COLLABORATIVE JUSTICE COURTS

General (*included in workbook)

Articles and other publications that offer specific direction for jurisdictions exploring the possibility of implementing a collaborative justice court program are listed below. While most court programs start small, there is national dialog about the ability to transfer the lessons learned in the collaborative court to other case types and beyond.

1. **Conference of Chief Justices and Conference of State Court Administrators Resolution 22 in support of Problem-Solving Court Principles and Methods*

2. **Key Components of Collaborative Justice Courts*

3. **Collaborative Justice in Conventional Courts: Opportunities and Barriers*
   A recent study examines the potential to apply specialized "problem-solving court" principles and practices more broadly throughout state court systems. Based on focus groups and interviews with 35 judges in California and New York, the study assesses which problem-solving court practices are transferable to general court calendars, the major barriers to transferability and how problem-solving methods may be more widely disseminated among judges and judicial leaders

4. **Collaborative Justice in Conventional Courts: Stakeholder Perspectives in California*
   Phase two of a study with the Center for Court Innovation regarding collaborative justice practice in conventional courts.

5. **California's Collaborative Justice Courts: Building a Problem-Solving Judiciary*
   A report on the development of collaborative justice in the California court system. The report highlights the efforts of local courts and judicial leaders and also chronicles the efforts of California's court system to respond, in part, to the joint resolutions of 2000 and 2004 by the Conference of Chief Justices and the Conference of State Court Administrators regarding problem-solving courts.

6. *Good Courts: The Case for Problem-Solving Justice*, Greg Berman and John Feinblatt. New Press 2005
   Good Courts is an overview of the collaborative court process and its history as well as a look at research on the effectiveness of the model.

7. *The Hardest Sell? Problem-Solving Justice and the Challenges of Statewide Implementation* Greg Berman 2004
   An overview of the issues faced by states attempting to mainstream problem-solving innovation.

8. *The Future of Drug Courts: How States are Mainstreaming the Drug Court Model*
   Aubrey Fox and Robert V. Wolf 2004
   A look at how four states – Louisiana, Missouri, Ohio and New York – are attempting to integrate drug courts into their court systems.

9. *Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts*
"Donald J. Farole, Jr., Nora K. Puffett, Michael Rempel, and Francine Byrne. The Justice System Journal, Volume 26, No. 1 (2005)
A summary of focus groups of judges in New York and California examining which practices of problem-solving courts can be integrated into conventional court operations.

CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS

CCJ Resolution 22
COSCA Resolution IV

In Support of Problem-Solving Courts

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators appointed a Joint Task Force to consider the policy and administrative implications of the courts and special calendars that utilize the principles of therapeutic jurisprudence and to advance strategies, policies and recommendations on the future of these courts; and

WHEREAS, these courts and special calendars have been referred to by various names, including problem-solving, accountability, behavioral justice, therapeutic, problem oriented, collaborative justice, outcome oriented and constructive intervention courts; and

WHEREAS, the findings of the Joint Task Force include the following:

- The public and other branches of government are looking to courts to address certain complex social issues and problems, such as recidivism, that they feel are not most effectively addressed by the traditional legal process;
- A set of procedures and processes are required to address these issues and problems that are distinct from traditional civil and criminal adjudication;
- A focus on remedies is required to address these issues and problems in addition to the determination of fact and issues of law;
- The unique nature of the procedures and processes encourages the establishment of dedicated court calendars;
- There has been a rapid proliferation of drug courts and calendars throughout most of the various states;
- There is now evidence of broad community and political support and increasing state and local government funding for these initiatives;
- There are principles and methods grounded in therapeutic jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and government organizations. These principles and methods are now being employed in these newly arising courts and calendars, and they advance the application of the trial court performance standards and the public trust and confidence initiative; and
- Well-functioning drug courts represent the best practice of these principles and methods;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators hereby agree to:

1. Call these new courts and calendars "Problem-Solving Courts," recognizing that courts have always been involved in attempting to resolve disputes and problems in society, but understanding that the collaborative nature of these new efforts deserves recognition.

2. Take steps, nationally and locally, to expand and better integrate the principles and methods of well-functioning drug courts into ongoing court operations.

3. Advance the careful study and evaluation of the principles and methods employed in problem-solving courts and their application to other significant issues facing state courts.

4. Encourage, where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and the community.

5. Support national and local education and training on the principles and methods employed in problem-solving courts and on collaboration with other community and government agencies and organizations.

6. Advocate for the resources necessary to advance and apply the principles and methods of problem-solving courts in the general court systems of the various states.

7. Establish a National Agenda consistent with this resolution that includes the following actions:

    a. Request that the CCJ/COSCA Government Affairs Committee work with the Department of Health and Human Services to direct treatment funds to the state courts.

    b. Request that the National Center for State Courts initiate with other organizations and associations a collaborative process to develop principles and methods for other types of courts and calendars similar to the *10 Key Drug Court Components*, published by the Drug Courts Program Office, which define effective drug courts.

    c. Encourage the National Center for State Courts Best Practices Institute to examine the principles and methods of these problem-solving courts.

d. Convene a national conference or regional conferences to educate the Conference of Chief Justices and Conference of State Court Administrators and, if appropriate, other policy leaders on the issues raised by the growing problem-solving court movement.

e. Continue a Task Force to oversee and advise on the implementation of this resolution, suggest action steps, and model the collaborative process by including other associations and interested groups.

Adopted as Proposed by the Task Force on Therapeutic Justice of the Conference of Chief Justices in Rapid City, South Dakota at the 52nd Annual Meeting on August 3, 2000.

Components of Collaborative Justice Courts

Collaborative justice key principles, as defined by the Collaborative Justice Courts Advisory Committee, based on the National Association of Drug Court Professionals' (NADCP) 10 components described in "Defining Drug Courts: The Key Components," are as follows:

- Collaborative justice courts integrate services with justice system processing.
- Collaborative justice courts emphasize achieving the desired goals without using the traditional adversarial process.
- Eligible participants are identified early and promptly placed in the collaborative justice court program.
- Collaborative justice courts provide access to a continuum of services, including treatment and rehabilitation services.
- Compliance is monitored frequently.
- A coordinated strategy governs the court's responses to participants' compliance, using a system of sanctions and incentives to foster compliance.
- Ongoing judicial interaction with each collaborative justice court participant is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- Effective collaborative justice court operations require continuing interdisciplinary education.
- Forging partnerships among collaborative justice courts, public agencies, and community-based organizations increases the availability of services, enhances the program's effectiveness, and generates local support.
- Effective collaborative justice courts emphasize a team and individual commitment to cultural competency. Awareness of and responsiveness to diversity and cultural issues help ensure an attitude of respect within the collaborative justice court setting.

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RESEARCH REPORT

Collaborative Justice in Conventional Courts

Opportunities and Barriers

A REPORT SUBMITTED TO THE CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS

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This report has been submitted to the Judicial Council of California • Administrative Office of the Courts by Donald Farole, Nora Puffett, and Michael Rempel of the Center for Court Innovation and Francine Byrne of the Administrative Office of the Courts.

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This report is also available on the California Courts Web site: *www.courtinfo.ca.gov/programs/collaborative* and at the Center for Court Innovation Web site: www.courtinnovation.org

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In the course of the project, 35 judges and two persons in administrative positions graciously agreed to participate in focus groups or interviews, which in many cases required several hours of travel time to a common location. We would like to thank all of the participants for their time as well as their valuable insights that made this report possible:

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- *From the focus group held in San Francisco, California:* Hon. Harlan Grossman, Hon. Loren McMaster, Hon. Barbara Miller, Hon. Mary Morgan, Hon. Donald Shaver, Hon. Richard Vlavianos, and our hosts, the San Francisco, California, AOC staff.

- *From interviews conducted in California (via conference call):* Hon. Stephen Marcus, Hon. Doris Shockley, and Hon. Darrell Stevens.

- *From the focus group held in Rochester, New York:* Hon. John Balzano, Hon. Craig Doran, Hon. Dennis Kehoe, Hon. Roy King, Hon. James McCarthy, Hon. Langston McKinney, Hon. John Rowley, Hon. John Schwartz, Hon. Joseph Valentino, and Hon. Margaret Szczur.

- *From the focus group or interviews held in New York City:* Hon. Efrain Alvarado, Hon. Jo Ann Ferdinand, Hon. John Leventhal, Hon. Rosalyn Richter, Hon. Larry Stephen, Hon. Laura Ward, Valerie Raine, and Michael Magnani.

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Executive Summary

In recent years an array of innovative courts has emerged throughout the country in an effort to address the underlying problems of defendants, victims, and communities. Since 1989, when the nation's first drug court opened in Miami, Florida, a number of different models have arisen: drug courts, domestic violence courts, family treatment courts, juvenile drug courts, peer/youth courts, mental health courts, community courts, and homeless courts. Various names have been used to collectively describe these projects. In California they are known as *collaborative justice courts*; in New York they are called *problem-solving courts*.[1] A number of unique elements characterize these innovative courts: a problem-solving focus, a team approach to decision making, integration of social services, judicial supervision of the treatment process, community outreach, direct interaction between defendants and the judge, and a proactive role for the judge inside and outside the courtroom.

California and New York, along with a number of other states, have successfully piloted and replicated drug courts and other collaborative court models. But it remains to be seen whether and how states can "go to scale"—not merely replicating more discrete courts but also disseminating some of their principles and practices broadly throughout conventional courts. Accordingly, this research project seeks to explore the extent to which key principles and practices fostered by collaborative justice courts may be applied more widely throughout a state court system.

Toward that goal, this project addresses three principal questions:

1. Which collaborative justice principles and practices are more easily transferable to conventional courts (and which are less transferable)?
2. What barriers might judges face when attempting to apply these principles and practices in conventional courts (and how might those barriers be overcome)?
3. How might collaborative justice be disseminated among judges and judicial leaders throughout the court system?

To gain insight into these questions, the research team conducted four focus group sessions (in Burbank and San Francisco, California, and in New York City and Rochester, New York) and several individual interviews in August and September 2003 among a diverse group of judges with experience in drug courts, domestic violence courts, mental health courts, and other collaborative justice courts in those two states. In total, 35 judges participated in this exploratory research. The findings, although not necessarily representative of the general population of collaborative justice court judges, provide important insights into the potential transferability of new practices to general court calendars.

This project originated with the Collaborative Justice Courts Advisory Committee of the Judicial Council of California. The committee had expressed an interest in exploring the integration of collaborative justice principles with more traditional court models in an effort to improve the quality of justice. The Administrative Office of the Courts funded the project and conducted it in collaboration with the Center for Court Innovation.

[1] This report refers to these projects throughout as "collaborative justice courts."

Emergent Findings and Themes

Across all focus groups the opinions expressed were surprisingly consistent—few substantive differences cropped up between groups, and clear themes emerged. It is hoped that the findings will stimulate continued dialogue and research into opportunities to practice collaborative justice on general court calendars, and will spur the development of strategies to promote such practice where appropriate.

Question 1: Which collaborative justice principles and practices are more easily transferable to conventional courts (and which are less transferable)?

Most judges—even while describing themselves as naturally inclined toward a collaborative, problem-solving orientation—agreed that their collaborative justice court experience greatly enhanced how frequently and how effectively they applied specific collaborative justice principles and practices on general calendars. Some judges questioned whether collaborative justice solutions ought to be practiced in a conventional court for fear that such practice might conflict with traditional legal values or even weaken support for collaborative justice courts themselves. However, most judges advocated a broader application in at least some respects.

Judges identified the following collaborative justice principles and practices as the easiest or most appropriate to transfer:

- *A proactive, problem-solving orientation of the judge*: This leads the judge to seek additional information and creative solutions. It was deemed widely helpful outside of the specialized court setting, particularly in negotiation situations.
- *Interaction with the defendant/litigant*: Direct interaction, a prerequisite for effective behavior modification, enables the judge to motivate and influence defendants to make progress in treatment/services. It can also bring to light the most crucial needs of parties in civil cases, laying the groundwork for positive solutions. Judges regarded this as one of the easiest practices to transfer to other calendars.
- *Ongoing judicial supervision*: Having defendants report back to court for treatment updates and judicial interaction was identified as one of the least controversial and most effective practices to transfer, particularly to probationers. Judges in all focus groups, however, expressed concern about the limited time they had available to devote to supervision in conventional courts.
- *Integration of social services*: Many judges reported service coordination to be difficult to transfer without having additional staff resources. But judges viewed social services to be a valuable tool in any court—especially for defendants with addiction, mental illness, or vocational/educational needs.
- *A team-based, non-adversarial approach*: Gaining the trust and participation of attorneys greatly facilitates judges' ability to practice collaborative justice on a general calendar. It might be far easier for judges to accomplish this in juvenile or family law settings, where rules explicitly foster a more collaborative approach, in order to serve the "best interests of the child." In addition, civil alternative dispute resolution programs, which are becoming more popular in California, might benefit from collaborative justice principles and practices.

Several judges also identified the practice of issuing sanctions and rewards as potentially transferable to general calendars, although there was far less consensus on this point than on the five principles and practices listed above.

Participants deemed the following conventional courts as most appropriate for practicing collaborative justice:

- *Juvenile delinquency and juvenile dependency courts*: These courts already practice some degree of problem solving and are non-adversarial by law. In California, they may also have greater resources than some other court systems. Judges identified young people as promising subjects for collaborative justice both because youths seem likely to benefit from intervention, and because attorneys were perceived as generally more amenable to treatment and other alternative sentences for younger clients.
- *Family law courts (in California)*: The judges viewed family law court, like juvenile courts, as inherently more problem-oriented, and as allowing greater flexibility and discretion than other courts. In addition, the state mandates alternative dispute resolution in disputed custody cases.
- *Proposition 36 courts (in California)*: These cases involve drug crimes by definition and clearly appealed to judges as being particularly appropriate for collaborative justice.

The judges identified several other case types as potentially conducive to transferability, such as mental health cases, some civil cases that could be resolved through alternative dispute resolution, and some domestic violence cases. The participants reached no consensus on whether it was appropriate to apply collaborative justice methods throughout civil and adult criminal courts, although judges provided many examples of having done so. There was also considerable disagreement among judges as to which cases might be *inappropriate* for collaborative justice, but they frequently mentioned cases involving serious violence and criminal trials as potentially incompatible with collaborative justice.

Question 2: What barriers might judges face when attempting to apply collaborative justice in conventional courts (and how might those barriers be overcome)?

Judges identified a number of critical barriers that could hinder their efforts to practice collaborative justice, and they proposed various strategies for overcoming or mitigating them. Of these, key findings include:

- *Resources*: All four focus groups discussed extensively the limited resources available in conventional courts. Judges underlined the limited time they had to provide individualized attention to each case, ongoing judicial supervision, and direct interaction with defendants. They also cited institutional pressures to "move cases along." Judges further lamented the lack of additional staff to help connect defendants with appropriate social service programs and provide the court with detailed progress reports. Although probation departments have historically been asked to coordinate treatment services and update the court, judges reported that chronic under-funding has rendered probation far less effective than desired. One potential exception is in California's juvenile courts (both dependency and delinquency), which have court, social services, and probation resources to facilitate the practice of collaborative justice.

- *Judicial philosophy and experience*: Judges—especially in the California groups—devoted a considerable amount of discussion to conflicting philosophical perspectives and the need for expanded judicial education. It was felt that the traditional view of the role of the judge—deciding cases, not solving problems—contrasted with the more problem-solving collaborative judicial philosophy. Many judges believed, further, that even those colleagues who are receptive to collaborative justice are discouraged from attempting to practice it by their lack of experience in a specialized court that would teach them the necessary skills.
- *Other barriers*: Participants also discussed barriers related to (1) attorney unwillingness toward or lack of education in the collaborative approach, (2) legal and constitutional constraints on what can or should be done in a conventional court (especially adult criminal courts), and (3) public-safety concerns with regard to violent defendants. These seemed to concern fewer judges, however, and they arose specifically when the discussion turned to conventional adult criminal courts, not juvenile, family law, or civil calendars.
- *Strategies to overcome the barriers*: Two categories of strategies emerged from the discussion: (1) strategies that judges could use now, with minimal additional resources, and (2) long-term solutions. Into the first category fell *triage* (selecting only the most appropriate cases for a collaborative justice approach) and exerting courtroom leadership to encourage attorneys and other parties to change their practices. Into the second category fell such ideas as making the resources of collaborative justice courts available to all and instituting court-wide screening, assessment, and case management systems. Much discussion also focused on strategies for judicial education (see below).

Question 3: How might collaborative justice be disseminated among judges and judicial leaders throughout the court system?

In exploring strategies to disseminate collaborative justice principles and practices throughout the court system, the participants concentrated their discussion greatly on the need to change attitudes and role orientations among the many judges and judicial leaders who are unfamiliar with or unreceptive to collaborative justice. Judges recognized that while it would never be embraced by all of their colleagues, the practice of collaborative justice can be, to some degree, a learned behavior—and exposure to the concept is the key to changing attitudes. Discussion of how exposure might occur generated the following themes and recommendations:

- *Education/training*: Judges cited the need for the development of courses on collaborative justice or the further use of such courses at judicial trainings and new judge orientations. Participants emphasized the latter, since the consensus was that judges new to the bench tended to be more receptive to collaborative justice. Many judges, though not all, expressed support for mandatory training.
- *Informal/word of mouth*: Across the focus groups, judges recommended less formal means by which their colleagues might be exposed to collaborative justice, including mentoring, brown-bag lunches, and exposing judges to the results of this new approach (e.g., sharing success stories). A common theme was that judges are more receptive to the idea of collaborative justice if they "hear it from other judges," rather than from administrators, attorneys, or academics.

- *Assignment/rotation*: While assignment to collaborative justice courts can have a lasting, positive impact on judges, participants saw mandatory rotation to these courts as impractical, largely due to the potentially deleterious impact on the courts themselves. (For example, an assigned judge might be hostile to the court's goals or methods, and too frequent rotation might harm program participants.)
- *Judicial leadership*: Judges in the California focus groups emphasized the importance of having presiding judges and other judicial leaders encourage the broader use of collaborative justice throughout the court system.

