

Collaborative Justice in Conventional Courts

Stakeholder Perspectives in California

A REPORT SUBMITTED TO THE CALIFORNIA ADMINISTRATIVE
OFFICE OF THE COURTS

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Executive Summary

Introduction

In recent years, courts and court systems across the country have begun to redefine their role in the administration of justice, moving beyond the neutral arbitration of legal disputes to intervention in the individual and social problems that underlie them. They have done so primarily through the vehicle of specialized courts dedicated to discrete problems such as addiction, domestic violence, and mental illness—issues that, if addressed by traditional methods of adjudication, are likely to return litigants to court time and again.

There is now a growing body of research to indicate that drug courts and other “collaborative justice,” or “problem-solving,” courts are indeed successful in improving outcomes for defendants and communities.¹ Yet for a variety of reasons they currently reach only a small percentage of the defendants and litigants who might benefit from them. Thus, innovators in the field have begun to explore how to expand collaborative justice innovations—whether through the proliferation of specialized courts, the application of their core principles and practices throughout conventional court settings, or some combination of these strategies.

In 2003, the California Administrative Office of the Courts and Center for Court Innovation initiated a research partnership to address the nature and feasibility of expanding the practice of collaborative justice beyond the specialized court setting. In the first phase of research, we conducted focus groups and interviews with collaborative justice court judges in California and New York. This report presents the results from a second phase, consisting of four focus groups held in January 2005 among representatives of other stakeholder groups: attorneys (prosecutors, public defenders, and the private defense bar), probation, treatment and service providers, and statewide organizations.

Emergent Themes and Findings

To stimulate discussion, focus group participants were asked to respond to a written, hypothetical description that envisioned the practices and principles of collaborative justice courts applied broadly to general calendars throughout the court system. Three key themes emerged, echoing those from the Phase One focus groups with judges:

- 1. General Support:** *Most stakeholders favored the broader application of collaborative justice practices in conventional courts, at least under certain circumstances.* Most focus group participants were, at least in principle, supportive of selectively applying collaborative justice practices outside of specialized court settings, although this support was not universal. Collaborative justice methods were perceived as more appropriate than traditional adjudication in many contexts, because they address litigants’ underlying problems and are therefore more likely to produce positive outcomes. Some participants argued that since collaborative justice courts have proven themselves effective, the integration of their methods into other court settings should be regarded simply as the dissemination of best practices.

¹ In California, these projects are referred to as “collaborative justice courts” while in other states they are referred to as “problem-solving courts.”

Participants also noted that many practices associated with collaborative justice courts, such as treatment mandates, already occur in general calendar settings, albeit informally and unsystematically. These informal approaches were believed to occur more often in smaller jurisdictions, facilitated by personal relationships among smaller numbers of stakeholders.

Cases and Calendars Appropriate for Collaborative Justice

As had the judges in the Phase One research, participants in this phase agreed that, in criminal cases, collaborative justice is only appropriate when defendants have underlying problems that contribute to the criminal behavior and can be addressed by court intervention. Most focus group participants, although not all, agreed that some cases, particularly those involving violence, “will never be appropriate” for collaborative solutions. Participants identified stages of the criminal justice process—bail, plea bargaining, and sentencing—as particularly opportune for collaborative approaches. They also saw many opportunities in civil law contexts, particularly in juvenile and family cases.

2. Barriers: *This support was tempered by a number of concerns, principally about the feasibility of the broad application of collaborative justice approaches and about the appropriateness of such approaches in certain settings.*

Support for collaborative approaches in general calendars was tempered by a number of concerns. Foremost among these were limitations on time and resources and the need to preserve the adversarial process in criminal settings. Additionally, concern was expressed about the receptivity, experience, and motivation of many stakeholders to participate.

Limitations on Time and Resources

Focus group participants spoke at great length about the heavy caseloads in conventional courts and the limited time and resources available to apply collaborative approaches more broadly. They also worried about the capacity and quality of existing community services and about courts’ capacity to identify and develop relationships with service providers. Finally, participants in all focus groups acknowledged that overloaded probation departments are unlikely to be able to provide additional monitoring and service coordination.

Need to Preserve the Adversarial Process

All participants, but especially attorneys, spoke about the need to retain the adversarial process, particularly in criminal court settings. For example, defense counsel noted that their responsibility to zealously defend clients and protect due process rights will sometimes preclude them from allowing a client to speak to the judge in open court. They also worried that, in a less adversarial environment, judges might become “advocates.” Prosecutors spoke about the value of an adversarial and even punitive criminal justice system in enhancing public safety.

Stakeholder Opposition

Focus group participants were concerned about the willingness and ability of many judges and attorneys to adopt collaborative approaches outside of a specialized court setting. They felt that many would oppose the concept outright, while even those who were amenable to it might be dissuaded by perceived institutional disinterest and a lack of relevant knowledge and skills. This latter challenge, some suggested, would be overcome only through system-

wide education and training. Participants also believed judges and attorneys currently have little professional incentive to introduce collaborative justice practice.

- 3. Next Steps: Stakeholders identified a number of steps that could be taken to facilitate the broader application of collaborative justice, but emphasized proceeding with caution.** An overarching theme was that change should be introduced incrementally. Specific suggestions included establishing pilot projects in a small number of counties and restricting initial efforts to particular calendars and cases, such as those in which defendants have substance abuse or mental health problems, or probation cases. A number of other suggestions were made as well:

Laying the Groundwork

Participants in all focus groups believed that judges, attorneys, and other stakeholders require extensive training to introduce them to core collaborative justice concepts, change oppositional attitudes, and provide necessary skills. Such training could be integrated into both orientation and continuing education forums for judges, attorneys, and other professionals. In addition, echoing a central theme from the Phase One focus groups with judges, participants believed that judicial leadership was a necessary precondition for any substantial expansion in the reach of collaborative justice; some added that it would also require leadership from various county-level leaders, such as county administrators or district attorneys, and suggested that the support of these leaders might be elicited by grass-roots community engagement.

Operational Changes

Participants were asked about what operational changes, at the courthouse level, would be needed for collaborative justice approaches to operate effectively. Some changes were consistently identified as critical:

Early Screening and Assessment While differing on how this might be conducted, participants agreed that it should occur as early as possible, ideally pre-arraignment. Public defenders were often identified as ideal candidates to conduct initial screening, but caveats were raised regarding their lack of clinical expertise and potential conflicts of interest.

New Roles for Justice System Stakeholders There was consensus that all stakeholders would need to become more proactive and collaborative. Attorneys would have to embrace the extra-legal roles of identifying problems and treatment needs, and proposing treatment or service plans. They would also have to share information with their adversaries, ideally with guarantees that clinical information would not be used against a litigant in subsequent legal proceedings. Judges would have to make similar adaptations.

Continued Specialization Some participants felt that it might be necessary to maintain a degree of specialization within the courts, perhaps by the introduction of a “collaborative justice” track encompassing a limited number of judges and attorneys within a particular courthouse. Cases might be funneled to either the collaborative justice or the traditional track at or soon after arraignment.

Revised Protocols for Judicial Supervision Many participants were skeptical that ongoing judicial supervision could routinely occur in courtrooms handling general calendars, especially in high-volume jurisdictions. A proposed alternative was for probation to perform an expanded monitoring role, although questions were raised about probation's capacity to do so and about the efficacy of non-judicial supervision.

Courthouse-Based Case Management Resources Several participants felt strongly that having case management and treatment resources available in the courthouse would be invaluable. Caseworkers (whether employees of the court or of community agencies) might be available to judges throughout a courthouse or county. A defense attorney suggested that public defense agencies might also expand their own social work resources.