Implications

Participants believed that informal means could also be used to take research findings on collaborative justice (which principles and practices could be applied on general calendars, and which types of cases and calendars would be more appropriate), incorporate those findings into standard judicial trainings, and disseminate them throughout the courts. This would help make both bench judges and judicial leaders more aware of how all judges could practice collaborative justice—and the strategies they could use to overcome the barriers they might encounter.

Participants proposed specific steps that might be taken in the short term to promote broader application of collaborative justice:

Education

- Incorporate collaborative justice and addiction courses in new judge orientation (new judges were consistently perceived as more likely to be open to new approaches);
- Encourage judges and presiding judges to attend collaborative justice courses; and
- Encourage training for prosecutors and defenders.

Informal judicial exposure

- Encourage judges from collaborative justice courts to mentor general bench judges and those new to collaborative justice assignments;
- Promote brown-bag lunches and other opportunities for judges to share relevant experiences;
- Encourage judges to sit in on collaborative justice courts (perhaps as part of new judge orientation);
- Encourage judges to attend collaborative justice court graduation ceremonies; and
- Encourage—when necessary and appropriate—general bench judges to sit as substitutes on collaborative justice courts.

Judicial leadership

- Encourage general bench judges to practice collaborative justice, when appropriate;
- Encourage judges to volunteer for collaborative justice court assignments; and
- Indicate that collaborative justice involvement, both within and outside of specialized courts, would reflect positively in judicial evaluations and career-enhancing assignments.

Focus group participants also identified barriers that could be overcome only with considerable investment over the long term. Judges suggested a number of long-term changes to promote collaborative justice, including the centralization of treatment coordination and compliance monitoring staff and resources within each courthouse, the development of jurisdiction-wide lists of community-based service providers serving populations with different needs, and the appointment of administrative judges with diverse jurisdictional backgrounds (e.g., family law, juvenile, criminal).

Future Research

This research shows that promoting collaborative justice throughout the court system will depend largely on the receptivity and participation of judges who have no collaborative justice court experience. Therefore, we recommend a systematic survey of *general calendar* judges in California and New York to answer key questions concerning their (1) knowledge, (2) attitudes, and (3) practices relating to collaborative justice. These would include:

- *Knowledge*: What is their current knowledge of the various collaborative justice court models, including drug courts, domestic violence courts, mental health courts, and community courts? What do they know of the specific principles and practices applied in these courts?
- *Attitudes*: What are their perceptions and attitudes about collaborative justice principles and practices? Do they perceive some as more or less applicable in various general calendars (adult criminal, civil, juvenile, etc.)?
- *Practices*: Do they currently practice collaborative justice in their general calendar assignments? If so, in what way(s)? If not, which barriers do they encounter?
- *Openness to change*: How willing are they to practice collaborative justice in conventional courts (and under what circumstances)? How willing are they to be assigned to collaborative justice courts? How willing are they to attend trainings? To participate in informal mentoring? To engage in other strategies recommended by focus group participants to promote collaborative justice?

As an additional avenue of research, a study among collaborative justice court judges nationwide might explore the extent to which they share the experiences and perspectives of the California and New York judges who participated in this research. Both California and New York have been at the forefront of testing models of collaborative justice; and while few differences emerged between the two in this study, it is not clear whether the experiences of collaborative justice court judges in those states would be mirrored by colleagues nationwide.

Collaborative justice courts are created through the cooperation of multiple agencies including probation, prosecutors, defense attorneys, law enforcement, and treatment providers. Taking these courts to scale can be accomplished only with the commitment of all justice system partners. While this project explores strategies and techniques that the courts can employ to bring these innovative principles and practices into the mainstream, it should be recognized that the success of these strategies depends on support from throughout the criminal justice and treatment systems. Additional research will focus on determining the receptivity and commitment to the widespread use of collaborative justice practices of the non-court system players.

1. Introduction

The study seeks to explore the extent to which principles and practices fostered by *collaborative justice courts* may be applied more widely throughout the court system. Collaborative justice courts—also known as problem-solving courts—effectively came into being with the creation in Miami, Florida, of the country's first drug court in 1989. Since then, more than 1,000 drug courts have opened nationwide, and other collaborative justice models have evolved, including domestic violence courts, family treatment courts, mental health courts, community courts, homeless courts, and a number of specialized courts serving juveniles, such as peer/youth courts.

At the same time that these specialized courts have mushroomed, several states—including California and New York—have gone further, developing coordinated efforts to institute some of their collaborative justice initiatives on a statewide level. California, now home to approximately 250 collaborative justice courts, coordinates its efforts through a special Collaborative Justice Courts Advisory Committee to the state's Judicial Council. These efforts reflect, in part, the demonstrated success of drug courts[2] as well as the public attention and support these courts have garnered.

This research stems from an interest in the prospective scope of institutionalization, or going to scale with a collaborative justice court approach. This idea of going to scale can have at least two implications. First, it can involve the system-wide acceptance, expansion, and coordination of specialized collaborative justice courts in increasing numbers (such as has occurred in California and New York). Second, it can involve the incorporation of a collaborative justice approach into the mainstream of conventional court operations. Our research will explore this latter area. Specifically, this project asks: Will collaborative justice continue to be practiced only in standalone courts dedicated to specific interventions (e.g., substance addiction, domestic violence, mental illness, or youth deviance), or will its core principles and practices be disseminated throughout the court system, provoking sweeping changes in the definition and administration of justice? While there has been considerable attention already to collaborative justice as practiced in specialized courts, it remains to be seen how and to what extent its core principles and practices can be transferred to general court calendars.

This exploratory study aims to identify both opportunities and barriers that judges may face in applying collaborative justice court principles and practices *outside* the specialized court setting. The study reviews the relevant literature, and reports the results from focus groups and interviews conducted with California and New York State judges who now sit or have previously

[2] Although it is premature to offer a definitive assessment of the newer problem-solving court models, a consensus has recently emerged regarding the efficacy of adult drug courts. David Wilson and colleagues (2003) reported that 37 of 42 completed studies found lower recidivism rates among drug court participants than comparison groups composed of otherwise similar non-participating defendants. A well-regarded study of the Baltimore City Treatment Court, which used a research design where defendants were randomly assigned either to the drug court or conventional case processing, found recidivism significantly lower for drug court participants over both two- and three-year tracking periods (see Gottfredson, Najaka and Kearley 2003; and Gottfredson, Kearley, Najaka, and Rocha 2003). And a study of six New York State drug courts also reported recidivism reductions extending to three years after the initial arrest across all sites, although the exact significance and magnitude of the reductions varied across the six sites (Rempel, Fox-Kralstein, Cissner, Cohen, Labriola, Farole, Bader, and Magnani 2003). Such evidence recently led Goldkamp (2003) and Harrell (2003) to concur that the evaluation literature now offers clear support for the effectiveness of adult drug courts in reducing recidivism.

sat on collaborative justice courts. The introduction describes both the origins of the project and the key questions the research attempts to address.

Collaborative justice courts are developed through the cooperation of multiple agencies including probation, law enforcement, and treatment. Taking these courts to scale can be accomplished only with the commitment of all justice system partners. While this project explores strategies and techniques that the courts can employ to bring the principles and practices of these innovative criminal justice models into the mainstream, it should be recognized that the success of those strategies depends on support from throughout the criminal justice system. Future research should assess the impact that taking such programs to scale will have on justice system partners, as well as the collaborative efforts that are in place or need to be established for the process to be successful.

How This Project Originated

This project grew out of two strategic planning meetings held by the Collaborative Justice Courts Advisory Committee in the spring and fall of 2001. These meetings sought to identify the advisory committee's goals and to tie those goals to the Judicial Council's overall strategic planning goals—specifically to enhance the quality of justice and service to the public: "Judicial branch services will be responsive to the needs of the public and will enhance the public's understanding and use of and its confidence in the judiciary" (Judicial Council Strategic Planning Goal number 4). The advisory committee's planning meetings were also shaped, in part, by an August 2000 resolution passed jointly by the Conference of Chief Justices and the Conference of State Court Administrators. The resolution expressly encouraged "where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims, and the community."

As a result of its strategic planning meetings, the advisory committee set as an objective for itself to explore the integration of collaborative justice principles with more traditional court models. The committee initially articulated this objective in its first annual report to the Judicial Council (November 2001), with regard to mental health court principles and practices—the committee having noted the large numbers of cases involving mentally ill defendants.

In spring 2002, William C. Vickrey, Administrative Director of the Courts, participated in a daylong discussion organized by the U.S. Department of Justice and the Center for Court Innovation that focused on bringing collaborative justice courts to scale. A key theme of that discussion—and one that motivated this current study—concerned precisely what "going to scale" meant. Many viewed the concept to mean not merely increasing the number of specialized courts in existence, but rather encouraging the spread of collaborative justice court principles into conventional courts systemwide. In fall 2002, the Center for Court Innovation published a summary of that meeting.[3]

Several other developments provided background for California's participation in CCI's discussion on collaborative justice: the advisory committee's efforts to document the cost-effectiveness of drug courts, projects in California such as the Substance Abuse Recovery Management System (SARMS) and Proposition 36 integration with drug court models, and the

[3] See Fox and Berman, 2002, for an edited transcript of the proceedings.

committee's observations regarding the potential for integrating collaborative justice practice into general court calendars.

During its August 2001 and August 2002 meetings, the committee hosted presentations about the relationship between "restorative justice" and "collaborative justice" practices and principles. The presentations emphasized the concept of restorative justice as a set of practices and principles, rather than as court-specific programs. The ensuing discussions compared restorative justice principles to the 11 defining components of collaborative justice courts that the advisory committee identified in its November 2001 report to the Judicial Council.[4] In turn, preliminary discussions focused on the applicability of both restorative and collaborative justice principles outside the collaborative justice or specialized court setting.

This research project also has origins in the advisory committee's ongoing efforts to identify promising practices in collaborative justice courts. These efforts produced two prior studies of promising practices in California. The committee presented summaries of the results from these studies in *Judicial Council Reports* in 2001 and 2003. Additional efforts in this area include the identification of a template to compile practices and outcome measures by which to assess practices, as well as the identification of drug court practices that are especially cost-effective (the latter effort as part of a broader cost study of California drug courts).

This research is part of continuing efforts by the Collaborative Justice Courts Advisory Committee and the Collaborative Justice Courts Project staff to define and assess the effectiveness of collaborative justice court programs and practices. It builds on the 2002 Center for Court Innovation study by exploring the transferability of specific collaborative justice court principles and practices outside of the specialized court setting. This study considers practices in terms of their applicability to a broad sector of court practice, as well as in terms of their relative effectiveness in promoting the goals of collaborative justice. The project addresses three principal questions:

1. Which collaborative justice principles and practices are more easily transferable to conventional courts (and which are less transferable)?
2. What barriers might judges face when attempting to apply these principles and practices in conventional courts (and how might they overcome those barriers)?
3. How might collaborative justice be disseminated among judges and judicial leaders throughout the court system?

To answer those questions, the AOC's Collaborative Justice Courts Unit partnered with the Center for Court Innovation to investigate going to scale with collaborative justice courts. This partnership recognizes that both organizations, in their study of collaborative justice courts, have come to the point of asking similar questions regarding transferability of practices. In addition, the partnership provides access to two of the largest court systems in the nation, with large, well-developed systems of specialized collaborative justice/problem-solving courts. Future research should assess the impact that taking such programs to scale will have on justice system partners, as well as the collaborative efforts that are in place or need to be established for the process to be successful.

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[4] In addition to the 10 key drug components defined by the U.S. Department of Justice (Drug Courts Program Office [1997]. *Defining drug courts: The key components*. Washington, D.C.: Office of Justice Programs, U.S. Department of Justice), the committee adopted an eleventh component of cultural competency. Drug courts receiving state funds in California must have a demonstrated commitment to all of these components.

Organization of the Report

To better understand the transferability of collaborative justice principles and practices outside a specialized court setting, researchers conducted a combination of individual interviews and focus groups (two in California and two in New York) during the summer of 2003. Participating judges had experience serving on one or more collaborative justice courts, including drug courts, domestic violence courts, mental health courts, and community courts. The judges also had either subsequent or simultaneous experience on a general calendar assignment, enabling them to draw on their own experience in exploring questions on the practice of collaborative justice in conventional courts. Thirty-five judges in all participated.

Chapter 2 lays the groundwork for this research by reviewing other writings on the broader applications of collaborative justice. While these writings consist mostly of descriptive accounts reflecting the experiences and perspectives of individual justice system representatives (e.g., judges, legal scholars, and court planners), the findings are certainly suggestive and have influenced the choice of issues probed by the current project.

Chapter 3 summarizes the focus group methodology and identifies how many participating judges had a background in each type of collaborative justice court (e.g., adult drug court, juvenile drug court, domestic violence court, and so on).

Chapters 4 through 7 present all findings, including both a discussion of key themes and an abundant use of quotations to bring forth the actual voices of participating judges. Chapter 4 reviews those principles and practices that were considered most integral to the collaborative justice approach. Chapter 5 reports which of these were deemed most or least transferable to conventional courts and also which *calendars* (e.g., juvenile delinquency, juvenile dependency, family law, civil, or adult criminal calendars) were deemed most or least suited to the practice of collaborative justice. Chapter 6 identifies key barriers that judges would likely face when attempting to practice collaborative justice more widely and how they might overcome those barriers. Finally, Chapter 7 presents the views of participating judges on how collaborative justice principles and practices might be successfully disseminated among colleagues and judicial leaders throughout the court system.

2. Literature Review

The purpose of this chapter is to synthesize published information about the transferability of collaborative justice principles and practices to the court system in general. We have taken a broad view of the concept of transferability for this review and had considered a wide range of publications. The literature draws primarily on two constructs: *therapeutic jurisprudence*, a legal theory concerned with the potential therapeutic impact of judicial decisions, and *collaborative justice*, a practice of addressing the problems underlying criminal behavior via the collaborative effort of judges, attorneys, law enforcement, service providers, and others.[5] The studies examined range in scope from the individual court level (e.g., experiences of judges engaged in these practices) to the systemic level (e.g., legal theories and policy considerations relevant to efforts to institutionalize the practices). Lessons from the literature review informed the development of focus group and interview questions for the present study.

It should be noted that the available literature consists almost exclusively of descriptive accounts reflecting the experiences and perspectives of justice system representatives, often as presented at symposia or focus groups. Virtually none of the literature directly addresses which discrete principles and practices might be transferable to general court calendars. In fact, only one evidence-based study—and that, still at a preliminary stage of reporting—directly addresses this issue (Casey and Rottman 2003).[6] Still, many publications provide relevant insights. Several demonstrate that judges in mainstream courts have begun to apply collaborative justice approaches (e.g., Babb, 1998; Bamberger, 2003; Brown, 2001; Casey and Rottman, 2000; Gilbert, Grimm, and Parnham, 2001; Schma, 2000; and Wexler, 2001). In addition, legal scholars and jurists (led by David Wexler) have explored theoretically how judges and attorneys might apply therapeutic jurisprudence in various contexts—e.g., appellate cases (Abrahamson, 2000; and Leben, 2000), family law cases (Babb, 1998), criminal cases (Wexler, 1993), and juvenile cases (Wexler, 2000). Others have considered the opportunities and challenges of going to scale—that is, institutionalizing drug courts and other collaborative justice courts (e.g., Feinblatt, Berman and Fox, 2000; Fox and Berman, 2002; and Tashiro et al., 2002). While these literatures are varied, four consistent themes emerge from them:

1. Broader use of collaborative justice requires changing the traditional attitudes and role orientations of judges, attorneys, and other justice system actors;
2. Resource and capacity issues can pose serious barriers to the attempts to apply specific collaborative justice practices more widely;
3. Judicial leadership is critical; and
4. Different perspectives exist on the question of collaborative justice and specialization: the extent to which collaborative justice requires specialized courts (and judges) as distinguished from institutionalization throughout the entire court system.

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[5] Collaborative justice and problem-solving courts are equivalent court-based innovations, differentiated mainly by terminology.

[6] The lack of a broadly developed literature reflects the fact that collaborative justice courts began as relatively small-scale experiments. Initial studies focused primarily on evaluating the effectiveness of individual demonstration projects. Only in recent years has attention turned to applying the collaborative justice model more broadly throughout the court system.

The first four sections below discuss these themes respectively. A fifth summarizes results from the sole study that empirically assesses the transferability of collaborative justice principles (Casey and Rottman, 2003).

Changing Roles and Attitudes

One key theme the literature raises is that broader use of collaborative justice requires changing the traditional attitudes and role orientations of judges as well as attorneys and other relevant actors. Publications demonstrate widespread recognition of a need to generate buy-in from those who would apply collaborative justice principles, whether that be in specialized or general courts (see Berman, 2000; Casey and Rottman, 2003; Chase and Hora, 2000; Feinblatt et al., 2000; *Fordham Urban Law Journal,* 2002; Fox and Berman, 2002; Fritzler and Simon, 2000; Rottman, 2000; and Zimmerman, 1998).

The Relationship Between Judicial Role Orientations and Behavior

A broad, though dated, series of studies conducted by legal scholars and political scientists examines the relationship between judicial *role orientations* (judges' expectations about what they ought to do) and *role behavior* (what they actually do in terms of identifying problems, searching for alternatives, and so on). Past studies have shown that role orientations affect behavior on the bench (Boyum, 1979; and Ungs and Bass, 1972) and are critical intervening factors between case management policies and their degree of practical success (Neubauer, 1978). Hanson (2002) recently reviewed the leading studies on this subject and called for renewed research into judges' attitudes and expectations about their decision making.[7] He notes that most studies of the judicial role were published more than 25 years ago. Since then, a number of court reforms (including collaborative justice courts) have emerged, with important implications for judges' role orientations and, potentially, behavior.

Changing Judicial Roles in Collaborative Justice Courts

As it relates to collaborative justice practices, each judge's role orientation falls somewhere along a continuum. At one end are the "neutral, detached" judges, who act as finders of fact and decision makers; at the other end are the "advocate, cheerleader, social worker" judges, who see their role in a therapeutic context. Judges in the latter group may subscribe to one or both of two recent developments in criminological theory: therapeutic jurisprudence and collaborative justice.

Therapeutic jurisprudence suggests that judges focus on the therapeutic content of their decisions—emphasizing rehabilitation and treatment, not just the legal aspects of their rulings (e.g., see Wexler, 2001). Collaborative justice, as its name suggests, encourages team building—collaborating with attorneys, defendants, outside agencies, and others to arrive at decisions reflecting the common goals of all parties. These two role orientations—the therapeutic and the collaborative—may often (but not always) coincide in today's collaborative justice courts, which typically use collaborative methods to address drug addiction, mental illness, and other underlying issues; both also contrast with the traditional judicial role.

[7] The key studies reviewed by Hanson are Boyum, 1979; Flango, Wenner, and Wenner, 1975; Gibson, 1977, 1978; Glick, 1971; Neubauer, 1978; and Ungs and Bass, 1972.

Not surprisingly, preliminary findings from a National Center for State Courts study suggest that a traditional concept of the judicial role is perceived as a central barrier to the spread of collaborative justice principles in conventional courts (Casey and Rottman, 2003). In general, while some judges look favorably upon the new culture of cooperation practiced in many collaborative justice courts (e.g., Berman, 2000), others do not (e.g., Hoffman, 2000). And throughout the literature there is an understanding that the widespread use of collaborative justice, particularly in mainstream courts, depends on convincing judges and others that such an approach is not only desirable but also appropriate to the judicial role under certain circumstances (see discussion of leadership below).

Changing Roles of Attorneys and Other Players

The literature recognizes that beyond judges, other players—particularly attorneys—carry weight. Some have noted that the bar has been resistant to therapeutic jurisprudence; and while the fate of therapeutic jurisprudence does not depend on support from attorneys, its success can only be enhanced by lawyers willing to practice it (Stolle, Wexler, and Winick, 2000; and Wexler, 2001). Others have observed that a more supportive bar is, in fact, emerging (e.g., Daicoff, 2000).

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Resource and Capacity Issues

Several articles identify resources (time, staffing, technology, and training) and funding as critical in any attempt to practice collaborative justice more widely (e.g., Bamberger, 2003; Feinblatt et al., 2000; *Fordham Urban Law Journal,* 2002; and Tashiro et al., 2002). For example, Bamberger (2003) argues that while specialized courts have proliferated (drug courts, domestic violence courts, and the like), judges in criminal courts of general jurisdiction face a difficult time trying to engage in problem-solving practices—specifically, administering alternatives to incarceration. Bamberger contends that such opportunities legally exist, and identifies three categories of felony cases in which a judge, under New York State law, may provide an alternative to incarceration: (1) youthful offender adjudication; (2) cases in which the defendant is charged with a felony requiring incarceration but pleads to a lesser charge that does not require it; and (3) probation-eligible cases. However, courts of general jurisdiction—unlike specialized collaborative courts—typically lack sufficient resources to administer alternatives to incarceration; for instance, general courts lack support staff to find a program and arrange admission for a defendant, meaning that the judge must attend to these details. In addition, local probation departments, which have traditionally monitored alternatives to incarceration, are severely underfunded and understaffed. Bamberger concludes that greater support services are needed for courts of general jurisdiction and local probation departments so that all courts can administer alternatives to incarceration.

Institutionalization of drug courts also raises the issue of treatment capacity, particularly in terms of the availability of treatment resources in the community and the costs of providing services to a large population of substance abusers. Feinblatt et al. (2000) argue that drug courts, as they go to scale, face the challenge of having to convince the public and other branches of government that treatment alternatives are cost-effective: that up-front investments in drug treatment will save money in the future by reducing criminal justice costs and crime rates.

A focus group session addressing the institutionalization of drug courts also identified the lack of a stable funding base as a major barrier to more widespread adoption of specialized drug

courts. Participants stressed that a comprehensive education strategy would be critical to any effort to achieve long-term, stable funding for drug courts. Education should be broad-based and focused not only on judges, but also on other justice system personnel, other branches of government, the media, and the general public. It should address drug court concepts, operations, and effectiveness (Tashiro et al., 2002).

Judicial Leadership

The literature cites the central role of judicial leadership in promoting collaborative justice throughout the court system. According to one leading proponent of therapeutic jurisprudence:

> The legal community has to press its judicial leaders to get involved ... because without it [this pressure], the lawyers won't come along, the Department of Corrections officials won't come along ... it does not happen without judicial leadership (*Fordham Urban Law Journal,* 2002, p. 2038, comments of Judge Schma).

In addition to systemwide leadership, Judge Schma noted that judicial leadership can occur individually—judges can create a legal culture in their own general jurisdiction courts:

> In my ordinary, regular, everyday court ... the lawyers know that they are going to be expected to deal with substance abuse issues if they are present ... that [it] is going to be brought into the courtroom (*Fordham Urban Law Journal,* 2002, p. 2038).

The literature also cites leadership as important for outreach, funding, and creation of new partnerships at a time when court systems look to create change at an institutional level (Feinblatt et al., 2000). At the national level, proponents of collaborative justice cite the leadership of the Conference of Chief Justices and the Conference of State Court Administrators in adopting a resolution that endorsed the problem-solving court approach, including:

> Encourag[ing], where appropriate, the broad integration over the next decade of the principles and methods of problem-solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, and meeting the needs and expectations of litigants, victims, and the community.[8]

Feinblatt et al. (2000, p. 287) similarly note that in New York the statewide drug court initiative spearheaded by Chief Judge Judith Kaye "sends a loud message" that the goal of criminal courts is not to process cases as quickly as possible but to achieve tangible results: increased sobriety and reduced recidivism.

Others note that this directive must be supplemented by an effort to change the personal beliefs and role orientations of judges and other players. During a focus group discussion about institutionalizing drug courts, one scholar noted that "you can't mandate belief in a program when you replicate or systematize it, but you must take belief into account through training."[9] Indeed, education and training are frequently identified as being critical to changing attitudes and

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[8] See Becker and Corrigan, 2002.

[9] Comment of Lisbeth Schorr, reported in Fox and Berman, 2002:7.

role orientations, and thereby to facilitating the spread of collaborative justice principles. Caroline Cooper of the Drug Court Clearinghouse at American University suggested:

> [The] judicial support issue will require education both within court and within other judicial education bodies. The drug court judge function, therefore, needs to be part of national and state and local education activities and part of special segments, as well as new judge orientation (*Fordham Urban Law Journal,* 2002, p. 1872).

Judges might also be made aware of the impact of collaborative justice practice on job satisfaction. In a focus group discussion about drug courts, one observer noted, "I think there's a need to continue to explain to the 25,000 trial judges around the country that a drug court is an enjoyable assignment. Without that buy-in, you won't be able to build momentum to expand drug courts."[10]

In a survey of California judges, Chase and Hora (2000) confirm that judges in drug treatment courts are more highly satisfied with their jobs than family court judges. The authors note that many of the factors associated with job stress among judges (large caseloads, the need to process people, and lack of control over the cases they get) are not as prevalent in drug courts. Their survey also found that drug court judges had a more positive attitude toward litigants than family court judges did. Drug court judges were more likely to report that they (1) got a positive benefit from their assignment, (2) admired litigants' efforts to improve their lives, (3) felt litigants were genuinely trying to solve their problems, (4) witnessed improvement by litigants, and (5) felt that litigants were grateful for the help the court provided. Although the study did not establish conclusively that drug court judges are more highly satisfied *due to* their assignment, the findings were consistent with self-reports from individual judges, who noted positive professional benefits resulting from their collaborative justice court assignments. For example, in a symposium published in *Fordham Urban Law Journal* (2002), several judges cited the positive impact that serving on a collaborative justice court had on their professional satisfaction, as well as their expertise and understanding of therapeutic issues.

One judge noted three aspects of collaborative justice courts that are particularly rewarding: (1) the courts improve decision making by allowing judges to make more informed decisions, (2) decisions are both legally correct and fair, and (3) outcomes are more satisfying—"the[y] make sense." (*Fordham Urban Law Journal,* 2002, p. 2014). Hora and Schma (1998, p. 12) assert:

> A drug treatment court judge experiences positive human interaction with litigants, receiving the personal reward of contributing to addicts' recovery in a manner uniquely available to the judge because of the criminal justice "event" over which the judge presides. Judging in this nontraditional forum becomes an invigorating, self-actualizing, and rewarding experience instead of a stressful, isolating, unsatisfying experience of watching people repeatedly recycle.

Collaborative justice assignments thus contrast with other specialized court assignments (e.g., many probate and juvenile courts), which some judges link to lower job satisfaction and increased stress. Rottman (2000) attributes the difference to the fact that in these other courts the specialization refers to expertise in technical and scientific matters or in complex areas of civil

[10] Burke, reported in Fox and Berman, 2000.

law, whereas collaborative justice courts require a different set of skills and qualifications, which can lead to increased efficacy.[11]

Collaborative Justice and Specialized Courts

A final theme of the literature deals with the relationship between collaborative justice and specialized courts: Do collaborative justice and therapeutic principles require specialized courts and specialized judges? Rottman (2000) addresses specialization as it pertains to therapeutic jurisprudence, and considers the ways in which specialized courts may both enhance and inhibit opportunities to apply it. He suggests that problem solving in specialized courts has several advantages, including the ability of these forums (1) to relax the adversarial process and focus on problem solving, (2) to attract a vigilant bar (due to the exclusive subject matter jurisdiction), (3) to mobilize and coordinate treatment and service providers, and (4) to develop the expertise of the judge and other staff. However, he also cites a number of ways in which specialization may inhibit therapeutic jurisprudence, including the possibility that judges in these forums might become overly deferential to experts; that the court might become overly dependent on one judge; and that specialized court assignments might result in stress, burnout, and fewer opportunities for career advancement.[12]

Rottman draws on lessons from a broader literature, which identifies both the advantages and disadvantages of specialization in contexts such as family and juvenile court (see, e.g., Babb, 1998; Domitrovich, 1998; and Stempel, 1995). While many people have traditionally viewed specialized courts as less prestigious than their general court counterparts—as attracting lower quality judges, as well as being narrow in focus, isolated from the rest of the system, and not adaptable to change—there are numerous arguments in favor of specialization, including improved adjudication, greater expertise from the bench, and economies of scale (faster case disposition and reduced costs) due to the division of labor in the court system (Stempel, 1995).

Specialized courts, of course, do not require specialized judges. Rotating panels of generalist judges into specialized courts allows for temporary specialization. Chase and Hora (2000) suggest a further benefit: rotation allows for a natural process of diffusion, as judges take the benefits of their collaborative justice experience with them when they return to general dockets.

The literature on judicial rotation into specialized assignments, such as juvenile and family courts, is relevant in this regard.[13] It identifies several potential benefits of rotation, including the development of judicial expertise, a change in the judges' perspectives,[14] and the prevention of too close an association of the court with one judge. However, it also cites several shortcomings, such as a disincentive for continued training and specialization, the possibility of judicial

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[11] However, as Rottman, 2000, correctly notes, the paucity of research makes it difficult to reach definitive conclusions about the impact of specialization on judicial stress and burnout.

[12] For the complete list of the ways Rottman suggests specialization may enhance and inhibit therapeutic outcomes, see Rottman, 2000, p. 24.

[13] The literature on judicial rotation is vast, and no attempt has been made to review it fully. For an overview of the advantages and disadvantages of judicial rotation to family courts compared to fixed courts with dedicated judges, see Hurst, 1991; and Rubin and Flango, 1992.

[14] Hurst, 1991, found that juvenile and family court judges, as a result of their assignment, accorded juvenile and family jurisdictions equal status with other jurisdictions.

burnout, less continuity on the specialized court ("no one in charge" syndrome), and an inability of judges to achieve the desired level of expertise in their limited time on the court.[15]

National Center for State Courts Delphi Study

The literature reviewed thus far pertains indirectly to the central issue in this research—the transferability of collaborative justice court principles and practices to general calendars. As noted earlier, only one study seeks to examine this issue empirically. Using the Delphi Method,[16] the National Center for State Courts recently conducted a series of three surveys among collaborative justice court judges nationwide (Casey and Rottman, 2003). While the study surveyed relatively few judges (19 judges completed the first questionnaire; 14, the second; and 12, the third), the research deserves note because it is unique in directly asking judges about the transferability of components or features of collaborative justice courts to conventional courts.[17]

The Delphi methodology seeks to identify areas of greater or lesser consensus among experts (the survey does not rely on a random sample). When judges were asked about components or features of collaborative justice courts that could be adapted more generally, there was:[18]

Unanimous agreement on:

- Involvement of a wide range of participants and stakeholders (e.g., multidisciplinary training); and
- A needs-based approach (e.g., judicial monitoring and review).

At least 75 percent agreement on:

- Accountability issues (e.g., stricter accountability for violations);
- Evaluation and service provision (e.g., access to treatment providers at the arraignment stage);
- Systems issues (e.g., information sharing); and
- Dispute resolution (e.g., judges as problem solver and mentor).

Less than 75 percent agreement on:

- More use of deferred sentences.

When asked which features would be difficult to adapt more generally, there was:

Unanimous agreement on:

- Changes in the traditional roles of the judge, prosecutor, and defender.

Less than 75 percent agreement on:

- Judicial/staff resources (e.g., amount of attention provided to each case);
- Judicial interest/role (e.g., judicial willingness to handle specialized dockets); and

[15] Note that these concerns are not limited to judicial assignments. For example, Thompson, 2002, addresses similar issues with regard to the rotation of prosecutors into community prosecution units.

[16] The Delphi Method uses multiple survey questionnaires, beginning with an initial brainstorming questionnaire that poses open-ended questions to elicit ideas. Later questionnaires refine the issues and determine the extent of agreement.

[17] The study addressed a variety of other issues—not reported here—with the goal of identifying unifying practices in collaborative justice courts.

[18] Because only preliminary study findings were available at the time of this writing, components and features are written exactly as they appeared in conference materials furnished by the authors. In addition, no attempt has been made to extrapolate upon the findings or conclusions.

- Community access (e.g., integrating the voice of the community and other stakeholders into the court's operations).

The preliminary findings suggest greater agreement on which components could be adapted more generally than on which components would be difficult to adapt.

3. Research Methodology

This research sought to gather information about the transferability of principles and practices fostered by collaborative justice (CJ) courts to general court calendars. Given the exploratory nature of the research, the research team deemed that a focus group approach would be more appropriate than a formal survey of CJ court judges. While neither the focus group participants nor the findings they yield can be considered representative of the general population of judges, focus groups are recognized as a particularly useful tool when the objective is to generate information on attitudes, opinions, personal experiences, and suggestions concerning topics about which limited information exists.

The team conducted research among judges in California and New York, two states at the forefront of testing new collaborative justice models. In selecting participants from each state, we tried to recruit judges who were familiar with collaborative justice issues and were available to participate. In nearly all cases, we restricted eligibility to judges who had both experience serving on a CJ court and simultaneous or subsequent experience serving on a general calendar assignment. This made it possible to explore the personal experiences these judges may have had in attempting to apply various principles and practices they learned in their CJ court. We took care to recruit a diverse group of judges in terms of their court location (e.g., urban versus rural; and geographic region within each state), current assignments, and current or prior collaborative justice court assignments.

To recruit for the California focus groups, the Administrative Office of the Courts (AOC) identified and invited judges who met one of three sets of criteria:

1. Experience on a collaborative justice court during the past five years and subsequent rotation to a general calendar for at least six months;
2. A current assignment to both a collaborative justice court and a general calendar; or
3. Experience on one type of collaborative justice court during the past five years followed by subsequent rotation to another type of collaborative justice court (e.g., rotation from a drug court to a domestic violence court).

To recruit for New York focus groups, the research team coordinated with the New York State Office of Court Drug Treatment Programs (OCDTP), a court administrative office responsible for drug court oversight, to identify and invite judges familiar with the issues of interest. In general, the research team directly contacted New York City judges known to be appropriate interview or focus group participants based on the above criteria, while the OCDTP contacted judges who became participants in the focus group held in Rochester, New York.

We conducted a total of four focus group sessions in August and September 2003. The sessions were conducted in and on the following locations and dates:

- *California:* Burbank (August 21) and San Francisco (August 22); and
- *New York State:* Rochester (August 19) and New York City (September 18).

The researchers conducted the California focus groups at AOC regional offices. The New York groups were conducted at facilities procured by the New York State Office of Court Administration. Each session averaged two hours in length and was moderated by a team of three researchers from the Center for Court Innovation. In California, the moderators included an additional researcher from the AOC. Participants were not paid but were provided lunch and

travel reimbursement. All focus groups were audio recorded and transcribed for later evaluation by the research team. Note that we have attempted to let the judges speak for themselves, so the report includes many verbatim comments. Note, too, that participants were assured that no comments would be personally attributed to them.

Sixteen judges attended the California focus groups (10 in Burbank and six in San Francisco); 13 attended the New York groups (10 in Rochester and three in New York City). Members of the research team also conducted in-person and telephone interviews with six other judges—three each from California and New York City.[19] The interviews in New York City took place in June and July and served to provide background ideas and information that helped shape the focus group protocols. The interviews in California took place in August and September and included judges who were unable to attend the focus groups. Each of these interviews averaged approximately one hour in length. Thus a total of 35 judges participated in this research. Since only three judges attended the New York City focus group, quotations from them and from the three New York City judges who were interviewed individually are attributed consistently to "New York City" judges throughout, to minimize any possibility of identifiable attribution.

Table 3.1 summarizes the background CJ court experiences of the 35 judges. More than 60 percent (22) had experience in an adult drug court, and just over 25 percent (nine) had experience in a criminal domestic violence court. Three or fewer judges had experience in each of several other CJ courts: juvenile or family drug courts, civil or integrated domestic violence courts, mental health courts, community courts, or DUI courts. Several judges had been assigned to multiple types of CJ courts. And one of the New York City judges interviewed had never been assigned to a formal CJ court but had more than nine years' experience imposing treatment conditions of sentence and practicing judicial supervision in a conventional court.

Three major topics were discussed in the focus groups:

- Core principles and practices of collaborative justice courts that differ from those in conventional courts;
- The extent to which these principles and practices are transferable to general court calendars; and
- Strategies to disseminate collaborative justice more widely throughout the court system.

The complete focus group protocol is presented in Appendix A.

Finally, a brief caveat on terminology: California's *collaborative justice courts* are generally equivalent to New York's *problem-solving courts*. This report uses the California term throughout, but in focus groups and interviews held in New York, the research team referred exclusively to "problem-solving courts" for the ease of the judges.