I. Introduction

In recent years, individual courts in jurisdictions across the country have begun to redefine their role in the administration of justice, moving beyond the neutral arbitration of legal disputes to intervention in the individual and social problems that underlie them. They have done so primarily through the vehicle of specialized courts dedicated to discrete problems such as addiction, domestic violence, and mental illness—issues that, unresolved by traditional adjudication and punishment, will return litigants to court time and again. While widely known for their “problem-solving” focus, these specialized courts share a number of other unique elements, including the integration of treatment and social services into the court process, judicial supervision of the treatment process, a collaborative approach to decision-making, interaction between litigants and the judge, and community outreach.

There is a growing body of research to indicate that these collaborative justice, or problem-solving, courts have been remarkably successful in addressing such issues and improving outcomes for defendants and communities. In particular, adult drug courts have been demonstrated to significantly reduce recidivism among substance-abusing defendants.² Yet the limited jurisdiction and eligibility restrictions of these courts prevent them from reaching more than a small percentage of the defendants and litigants who might benefit from them. Thus innovators in the field have begun to explore how to institutionalize and expand collaborative justice innovations to reach a greater number and variety of defendants, litigants, and cases—whether through the proliferation of specialized courts or through the application of their core principles and practices in other court settings.

A 2000 resolution of the Conference of Chief Justices and Conference of State Court Administrators would seem to endorse the latter approach. The resolution advocated for “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.”

In the wake of this resolution, which the Conferences reaffirmed in 2004, the national commitment to collaborative justice has increased. Laying the groundwork for system-wide integration, the National Judicial College in 2005 hosted a working summit to discuss how collaborative justice court practices might be more broadly applied; and two states, California and New York, implemented pilot judicial trainings designed to impart collaborative justice techniques to bench judges not serving in specialized collaborative justice courts.

² See recent reviews of the drug court literature in Government Accountability Office, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, United States Government Accountability Office, Report to Congressional Committees (February 2005); Cissner, A., and Rempel, M., “The State of Drug Court Research: Moving Beyond ‘Do They Work?’” New York: Center for Court Innovation; Roman, J., and DeStefano, C., “Drug Court Effects and the Quality of Existing Evidence,” in *Juvenile Drug Courts and Teen Substance Abuse*, eds. Butts, J., and Roman, J., Washington, DC: Urban Institute Press (2004); and Wilson, D. B., Mitchell, O., and MacKenzie, D. L., “A Systematic Review of Drug Court Effects on Recidivism,” Draft M.S. (2002).

Yet fundamental questions remain regarding the appropriateness and feasibility of utilizing collaborative justice methods outside of specialized courtrooms. In 2003, the California Administrative Office of the Courts and Center for Court Innovation initiated a research partnership to address these questions. In this study, an array of justice system stakeholders explored the opportunities and barriers to applying collaborative justice outside of specialized courts. This report presents results from the second phase of research, which consists of focus groups conducted among representatives of key justice system, service provider, and state policy stakeholders. The report is structured as follows: It begins with an overview of the project—its origins, the two phases of research, and the key questions to be addressed in the current study. The research methodology is then described, after which the key themes and findings from the focus group sessions are presented. The report concludes with discussion of the implications of the findings and suggestions for next steps.

II. Project Overview

This project grew out of two strategic planning meetings held by the California Collaborative Justice Courts Advisory Committee in the spring and fall of 2001. These meetings sought to establish an agenda for the committee in support of the goals of the California Judicial Council—particularly the goal of enhancing the quality of justice and service to the public (Judicial Council Strategic Planning Goal number 4). This agenda was also informed by the August 2000 resolution of the Conference of Chief Justices and the Conference of State Court Administrators, mentioned earlier.

The Advisory Committee’s planning meetings concluded with the decision 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).

In spring 2002, William C. Vickrey, California’s Administrative Director of the Courts, participated in a discussion organized by the U.S. Department of Justice and the Center for Court Innovation regarding the potential for taking collaborative justice courts to scale. A key theme of that discussion, and one that motivated the current study, was the possibility that “going to scale” might mean not merely increasing the number of specialized courts in existence, but rather encouraging the spread of collaborative justice court principles into conventional courts system-wide.³

The present research also has origins in the Advisory Committee’s ongoing efforts to assess promising practices in collaborative justice courts, efforts that have been summarized in the 2001 and 2003 *Judicial Council Reports*. The Committee’s endeavors have included developing a template of implementation and outcome measures by which to assess practices, and identifying drug court practices that are particularly cost-effective, the latter as part of a broader cost study of California’s drug courts. The present study represents the further development of this interest in defining and assessing collaborative justice court programs and practices by the Advisory Committee and the Collaborative Justice Courts Project staff.

For this project, the Collaborative Justice Courts Unit partnered with the Center for Court Innovation to investigate going to scale with collaborative justice. 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 outside of the specialized court context. The partnership also provides research access to two of the largest state court systems in the nation, with large, well-developed systems of specialized collaborative justice/problem-solving courts.

Phase One Research

The Administrative Office of the Courts/Center for Court Innovation research partnership has, to date, proceeded in two phases. The first phase consisted of focus groups and interviews

³ See Fox, A., and Berman, G., “Going to Scale: A Conversation about the Future of Drug Courts,” *Court Review* 4 (Fall 2002) for an edited transcript of the meeting’s proceedings.

conducted in August and September 2003 with 35 collaborative justice court judges in California and New York. These discussions explored the questions of which collaborative justice principles and practices are most easily applied in conventional courts, what barriers to the more widespread adoption of such practices exist, and how those barriers might be overcome. Participating judges were cautiously optimistic about the opportunities to practice collaborative justice, at least on a limited basis, in general courts. Practices such as adopting a problem-solving orientation, engaging in interaction with defendants and other litigants, and conducting ongoing supervision of treatment cases were deemed feasible and appropriate in many general court contexts. However, participants noted numerous barriers as well. Chief among those were the limited time and resources in general courts and philosophical opposition or lack of education among colleagues on the bench and in judicial leadership positions. Opposition from attorneys, probation officers, and others was also cited as a possible barrier.⁴

In light of the positive opportunities identified, and because the education and training of general bench judges was viewed as a critical next step, the New York State and California court systems developed separate pilot trainings in 2005, designed to impart collaborative justice techniques to judges not currently assigned to a specialized collaborative justice court. The California training will be followed by development of a judicial curriculum that could be made available to court systems and judges nationwide. Over the same period, the National Judicial College held a working summit to discuss the broader applications of collaborative justice and will likely issue a bench book or training manual in the near future.

Phase Two Research

This report presents the results of the second phase of research, in which focus groups were conducted with representatives of other stakeholder groups: attorneys (prosecutors, public defenders, and the private defense bar), probation officers, treatment and service providers, and statewide organizations. Motivating the research was the recognition—confirmed by judges in Phase One—that collaborative justice courts are created through the cooperative efforts of multiple agencies; hence, taking collaborative practices to scale would inevitably require the support and commitment of justice system and social service partners.

In January 2005, researchers from the Center for Court Innovation and the California Administrative Office of the Courts conducted four stakeholder focus groups: two with attorneys (one each in Burbank and Sacramento), one with probation and treatment/service providers (Burbank), and one with representatives of statewide organizations (Sacramento). All focus group participants had worked with collaborative justice courts and addressed three key questions:

⁴ Farole, D., Puffett, N., Rempel, M., and Byrne, F., *Collaborative Justice in Conventional Courts: Opportunities and Barriers*, Report Submitted to the California Administrative Office of the Courts (2004) (“Phase One” report). Available at www.courtinfo.ca.gov/programs/collab/documents/TransferabilityStudyFullReport.pdf or http://www.courtinnovation.org/pdf/collaborative_justice.pdf. The report also included a review of the previous literature about applying collaborative justice approaches to general calendar settings, including a discussion of the only other empirical study on the subject, Casey, P. and Rottman, D. B., “Problem-Solving Courts: Models, Commonalities, and Trends: The View from the United States,” Prepared for Problem-Solving Courts: An International Perspective, Psychology and Law International, Interdisciplinary Conference, Pre-Conference Workshop, Edinburgh, Scotland (2003).