[19] At the outset of the project, we conducted interviews with two additional individuals who serve in an administrative capacity in New York State's collaborative justice courts. As with the three judge interviews in New York City, these interviews served to raise and clarify issues that proved to be of particular interest as the project went forward.

Table 3.1. Collaborative Justice Court Experience of Focus Group and Interview Participants

	California	New York	All Judges
1. Drug Court			
Adult drug court	10	12	22
Juvenile delinquency drug court	4	0	4
Juvenile dependency drug court (CA) or family treatment court (NY)	2	2	4
2. Domestic Violence Court			
Criminal domestic violence court	6	3	9
Civil domestic violence court	1	0	1
Integrated domestic violence court (both criminal and civil cases)	0	1	1
3. Mental Health Court			
Adult mental health court	2	0	2
Juvenile delinquency mental health court	1	0	1
4. Community Court	0	1	1
5. D.U.I. Court	1	0	1
Number of Collaborative Justice Assignments	27	19	46
Total Number of Judges[1]	19	16	35

[1] Numbers within individual collaborative justice court categories add up to more than the total, since some judges had experience in multiple types of collaborative justice courts.

4. Core Collaborative Justice Court Principles and Practices

The researchers asked all four focus groups to identify what they perceived as the core principles and practices of collaborative justice (CJ) courts. Their lists did not include all the practices identified by the literature,[20] but instead focused primarily on those related to the role of the judge. Nonetheless, the lists were very consistent across groups, indicating wide consensus among the sample of California and New York judges on the defining characteristics of collaborative justice. As the final section of this chapter makes clear, however, domestic violence courts in both states may differ from other types of CJ courts.

Principles

The focus groups identified the following four core principles of CJ courts:

1. Problem-solving orientation;
2. Non-adversarial, team approach;
3. Interactive, proactive judge; and
4. Community outreach.

Problem-Solving Orientation

One of the themes most frequently raised was the philosophy or orientation of the court. Participants identified many specific collaborative justice court practices that differ from those of conventional courts, but driving those practices is a different purpose, even a different notion of justice. In this view, the conventional approach to justice involves protection of due process, establishment of guilt or innocence, and imposition of appropriate punishment. By contrast, judges perceived that a collaborative justice approach focuses primarily on the resolution of the underlying problem(s) that brought the defendant to court.[21] At least one judge framed this as a focus on outcomes rather than process; and the outcomes to which CJ courts aspire may be substantively different from those with which conventional courts concern themselves:

> I think there is a different notion of justice, and I think it is an interesting deviation from the typical American notion of justice, which is predicated on due process rights. ... In a problem-solving court, it is not that anyone tries to deprive anyone of rights, but the emphasis is not on due process rights and, therefore, [not on] a constant which encourages denial by the defendant and a polarization of views and a real issue of who is going to win. ... That's all put aside and the issue is really how to solve this problem. And part of how you solve the problem, particularly in the drug court but I think equally true in domestic violence court, is to stop the denial, acknowledge the problem. (San Francisco)

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[20] As described in the literature, practices that are common in collaborative justice courts but were excluded from judges' lists include reliance on data and research, graduated sanctions and rewards, an emphasis on immediacy (tying crime to its consequences, and linking defendants to treatment as soon as possible), services for victims, community restitution sentences, and efforts to engage community residents. See *Defining drug courts: the key components* (NADCP, 1997); *Problem-solving courts* (American Bar Association, 2003); or Problem-solving courts: a brief primer (Berman and Feinblatt, 2001).

[21] Specialized courts were uniformly and primarily defined as "problem-oriented," "problem-solving," and "solution-focused." Although all judges cited a team approach and collaboration with partners as being critical (see following section), the judges discussed these principles primarily in terms of how they promote problem solving.

> The traditional criminal courtroom measures success by compliance. The person complies with the rules and is successful. There is no measurement of solving the problem that caused the behavior. ... I see the collaborative courts as measuring success by remedying the problem that got this person here. (Burbank)

> [The] goal for each client is to have them become a ... normal, ordinary, responsible person. ... It is not like you are sentencing a thief, where you want to punish them and you just ratchet it up. And if you did 30 days last time, you are going to do 60 and then 90 and then you are going to go to prison. ... You really have goals beyond what your normal focus would be. (San Francisco)

> Your decisions in the CJ courts are made based on therapeutic considerations as opposed to punitive considerations. It is not "does the time fit the crime," but "how much time is necessary to bring about a therapeutic change." (San Francisco)

> Achieving outcomes beyond those of judgment and sentence requires looking beyond charges and cases to problems and people: What's standing in front of you is not a case or a number, it's a person. (Rochester)

> In a traditional criminal [court], we tend not to look at the individual facts running a case. We tend to look at a charge and a punishment and what should be an outcome. Collaborative justice does not tend to look at charge and punishment. (Burbank)

> [It's] the idea of looking at the client as opposed to the case, [a] holistic approach. ... You are looking at ... what caused this to happen. ... You are trying to provide treatment for everything that goes into the mix, rather than isolating it and looking at just one problem at a time. (San Francisco)

Focus group participants also contrasted conventional courts' priority of rapid case resolution to the intensive focus applied to each case in most CJ courts:[22]

> I find sitting in a traditional court [that] the issue of time is incredibly important and it is much less emphasized in a collaborative justice court ... where the goal ... is to solve the problem for each individual person regardless of the amount of time it takes. (San Francisco)

> I think when we're doing the [domestic violence courts], not only do we protect the constitutional and procedural rights of the defendant, we also have an interest in keeping the victim safe or the plaintiff safe while the case is pending. (New York City)

Non-dversarial, Team Approach

The focus groups repeatedly pointed out that CJ courts encourage parties to work together for a common end, rather than compete for disparate goals. Treatment courts generally hold regular case conferencing meetings of the attorneys, service providers, and judge; nearly all courts have regular, though less frequent, meetings with larger groups of community partners, such as probation, parole, treatment, and social service providers. While judges reported varying levels

[22] One New York City judge observed that rapid case disposal remains an objective of domestic violence courts, since delays often work to the perpetrator's advantage (primarily because victims may recant or lose touch with the prosecution). But here speed is desired not for processing reasons alone but because it serves a desired outcome of the court.

of success in eliciting participation from partners, all agreed that some degree of teamwork was critical:

> There is a team approach in drug court; it is not adversarial and generally it is best to have all the players there, to have the attorneys and the probation officer, the treatment supervisor. ... You are all working toward the common goal of trying to have the person recover and become clean and sober. ... It wouldn't be unusual to have the public defender say, "I think that the person ought to have shock incarceration to get their attention," trying to get them back on track. You are working with individuals in different roles or capacities than normal. (San Francisco)

> It is a trust thing, everybody is there for the same goal, the same purpose, the same mission, and you are now out of the adversarial part and you are into the teamwork part, so everybody is on the same team. And it makes for getting things done much better. (San Francisco)

> Some CJ courts don't have attorneys; others do have them there, but ... rather than them competing against each other so that the victor can prevail, they are discussing among themselves ... how best they can get the drunk client in treatment. ... And the client loses the ability to play one side off against the other ... because their own attorney has said, "Hey, you know, no one is going to believe [that] ... your positive test came from dope on the plate you had your pizza off of." (San Francisco)

Participants explained that this team approach is critical to collaborative justice in part because it allows everyone to focus attention on the defendant:

> I have always been impressed with the illustration ... [in which] the defendant is placed in the middle of the circle and then all of the [court] participants ... are on the edge, including the judge, who is [there] as one of many. Whereas, in the traditional court model, the judge is at the center, everybody else including the defendant is on the edge, because they are waiting for the judge to make a decision. When you have that focus being changed ... to what's in the best interest of ... the defendant, that's what I have always found extremely useful. (Burbank)

Judges perceived this non-adversarial, team approach as one of the most significant differences between conventional and CJ courts, and noted that even some people who embrace the CJ concept may have difficulty adapting to changed roles and relationships. In particular, the judge's role is greatly complicated; the judge is still the final authority on case disposition, but as a team member the judge must also make decisions in collaboration with others. Focus group participants reported that this might be a difficult transition for both the judge and other team members:

> In the initial stages of starting up a drug court ... whenever a new member of the team joined, I had to spend quite a bit of time working with the new team member to help them overcome being intimidated by the judge. ... When we are functioning as a team, everybody needs to feel comfortable to express their opinion, and that means disagreeing with me. ... That was a radically new concept, even for the lawyers. ... Lawyers will always say, "If only we could tell the judge what to do." Here is their chance, and in some respects they were the ones to take a chance. (Burbank)

> The case manager speaks in court and says what they recommend. ... And you not only take that into consideration, you will frequently follow it because of the ... dynamic of the court, even though you personally may not think it is the best result. You leave your judge hat home and work more as a team player as opposed to a dictator. (Burbank)

Interactive, Proactive Judge

Team membership was not the only new facet of the judicial role to emerge. Judges reported that in CJ courts they take on new responsibilities and significantly modify their practices—which may require changes in their beliefs and attitudes, as well. As noted above, one such modification is the regular presence of the judge at the conference table in meetings with attorneys, law enforcement, and service providers to share information and make decisions on a more collaborative basis. An even more dramatic change transforms the relationship of judge to defendant. In a conventional court there is arguably no relationship. But participating judges reported that in a CJ court they took on a therapeutic or motivational role—speaking directly to the defendant, seeing the defendant frequently over a long period of time, and hopefully inspiring the defendant to remain engaged and compliant. Judges unanimously agreed that this direct communication and relationship benefited both the defendant and the court process. One judge in Burbank wondered: "Why am I screwing around talking to lawyers, who don't even see what I am saying, when this guy over here [the defendant] does?" For the defendant, this communication and relationship has far greater dividends:

> People have problems and people are human beings and have to be dealt with in a certain kind of way. ... There is such a thing as a "black robe effect." The mere fact that an authority figure shows ... caring and kindness can have a positive impact that is intangible but still [real]. (Rochester)

> I think the issue of judicial supervision and accountability [is] that that person has to come here, and if the person is doing well, I am going to tell them they are doing well. ... It is the first time in their lives anyone ever told them that they were doing well, and it makes a difference. (San Francisco)

Judges report that CJ courts—in addition to changing the nature of their relationships with defendants, attorneys, and other case players—demand that they become much more proactive than reactive. For instance, team meetings and community meetings provide new opportunities for the judge to learn about problems, and respond constructively. One judge explained, "I [now] have regular supervisors meetings, [so] when they run into a problem in the court, all the supervisors meet with me to iron out problems." At these meetings, team members may suggest strategies for taking advantage of one of the judge's unique contributions—judicial clout:

> Another nontraditional role that the team members really relished and valued was, if something wasn't happening, taking too long to get [a defendant] placed or whatever ... I was always there to say, "Well, I will make the call." For better or worse, our titles mean something. I love it when I pick up the phone and make that call, and that's one of the ways you can really help build your consensus. (Burbank)

Community Outreach

Particularly notable about the team approach, judges said, is the inclusion of treatment providers and other partners, who may initially be unfamiliar and uncomfortable with the justice system. One judge explained why this may be, and how a judge could respond:

> Treatment providers are advocates for their client and they have always been confidential. These ... courts change that mode for them. ... They are responsible for reporting negative acts by the defendant and failures by the defendant. That is something that they are not comfortable with. ... They don't tell you there were three dirty tests. So I go out and interface with each one and say, "I am

Judge X; this is a person in my court," and meet with them and tell them what the expectations are. (Burbank)

Judges in the Burbank group took quite a broad view of the role of the judge outside the courtroom, as evidenced by this exchange:

Judge: The role of a judge in these courts, I see in terms of the scope of what you can do. ... In these CJ courts, you are [an] ombudsperson out into the community doing all kinds of stuff that has nothing to do specifically with any case ... like organizing services for domestic violence victims or perpetrators or drug treatment programs or looking for more foster parents.
Judge: Finding housing, looking for jobs, talking to every service organization there is.
Judge: Talking to bus transit companies: "Hey, we need free vouchers, we've got people that can't get to their doctor's appointments."
Judge: And training other judicial officers—
Judge: Going out to treatment facilities—

While judges indicated that their new roles in this outreach process could be challenging, and while some embraced a broader definition of the role than others, nearly all indicated that the opportunities for creativity and interaction with the community were among the most satisfying aspects of sitting in a CJ court.

Practices

Although the focus groups identified many CJ court practices, five seemed to recur as particularly essential:

1. Integration of treatment services;
2. Supervision and accountability;
3. Second chances at compliance;
4. The courtroom as classroom; and
5. Information.

Integration of Treatment Services

In interviews and focus groups, all judges agreed that a crucial element of collaborative justice is the integration of treatment services into the court's mission and practice. In speaking of problem solving, most participants assumed that a solution to any problem involves services:

You make an enormous use of community resources ... [more than] in most other courts. In a domestic violence court, for instance, there are shelters ... for the victims and there are drug treatment programs and there are behavior modification programs. ... I have discovered in having my court that there is a wealth of services there in the community that tends to go untapped unless there is something like this that [providers] can contribute their services to. (San Francisco)

The collaborative justice court really serves as a linkage between the individual—the need for the service—and the service. It is a great linkage mechanism. (San Francisco)

The role of the court in linking defendants to treatment and enhancing their success was of great interest to many judges. Obtaining treatment for defendants with few resources of their

own was a challenge for most courts. Some judges believed that without the assistance of the court many defendants would be unable to obtain services; others worried that defendants, because of their court cases, would be automatically ineligible for many services. In discussing the features of CJ court practice that encourage success in treatment, one judge underlined that a critical contribution is the court's ability to force people to receive treatment. Although most CJ courts are voluntary, in the sense that defendants must opt into them, CJ court participants typically face significant legal consequences for failing (e.g., jail or prison), once they do enter.

Supervision and Accountability

Along with services and treatment, participants identified two practices—supervising defendants' progress and holding them accountable for noncompliance—as the heart of the collaborative justice model. All reported that they brought defendants back before them on a frequent and regular basis, particularly in the early stages of the case. These appearances keep the judge informed of changes in defendants' circumstances, remind defendants that they are still accountable to the court, and foster a relationship between defendants and judge. They also serve as an opportunity for judges to administer the rewards and sanctions that are deemed important for motivating continued progress in treatment.

> The success of drug court is the active involvement of the judge, the possibility of quick sanctions and rewards and ... [saying,] "I am going to hold you responsible ... and I am going to do something to you if you don't measure up, and I am going to do something for you if you do." (Rochester)

In describing exactly what they meant by ongoing supervision, several judges clarified that it should not merely involve returning to court but should include direct interaction and exchange, motivation, feedback, and the like. One judge from the San Francisco group explained:

> It is not just monitoring. I would really call it supervision, which is a much richer concept. Not just "Be back." ... [but] I am going to talk to you; I want to know what is happening. And I can impose sanctions. I can say, "Write an essay," "Come back and sit here." There are limits on that. But it is definitely not just monitoring.

Repeat appearances are time-consuming, and are not often practiced outside specialized courts. One New York City judge explained that in conventional courts, dates are set for discrete events—arraignments, motions, hearing, trial, sentencing—"and [judges] don't want to see anyone except for those dates because they want to process their calendar. They want to have efficiency."

Second Chances at Compliance

Particularly in drug court, the defendant's progress is not expected to be smooth: defendants relapse, disappear on warrants, and drop out of programs. These events are all perceived as integral to the recovery process, rather than interrupting or ending it, as they might be viewed in a conventional court (should treatment be offered there).

> [We] keep people ... longer than we would if they were on probation in felony court ... [if] they violate probation ... once or twice and they are generally gone. ... We give them much greater leeway as long as we believe that they are making an effort to try to change their life. (Rochester)

> In the process the rules may be broken, if you will, with use episodes from a drug court perspective, and you don't view that as failure. (Burbank)

The Courtroom as Classroom

Several judges made reference to the theater of the courtroom, particularly in drug courts. Since every courtroom has an audience, each case provides an opportunity to educate and motivate defendants who are watching, to show them the consequences of success and failure. One judge described becoming less likely over time to hold bench conferences in drug court, believing instead that everything should be said in open court, so that other defendants could learn from what was happening. The presence of the courtroom audience may also provide the individual defendant with a jury of peers, as one judge described:

> Somebody tests dirty in adult drug court and they say, "Whatever, it must have been in my coffee." ... You hear the boos and catcalls and "No, I don't think so" from the audience. There was one court ... [where] it was almost like they had a Greek chorus [of drug court participants] in a jury box ... [giving] thumbs up, thumbs down. (San Francisco)

Information

Judges were clear that practicing collaborative justice requires much more information than is usually available to them. Judges need information about the defendant's criminal record, family, employment situation, health problems, and other background characteristics. They also need information on available treatment programs, the defendant's progress in treatment, and compliance with other court orders, as well as the existence of any new court cases. This is information to which judges in most courts do not have access. In CJ courts, a resource coordinator or case manager may be able to provide the judge with program compliance and treatment updates. Additionally, several New York judges had courtroom access to a computer application that provided information on defendant characteristics, treatment referrals, and compliance. The judges cited this as a great asset to the court.

Domestic Violence Versus Other Collaborative Justice Courts

Focus group participants noted that there is a divide between domestic violence (DV) courts and other collaborative justice court models, a divide marked by significant differences in philosophy and practice. This suggests that there may be no single, universal body of collaborative justice principles and practices. It also suggests that the type of CJ court experience judges have had may influence how they view collaborative justice and what they consider to be transferable components. This fact was frequently acknowledged, both explicitly and implicitly, in exchanges among focus group participants.

Perhaps most significant for this discussion, DV courts do not view defendant rehabilitation as a high-priority part of the problem-solving process. This differs sharply from most CJ courts (with the possible exception of community courts). Rather, the mission of DV courts concentrates more on the promotion of victim safety and offender accountability. In focus groups, judges further discussed the differences between domestic violence and other CJ courts.

Domestic Violence Court Operations

Based on experience, one judge believed you could effectively apply all the core collaborative justice court practices in a DV court, except that it would be inappropriate for the courtroom to applaud defendant compliance, and you would need to tone down the use of incentives and sanctions. However, most judges articulated major differences between DV court operations and those of other CJ courts. The primary difference concerned the basic dispositional processes in the court. In DV court, unlike in most other CJ courts, the determination of guilt is an integral component, which often leads to an adversarial atmosphere in which defendants deny culpability and resist participation in community-based sanctions and services. This tension persists even in post-disposition monitoring, one judge in the Rochester group noted, because DV courts will not tolerate violent recidivism the way a drug court might tolerate relapse: "There is an immediate punishment for any kind of behavior like that." As another judge in that group pointed out, DV courts have really adopted only the *punitive* tools of behavioral modification; there are sanctions but no rewards. Explained a New York City judge, "We don't clap when you complete a domestic violence accountability program." Again, this view of the adversarial nature of DV court operations was not universal. One judge believed a truly collaborative approach could emerge by building trust over time among the judge, district attorney, and public defender.

Another key difference is court volume. DV court judges reported that they had staggering caseloads, far more than in other CJ courts. This left them with little time to spend either on individual interactions or on return court monitoring appearances; as a result, some judges were forced to rely on probation for monitoring.

Finally, a few judges remarked on the procedural challenges posed in DV courts by evidence-based prosecution and victim recantation, both issues that rarely arise in other courts. These two issues, which can take up substantial amounts of court time, require both the judge and attorneys to have technical expertise. Indeed, one of the areas in which DV courts were seen as very similar to other CJ courts was in the need for specialized knowledge.

Program Mandates

While drug court judges frequently stressed the need to understand the psychopharmacology of addiction, there is no equivalent concept in domestic violence. One cannot describe domestic violence in terms of a disease model, and there is no known "cure." So while the process of placing and monitoring defendants in batterer intervention programs may seem similar to that of placing and monitoring defendants in substance abuse or mental health treatment, some judges observed that it is done with a different intention. Batterer intervention programs may be mandated as much for purposes of supervision and punishment as for rehabilitation.

Overall, DV courts do share several common features with other CJ courts: a larger team composed of judge, attorneys, resource coordination staff, and treatment representatives; community outreach; monitoring and accountability; and extra information about defendants and their compliance. But most judges cited other features as noticeably absent: substantial time for each case; non-adversarial deliberations; and interactive, theatrical dimensions with respect to the judge-defendant-audience relationship.

5. Transferable Principles and Practices

This project aimed primarily to identify which collaborative justice court principles and practices could be readily transferred to other calendars—and which could not. Researchers encouraged the participating judges to name specific practices and describe how they might be applied outside the CJ court setting; participants were also asked to detail their personal experiences—successful or otherwise—in attempting to do so. This discussion invariably led to a consideration of which specific types of cases and calendars might be most ripe for collaborative justice solutions.

It should be noted that at the outset of this discussion a few judges objected to the idea of transferability itself. They argued that the relevant question was not whether principles and practices *could* be transferred, but whether they *should* be. Two particular objections came up in discussions. A judge from the Burbank group first argued that specialized CJ courts were created precisely because ad hoc administration of collaborative justice on general calendars was haphazard and not uniform. Now that CJ courts are established, the argument went, encouraging collaborative justice practice on general calendars would reverse the centralization process, resulting in the return of poor, inconsistent practice, and possibly siphoning off the resources available to CJ courts.[23]

The second objection made to transferring CJ practices was that it might ethically or legally compromise the judge and the court process. As discussed in greater detail in chapter 6 below, some judges perceived certain aspects of collaborative justice—particularly the non-adversarial, team approach—as incompatible with the conventional criminal and civil court process.

However, these were minority views, and other focus group participants generally disputed them. Moreover, the judges making these objections went on to participate in a debate over the transferability of particular practices, suggesting that they were not absolutely opposed to the concept, but simply were raising fundamental concerns for consideration.

The first section below discusses the transferability of several CJ court principles and practices. The next section identifies specific cases and calendars in which a collaborative justice approach was considered particularly appropriate. The final section identifies cases and calendars in which such an approach was *not* considered appropriate or which sparked some debate and disagreement.

Potentially Transferable Principles and Practices

The judges considered the following principles and practices more potentially transferable to general calendars (listed in approximate order of consensus concerning their transferability):

1. Proactive, problem-solving orientation of the judge;
2. Interaction with the defendant/litigant;
3. Ongoing judicial supervision/return court appearances;
4. Integration of social services (although considerable qualifications were expressed concerning the ability to do this as effectively outside a specialized court setting);

[23] Conversely, one judge from the Rochester focus group feared that specialized CJ courts were consuming resources that might otherwise go into making conventional courts operate more collaboratively, and that CJ courts might have the effect of distracting attention from deeper systemic reform.

5. Team-based, non-adversarial approach (although not appropriate in all situations and partly dependent on the attorneys); and
6. Sanctions and rewards (although approximately as many judges felt these practices were *not* transferable).

These six categories represent a subset of those cited initially by each focus group (reported in chapter 4). For each practice, at least some judges observed that their CJ court experience led them to apply it on a general calendar—or at least to apply it more frequently or effectively than they otherwise would. Chapter 7 explores other ways, besides experience, of disseminating these practices throughout the judiciary.

Proactive, Problem-Solving Orientation of the Judge

Focus group participants generally agreed that the proactive role of the judge in CJ courts could be applied on other types of cases and calendars in a variety of ways. One judge from the Rochester group, in fact, believed that of all the CJ court principles, "[the one] that would be very valuable in all those courts, that one principle would be the judge being proactive." The Rochester and Burbank focus groups discussed this issue at some length. Judges mentioned matrimonial court, family court, or other civil assignments as particularly appropriate places in which to apply the proactive orientation they learned in their CJ court assignment. One judge from the Rochester group claimed to have become known, after leaving the CJ court, for "thinking outside the box" in civil negotiations:

> The "taking it out of the box" thing—a specific case was that one attorney was proposing a certain settlement with a certain amount of money, the way they normally do it, the percentage this way and that. … And then I gave my suggestion: Have you talked to this person and how about this, instead of making it the normal way, it seems to me as if the money should be this [other way], if you looked at it in a different perspective. And I told him the different perspective. I mean, it is too long to go into but that was it: I gave it my different perspective.

Other judges elaborated on how they could assume more proactive roles in conventional courts—asking more questions, seeking more information about the case and possible solutions, and crafting unconventional court orders in both civil and criminal cases. One judge illustrated this approach with respect to criminal matters:

> For example, where I otherwise may have just taken the proposed orders of probation from the probation department, signed them, and said, "All right, you are on probation for a year" … I will now ask the questions: Did you look into X, Y, and Z? Did you look into this treatment option? Have they had treatment before? Have you looked and have they been examined for any mental health [issues]? I will ask those questions where I wouldn't have before. (Rochester)

This was one of few areas in which judges repeatedly declared that the practice depended on having CJ court experience, which "opens an avenue of communication that you otherwise wouldn't have." (Rochester)

Interaction with the Defendant

Judges identified interaction with the defendant as one of the easiest practices to transfer to other calendars, perhaps because they could engage in interaction without the assent or

participation of any other parties and without additional resources. Most focus group participants endorsed the transferability of direct interaction with the defendant. While some judges expressed concern that defense attorneys would not allow it for fear that their clients would incriminate themselves, others reported that they routinely addressed defendants directly, with few objections from the defense bar. Explained one judge from the Rochester group:

> I have never had an attorney say to me, "Judge, I won't let you ask him any questions." I may ask questions they don't like and then they say, "I am directing my client not to answer that," and they don't answer it. It helps us get through a lot of paperwork and a lot of malarkey.

Several judges drew attention to other practices that typify the interaction between CJ court judges and defendants: treating defendants with respect, showing compassion, having faith in their ability to improve, and seeing them as potential law-abiding citizens. In the course of sitting in a drug court, one New York City judge was surprised to learn the extent to which drugs change defendants' personalities. This judge considered it important for colleagues also to learn that a defendant's "bad attitude" seen early in recovery may not be that person's true personality or a signal that the person will fail in treatment.

Judicial Supervision

The judges viewed ongoing supervision as both widely useful and uncontroversial in a conventional court setting. Several judges from both states indicated that when serving on a general criminal court calendar, they frequently required defendants to return to court. This was especially the case with probation sentences, as one judge from the Burbank group described:

> I used to give probation terms and wait for them to violate probation, and then we would file a petition and they would come back to court. Now I set review dates so that they have to come back in and prove to me that they have done something. And [I do that] because I know that that's what makes the drug court work, ... they have to come back and tell me what is going on.

Recognizing that probation was too overloaded to supervise cases effectively, a judge from the San Francisco group introduced return court appearances to facilitate direct supervision by the judge:

> I have started telling people that they are ordered back and I will have them come back once a month. And I intend to use sort of a drug court model. I don't have all the resources of a drug court, I don't have the testing and I can't get probation to really supervise them. But I think the issue of judicial supervision and accountability ... [It] makes a difference.

Two barriers restrict truly interactive supervision outside a CJ court setting: (1) limited judicial time and resources and (2) lack of additional staff to facilitate communication between treatment providers and the court.[24] Time limitations may force judges to select only a subset of cases for supervision. And the lack of staff means that judges often cannot obtain the thorough treatment reports that could better inform their interactions with defendants. One New York City judge found the barriers to quality supervision particularly frustrating:

[24] These barriers are discussed in greater detail in chapter 6.

> Someone will get [in] the program, whether it's a drug program, anger management ... And they'll have to come back and bring a letter in from the program saying that they're in compliance. But ... you're not really monitoring them. You want them to show up on the adjourn date with a letter saying they're going through the program. That would be nice—we could have a resource person who called the program and talked to a counselor: How is this person really doing? Or did they come to all their meetings? Are they on time? Are they late? So it's really just sort of cursory in a lot of ways. They show up with the letter: OK, come back in another month. ... If they don't come back you order a warrant. If they're not in the program, then you may put them in [jail] ... So it's not meaningful monitoring because of the lack of resources and the high volume that you have to deal with.

While concerns over these barriers to effective supervision were near universal, other judges nonetheless cited examples of doing so successfully for select cases (see chapter 6).

Another New York City judge believed that judicial supervision as just described was not the only way in which return court appearances were transferable and helpful. This judge pointed out that on general criminal calendars it is common to set long adjournment dates in the early stages of a case. The CJ court model teaches, however, that immediate follow-up after the precipitating arrest is crucial; long adjournments, by contrast, send the message that the crime is not taken seriously. This judge suggested that the practice of setting short adjournments early in a case is highly transferable throughout criminal courts.

Integration of Social Services

Across interviews and focus groups, judges concurred that referring parties to treatment was a transferable practice in theory, but they feared that they would face substantial barriers to doing so without added staff. One judge stated categorically that outside the CJ court "you don't have access to the wide array of services" (Rochester). Nearly all judges seemed to confirm that assessment. It was generally agreed that asking judges to perform the time-consuming work of making direct referrals to service providers is impractical on a large scale. However, as the following excerpts illustrate, judges in both California and New York said they could often draw upon their own knowledge of community-based services, gained from their CJ court experience, to make referrals from conventional courts:

> I think of collaborative justice involvement: You do become aware of treatment and what is available. So ... if you were sentencing [from a general calendar], you could impose terms and conditions of probation, which would incorporate treatment aspects that you would have greater awareness of. (San Francisco)

> I went into a felony court and became a regular felony calendar judge. I didn't have a resource coordinator. But because I had started a drug court, I knew what the programs were. And if I was really frustrated, I would at least call or have my law clerk call and sort of say, "Can you fax me over a list of your criteria," so that I can give it to the lawyer, so they can give it to the client, so they can go to the intake appointment. Now it's not as good as having somebody set up the intake appointment. But at least it's better than saying, "Well, I don't know where there's a program." (New York City)

Several judges from both states added that CJ court experience led them more often than before to set treatment conditions as part of probation pleas (e.g., obtain high-school diploma or GED, attend drug treatment, or attend another program). One judge from the San Francisco group summarized:

> I think you look at probation a little differently. I think when you are on the adult side and you are in a noncollaborative court you tend to look at probation as just something you do, maybe as a suspenders kind of thing. But when you are in the collaborative court you tend to come out looking at probation as a treatment plan.

Team-Based, Non-adversarial Approach

Most judges felt that the judge plays a critical role in determining the extent to which any individual courtroom can take a non-adversarial approach. However, most also stressed the ability of other players—particularly attorneys—to enable or derail that approach. It was agreed that players would not act as a team until they developed trust, which takes time. A judge from the Burbank group, for instance, attributed the defense bar's willingness to let him talk directly to defendants to a trust-inspiring reputation: "They know I am not going to slam [defendants] into jail … [so] they allow their clients to talk to me."

Judges in most CJ courts hold regular case management meetings of court partners, at which they address any recent developments or difficulties on specific cases (e.g., relapses, problems at an assigned program, questions about additional treatment needs, and so on). Some judges felt that this practice was essential to the functioning of a team and could be continued, albeit on a limited basis, in a conventional courthouse. One judge from the Rochester group indicated having done this to productive effect on a family court calendar:

> I started with reviews, [for] a kid who I know was in really rough shape. We have periodic reviews and they come back into court and then in chambers would be all of the service providers, probation officers, the mental health person, the staff worker. Occasionally, we bring the parents in, sometimes we bring a whole crew in and try to problem solve as a group, kind of all the key people that are there. It has been a real positive experience.

Sanctions and Rewards

Surprisingly, none of the focus groups explicitly introduced the issuing of sanctions and rewards as a core CJ court practice.[25] However, when they were raised in the context of which practices are more or less transferable, sanctions and rewards stirred considerably more controversy than other practices. Many judges asserted that issuing sanctions and rewards was simply impossible within conventional criminal courts—and possibly inappropriate on other calendars, such as civil court. One judge from the Rochester group, however, strongly disagreed:

> You do it every single day on the bench as a criminal court judge. … We have just never regularized it in the sense of sanctions and rewards. We tell people, "Listen, if you have a job by the next time you come to court, I might place you on probation. But if you don't have a job or three different job applications per day, you are in trouble." … We do it all the time. We just never think of it in those terms.

Some focus group participants who had earlier asserted it was not possible to issue sanctions and rewards nodded in agreement; as the judge had stated, they apparently had not initially thought of such actions in those terms. Also, several judges (two from the San Francisco focus

[25] Participants in one of the focus groups mentioned sanctions and rewards strictly in passing while illustrating a different core principle (use of a team approach to make decisions such as those pertaining to sanctions and rewards).

group and one from New York City) indicated they had often used traditional drug court sanctions (e.g., essay, sit in court, short jail sanction) on general calendars.

Without specifying the perils, another judge expressed this caution: "When you start talking about formalization of this process, I think you are on dangerous ground when you ... say, 'Look, I am going to give you a system of sanctions ... and rewards, if you do what I want you to do as far as your initial conduct is concerned'" (Rochester). This judge was especially concerned with the use of rewards outside the CJ court: "I don't see myself giving somebody free French fries and McDonalds if they show up for their next court appearance ... or hugging or clapping. I don't see any of that going on [in conventional courts]."

But one judge from New York City reported actually having clapped in a conventional courtroom when a defendant completed drug treatment, although the judge found that doing so yielded mixed results:

> The first time I ... put somebody in a drug treatment program, since I spent time in a drug court and I came back [to a conventional court], I clapped. And it really didn't matter. There was nobody else clapping. And everyone else in the courtroom looked at me like I had lost my mind: The judge is *clapping*. Whereas in a drug court, where the court officers go in, they get a little intro to drug court, so they know what it's going to look like. ... I don't think it won't work. But I think that there certainly will be some initial differences when judges start behaving differently.

Another New York City judge, however, indicated a long-standing practice of utilizing both sanctions and rewards in a conventional criminal court—including clapping for achievements, congratulating program graduates in front of the entire court assemblage, and attempting to place graduates together on the same calendar day. Still other judges pointed out that one need not use both—for example, domestic violence and sex offender courts employ sanctions, but not rewards.

To summarize, the findings suggest that judges can use and have used sanctions and rewards in conventional courts, but the extent of their use depends greatly on the varying comfort levels of individual judges and their courtroom staffs.

Other CJ Court Principles and Practices

A few judges singled out other CJ court principles and practices as transferable: (1) deferred sentencing, (2) second chances, and (3) outcome orientation.

One judge from the San Francisco group expressed the belief that deferred sentencing (e.g., agreeing not to impose a jail sentence if the defendant fulfills some conditions) could be used as an effective tool in conventional courts:

> It was clear that one of the problems was a lack of money, no job, no income or whatever, and no high-school diploma, no equivalency. ... So I imposed some sentence of 90 days ... but I stayed it and said, "If you get your high-school equivalency within a period of time ... ." I made him come back with reports ... with the understanding that all bets were off if he didn't keep [going] and as I recall, he did it. So, he didn't serve jail time, he got his high-school equivalency.

Second chances were never explicitly mentioned as transferable to conventional courts, but two judges commented independently in separate interviews that within their drug courts, they grew more likely over time to accord multiple chances to participants after initial noncompliance. This came from learning that relapse is a common part of the substance-abuse

recovery process. Presumably, this tendency to accord more chances inside a CJ court would be transferable outside when using ongoing judicial supervision or deferred sentences.

On the issue of outcome orientation, several judges emphasized the contrast in styles between conventional and CJ courts. Conventional courts, they said, focus on legal process issues: What is legal? Is the case being processed fairly and quickly? In contrast, CJ courts focus on practical outcomes: Will the case outcome produce less recidivism or fewer future cases (e.g., in juvenile settings or family court)? One judge suggested that this outcome orientation would likely shape how ex-CJ court judges thought about their cases once they were in subsequent general calendar assignments.

Cases and Calendars Appropriate for CJ Court Principles and Practices

In discussing where CJ court principles and practices could be transferred, judges referred both to types of cases and types of calendars or courts.

Appropriate Cases for CJ Court Principles and Practices

The judges identified as appropriate for a collaborative justice approach those cases that involved drug addiction, domestic violence, mental illness, and driving under the influence—not surprising, given that specialized CJ courts have been created to address all of these issues. Several judges singled out cases involving mental health treatment as particularly appropriate; this may stem from the fact that mental health courts are still relatively rare and many mental health cases remain on general calendars. By contrast, one judge pointed out that conventional California criminal courts see few cases that require drug treatment, since Proposition 36 assures that drug possession cases will all be sent to Proposition 36 courts (some of which operate like drug courts and some of which do not).

Concerning specific types of defendants, one judge cited younger criminal defendants as particularly ripe for collaborative justice, noting that defense attorneys often want treatment sentences for their younger clients (e.g., a requirement of vocational education at minimum).