1. Do stakeholders favor the broader application of collaborative justice principles and practices in conventional courts and, if so, under what circumstances?
2. What are the barriers to practicing collaborative justice outside of the specialized court?
3. What recommendations do stakeholders have to facilitate the broader practice of collaborative justice in conventional court settings?

III. Research Methodology

As in Phase One, the exploratory nature of this study made focus groups a more appropriate research methodology than surveys. While focus groups may draw on participants who are not representative of the general population of stakeholders, thereby limiting the ability to generalize from the findings, they can yield a wealth of information on attitudes, opinions, and suggestions on topics about which little is known.

Three stakeholder groups were represented in the Phase Two research: (1) attorneys, (2) treatment/service providers and probation, and (3) statewide organizations. Two focus groups were conducted with attorneys, one in northern California (Sacramento) and one in southern California (Burbank). A third session was conducted with probation and treatment representatives in southern California (Burbank); and a final session was held with representatives of statewide organizations in the state capitol of Sacramento.

The California Administrative Office of the Courts (AOC) identified and invited all focus group participants. Attempts were made to recruit participants who were familiar with the issues of interest and represented a mix of urban, suburban, and rural jurisdictions. All participants had current or past direct involvement with one or more specialized collaborative justice courts. For the attorney sessions, prosecutors, defenders, and civil attorneys representing a mix of line, supervisory, and managerial staff participated. For the treatment/service providers and probation session, a mix of line, supervisory, and managerial staff from probation, and representatives from a number of different treatment and social service providers participated. For the statewide organizations session, representatives from various statewide professional associations representing relevant stakeholders (i.e., associations representing public defenders, district attorneys, treatment providers, probation, police, and the California State Association of Counties) participated.

The focus groups were conducted at the AOC regional offices in Sacramento and Burbank in January 2005. Each session averaged two hours in length and was moderated by a team of three researchers from the Center for Court Innovation, with one researcher leading the sessions and the others asking follow-up questions. An additional researcher from the AOC was also present at the sessions. Participants were not paid but were provided snacks and travel reimbursement. All focus groups were audio recorded and transcribed for later evaluation by the research team; participants were assured that no comments included in the final report would be personally attributed to them.

There were a total of 24 participants in the four focus groups:

- Seven in the Burbank attorney session (3 public defenders, 2 prosecutors, 1 civil law attorney, 1 community court coordinator);
- Four in the Sacramento attorney session (2 prosecutors, 2 public defenders);
- Eight in the treatment, service provider, and probation session (4 probation and 4 treatment or service provider representatives); and
- Five in the statewide organizations session (including 1 representative each from statewide associations representing public defenders, probation officers, treatment professionals, police chiefs, and the California State Association of Counties).

Apart from their different organizational affiliations, the 24 participants also represented a range of experience with collaborative justice courts; in fact, many had planned or served in more than one collaborative justice court model. Approximately half had some experience with adult or juvenile drug courts, one-third with mental health courts, and one-fifth with domestic violence courts. Other models with which participants had experience included youth courts, community courts, homeless courts, elder abuse courts, and driving under the influence (DUI) courts.

To prepare for the focus groups, the research team conducted interviews with eleven representatives of equivalent New York stakeholder organizations in the summer of 2004, gathering background information that would help shape the focus group protocols. Finally, in spring 2005, the research team conducted telephone interviews with three court administrators from different counties in California. The purpose of these interviews was to explore in further depth the administrative implications of applying collaborative justice practices throughout the courthouse. Individual interviews averaged one hour in length.

While the discussion protocols varied slightly with the composition of the focus group, all addressed three primary questions:

1. Do stakeholders favor the broader application of collaborative justice principles and practices in conventional courts and, if so, under what circumstances?
2. What are the barriers to practicing collaborative justice outside of the specialized court setting?
3. What recommendations do stakeholders have to facilitate the broader practice of collaborative justice in conventional court settings?

The complete focus group protocols are presented in Appendix A.

Each focus group opened with a warm-up exercise in which attendees identified what they perceived to be the critical differences between collaborative justice courts and conventional courts. Participants were then asked to read a brief outline of a hypothetical model in which general courts would implement many of the practices and techniques associated with specialized collaborative justice courts (see Appendix B for the full statement), specifically:

- Problem-solving focus;
- Proactive role of the judge;
- Non-adversarial team approach to decision-making;
- Integration of treatment and social services into the court process;
- Ongoing judicial supervision of the treatment process;
- Direct interaction between litigants and the judge; and
- Community outreach.

This hypothetical scenario was not intended as a desired, realistic, or complete model for the administration of justice.⁵ Rather, it was designed to stimulate discussion and to tap focus group

⁵ Nor does the hypothetical model necessarily represent the mission or goals of the California Administrative Office of the Courts or the Center for Court Innovation.

participants' immediate reactions to the prospect of applying collaborative justice outside of the specialized court setting. The concept statement was written in the most general of terms, containing only as many details as necessary to stimulate subsequent discussion. The statement did not include specific information about how the justice system would operate under this model or about how the model might be achieved (topics that were raised later in the focus group sessions and are discussed below).

IV. Emergent Themes and Findings

Stakeholders' initial reactions to the concept of applying collaborative justice principles more broadly were mixed. Some participants immediately expressed their support, while many were initially skeptical, due to concerns that such an endeavor might be not only infeasible but also inappropriate. As they engaged in further discussion, however, most of these participants expressed some degree of support for the idea, identifying circumstances and cases in which they favored using collaborative approaches on general court calendars.

Discussion in all focus groups was often theoretical and speculative, as is expected of reactions to a hypothetical construct. Participants often spoke about "collaborative justice" in the abstract, and resisted the moderators' efforts to focus on specific practices and operational issues. Thus the groups yielded more discussion of stakeholders' perceptions and attitudes regarding the broader application of collaborative justice rather than how it might be practically achieved.

Across the groups, three themes emerged:

1. Most stakeholders favored the broader application of collaborative justice practices in conventional courts, at least under certain circumstances.
2. This general support was tempered by a number of concerns, principally about the feasibility of the broad application of collaborative justice approaches and about the appropriateness of such approaches in certain settings.
3. Stakeholders identified a number of steps that could be taken to facilitate the broader application of collaborative justice, but emphasized proceeding with caution.

These themes are explored at length below.

1. General Support: *Most stakeholders favored the broader application of collaborative justice practices in conventional courts, at least under certain circumstances.*

Most focus group participants were, at least in principle, supportive of selectively applying collaborative justice practices in traditional courts; one attorney commented that this "would be a great direction to move in." Participants noted that collaborative practices would allow the justice system to address defendants' underlying problems, which is "not only more appropriate, but ... [more likely to evince] a long-term solution." Another attorney believed that such an "outcomes-orientation" could help to generate support for change among key players in the justice system. This attorney argued that, for example, if collaborative approaches can be shown to reduce criminal recidivism, prosecutors might be more likely to support them. And indeed, some participants argued that the efficacy of collaborative justice has been established, and thus its integration into the broader system should be regarded simply as the dissemination of best practices. At least one prosecutor, however, felt that it was important to more narrowly define and assess those practices, warning against the dangers of "biting off too much."

Very few stakeholders argued that collaborative justice should *never* be applied outside the specialized court. One who did was a prosecutor who asserted that such practice would be not

only an inefficient use of resources (for reasons discussed below) but also a fundamental contradiction of California's current emphasis on punishment rather than rehabilitation, as evidenced by the change from indeterminate to determinate sentencing. He argued that a universal application of the collaborative approach would be a return to "a philosophy that we had 20 or 30 years ago, which we found didn't work." This, however, was a minority view.

There was more widespread agreement among stakeholders that some cases "will never be appropriate ... [for] this model." Attorneys were somewhat more skeptical than other stakeholders, primarily due to concerns that collaborative approaches within criminal courts might infringe upon due process.

Specific Cases and Calendars

In considering which types of cases and court calendars might be more or less appropriate for collaborative justice, the discussion mirrored that of judges in the previous study.⁶ Participants identified as a deciding factor the presence of an underlying problem that contributes to a defendant's criminal behavior and can be addressed by court intervention. For example, one attorney spoke about collaborative interventions for the "basic three [problems]: drug addiction, mental illness and domestic violence." Another attorney suggested that prostitution cases can also be appropriate for treatment and service interventions, and others added DUI cases to the list.

One prosecutor, while agreeing with these positions, stressed that courts must distinguish cases in which addiction, mental illness, or other problems motivate the criminal behavior from cases in which the defendant "is a criminal who also happens to be an addict" (i.e., underlying problems are not criminogenic factors). This participant felt that defendants in the latter category should *not* be considered for a collaborative approach.

Most focus group participants seemed to agree that collaborative justice solutions are unlikely to be, and should not be, applied to violent crimes (with the possible exception of domestic violence cases). One attorney commented that it "will be way down the road before [collaborative justice] works for arsonists or violent offenders." Another explicitly distinguished violent crimes from other felonies:

In any given traditional felony court, we have property crimes, we have drug possession crimes. Those all can go this way [collaborative justice solution...But] there are violent felonies that, not in my lifetime, are ever going to be part of this model.

One participant believed that, the question of violence aside, felony cases may be more appropriate than misdemeanors for collaborative justice solutions that are likely to involve lengthy treatment mandates. This was attributed not only to the fact that felony defendants have a greater legal incentive to comply with the mandate than misdemeanants (i.e., they face a more significant penalty for failure), but also to the perception that there are greater resources available to probation for monitoring of felony cases.

⁶ Farole, D., et al., *Collaborative Justice in Conventional Courts*, *supra* note 4.

Participants also identified particular stages of the criminal justice process—most often bail, plea bargaining, and sentencing—at which problem solving might be appropriate. By contrast, criminal trials were deemed inappropriate for collaborative solutions, because

...when you are deciding guilt or innocence, it is a whole different deal and there are all sorts of constitutional safeguards that have to take place...there needs to be a clash.

Most of these restrictions, of course, apply only to criminal cases. Juvenile court, family law, small claims court, and other civil courts were also mentioned by some as quite appropriate for collaborative justice practices. Again, however, some caveats were made, with several participants identifying business litigation in particular as unlikely to be resolved through collaborative approaches because “a lot of money is at stake.”

Current Practice

An additional theme that emerged in all focus groups, but received most extensive discussion among attorneys, was that approaches identified with collaborative justice courts, particularly treatment mandates, are in fact already applied on general court calendars, albeit informally and unsystematically:

The judges are doing this [collaborative justice], but they don't have uniformity, they don't have resource organization ... So the courts are doing this in a patchwork way.

Some courts simply make ... treatment plans[s] informally, make treatment plans part of the conditions of probation, and schedule regular court reviews so that they're overseeing it... The treatment process is very informal. It's not a collaborative court. There aren't partners sitting at the table ... It's just the judges' way of doing business. ... I think that in mainstream courts informally much of this is going on.

One attorney cautioned, however, that there are limitations to what such practice can accomplish, noting in particular that resources are “a little hit and miss when you have an informal process.”

Informal collaborative approaches were believed to occur more often in smaller jurisdictions, with one participant declaring that “attorneys have been doing this in my small community for almost twenty years...[In a] small town, it begins more as a problem-solving approach to criminal justice” because “everybody knows everybody.” Smaller jurisdictions also have fewer relevant players (judges, attorneys, probation officers, etc.) and less frequent changes of assignment, which facilitates the development of the working relationships necessary for a collaborative approach, relationships that may be harder to forge in larger jurisdictions.

When asked for examples of the informal practice of collaborative justice in general courts, an attorney who works extensively with a specialized mental health court reported “try[ing] to do a little mental health court in every courtroom.” On an informal, case-by-case basis, this attorney attempts to educate general calendar judges about clients that require judicial monitoring. And, although “it is not the same warm atmosphere as there would be in a mental health court,” these defendants do report back to court for progress reports. The attorney also arranges, again informally, for many higher-risk offenders who are technically ineligible for mental health court

(due to past history of violence, sex offender status, etc.) to remain under court monitoring during the probation period by reporting to the Master Calendar judge.

Another participant from a larger jurisdiction believed that many judges there were quite often imposing treatment mandates in lieu of jail and having certain defendants report back to court for monitoring. However, this participant cautioned that the practice varies widely throughout the courthouse, depending on the philosophy of each individual judge and the availability of resources like probation or case management staff.

Participants cited several other examples of collaborative approaches in general calendar settings. Plea bargaining in criminal cases was frequently mentioned. A prosecutor noted that, while it is not always appropriate, “there are times that I have worked very closely with defense in coming up with programs” to facilitate “creative sentencing”—for instance, requiring the defendant to attend a program or see a doctor every week in exchange for a reduction in charges. Participants also cited the use of mediation in family law and other civil settings, with one attorney commenting that:

I’ve seen it in small claims courts, family courts and in lesser civil litigation matters, where the judges can start pointing at the people and start acting either as an arbitrator, or more as a mediator, depending on the situation and get the people more involved in trying to resolve the problems themselves.

Finally, another attorney cited a local program for removal of gang tattoos as an example of how individual judges already collaborate with community partners to address the issues underlying defendants’ criminal behavior.

2. Barriers: This support was tempered by a number of concerns, principally about the feasibility of the broad application of collaborative justice approaches and about the appropriateness of such approaches in certain settings.

While many participants were, in principle, supportive of the application of collaborative justice practices in conventional courts, support was tempered by a number of concerns. Two primary concerns that were discussed extensively by all stakeholders in all sessions were limitations on time and resources, and the need to preserve the adversarial process in general calendar settings. A third group of concerns was related to the receptivity, experience, and motivation of justice system stakeholders, particularly judges and attorneys. Several other concerns were raised as well.

Limitations on Time and Resources

Focus group participants spoke at great length about the heavy caseloads in conventional courts and the limited time and resources available to apply collaborative approaches more broadly. For some, this issue seemed insurmountable:

There is just not enough time on a court date to accommodate this, unless you create the increased court staff and the number of judges.

It'll never happen—putting billions of dollars, and that's what we're talking about here, billions of dollars, into rehabilitation and [reducing] recidivism.

Who's going to pay for it? ... That's the gorilla in the room.

Court Capacity A number of capacity-related concerns were mentioned. Focus group participants cited the limited time available for assessment and individualized attention to cases, particularly in larger, urban jurisdictions and in high-volume courts:

...Misdemeanor arraignment [is] so busy. There's not enough time for defendants to actually engage with the judge and converse about what the issues are and have the judge provide feedback.

What we can't forget is the caseloads that we are facing. We are constantly going through cases ... We have to be practical about it. Because in an ideal world, it would be great to sit down and get to know [every] person and figure out how we can help ... maybe ultimately that will decrease the amount of cases and that'll be a really good thing. But we also have to look at the time that we're given.

In the treatment and probation session, participants also noted the lack of case management and assessment staff available in general courts.

Community Service Capacity In addition to the court's capacity to administer collaborative justice, focus group participants spoke extensively about the community's capacity to provide necessary treatment and other services, worrying that "If the courts open their doors to anyone who needs a certain kind of treatment ... the resources aren't out there."

Many noted that residential treatment is especially problematic; as the most costly form of treatment, its availability is limited, and waiting lists are long. The availability of treatment for juveniles, mental health and dual diagnosis services, and job training in many communities was also questioned. Some treatment and service providers also worried that, even in communities with the necessary services, most courts lack the staffing and resources to identify and develop relationships with service providers.