In discussing the types of cases in more descriptive terms, judges articulated their own criteria for what makes an appropriate case:

> The type of case that is right for collaborative justice treatment is one where the person you are dealing with … can benefit from positive feedback from the court. (Burbank)

> [Appropriate cases are those] where the level of punishment required is diminished by the need to solve the underlying problem, and so you'd rather solve the problem than punish the behavior. (Burbank)

> What do I do with this? The lawyers all look at you. The DA says, "This isn't a state prison case … what do we do with this?" … Those situations come up, I think for everyone when you are on the bench, where you have to change your focus because everybody agrees [that] none of the traditional methods work.

Appropriate Calendars and Courts for CJ Court Principles and Practices

The focus group discussions included the following types of calendars and courts:

- Juvenile delinquency and dependency courts;
- Family law (in California);
- Civil cases;
- Adult criminal cases (some, but not all types); and
- Proposition 36 cases (in California).

Juvenile delinquency and dependency courts. Judges widely cited these courts as appropriate venues for collaborative justice, particularly for practices such as addressing the problems that contribute to recidivism, using a team-based approach, and interacting directly with all parties. A judge from the San Francisco group noted that the rules governing juvenile court in California explicitly encourage these practices (a point that was echoed by an interview subject in New York):

> The obvious and the easiest one is juvenile court, because the rules are already kind of written to incorporate a lot of those sorts of things [CJ court practices]. There is already a rule that says it shall be non-adversarial to the maximum extent possible. There is already a rule in place that says the well-being of the child, the minor, treatment needs, and all those take precedence over any issue.

A judge from the Burbank group added that because of the large number of lawyers and parties that can become involved in juvenile dependency cases, the ability to bring all parties together and seek a team-based solution could prove invaluable:

> I think you can take the skills and the approach that we ... use in the collaborative courts and translate it to other courts, and I don't mean the services. When I left adult criminal and drug court and I went to dependency court, ... I would have parents come in front of me and you've got seven lawyers—because you've got one mom and five dads and six kids and they all have lawyers—and I am looking at the reunification services being provided and I realize the social workers didn't have a clue of half the services in the county that I knew about. ... I inherently took this collaborative approach in dependency because it just seemed to make a whole lot of sense for what I was doing there. And it was resisted at first, but then once people got used to this power they were going to get from me, it [had] an amazing effect ... on all of these lawyers that were fighting with everybody else, but they all have the same goal.

Judges from both California focus groups reported that the juvenile system might have greater resources than other systems, further facilitating the practice of collaborative justice. On the other hand, New York judges did not report perceiving greater resources on the juvenile side, but still agreed that juvenile court was an appropriate venue for attempting CJ court practices.

Family law. California judges commonly cited family law court as another venue ripe for collaborative justice, again partly because the rules explicitly allow more flexibility than in other courts.

> Family law is another area where ... there could be more collaborative justice principles brought in because the family law judge traditionally has enormous amounts of discretion, particularly when it comes to custody issues of children. (San Francisco)

> It seems to me that of all the areas that are right for this collaborative justice approach [one] is family law, which is underserved, overburdened ... with all kinds of problems. ... A little bit of extra intervention in services, besides just "Your divorce is granted and you get the kids this day and here is how much money you pay"—a little broader approach to some of their problems, I think would ... prevent a lot of repeat business. (Burbank)

Civil cases. There were some mixed opinions about the applicability of CJ court practices to civil cases. Two judges from the Burbank group had in fact incorporated elements of collaborative justice on their civil assignments:

> [When I was assigned] I thought ... How am I ever going to do anything that's the least bit interactive in civil? I am going to move money from one end of the table to the next. But I will tell you where I really use a collaborative approach, and I find it very effective, is in my settlement conferences. ... It is an absolute natural to use that kind of collaborative approach: What's the problem? How are we remediating it? What are we really fighting about? (Burbank)

> Even on the civil side, there is a way to deem it a collaborative justice court if what you are talking about is alternative dispute resolution, and we could better interface with mediation providers and arbitrators. And then especially some of the small claims cases might be [handled in an alternate way]. (Burbank)

Other judges disagreed, however, with a judge from the Rochester group insisting that "when dealing with money, none of this [collaborative justice] applies." In the San Francisco group, this subject sparked considerable debate, with one judge recounting the story of a colleague's settlement of a case:

> A woman was suing—it had to do with ... the burial of her son and she was suing for an enormous amount of damages. ... When the judge brought the woman back into chambers ... she really didn't want enormous amounts of money, she wanted an apology. She wanted the defendants to say that they were sorry, to admit that they were wrong. ... That judge ... had exposure to a collaborative justice type of setting ... [and] it helps you, the judge, to think outside the box and become more creative. [To] sometimes find out what is it that this person really wants here.

Adult criminal cases. Although judges identified several types of criminal cases as appropriate for collaborative justice, there seemed to be a reluctance on the judges' part, especially in the Burbank group, to seriously consider the broad application of CJ court practices to traditional adult criminal courts (for reasons to be discussed in chapter 6). As indicated above, however, when discussing individual practices such as treatment referrals, probation conditions, judicial supervision, sanctions, rewards, and plea bargaining negotiations, many judges included criminal cases as examples. Also, several judges perceived the practices as being widely transferable to criminal calendars. One judge from the San Francisco group said:

> Everything you do in a collaborative justice court is applicable in a generic criminal court. It just depends upon the desire of the judge and the emphasis of the judge and how they want to apply it in any given case.

Concerning specific criminal court procedures, it was agreed that judges could most easily use CJ practices on bail, since in setting bail they can impose a wide range of conditions,

treatment requirements, supervision, and so on. Similarly, judges repeatedly cited conditions of sentence as a place to apply collaborative solutions. One San Francisco judge also mentioned pre-trial conferences, observing that "more and more people are willing … to come in and have a much more collaborative discussion. Not that they are both on the same side, but that it is not quite as adversarial." Judges from several groups spoke similarly of plea negotiations, but at least one objected on the grounds that plea-bargaining is "a negotiation for what kind of punishment … they are going to receive, which is not a collaborative court model and is probably inappropriate." Finally, ongoing judicial supervision was repeatedly discussed in a criminal court context.

Proposition 36 courts. Unique to California, these courts arose out of a voter referendum passed in November 2000 that mandated a treatment option for a wide range of defendants convicted of drug possession–related charges. These specialized courts serve to centralize and streamline the processing of eligible cases and to monitor defendants agreeing to enter treatment. Beyond these general principles, each of California's 58 counties has its own list of eligible charges, case processing methods, and programmatic features. Nineteen percent of California's counties report handling Proposition 36 cases within a preexisting drug court; an additional 55 percent report handling at least some (if not all) Proposition 36 cases with a "drug court approach"—although it remains unclear how each county defines this approach and if it always includes, for example, most of the components discussed in chapter 4 (see Longshore et al., 2003; see also NADCP, 1997 for the key components of drug courts).

While actual Proposition 36 court practices and fund distribution vary greatly by county, the focus group results suggest that, at least in theory, Proposition 36 cases are ideal for a CJ approach. In one California judge's county all Proposition 36 cases *are* in fact handled with a complete drug court model, and this judge recommended doing the same statewide. However, two other judges indicated that in their counties, the handling of Proposition 36 cases fell well short of CJ court standards (e.g., less-frequent court appearances, less time for in-depth judicial interactions, and a lack of extra staff resources to coordinate treatment services and relay progress reports to the judge). In the one case the reasons cited had primarily to do with insufficient resources; in the other, local attorney opposition also played a role. In sum, participants reported that while Proposition 36 cases are clearly appropriate for collaborative justice, various barriers on a county-by-county basis might make it difficult to practice.

Probation. One final area—*probation*—fell outside the strict limits of this part of the discussion: It is not a calendar type, but arguably an extension of the criminal court process. Still, the judges widely regarded it as an excellent vehicle for collaborative intervention. Setting probation conditions, monitoring compliance, and responding to violations were all activities in which judges reported often using collaborative justice techniques. Due to the systemic underfunding of probation departments, judges from both states emphasized that judicial follow-up would often be required to ensure that defendants were in fact linked to programs, and that other probation conditions were being met. (See chapter 6 for a more complete discussion of this issue.)

Inappropriate Cases and Calendars for CJ Court Principles and Practices

Judges suggested that several types of cases and calendars were expressly inappropriate for a CJ approach. Most judges agreed that—outside of the context of domestic violence or mental illness—defendants facing charges of violence involving a weapon, violence resulting in serious injury, felony violence in general, and murder or manslaughter were inappropriate for CJ practices. Some of these distinctions were made on the basis of whether the courts could or could not solve a defendant's underlying problems. As one judge from the Burbank group explained:

> If … you know that the violence—maybe even an attack with a weapon—was clearly connected with substance abuse, now there is a violent crime, but we can deal with it in the context of a drug court or substance abuse, because we can recognize … the underlying cause. [But for issues such as] gang violence problems, [although] we can recognize the general sociological problem that is behind the gang, we can't deal with that [with a CJ court approach].

Criminal trials were also generally seen as inappropriate for collaborative justice. One apparent difference between California and New York judges concerned whether a collaborative justice solution was appropriate in cases where the defendant faced felony drug *sales* charges (as opposed to drug possession). Several California judges indicated that drug sales cases are too serious for collaborative justice practices, whereas the New York judges did not raise such a distinction. It should be noted, however, that statutory requirements in California prohibit most drug sale offenders from drug court participation.

Summary

Judges identified many collaborative justice practices and principles as transferable to general calendars. Many of these components can be introduced by the judge with minimal additional resources and participation of court players: a proactive, problem-solving judicial orientation, interaction with the defendant, judicial supervision via return appearances, service referral, and a team-based, non-adversarial approach.

When considering where to apply these practices and principles outside of the CJ court, judges considered both the types of cases and the types of courts or calendars that might be appropriate. They characterized appropriate case types, in part, as those in which a problem that contributed to the defendant's criminal behavior could be resolved by court intervention and services. Examples of such problems included all those already served by collaborative justice courts: domestic violence, mental illness, and drug and alcohol abuse. Cases involving younger defendants were also cited.

The court types that judges deemed most appropriate were those that dealt explicitly with the problems of young people and families, juvenile and family law, as well as those dealing with drug cases under Proposition 36. Judges were divided on the question of civil and criminal courts. Finally, probation—neither a case type nor a court type yet closely related to both—received strong endorsement as a venue for collaborative justice practice.

Crimes of serious violence and criminal trials were virtually the only matters that a significant number of judges suggested as inappropriate for collaborative justice; yet some judges observed that violent offenses are staples of some CJ courts (primarily domestic violence and mental health courts).

6. Barriers and Facilitators to Transferability

In both interviews and focus groups, judges discussed a number of critical barriers that could impede their efforts to transfer collaborative justice court principles and practices to other courts. These included limited judicial time and resources, barriers to effective coordination of treatment services, opposing philosophies among colleagues, inadequate judicial leadership, attorney opposition, legal and constitutional constraints, and public-safety concerns over cases involving violence. The key facilitators of collaborative justice that judges cited included creative and proactive judicial philosophies and personalities, a supportive judicial and local political leadership, CJ court experience itself, and, in California, the plentiful resources associated with juvenile courts. This section begins by identifying the key barriers and facilitators, and then discusses a series of strategies to overcome or at least mitigate the impact of the barriers.

Major Barriers and Facilitators

In discussing barriers and facilitators to collaborative justice, the judges focused on seven themes, listed in approximate order of prominence:

1. Judicial time and resources;
2. Coordination of services;
3. Judicial philosophy and experience;
4. Institutional leadership;
5. Attorneys;
6. Legal and constitutional issues; and
7. Public-safety concerns.

Judicial Time and Resources

Collaborative justice takes time—"quality time," as one judge stressed—but time is often in short supply in conventional courtrooms. Even if judges want to devote more time to each case, there is a strong countervailing pressure that dissuades them from doing so, as judges are often evaluated on their ability to move cases along. All four focus groups discussed at length this barrier of insufficient judicial time and resources. One judge summarized the dilemma this poses for those interested in bringing CJ court practices to conventional courts:

> When you leave treatment court … you don't have time for the individualized attention to each defendant, you don't have access to the wide array of services, [and] you are under a great deal of pressure to move cases. … In some places … they have standards and goals, and the concern is not what are you doing for the defendant, but what are you doing about reducing your caseload, and you don't have the same kind of pressure in drug courts or [other] problem-solving courts. But the individuals are virtually the same and the need for services and the need for attention—the need to have you as a judge react on a personal level … to use that authority-figure status in a kind of interpersonal relationship to do some behavior modification—is just as great outside of treatment court, but you don't have all the resources and all the benefits that the problem-solving courts have. And it is just kind of frustrating, because you know that it [collaborative justice] works. (Rochester)

Another judge cautioned that attempting to handle cases collaboratively outside the CJ court may require even more time than within a CJ court, since attorneys may not be versed on specific

problems (e.g., the nature of addiction) or prepared to operate as a member of a team. Further, without the dedicated attorneys that typically staff CJ courts, judges in conventional courts may spend hours waiting for attorneys to appear, which further reduces the time they can devote to each case.

Across all focus groups, judges expressed particular concern about this barrier when the subject of return court appearances arose. While the use of return court appearances is in theory one of the most transferable of collaborative justice practices, in actual operation it creates costs for a large number of personnel—not just the judge—and can incur resentment from other court staff. One judge explained:

> [Return appearances] are problematic, I think, especially in the budgetary crunch ... and a judge is going to set it, it has to go back to his or her calendar. So then you start getting backlash from your staff ... you are the only judge that does it; nobody else does it. And then we have to break ... we break before noon, we have to break before five, our clerk's offices close down at three. Every time you handle a file ... even issuing a warrant now, and what it costs to issue a warrant, then having somebody picked up—it is just amazing. (San Francisco)

While all judges cited limited judicial time and resources as a barrier to practicing collaborative justice on general calendars, judges in higher-volume (generally urban) courts tended to perceive it as more critical. Several New York City judges and one from an urban county in California insisted that caseload pressure in conventional courts precluded them from holding as many court appearances or devoting as much time to direct interaction with defendants and attorneys as they would in CJ courts. One expressed concern that the lack of time for individual interaction could seriously impede the judge's ability to motivate and influence defendants both to enter treatment initially and to make progress subsequently.

According to focus group participants, where greater resources can be assembled, CJ practices are more easily transferred. As one example of an environment that facilitates rather than blocks collaborative justice, California judges cited juvenile courts (both delinquency and dependency), which have far greater resources than adult courts.

One final point: Domestic violence court judges from both states, though they operated in a CJ court, indicated that they faced high caseloads and pressure to move cases along rapidly. By contrast, drug and mental health court judges were far more apt to contrast the plentiful time available in CJ court with the severely limited time available in other court assignments.

Coordination of Services

Since social service mandates (to drug treatment, mental health treatment, batterer intervention, vocational counseling, etc.) are often part of CJ court case outcomes, judges viewed the effective coordination of service provision to be a critical challenge outside the specialized court setting. As described in interviews and focus groups, this coordination involves four basic functions:

1. Identifying available services in the community;
2. Linking each defendant to an appropriate program(s);
3. Providing ongoing court-based case management services; and
4. Monitoring and informing the court of progress or noncompliance.

All four focus groups discussed barriers to the effective performance of these functions at length.

Within CJ courts, additional staff members—a program coordinator, resource coordinator, or case management team—often handle treatment coordination. In the absence of such staff the need for that coordination remains. One judge observed that this is especially true when dealing with clients beset by multiple underlying problems:

> It has become obvious to me that a real problem with managing people with addiction or mental health problems or anything else ... [is that] what you really need is case management. ...Whether you call it drug court or not, [what you need] is someone who is responsible to pilot that person through the system, to take the person who has a multitude of problems, with mental health or substance abuse ... and make sure that they are getting what they need. (Rochester)

In conventional courts, there is the potential for the department of probation, treatment program staff, judges, and attorneys to perform this treatment coordination. These are discussed in turn.

The role of probation. All focus groups identified the local department of probation as the most logical agency to perform treatment coordination, but complained that probation departments were too underfunded to perform effectively in practice (see also Bamberger, 2003).[26] The following were typical comments:

> We got into the [drug court] business because no one else was ... and 70 percent of these people [defendants who needed drug treatment] were being dumped on our doorstep. So we had to come up with a solution. We had to, because community safety demanded it. ... Probation was the original alternative to incarceration, that's what it was for. And now ... you talk to any probation officer: "I've got too many cases, I've got too many cases, I am overwhelmed." And it is not solving the problem. (Rochester)

> Our probation department has no money; these cases are completely unsupervised. The condition of probation is to go to a drug program, but no one gets [defendants] into a program much less supervises them. So, it is really an exercise in futility. (San Francisco)

> Judge: I know that I am troubled by the lack of information [outside collaborative courts]. We certainly don't have that kind of information in traditional courts. I find quite frankly that our probation reports tend to be pretty sterile.
> Judge: They're formulaic.
> Judge: Yes.
> Judge: If you get them.
> Judge: And they are so overwhelmed, they are just like nonfunctioning. (San Francisco)

Many judges agreed that the historic mission of probation was to place defendants in needed treatment programs, monitor their progress, and update the court—in short, to perform many of the functions that, in CJ courts, the additional dedicated staff handles. But lack of funding has dealt a serious blow to probation departments' ability to fulfill this mission, leaving probation officers overworked and judges frustrated by the lack of follow-up to their orders. Time and funding are not the only problems. One judge noted that while the local probation department

[26] Several judges cautioned that while added funding might enable probation departments to perform needed treatment coordination functions, probation could not supplant the need for ongoing direct judicial supervision—the role of the judge in motivating compliance was thought to be crucial by some.

maintained lists of treatment agencies, its staff lacked sufficient expertise to match each defendant to the most appropriate program. Judges also expressed consistent disappointment with the quality of reporting to the court, complaining that progress reports tend to be neither timely nor useful. One New York judge claimed that at least four out of 10 probation progress reports contained inaccuracies.

However, one California judge noted that in juvenile dependency and delinquency cases, social services and probation reports tend to be highly detailed and useful, and probation served a valuable role in linking juveniles to services.