A related barrier regarded the quality of available services. Participants in all focus groups cited an insufficient number of certified treatment programs adhering to best practice guidelines:

Our biggest concern is making sure treatment providers are certified and offer the treatment that is necessary.

[Treatment providers] need to be held accountable for using professional level services and evidence-based practices. And they need to be able to document fidelity to those evidence-based practices.

Probation Capacity Finally, participants in all focus groups acknowledged that probation is "overloaded and undermanned and under-budgeted." They noted that many probation departments are struggling to maintain even minimal levels of supervision, and doubted that they could provide the additional monitoring and service coordination that might be required in the

absence of additional staff. One probation officer speculated that this could create a “conflict between reality and expectations,” as probation would be unable to meet the court’s requirements. In fact, this happens even under the existing system, according to the officer:

We have roughly 1,200 domestic violence offenders. We traditionally supervise the felons but now ... the court want[s] us to provide supervision services or report writing on all the misdemeanors. We simply don’t have the resources—the money or the personnel—to do that. So you run the risk of some judge saying, ‘Well, now that there’s a domestic violence unit, a domestic violence court, you are going to do all the misdemeanors.’ Or if you’ve got a mental health court, you’re going to have judges that want regular progress reports, and that can be very taxing to a probation department.

The Need to Preserve the Adversarial Process

Participants in all focus groups spoke about the need to retain the adversarial process, particularly in criminal court settings, and cautioned against over-extending collaborative approaches. The topic was discussed extensively among attorneys, many of whom considered it just as critical a barrier as limited resources, if not more so:

In the end there needs to be a model where people really go at it.

There are some cases where ... the crime is the thing, [cases] that simply are not [appropriate] for this process.

The courts tend to be, and really should be, adversarial environments.

This desire to retain the adversarial process is consistent with the view, discussed earlier, that collaborative approaches are *least* appropriate in considering questions of guilt and innocence in a criminal context.

This concern for the protection of the adversarial process was expressed by both prosecutors and defense counsel. The latter noted that it is their responsibility to zealously defend clients and protect their due process rights, and that in some cases this precludes a collaborative approach. One voiced concern that in less adversarial court settings, judges “become advocates and not the arbiters that they ought to be.” Judges attempting to take on such a “nontraditional” role might, therefore, expect resistance from the defense bar. One defense attorney, for example, noted that at present, if general calendar judges “even veer towards talking [with the client in open court] about anything regarding the case, I stop them.” Collaborative justice might require more open communications among the parties, but “I don’t see that as translating into a regular courtroom.”

Prosecutors, for their part, also spoke about the value of an adversarial criminal justice system in enhancing public safety:

A prosecutor’s job has more to do with the security and the safety of society ... [than] the well-being of the client ... when we’re looking at a problem, we’re not looking at ‘Hey, what’s good for this guy?’ We’re looking at, ‘Hey, what’s good for the safety of the community?’

One prosecutor worried that collaborative approaches could make criminal justice practice “too defense-oriented.” Another noted that prosecutors also need to consider the desires of crime victims, who may not be supportive of such approaches:

We can’t forget about the victim either. We have to take into account their feelings on a particular case . . . We are for the people and [therefore] we don’t necessarily do what our victims tell us to do, [but] we do have to make sure that they feel that there is a certain amount of justice done.

Stakeholder Opposition or Hesitancy

Participants in all groups identified multiple concerns related to the ability and willingness of stakeholders, particularly judges and attorneys, to adopt collaborative justice methods outside of a specialized environment. They argued that many stakeholders would oppose the concept outright, while even those who were amenable to it might be dissuaded by perceived institutional disinterest and a lack of relevant knowledge and skills. This latter challenge, some suggested, would be overcome only through education of stakeholders system-wide, and would require significant revision of current training and continuing education programs.

Opposition from the Bench and Bar

Most participants’ concerns were related to the potential for opposition from judges and attorneys. In particular, stakeholders worried that judges, prosecutors, defense counsel, and others would be reluctant to embrace an approach that is so contrary to the traditional adversarial model of litigation.

A lot of people will have problems with that. There are judges, there are prosecutors and probably even defenders who think that [collaborative justice] has no place [in the system...That attitude is] especially obvious when you get into more serious crimes and felonies.

People who participate in collaborative justice believe in it. And there are many people, most people, in the criminal justice system who are not of that mind.

Attorneys indicated that many of their colleagues would not endorse the broader application of collaborative justice. Explained one defense attorney:

This is not what [defense attorneys] got into it for. They are there to protect the client’s rights. They run the motions and try cases. The head of my office is very supportive of collaborative courts, but in their place. The rest of the office . . . [believes in] fighting the fight.

A district attorney agreed that, among prosecutors too, “it’s a pretty hard sell.” Assigning a prosecutor to a collaborative justice court “is like sending them to Siberia.” He went on to distinguish among different types of collaborative justice courts, arguing that domestic violence court is a “much easier sell” than drug court to most prosecutors, presumably because domestic violence courts place less emphasis on defendant rehabilitation and more on victim safety.

Professional Incentives

Several focus group participants were skeptical that judges and attorneys, particularly prosecutors, would practice collaborative justice given the current incentives for advancement and promotion:

It's unrealistic in terms of the incentives that exist ... judges are not promoted by virtue of supporting collaborative courts ... there would need to be a reappraisal of incentives for some of the heavy hitters in the criminal courts, the judges and the DAs.

Various participants mentioned that judges are evaluated and promoted based on such measures as effective docket management and publications; prosecutors on conviction rates. Neither, therefore, has strong professional motivation to support collaborative justice. Participants also suggested that those district attorneys and judges who are elected may have an additional incentive to avoid collaborative approaches:

Elected judges have political considerations—they would not want to be looked [at] as soft on crime, you're letting all the criminals loose, etc.

District attorney[s] in California are political and see very little value in constructing a non-adversarial kind of approach to a criminal offender.

However, at least one participant in the treatment stakeholder group suggested that electoral considerations could induce judges and prosecutors to *support* rather than oppose collaborative justice if the community demanded it.

Other Concerns

Efficacy: “Diluting the Model”

Some focus group participants felt that collaborative justice courts work precisely because they take “very small bites of the apple” and worried that larger endeavors might lose their efficacy:

The collaborative justice system works ... because we ... focus the attention of all parties ... on a particular problem, train them and try to get the resources together. You lose that efficacy once you start trying to make it into a general proposition. And therefore, I believe the more practical [approach] is to continue to do these small boutique courts ... We can focus our attention on some of the solvable problems.

It's a great concept, it's a great idea, but we don't want to become ineffective because we're expanding.

These discussions seemed to reflect a belief held by most stakeholders—not only attorneys—that it may be preferable to allocate limited resources to more intensive interventions in fewer cases, as is currently done in specialized collaborative justice courts. Attempting to apply collaborative solutions to larger numbers of cases on general calendars, some participants feared, could spread resources too thinly. While these themes were raised by only two or three participants in each focus group, they were not disputed by others in the session.

Participants raised related concerns about how effective collaborative practices would be in general courts, particularly if the practices are applied piecemeal rather than as an integrated whole, the “full model.” They noted that general courts lack the reduced caseloads, additional staff, established ties to community-based service providers, and other resources available to specialized collaborative justice courts, and worried this would make the interventions less effective. Several stakeholders across focus groups also questioned whether and how the team-based, non-adversarial model, which is “relationship-driven” and requires “trust” among relevant personnel, could be taken to scale:

[In specialized courts,] whether you communicate with a judge or a PO for treatment or a coordinator, you ... have some sort of relationship with them. If we were to take this to scale and you lost that kind of relationship, what would you be losing and what would you need in order to be able to continue functioning? ... How would you interact with a whole courthouse instead of just a courtroom?

Several participants were especially concerned about working relationships in larger jurisdictions. By contrast, these relationships might be easier to build and maintain in smaller jurisdictions, which have less frequent rotation of judges and other personnel:

It’s hard for me to envision [collaborative justice in regular courts] happening in a larger jurisdiction simply because of the change in assignments with the judges ... changes in probation, defense. I think everybody is moving around because they have so many courts to cover.

Potential for Backlash

Several focus group participants worried about potential political backlash if “one of these guys goes out and commits a nasty, nasty crime.” They also cautioned against expanding problem-solving practices too quickly and promising more than can realistically be expected from these efforts:

If [going to scale] is not managed correctly . . . and is not balanced with public safety and becomes literally a hug-a-thug, then what happened in the 1970s to defund probation and treatment will happen again in the next 10 years . . . [and that would] be a disservice to hundreds of thousands of people.

There is a long-term value in [going to scale] slowly and appropriately, because we need to avoid a backlash.

These concerns are indicative of the mood of cautious support pervading all focus group sessions.

3. Next Steps: Stakeholders identified a number of steps that could be taken to facilitate the broader application of collaborative justice, but emphasized proceeding with caution.

According to one focus group participant:

The demand is there, I think from all the key players. Participants, defendants, prosecution, defense, courts, in-service providers alike, they need a venue in which to solve the problems they're facing. And whether it's through the specialty courts we have or expanding it one county at a time, there have to be some mechanisms established to open that door a little bit further.

Having identified a host of potential barriers to the broader application of collaborative justice practices throughout the courts, focus group participants then suggested several steps that could be taken to overcome them. An overarching theme was that change should be introduced cautiously and incrementally. For instance, it was proposed that a pilot project be introduced in a small number of counties: "I think you'd have to start like you did with drug court: Do it in some courts; try it out. Figure out what works and what doesn't." One participant recommended selecting one trial county in Northern California and one in Southern California.

Alternatively, initial efforts might be restricted to particular types of cases and calendars. In considering this possibility, participants generally recommended cases for which there are already specialized courts, particularly those involving domestic violence, juvenile delinquency, or a need for substance abuse or mental health treatment. Several participants noted that the existing collaborative justice courts do not reach all potential cases, so there would certainly be room for expansion. Probation cases also emerged as a fruitful area to explore in light of probation's historic mission to engage in similar kinds of supervision and service provision that the collaborative justice approach recommends:

They [probation] are an arm of the court, they are the people who are supposed to be facilitating and doing this in court. They could carry much of this, both in juvenile and in the adult platform.

Although most collaborative justice courts deal with criminal matters, the discussion of appropriate courts and calendars often emphasized the family and dependency arena (juvenile delinquency, abuse and neglect, and matrimonial matters). One reason for this is that the adversarial process is less of a barrier on such calendars: "It's generally a less adversarial court than a criminal court, which is the fundamental key." The Phase One judicial research evidenced a similar trend, suggesting consensus among stakeholders on this subject.⁷

An important qualification regarding these and other points discussed below is that they tended to reflect the "top of mind" reactions of a small number of focus group participants. While participants rarely objected to their colleagues' comments, they often moved to other topics without responding or elaborating, making it difficult to assess the degree of consensus.

⁷ Farole, D., et al., *Collaborative Justice in Conventional Courts*, *supra* note 4.

The one point that enjoyed nearly universal assent was that, however it is accomplished, the broader application of collaborative justice practices in general courts should proceed incrementally. Discussed below are participants' suggestions for how this might be accomplished, suggestions that addressed the importance of both laying the groundwork outside the courthouse and changing everyday practice inside the courthouse.

Laying the Groundwork

Focus group participants identified two necessary preconditions to broader use of collaborative justice: (1) training and education of all relevant stakeholders and (2) judicial and community leadership.

Training and Education

Participants in all focus groups believed that, before collaborative justice can be practiced on a wide scale, judges, attorneys, probation officers, and other justice system players require extensive training and education. Many of these professionals were perceived by participants as unfamiliar with, or opposed to, collaborative justice. Training could introduce them to core collaborative justice concepts, change oppositional attitudes, and provide the skills necessary for effective collaborative justice practice. One prosecutor explained:

I do think that you could implement some of these things by correctly training people... The way I view a criminal justice file now is completely different than the way I did as a narcotics deputy... A D.A. should be able to ascertain pretty quickly whether I have got a criminal who uses drugs or an addict who occasionally does crimes, because they are very different people. And that should chart the way the D.A. runs it through the criminal justice system.

Besides helping justice system actors to identify potentially eligible cases, training could make them more aware of what services are available in the community. In the words of one participant, "Everybody needs to get in a room and make sure that we know what's available for mental health and substance abuse and legal services."

Participants suggested that judges could easily be trained during new judge orientation and in other forums attended by more experienced judges. Similar opportunities exist for other justice system personnel:

There's a core training for probation officers that's mandated by law. [Collaborative justice] could be part of a day in court training for probation. District Attorneys, public defenders have ongoing training.

One attorney argued that collaborative justice needs to be taught even earlier, in law school, if only because "judges have to go to law school." Others recognized that education takes time:

It's a generational thing; we're not going to see it in your lifetime. Not in my lifetime either, none of our lifetimes. But if slowly we start introducing the concept to people who are coming up through the system maybe that's a way to build.

Judicial and Community Leadership

Echoing a central theme from the Phase One judicial focus groups,⁸ participants in the present study believed that judicial leadership was a necessary precondition for any substantial expansion in the reach of collaborative justice. One participant illustrated the importance of judicial leadership in describing how a local collaborative justice court was started:

There was a homeless court that a judge expressed interest in getting together. Started the preliminary work and then came [up] against some obstacles. Finally, got a call from the Presiding Judge: “Make it happen.” And that provided the impetus within the court to help open that door and establish their homeless court.

Several of the representatives of statewide organizations added that initiating any expansion of collaborative justice outside of a specialized court would require the support of the heads of county agencies:

This would have to be blessed by the county administrative office. And supported from the county administrative office and the board of supervisors down to the district attorney, who is a political figure, as the courts are ... [S]o you’re taking all those political environments in hand. You’d have to really get the blessing of the entire county.

Participants in several groups suggested that community pressure could influence county leaders. This in turn suggests a need to disseminate information about the collaborative justice approach to the public in order to raise awareness and support. One participant illustrated the point with reference to Proposition 36, a ballot initiative approved by California voters to expand treatment opportunities for substance-addicted criminal defendants:

To build any type of investment in this model ... one possible way that could occur, your last point being your community outreach. Judges and DAs are elected officials and if the community has an interest in these kinds of innovative programs, backed up by outcome research, as we all saw with Prop. 36, the DAs and many judges were shocked that the public would support that kind of innovative approach to drug abusers.

Other Steps

Although the subject did not receive a great deal of attention, a need to increase statewide treatment capacity particularly for residential substance abuse and mental health treatment was suggested by some participants: “Treatment facilities are one of the big problems. All of my experience as a prosecutor, particularly with drug cases, is that beds aren’t available.” Indeed, a study of the implementation of Proposition 36 in California found that the capacity for residential substance abuse treatment is in many counties far less than that for outpatient treatment; and for this reason, the overwhelming majority of treatment mandates under Proposition 36 have been to outpatient services.⁹ One of the statewide organization representatives explained: “Residential is full; we don’t have the money for it.”

⁸ Farole, D., et al., *Collaborative Justice in Conventional Courts*, *supra* note 4.

⁹ Longshore, D., Evans, E., Urada, D., Teruya, C., Hardy, M., Hser, Y., Prendergast, M., and Ettner, S., *Evaluation of the Substance Abuse and Crime Prevention Act of 2002 Report: Implementation July 1, 2001 to June 30, 2002*. UCLA: Report prepared for the Department of Alcohol and Drug Programs California Health and Human Services Agency (2003).