The role of treatment programs. In theory, if treatment programs could provide detailed progress reports, the need for court-based case management would be lessened. However, judges were generally critical of progress reports that came directly from the treatment programs. Several judges believed that without additional court staff demanding accountability, programs would not provide timely reports with a "sufficient depth of information about client progress" (New York City). Two judges (one each from California and New York) expressed particular concern about situations in which defendants have early problems at their assigned program (e.g., relapses or rule violations). They feared that the treatment programs would fail to mention these problems in interim progress reports, waiting until the situation had escalated to the point of program failure before they notified the court. By contrast, if judges were informed as soon as problems arose, they could intervene via motivational interactions during court appearances.

The role of judges. Judges with CJ court experience may be familiar with the local treatment community, enabling them to perform aspects of treatment coordination. Indeed, many judges indicated that they occasionally drew on their knowledge of community-based programs to make appropriate placements. This, however, requires spending significant time making phone calls to treatment agencies. One New York City judge who did this routinely for several years indicated that it sometimes involved making up to 10 calls to service providers at the end of each workday. Obviously not every judge can or will do this: "It would be great to be able to reach out, but as judges, unless you have nothing to do, it is pretty tough to be on that phone all day long trying to bring services in." (Rochester)

The role of attorneys. A few judges noted that in the absence of court-based case management staff, defense attorneys could sometimes recommend an appropriate program; however, there are relatively few attorneys equipped to do. One judge observed that certain defense agencies employ social workers that can work with defendants and refer them to community-based services as needed. This judge had occasionally reassigned counsel so that defendants in need of services received an attorney from such an agency, but logistical constraints prevented this from becoming a regular practice.

Judicial Philosophy and Experience

Judicial philosophy, experience, and personality were subjects of much conversation in all groups and some interviews, and they were clearly perceived as interrelated—philosophy and personality in particular. The three are explored in turn below.

Judicial philosophy. The consensus of the participants seemed to be that in any courthouse, a percentage of judges subscribe to a judicial philosophy that runs counter to the tenets of

collaborative justice. Judges from rural and politically conservative counties tended to report this percentage as being substantial, perhaps even a majority, while several judges from large urban counties indicated that the predominant philosophy in their courts was more conducive to a collaborative approach. (Of course, opposition from colleagues does not necessarily prevent judges from applying CJ court principles and practices in their own courtrooms, except when that opposition comes from the judicial leadership level—a theme discussed in the next section).

In the focus groups, judges identified two distinct philosophies as being generally inconsistent or incompatible with collaborative justice: (1) a traditional view of the judicial role and (2) a preference for punishment rather than rehabilitation.[27]

In a traditional view, the judge is an objective arbiter of facts and legal doctrine, not a proactive problem-solver. The traditional view clashes with both the methods of collaborative justice (e.g., judicial interaction, rewards for progress, and non-adversarial decision-making) and its goals (social problem-solving). One judge considered this barrier fundamental, declaring, "The biggest problem I have is people on the bench here," and explained that colleagues generally viewed collaborative approaches as "social work" and contrary to the proper judicial role of "deciding cases." A second judge echoed this contrast using precisely the same terms. Several others framed the issue a bit differently, expressing that the traditional role focuses on *legal process* (e.g., legally correct decisions and case processing) while the problem-solving role focuses on *outcomes* (e.g., decisions that solve underlying problems and reduce recidivism). One judge summarized the collaborative justice mindset as one that considers but is not preoccupied by legal issues, and focuses much more on practical solutions.

Judges also saw their colleagues' philosophical preference for punishment over rehabilitation as a barrier in dealing with criminal cases, as illustrated in the following excerpts:

> I just get so frustrated at times working with colleagues who snicker and laugh and make fun of the collaborative approach, because they say, well, "punishment" ... I have had PJs [presiding judges] who said, "This is the purpose of why we have courts, [it] is to punish people." And that's frustrating. (Burbank)

> I think the traditional criminal justice notion is, the only thing that gets compliance is jail time: either [you] voluntarily comply or you go to jail. (San Francisco)

Collaborative justice court experience. A few judges indicated that experience on a CJ court had altered or influenced their judicial philosophy, moving them from mild opposition or disinterest to enthusiastic support for collaborative justice. But many more judges reported that colleagues with opposing philosophies had been unmoved by the experience of sitting in CJ courts. For those whose philosophy is or becomes sympathetic to collaborative justice, however, actual CJ court experience seems to have a universal impact on practice:

> I would have to say I was predisposed [to apply collaborative court practices], because I was doing it with DUI cases before I went out to do my collaborative justice court. But having done collaborative justice courts ... I think I learned more about it and I think I probably do it more now because of the information I have gained. (San Francisco)

[27] While punishment and rehabilitation may not be inherently incompatible, the attitude described was one that eschewed rehabilitation entirely.

> [Without the collaborative court experience] ... we wouldn't have realized that it could work, except that doing the collaborative style you learn what does work. ... Little things like [review dates] ... I didn't do that before, because I thought it was a waste of time, it was another case on my calendar. But I am just more attuned to that because of doing this. (Burbank)

> It is a learned behavior. I have been in law now for 33 years as a lawyer and now 18 years as a judge, and until 1994, when I first heard [a collaborative justice court judge] speak, I was doing the same thing as everybody else, the traditional role of both a lawyer and a judge. And so becoming aware of the drug court concept is what opened my eyes to what am I doing to these people, and [I] switched over. My philosophy changed and got me into this whole stuff about collaboration ever since. (Burbank)

Chapter 7 explores in detail several ways to increase the number of judges who get direct experience and to disseminate information on CJ court principles and practices more effectively to judges who have no direct experience.

Personality. One issue that aroused considerable emotion in all four focus groups was the extent to which personality affects the judge's ability to learn and apply CJ court practices effectively. Several judges expressed vigorously that a collaborative justice philosophy and practice were inherent to their personality, and that fact furthered their ability to apply CJ practices both in the CJ court and on other calendars:

> Most of us sitting at this table have a personality that, no matter what assignment we are in, we are going to be creative problem solvers because we all stood up early, most of us, and said, "We are going to do this differently." So, yes, all of us sitting at this table are going to take these skills and use them no matter what assignment we have. (Burbank)

> For me to take this concept of thinking to another court—it is like asking me, "Do you take your personality with you to another court?" Yeah. (Burbank)

Are judges with certain personalities the only ones who can implement CJ practices? There was no consensus on this matter. Some judges felt that colleagues without the right personality, even if they had experience, could not be effective in practicing collaborative justice. One judge noted, however, that the connection is not predictable: "There are some people [CJ court judges], [whose] personality would be the total antithesis of what you expect of a collaborative justice court." Rather, the "right" personality seemed to refer to a few specific characteristics: empathy, honesty, and communication. One judge observed that a colleague who acted as a regular backup lacked compassion and would always say the wrong thing to participants. Another judge believed that judges must always be who they are; the only prerequisites for CJ practice were the abilities to talk to defendants like real people and to have faith in their capacity to succeed.

Ultimately, it may be some combination of philosophy, experience, and personality that enables or inhibits a judge from practicing collaborative justice:

> Judge: Do you think everyone can learn the behavior?
> Judge: I think they can if they choose to.
> Judge: I agree with what Judge X said a minute ago though. You heard Judge Y speak and a light bulb went on for you. Well, you have talked to other judges where the light bulb stayed very dim. I think to a large extent it is personality.
> Judge: Until they actually came and sat in the court.

> Judge: And sometimes that made a difference [but] sometimes even that didn't make a difference.
> Judge: I think most judges could learn this behavior, but they aren't willing to be there and see how it really works and become convinced that it ... justifies their additional energy to get to that goal. ... It is not like it is some really difficult thing to learn how to do, but ... some people more than others ... have to be convinced that it is their role as a judge and that it actually does work. ... It took some convincing for me to believe that ... that kind of reinforcement actually would work. And I think for some they are anxious [to] believe that it will work and so they will get in there and try to do it. Others are firmly convinced that's not [their] role and it is not going to work and they have to be pushed in there kicking and shoving. But if there is some way to force them to do it, [then] they have to face the music and say, yes, it really does work. (Burbank)

Institutional and Political Leadership

Although all judges felt comfortable operating in a collaborative fashion within CJ courts, some believed that judicial leadership would be a critical facilitator for—or barrier to—the dissemination of CJ court practices on general calendars. Discussion on this theme revealed one of the very few interstate differences: California judges were more likely than their New York counterparts to view institutional leadership as a potential barrier. The Burbank group, in particular, discussed the theme extensively. In general, when the issue arose, California focus group participants concentrated more on leadership at the level of the presiding judge; New York participants, on their equivalent position: the county-level administrative judge. The following excerpts come from the Burbank focus group:

> And so to transfer some of these principles, there has to be permission from above. ... There are people who are in authority for judges [presiding judges], that [have to say] it is OK to do this; it is not really crazy; you are not some kind of radical outlaw bandit. It is OK to do this. In fact, it may be actually encouraged. That message needs to be given if you are going to be successful in the transfer.

> Another way [to encourage transferring CJ practices] is for the presiding judges to accept that this is appropriate. ... I am sure all of you have had people make fun of you for what you do ... who absolutely disagree with what we do in our courts. ... Until we can get rid of that pervasive opinion that exists within our system, I think we are going to have problems and you are not going to see these great concepts being passed on to other assignments.

In addition to judicial leadership, one judge from the Burbank group drew attention to the impact of political leadership in the form of local community support:

> It's permission from our chief, from our PJs, for the colleagues that do not buy into it. For many of them it is political permission. It is the community saying it is OK to be like that as a judge and you don't need to worry that we are going to vote you out of office.

This same judge went on to suggest that community outreach efforts can help to increase local political support, as it did in the judge's own county:

> I am in one of the most conservative right-wing communities in this whole entire state, where everything is "Get them," "Punish them" ... until it is their kid. But it is interesting when you go out and you talk to these same people and you explain what you are doing and how the approach really is much more beneficial, a lot of those light bulbs go on.

It remained unclear, however, how or to what extent a lack of leadership could impede an individual judge's efforts to transfer CJ court principles and practices. In the words of a judge from the San Francisco group: "I don't need anyone's permission or support to increase my calendar [and] personal workload by having additional people come back and see me." The judges were more likely to believe that a lack of leadership would pose a barrier to the broad dissemination of CJ components throughout the bench (a theme that is explored further in chapter 7). One judge added that those in leadership might signal their support of collaborative justice involvement when it came to evaluating and promoting judges—instead of leaving judges with the common impression that moving cases along, holding trials, and publishing opinions were paramount considerations.

Attorneys

All the focus groups and most interviewees discussed the role of attorneys. In all, participants identified four possible barriers that attorneys might pose to the transfer of CJ principles and practices.

First, attorneys might object to CJ court methods, such as team decision-making or direct interaction between judge and defendant/client:

> We have all said the judge has power in the courtroom. Well, in a criminal courtroom, the attorneys have a great deal of power to represent their particular vested and protected interest under the Constitution. (Burbank)

> The firewall is the DA and the defense counsel, because without their consent, except in plea bargains … you don't have any authority to talk to anybody [i.e., the defendant]. (Rochester)

According to some judges, an insistence on a strictly adversarial environment in criminal court inhibits the defendant's ability to speak openly, because of the danger that any admission will be used against the defendant by the prosecution. One judge added that resistance to a judge interacting directly with defendants is particularly deleterious, since such interaction is central to the therapeutic process.

A second barrier, related to the first, is that defense attorneys might prefer an adversarial process in the hopes that it will yield a better case outcome for the client—for example, a probation sentence with minimal conditions attached:

> Defense attorneys perceive their role as being somebody who gets somebody off, as opposed to getting somebody help. If they go into drug court, they generally have to have their back to the wall and their client has to have their back to the wall, because otherwise, they are going to try to minimize whatever [the defendants] have to do. And probation is clearly easier than a drug court program. (Rochester)

Third, attorneys outside the CJ court are often not educated about addiction or other issues that will affect the defendant and the court process, so they might have only a superficial understanding of events—such as relapse in drug treatment court or victim recantation in domestic violence cases—that are common occurrences in CJ courts.

Finally, attorneys might be unwilling to devote the time on each case that a CJ approach requires. One judge explained that outside of CJ courts, attorneys typically want a quick

resolution of their cases; private attorneys especially do not want to return for judicial status updates.

It should be mentioned that while all judges acknowledged these barriers, there was no consensus on how significant they might be. Many judges seemed to feel confident that their control of the courtroom could overcome the resistance of attorneys; others seemed to vest attorneys with considerable power.

Constitutional/Due Process Issues

In both the Burbank and Rochester focus groups, several judges raised questions about whether it was legally appropriate to transfer CJ court practices outside the confines of the CJ court itself. As one judge from the Rochester group explained:

> I am not sure I am willing to make the assumption that it would be a good thing to transfer all of these things to the old-fashioned courts, because obviously there is a reason we have separated out some of these [specialized] courts, to deal with particular issues. What we need to remember as judges ... is that our first and foremost role frankly is not to solve the defendant's problem, it is to be sure that justice is done to the people that are before you. ... For example, if there is a hotly contested constitutional issue involving the criminal case, I am not sure that the judge ought to be sitting around the table with everybody talking about that [collaboratively]. ... I think there are many places in the traditional system [where] the judges ought to stay just judges and not get into that problem-solving mode.

Echoing some of this, judges from the Burbank group noted that there was generally less room for widespread adoption of CJ practices in adult criminal courts than in other calendars (e.g., juvenile, family law, or general civil cases), primarily because of the due process concerns that become paramount in a criminal setting. The following assessment, for example, came from Burbank:

> Moderator: Let's begin with [the question of transferability] in a traditional criminal court.
> Judge: Yes, I think most of the lawyers in the court are going to think that your first hurdle is this little thing called the Constitution.

However, judges disagreed on the degree to which due process and constitutional concerns precluded a collaborative approach. In the New York City focus group and interviews, for example, several judges commented that plea-bargaining restrictions might sometimes hinder the ability of a judge to step in and propose an alternate sentence (e.g., if prosecution and defense had reached a specific agreement involving a plea to a lower charge). But otherwise, judges seemed unconvinced that legal and collaborative justice principles must necessarily clash in criminal cases; and as discussed previously, several judges pointed out that the rules governing juvenile cases positively facilitated a collaborative approach.

Public Safety Concerns

In the Burbank and Rochester focus groups, several judges suggested that cases involving a certain level of violent crime were inappropriate for a collaborative approach. One judge from the Burbank group commented:

> I would say there are [cases] where the level of punishment required is diminished by the need to solve the underlying problem, and so you would rather solve the problem than punish the behavior. [But] there is a certain level you reach of conduct where that is not true anymore.

Another Burbank judge cautioned that there is a personal risk for the judge and the attorneys if treatment is mandated for defendants charged with serious crimes, when lengthy incarceration sentences would normally be imposed.

However, in one Burbank judge's CJ court (not a domestic violence court), 90 percent of the cases involved serious felony crimes, most committed with weapons. This judge believed that defendants should receive consideration on a case-by-case basis, without imposing hard-and-fast rules as to which cases are appropriate for a collaborative solution:

> I think when we try to label something—when you say what kind of cases—you get in trouble. ... It just depends. When we try to label what will and will not come in, you run into trouble in the face of the specific facts of an individual case.

Strategies to Overcome Barriers

Judicial Time and Resources / Coordination of Treatment Services

In the estimation of the judges, time, resources, and service coordination ranked as unquestionably the most significant barriers to transferability. Many judges seemed paralyzed by these barriers, and could see no way to surmount them. Other judges envisioned complex, long-term solutions that did not further the transfer of CJ practices now or in the short term. Ultimately, the judges discussed two possible approaches: obtaining additional resources or doing without resources. Each was explored in depth.

Obtaining additional resources. It was not surprising that all the judges preferred to obtain whatever additional resources would allow them to practice collaborative justice as it is done in specialized CJ courts. In particular, judges proposed (1) borrowing resources from existing specialized courts and (2) creating central structures in each court building that would provide resources for all defendants, regardless of which court part heard their case.

Borrowed resources. One judge recommended making the extra staff resources of CJ courts available to similar cases from conventional courts. This judge pointed out that CJ courts often have criteria for eligibility, which may be specific charges or criminal history or the like; certain defendants who, therefore, are technically ineligible for the CJ court might nonetheless have the same problems as CJ-eligible defendants—and the same need for treatment. From a court system standpoint, then, it would be desirable for CJ courts to share their resources. Of course, there are drawbacks to this approach—none of which were raised by the groups—including funding limitations, the potential for strain on CJ court resources, and the difficulty of coordinating the CJ court with multiple other courts.

Centralized resources. Participants suggested several possibilities for providing courtwide resources. These varied in terms of both what resources would be offered and how they would be made available. The three most clearly developed strategies addressed the core CJ practices of judicial supervision, program referral, and case management.

- Judicial monitoring: In 2002, after years of having individual judges mandate and monitor treatment cases on an ad hoc basis, one New York City court established a centralized Compliance Part. Any judge could then adjourn to this part cases in which defendants would benefit from regular reporting to court (presumably to give updates on progress in drug treatment, vocational education, life skills, or other assigned programs). The Compliance Part is staffed by a dedicated judge and by case managers who coordinate treatment services. While the part is not a CJ court per se, it incorporates certain CJ features while achieving an economy of scale through centralization of supervision resources.

- Program referral: Another New York City judge noted that the lack of familiarity with community-based services on the part of most judges posed a barrier to program referrals. This judge recommended making available a computerized directory of local treatment programs (including contact information and information on special populations that each program can serve). There had been efforts to produce just such a list in this judge's county, but they consistently fell apart due to poor implementation. Another judge suggested establishing a court-wide mechanism by which a limited number of judges, or a single coordinator for all judges, could make treatment and other programs accountable to the court. This would make it easier for judges to use treatment alternatives more widely on general calendars, since most judges would not have to interact extensively with provider agencies.

- Universal screening and case management: To facilitate service coordination, several judges strongly recommended the creation of a courtwide treatment coordination/case management unit. This unit would perform all the functions of the additional staff common to CJ courts, and any judge could refer defendants for assessment and placement. One judge advocated for universal intake and screening, and for the inclusion in all courts of two parts—a problem-solving part and non-problem-solving part. Every person involved in the criminal justice system would be screened and administered a needs assessment. Based on that information, a determination would be made and the case would be moved to one of the two parts for resolution. These changes would obviously require significant new funding and an expanded concept of what types of services the courts could provide. Indeed, the judge who proposed this vision believed that the rise of specialized CJ courts may have ultimately been a step backward, diverting attention and resources from the greater project of universal screening, assessment, and case management.