In addition, several participants expressed concern that justice system stakeholders are often unaware of what services and facilities *are* available. One participant illustrated this point with reference to the local community court:

When we started up the community court program, one of the first things I did was research all the service provider programs in the downtown area, make a list, so that way when we come across clients that may have a need for something, we can refer them. And also to develop relationships with those service providers as well ... Sometimes they'll find a way to find a bed or find somewhere for them to go. Developing the relationship [between the court and providers] is really big.

Finally, participants in two focus groups suggested that new policies might need to be implemented to enable clients to identify their personal problems or service needs without facing adverse legal consequences. Otherwise, it would be difficult for the defense attorney to have a frank discussion with the prosecutor and judge about a criminal defendant's need for treatment. As one participant explained, "[A defense attorney's] concern is, you get into a room and he says, 'Yes, my client did X, Y, and Z, and this is how he did it, and here's what's behind it.' And then if ... it goes back to criminal court he's afraid that there may be testimony that his client did X, Y, and Z." In a specialized collaborative justice court setting, the key players have typically built up a level of trust leading everyone to believe that needs assessment-related information will not be used against a client's legal interests: "It has to be a trust issue. And it has to be built over time." However, some participants felt that more formal legislative protections might be necessary if collaborative justice was expanded to involve greater numbers of judges, prosecutors, and defense attorneys.

In light of this last consideration, some participants felt that the broader practice of collaborative justice would have greater potential in a smaller county, where existing personal and professional relationships might make judges and attorneys more likely to trust each other with sensitive information, even without the protection of formal agreements:

Do they share information [in small courts]? Yes, they do, because ... it's relationship-driven. They have the trust and the relationship to say, 'Let's talk about this, we're going to share information. With one goal: what's the best thing for this person. If we decide that we can't make it work and they're going off down this criminal path there's an understanding that we're not going to use this.' ... Informally, this is happening.

Operational Changes

The final portion of the focus group protocols in both the justice and treatment/probation sessions was dedicated to questions about operational change at the courthouse level: For those elements of the collaborative justice approach that could and should be more broadly applied, how might implementation proceed? This part of the protocol was the most challenging to participants, since it asked them to give close consideration to the implementation of what was only a loosely defined hypothetical model of the administration of justice. Yet, the ensuing discussion did identify a few subjects as critical, regardless of whether collaborative justice was envisioned more as an informal courtroom practice or formal program:

- Early screening and assessment;
- New roles for prosecutors, defense attorneys, and probation;
- Some level of staff specialization;
- Revised protocols for judicial supervision; and
- Courthouse-based case management resources.

Early Screening and Assessment

While differing on how screening and assessment might be conducted, and by whom, participants agreed that it should occur as early as possible, ideally pre-arraignment. Several participants suggested that the assessment might begin even before a criminal case has reached the court, if police officers were trained to identify defendants with obvious treatment needs.

A number of participants believed that the public defender had a critical role in screening the case:

I would assume [assessment would begin with] the public defender's contact with the client ... the public defender would probably need to be aware of certain questions they need to ask. Maybe have an intake tool. And that way, they can assess whether or not this individual needs to take advantage of this treatment team, or mental health service providers.

While no participant disagreed that the public defender was in a unique position to recommend a client for a collaborative justice approach, two important caveats were raised. First, this approach would require public defenders to make clinical assessments for which they are not qualified. Moreover, the resulting recommendations might be viewed with skepticism by the prosecution. One prosecutor felt that the use of some kind of standardized instrument would help to increase a prosecutor's level of trust in what the public defender claimed to have discovered:

... [The use of] an intake interview, a psychometric [instrument] ... [would] go on a long way in being able to trust the outcomes and the solutions of the issues. Currently, if somebody [a defense attorney] comes up to me and says, 'Hey, look, this guy's crazy' or 'He's got a drug problem' ... [what evidence do I have of] the validity of that issue?

Second, as previously discussed, for public defenders to share their information freely with the prosecutor and the judge, agreements might need to be forged to protect that information from being subsequently used against the client. As one defense attorney noted, "This would all require a safe environment for the client so that there were policies amongst the D.A. and the public defender and the courts that anything the client said would never be used if their case stays on the trial track."

New Roles for Justice System Stakeholders

The common thread running through discussions of individual stakeholders' roles was that they would all have to become more proactive and collaborative. Public defenders and, to a lesser extent, prosecutors would have to embrace the extra-legal roles of identifying problems and treatment needs, and proposing treatment or social service plans. Explained one prosecutor: "We have to start working together right from the get-go," while also expanding the range of activity

included in case preparation: “As a prosecutor, you find out things by talking to your victim, by talking to witnesses, by talking to your police officer.”

Attorneys would have to become not only more proactive but also more collaborative, sharing information with their adversaries—which would require trust. Judges would similarly have to adapt. A proactive judge could promote a collaborative justice resolution when the attorneys could not agree to one; or could help to finalize an agreement reached through initial discussions held among the attorneys. According to one participant in the statewide organizations session:

I would see the D.A. and the public defender ... [discussing] this before it gets to the judge, so that there's consensus hopefully when it gets to the judge. And then the judge can ask some questions and say, 'Yes, this can go to this thing [a treatment track], set up a meeting for it,' or 'Heck no, nobody agrees and we go after criminals.'

Another participant stressed, however, that while the defense attorney might be necessary to relay the defendant's possible interest in a program, a truly proactive judge could take the lead in moving the parties forward to a final resolution. Commenting on the practice of some judges in this participant's court:

Often, the judge is making offers or discussing it, and defense counsel will make a pitch, and the judge will make a decision ... on a felony arraignment calendar [the judge might propose] 'You're here for arraignment, here are the charges, if you're going to plead guilty, here's what I'll offer, your attorney said you'd be amenable to a program, so here are the terms and conditions, and what's your decision?'

Continued Specialization

Although the concept of applying collaborative justice more broadly connotes doing so outside the confines of specialized courts, opinion nonetheless seemed to converge around the necessity of preserving some degree of specialization. This was attributed in part to the improbability of the majority of judges and attorneys in any given courthouse embracing collaborative justice practices in the near future; therefore, it would make sense for those who are interested and willing to *specialize* in collaborative justice. It was also argued that some level of specialization and centralization may be more efficient for stakeholder agencies. As one defense attorney reflected:

I think the collaborative courts work better when the prosecutor, the defense attorney, probation, whoever's involved are especially assigned ... rather than asking your line attorneys to spend 10% or 20% of their time being collaborative courts attorneys. Or probation officers being collaborative probation officers ... These cases, the collaborative cases, are different, and they really work well only when the people working in those courts can devote pretty much all of their time to that particular assignment.

How might some degree of continued specialization be achieved? Participants in three of the focus groups sessions all suggested variations on the idea of a “collaborative justice” track encompassing a limited number of courtrooms, judges, and attorneys within a particular courthouse, with “a clear-cut delineation” between the two tracks, “because this will never overtake the criminal justice system adversarial process, nor should it.”

...the cases in theory can come through any arraignment courts or any criminal court in the system. But once they were identified as a drug treatment [case] or a case with mental health issues, an efficient way to do it would be to funnel that to a particular judge and to a particular group of attorneys and probation officers who deal with those cases. So they might come in from a variety of locations, but be funneled into a court or a series of courts dealing with those particular issues.

Consistent with this, many participants agreed that the decision of whether cases would be funneled to the proposed “collaborative justice” track or continued on a more conventional “guilt or innocence” track would need to be made early—by arraignment or, at the latest, after arraignment but prior to an adjournment to a trial calendar. Two participants in the statewide organizations group both advocated this approach, commenting:

I can see a collaborative approach up to that point. From the time it gets to the system until the time it is determined whether this thing is going to go to trial or not.