Doing without resources. Bowing to fiscal realities, most judges developed strategies on a smaller scale. They considered what they themselves could do, in their own court parts, with their current caseload. And while they identified a critical practice—judicial supervision—that they could easily implement, some of them acknowledged that even this would prove impractical if it were applied in every case. Instead, they employed a triage process to select only those cases most in need of or most likely to benefit from a CJ approach.

Supervision. In the absence of complete confidence in the effectiveness of community-based program placements, judges can still require defendants to report back to court for updates. However, several judges emphasized that truly effective supervision depends on having a probing and motivational exchange between judge and defendant. This means that the quality of

supervision depends partly on the quality of advance information made available to the judge. Some judges were concerned that without detailed progress reports, their supervision could take on an unproductive, perfunctory quality (see chapter 5).

Triage. One judge described the process of triaging cases as follows:

> I think the concept of triage is really the essential ingredient of being able to take the collaborative justice principles and apply them outside the traditional framework [of the collaborative justice court] because they are just time-intensive. And if you try and apply it to all the cases in a particular category, you know, you will run out of time. You will burn everybody out. So you have to be able to decide what sort of cases you are going to concentrate on and be able to take that smaller number and give it the increased attention that is there. (San Francisco)

Many judges agreed that this sort of selection process was necessary, not only to conserve the judge's limited time and energy, but also to prevent court staff—clerks and court officers—from becoming overworked and resentful. But at least one judge was troubled by the strategy of practicing collaborative justice without resources, or doing it alone, rather than striving for systemic change:

> I do agree … we can make individual changes. But unless you can really demonstrate that it [monitoring probation cases through repeat appearances] reduces the number of motions to revoke—[that] it saves some money—the other person down the hall who doesn't want to do that extra workload is not going to make that change. And it [becomes] purely a personal thing as opposed to an institutional thing. (San Francisco)

Attorneys

Participants disagreed somewhat on the issue of how much of a barrier attorneys presented. Some judges credited them with the ability to derail any attempt at a CJ court approach, while others argued that attorneys would follow a judge's lead. Two basic strategies were proposed to engage attorneys in collaborative justice: exerting judicial leadership and building trust.

Exerting judicial leadership. Several judges believed that by exerting leadership they could lessen the impact of barriers put up by attorneys. One judge believed that strong personal capital on the part of the judge was essential, noting: "In my courtroom, I make it happen." This same judge recognized, however, that colleagues who lack courtroom leadership skills might not be able to move cases as effectively in a collaborative direction. Another judge spoke of leadership this way:

> I just talk over the attorneys. I go right to the defendant and I will leave it up to the defendant's lawyer to object to me speaking to his or her client. I get away with that 95 percent of the time. … If they object … I will schmooze them and get around to it. (Burbank)

Building trust. Several judges noted that it is possible to gain attorneys' trust over time by building a reputation for handling cases collaboratively and fairly. Current or former CJ court judges have an advantage here, since they are already known for collaborative practice. Referring to potential problems with defense attorneys, one judge explained:

> Over time [direct interaction with defendants] has built up enough of a reputation on my part that they know I am not going to slam them into jail. They know that. I tell them up front and then they will allow their clients to talk to me. And it has worked out very well. (Burbank)

Another judge added that if defense attorneys perceive a judge to be making a genuine effort to solve a defendant's underlying problems, they may become more amenable to CJ court practices such as requiring program mandates and return court appearances:

> There are a lot of attorneys out there, a lot of defense counsels that do appreciate that you are actually trying to solve the problem. And so you might get more cooperation than you would think you would initially going in, as long as you are not ... just adding [new requirements] on. If you are just making sure that [defendants] actually do the program ... there is not going to be a whole lot of resistance there, because most [attorneys] are going to look at that as a good thing. (San Francisco)

Since building trust often depends on seeing the same attorneys regularly, judges in smaller jurisdictions seem to have an advantage:

> There are a couple of key defense attorneys who know the game, but a lot of them didn't. And the DA ... was not really a big fan of it, and he never used the plea-bargain services. And now finally over time [they support the CJ approach]. I think our smaller jurisdictions probably in time won't run into the problem, [but] it may never be solved in bigger jurisdictions, because we keep rotating people through. (Rochester)

Summary

Focus group participants did not presume that applying collaborative justice outside specialized courts would come easily. Indeed, for some judges the barriers seemed overwhelming:

> I'd say yes, there are a lot of things that could be done. But only Don Quixote could do them. Because you're tilting at windmills when a lot of people would be resistant to it and wouldn't cooperate. And it would cost a lot of money. And you would have to be indefatigable. And you could never, never give up. Maybe you'd get some things done. And you'd be quite tired by the end of the week. You'd have to sleep all weekend to start again on Monday. So that's my view. I'm not cynical at all. I'm an optimist. (New York City)

While this judge was more pessimistic than most, the list of barriers was certainly long and daunting. Chief among the barriers cited were those related to resources—both the limited time and resources available to judges in conventional courts and the lack of additional staff to effectively manage treatment coordination. Philosophical opposition or lack of education among colleagues—both on the bench and in judicial leadership positions—also received considerable discussion, especially in California. Participants also discussed the barriers posed by attorney opposition, legal constraints, and issues of public safety. But fewer judges seemed concerned about these areas, which came up mainly when discussions turned to traditional adult criminal courts—not juvenile, civil, or family law.

Judges also related many strategies for overcoming barriers, both with and without additional resources. In fact, when the discussions focused on the issues of judicial time and resource limitations—seemingly among the more substantial obstacles to overcome—the judges offered

the widest range of possible solutions.

Finally, judges repeatedly cited their experience on a CJ court as being a key facilitator in helping them to apply collaborative justice elsewhere. This raises the question of how to impart such experience more widely or, in lieu of that, how to identify and develop other dissemination methods. This is the subject of chapter 7.

7. Promoting Collaborative Justice Among Colleagues

The research team asked the judges how to promote the broader use of collaborative justice throughout the court system and among their colleagues who did not have CJ court experience. Generally, the discussion in all four focus groups was consistent, and several common themes emerged:

1. Changing the attitudes of judges and others is key to promoting the broader use of collaborative justice;
2. Mandatory education and training, along with less-formal mechanisms, are the best ways to expose judges to collaborative justice principles and practices; and
3. Although being assigned to collaborative justice courts can have a lasting, positive impact on judges, mandatory rotation to CJ courts is impractical, largely due to the deleterious impact on the courts themselves.

In addition, judges in California emphasized the need for presiding judges and other judicial leaders to encourage the broader use of collaborative justice throughout the system.

The first section below reviews comments on the importance of judicial attitudes to the dissemination of collaborative justice principles and practices. Subsequent sections discuss various dissemination methods, including education and training, informal exposure/word of mouth, judicial assignment/rotation, and leadership.

Judicial Attitudes

In all focus groups and interviews, the participants concentrated extensively on the need for judge-centered solutions to change the attitudes and practices of judges who might not be familiar with collaborative justice, or open to the idea of applying it on general court calendars. This topic received at least as much attention as strategies to cope with limited resources, lack of treatment coordination, and other barriers outside of the judge.

A New York City judge noted, "One of the biggest challenges is convincing other judges to do this." As reported earlier, the judges believed that someone's personality and temperament—not just their judicial philosophy—affected their openness to collaborative justice. The consensus emerged that because philosophy, personality, and temperament all play a part here, it will be a long process to get judges to adopt collaborative justice on a widespread basis. Some judges will simply be unwilling to embrace new practices and roles:

> You are talking about evolving or changing the role of the judicial officer and the colleagues; the judicial officers who [came in] 20 to 25 years ago as a general rule don't perceive the position that way. (San Francisco)

> There are some of us who can still learn new tricks [but] some of us just can't. (San Francisco)

Focus group participants did, however, leave the door open for judges to come around to new ideas, noting that the attitudes of many judges (including themselves) can be changed with exposure to the collaborative justice concept:

> [Collaborative justice] is a learned behavior. … Becoming aware of the drug court concept is what opened my eyes to what I am doing. … My philosophy changed and got me into this whole stuff about collaboration. (Rochester)

> Judges are probably more affected by drug courts than even the people who go into the drug courts. (San Francisco)

A judge in the San Francisco group identified three categories of judges. At one end of the spectrum are judges who will never change: "You can put them in a CJ court and they will come out and still do the same old thing." At the other end are judges who are very open to new ideas: "You don't even have to market to them." In the middle is a vast group of judges who are open to adopting new ideas and approaches under the right circumstances: "They thought they would never like [a CJ court assignment]. … It turns out, 'Oh, my gosh, this is fabulous,' and their lives are turned around." (San Francisco)

The Importance of New Judges

Interview and focus group participants agreed that all judges, particularly those in this middle group, need exposure to the collaborative justice concept. Many focus group participants suggested that new judges, just beginning their assignments, would be most receptive and thus ought to be the focus of any efforts:

> The key is the crop coming out … so you gradually over time change the concept or perception. (San Francisco)

> New judges tend to be won over. … Everything is wonderful to them. (Burbank)

> New judges coming in, you hope to get them into more of a collaborative justice way of thinking, at least initially, because it very much affects their development as a judge. (San Francisco)

> Educating new judges on that concept [is] critical, right there when that mind is fresh. (San Francisco)

Since new judges are likely to be most amenable to collaborative justice, widespread adoption of CJ practices would come with generational change in the courts:

> At some point in the future everybody will have been subjected to training, and people like myself will be dead and gone. And we will have a whole cadre of people … at least who have been told, "Here is the way it is supposed to be done." (Rochester)

While some judges noted simply that exposure to the collaborative justice concept was critical to changing attitudes and role orientations, a number of specific suggestions emerged and are presented below.

Education and Training

In all focus groups, judges emphasized the need for greater education and training of judges (and other personnel) in collaborative justice principles and practices. They saw education as the most appropriate and effective method to bring about the adoption of collaborative justice

approaches by judges who were unfamiliar or unreceptive to the concept. One New York City judge remarked, after reading an original proposal for a drug court, "Everything in it was true and obvious." This judge also believed that colleagues would react similarly, but that without it laid out for them, judges would lack information on what precisely to do. Others were less certain their colleagues would take to collaborative justice so readily, but agreed that education was still the best method available.

Participants cited judicial colleges and new judge orientations as the preferred venues for disseminating information. For some, new judge orientation was especially crucial. A participant in the San Francisco group noted that California's new judge orientation has in the past decade placed greater emphasis on the "art of being a judge" and on teaching ethics and fairness, so a section on collaborative justice would be especially appropriate. A judge in the Burbank group suggested that new judges be required to sit in a collaborative justice court for a day as part of their orientation.

Mandatory or Voluntary Training?

Some judges recommended that training be mandatory. Said one participant in the San Francisco group, "I am a firm believer in brainwashing." A New York City judge agreed, suggesting that mandatory training would reach a broader audience: "If you make it voluntary, the people who want it, come; and the people who don't, don't." While the judges did not universally endorse the idea of mandatory training, they appeared to favor it over voluntary training. Judges in the Burbank group discussed this issue extensively, citing favorably the facts that California now had mandatory domestic violence training for all new judges, and that Utah had recently closed its courts for a day so that all judges could attend a mandatory domestic violence seminar.

Training Other Personnel

While the discussions about education and training focused on bench judges, participants expressed that it should not stop there, citing the need to include attorneys and presiding judges in order to build broader understanding and support of collaborative justice:

> Lawyers ought to also get education. So that, on a case-by-case basis, if the judge mentions it, the lawyer has some idea of what the judge is talking about, or vice versa. It seems to me to be fairly critical. (New York City)

> We should expand [mandatory training] to the [presiding judges], learning what domestic violence and drug courts are about, so that they buy into the importance of it, because that is a big problem. (Burbank)

Informal Exposure/Word of Mouth

Focus group participants identified a number of less-formal ways to expose judges to the collaborative justice concept. Specific suggestions included:

- Mentoring of judges newly assigned to CJ courts by experienced collaborative justice judges who would provide guidance and teach by example;
- Brown-bag lunches among judges to discuss collaborative justice;

- Exposure to results (e.g., inviting judges to drug court graduation ceremonies; e-mailing articles and anecdotes about success stories); and
- Substitution of general calendar judges in CJ courts. One participant reported that three judges who served as backups in drug court all enjoyed the experience and, as a result, became drug court judges themselves. (Another participant, however, sharply criticized the idea of designated substitutes, raising the need for training or careful selection before entrusting a CJ court to a temporary fill-in.)

A judge in the Rochester group noted that the best way to generate acceptance among colleagues "is word of mouth. ... One of the things I was most influenced by was hearing from these guys their experiences ... how it changed their outlook." Another judge felt that the mere presence of the drug court, and the resulting informal dissemination of information about how it worked, had already generated a change of attitudes in the local judiciary—specifically, a greater understanding of addiction and a greater acceptance of practices that could be used in other courtrooms, such as mandating defendants to treatment and giving them multiple chances after initial noncompliance.

These recommendations reveal the underlying assumptions that (1) exposing judges to the collaborative justice concept is an informal process, and (2) judges often learn about collaborative justice from other judges. Indeed, a New York City judge reported in an interview that "judges need to hear these things from other judges."

Assignment/Rotation

Participants also spent considerable time discussing the idea of assignments to CJ courts as a way to disseminate collaborative justice principles. It was assumed that this experience would enable judges to develop new attitudes and skills that they would then take to subsequent assignments. There was consensus that a CJ court assignment did indeed impart new insights and ideas: "[The] most important thing I learned in a problem-solving court ... [is being] open-minded to new things, new possibilities, new solutions, new approaches" (New York City). In addition, the judges often cited specific principles and practices that their CJ court experience led them to apply on subsequent assignments (see chapter 5).

However, the judges were mostly unenthusiastic about *mandatory* assignment to CJ courts. When researchers asked all groups how to advance the use of collaborative justice throughout the court system, only the Rochester group raised the idea of mandatory assignments, and several judges there responded negatively. When probed on the issue, participants in the other focus groups all agreed that CJ court assignments ought to be voluntary. The judges' position stemmed from their concern about the potentially deleterious impact of mandatory assignment (and frequent rotation) on the CJ courts themselves—and on the defendants, whose rehabilitation process is paramount. Judges noted, for example, that a common component of the drug court model is for defendants to see and form a relationship with the same judge at each court appearance. As one judge summarized: "The quality of the work may suffer in the push to rotate" (New York City). Judges cited several other drawbacks, with their principal concern being that an assigned judge might be hostile to a collaborative, problem-solving approach:

> *"I am not going to get involved in solving your problems, I am going to get the answer"*—There are a lot of judges who have that perspective. (Rochester)

> If someone views this [assignment] as a punishment, they're not going to do it wholeheartedly. They just can't wait to get out. … Just like any assignment that you want to get out of. (New York City)

Judges saw another drawback in the possibility that an assigned judge might lack the necessary skills or be unwilling to work with partners: "If you start treating our partners like some judges treat other people, they are going to walk away from the group" (Rochester). Other judges mentioned that if court rotation were too frequent, the judge would be unable to learn the ropes, which could cause discontinuity in the CJ court team. There was also concern about the amount of time required for a judge to develop expertise in the field. Judges suggested that assignments range from two to five years at a minimum.

Leadership

Both California focus groups, and the Burbank group in particular, spoke pointedly about the need for judicial leadership. Participants suggested that judicial leadership could be stronger, providing "encouragement" and "institutional validation" to back judges in applying CJ court principles on general calendars. Many judges also cited the need for leaders to support existing collaborative justice courts.

Some judges expressed that leadership should send a positive message regarding collaborative justice practice: "Judges need to be given some sort of permission to act this way" (Burbank). Several participants worried that some collaborative justice practices clash with traditional notions of judging: "We are bending the rules and we have not been told we are allowed to bend the rules. … We all get a little nervous about that" (Burbank). Others advocated for more active support and encouragement from judicial leaders, in light of the perception that the prevailing culture on the bench does not embrace collaborative justice:

> Collaborative justice courts need a good PR program for the judges because right now, at least in a lot of places, it is seen as an undesirable assignment. And people are not clamoring to go there, because they don't know what it is—it is not made clear. (Burbank)

A judge in New York City suggested a more tangible way for judicial leaders to encourage collaborative justice, by defining career opportunities:

> If one were really honest, one would have to talk about opportunities for promotion and advancement. … I think one way [to promote collaborative justice] would be to get a very clear message from people who determine judges' career paths and promotions—administrators—that this kind of approach is as important as how many days on trial you had in the last year. Everybody wants to be looked upon favorably by people who evaluate their performance.

In terms of discussing specific leaders and whether or not they sufficiently supported collaborative justice, the participants were more vague. Judges in both California groups did focus mostly on the presiding judge level, but in general they expressed the need for all levels of the court system to buy into the concept:

> You also have to have [that] support from the Judicial Council and [the] AOC and all the way down to your bench and officers on the bench.

> Our challenge is to get other judges to accept this way of thinking. How do we do that? Judicial college is one way to do it. Another way is for the presiding judges to accept that this is appropriate.

One judge from the San Francisco group discussed leadership in terms of the impact that gubernatorial appointments had on the composition of the bench. This judge felt that some past governors had tended to appoint judges with backgrounds in criminal prosecution or complex civil litigation, and suggested that judges with such backgrounds might not be interested in or receptive to collaborative justice. If governors were to appoint judges with a diversity of practice backgrounds, "you are more likely to be able to find people who are going to naturally take to being a collaborative justice judge" (San Francisco). Another judge in this group, however, was "not sure the governor would be any better at choosing somebody in advance than we are."

Summary

Focus group participants believed that promoting collaborative justice throughout the court system would require changing the attitudes of judges who did not have collaborative justice court experience or had not otherwise been exposed to the concept. They viewed mandatory education and training, as well as a variety of informal mechanisms, as the best ways to change attitudes. Participants were less enthusiastic about mandatory rotation to collaborative justice courts, primarily because rotation might be detrimental to the CJ court itself. Finally, participants in the California focus groups stressed how important it was for presiding judges and other judicial leaders to encourage the broader use of collaborative justice throughout the court system.

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