If you come in at that stage, between arraignment and the matter of being signed off for trial ... we can take it out of the [conventional] track for a moment, put it over here and say let’s bring in the social worker, let’s bring in probation, let’s bring in treatment and see whether or not this guy’s amenable to some, some type of [treatment] thing.

Revised Protocols for Judicial Supervision

Although focus group participants observed during the warm-up exercise that judicial supervision was an important component of collaborative justice courts, many were skeptical that it could be implemented with the same frequency and intensity on general court calendars. This concern applied especially to high-volume courts in large urban areas:

The practicality of translating this check-in every week to a felony judge who is doing preliminary hearings in a lower court: impossible, because they don’t want to. Their calendars are too heavy ... They want to get everything done, they want as little as possible on their calendar and they are not going to let someone just come in to say ‘Hello’ every week, which is what they need.

One suggested alternative was for probation to perform more of the monitoring typically conducted by the dedicated judge in collaborative justice courts: “I think they [probation] have to take on more of an active role in the collaborative justice program to stay in contact. Because it is too much to ask of the courts and the prosecutors and the defense to keep having these people come back every three months.” However, a probation representative worried about placing more reporting pressures on probation officers and treatment and social service providers:

One of the things which would be nice is to have standardized ways of what we’re going to report to the judge and also all the elements that will go into that report ... from a [probation] agency viewpoint, if we were doing this for a multitude, it’s going to take a little more staff time in terms of gathering the information, in terms of making sure it’s accurate, because ... sometimes all the information doesn’t get in the file and the person who’s doing the report, they have an element that goes to the court that’s not correct and it could be adversarial or to the benefit of the participant, depending on how you want to look at it. So it’s going to take a little more time. It’s going to have to take some coordination as to what type of message we’re going to communicate to the court.

Several participants were also concerned that monitoring might lose its impact if not conducted in court by a judge, which research has shown to be critical to program success. As one attorney opined, “The amount of attention, the checking-in with the judge: that is what is central to the operation of the court and to the success of the participants in the court that I work in, no question about it.”

Courthouse-Based Case Management Resources

Several participants felt strongly that having case management and treatment resources available in the courthouse would be invaluable. Such resources could aid judges and attorneys in assessing litigants’ problems and in finding appropriate treatment or social services; and, being located in the courthouse, would also increase the likelihood that defendants actually reach those services. Observed one attorney, “The resources almost have to be in court because the clients get lost if they’re told, ‘Show up in probation a week from now and treatment center two weeks from now.’ They go out into society and disappear.”

While no consensus was reached on how to implement on-site case management, several suggestions were advanced. One was to hire a small number of case managers or counselors who could be available to judges throughout a particular courthouse or perhaps even throughout all courthouses from a particular county. One participant illustrated this idea with reference to an Elder Abuse Case Manager in this participant’s court: “She works throughout [the] county with other courts where there is perhaps a more traditional approach, where there’s not a separate [collaborative justice] calendar. But she is available because in this instance, these courts are held on separate days. She is available to all the judges and she brings those resources literally to them. That’s where I’d put money.”

Another participant suggested that on-site case management be provided not by the court itself but by dedicated staff from community agencies.

If you could possibly create a treatment team, where you would have different agencies represented, mental health, employment agencies... housing, just have a variety of service providers present as a treatment team, possibly available to the court. So that way defendants can be identified as eligible to go to this treatment team and ... be assessed as to what resources could be made available to him or her to help them better themselves.

Finally, a defense attorney suggested that public defense agencies might expand their own social work resources:

Because we find in our county [that] the courts don’t have time to do that [make treatment/service referrals] and probation is overloaded and undermanned and under-budgeted. And so we [public defenders] have to go out there and find these services to give alternative views of sentencing to the judges. Otherwise all they think about is jail. And we say ‘no, here’s another alternative for you.’

In considering how collaborative justice might be implemented with only the limited resources now available, participants suggested that courts might need to select only the neediest cases for service mandates or ongoing monitoring. They also thought that, in the absence of a specialized

court's dedicated case management staff, defense attorneys and prosecutors might take a more active role in the identification of appropriate cases, as discussed earlier.

V. Conclusions and Next Steps

The California Administrative Office of the Courts/Center for Court Innovation partnership has produced two phases of research exploring the opportunities and barriers to applying collaborative justice principles and practices outside of the specialized collaborative justice court setting. Numerous stakeholders—judges, attorneys, court administrators, probation officers, treatment and service providers, representatives of statewide organizations—offered their perspectives, insights, and experiences about an issue receiving increased attention among justice system representatives in recent years, motivated in part by the Conference of Chief Justices and Conference of State Court Administrators’ resolutions encouraging such efforts. We conclude by discussing common themes and lessons from the two phases of research now completed, and potential next steps for research.

Common Themes and Lessons

1. Opportunities currently exist to apply collaborative justice more broadly.

Participants in all focus groups recognized the potential, and the need, to integrate principles and methods from collaborative justice courts into general calendar settings. Participants recognized that specialized collaborative justice courts currently handle only a small fraction of the criminal cases in which defendants’ underlying problems (addiction, mental health issues, etc.) contribute to their criminal behavior; therefore, it would be especially productive to expand collaborative solutions for these types of cases, so that more of those in need can actually be served. Other types of cases (e.g., juvenile delinquency, civil cases that can be resolved through alternative dispute resolution) and calendars (e.g., family law) are also ripe for broader applications of collaborative justice. For these reasons, participants urged the courts to continue to explore how collaborative justice principles and methods might be productively integrated into general court settings.

2. Courts should move forward cautiously and incrementally.

Participants supported integrating collaborative methods into the administration of justice but, particularly in the current study (Phase Two), urged court systems to proceed cautiously. A common theme was that not all cases are appropriate for, or would benefit from, collaborative approaches. While there was no consensus, frequently mentioned as inappropriate were cases involving serious violence, criminal trials, or cases lacking an identifiable underlying problem. In the current study, participants expressed wide support for an incremental process that might begin with only a few trial counties, or might initially restrict the range of cases and calendars to be included.

Participants also urged that careful consideration be given to which practices can and should be integrated into general court practice, given limited resources, the demands of the adversarial process, and existing knowledge of best practices. Finally, participants cautioned against setting unrealistic expectations for what collaborative justice can accomplish.

3. Courts should expect to face obstacles.

All focus groups identified numerous barriers to integrating collaborative approaches into the administration of justice. Across the two phases of research, two were most prominent:

- *Limited time and resources.* Collaborative approaches require a substantial investment of time and resources, both of which are in short supply in the justice system and may be expected to limit the scope of integration. Particular deficits cited by participants included limited court time for individualized attention and ongoing judicial supervision, a lack of case management and treatment resources, and chronic underfunding of probation.
- *Philosophical opposition.* Focus group participants felt that many judges, prosecutors, and defense attorneys would oppose the practice of collaborative justice in general courts, particularly to the extent that it contradicts the traditional models of adversarial litigation and judicial demeanor.

In addition, the attorneys included in the current study (more so than the judges included in Phase One) placed significant emphasis on the need to preserve certain elements of the traditional adversarial process, particularly in criminal courts.

4. Court systems can take steps to facilitate the broader practice of collaborative justice.

Across the two phases of research, a few concrete steps were commonly suggested:

- I. *Education and training.* Recognizing that many stakeholders are unfamiliar with or opposed to collaborative methods and principles, all participants cited the need for extensive education and training among judges, attorneys, probation officers, and others. Education should begin as early as law school and continue at professional orientations and trainings.
- II. *Leadership.* Focus group participants felt that the judicial and political leadership can promote collaborative justice practices by sending the message that these practices are not only permissible but encouraged. They pointed to the critical role that strong local leadership played in the development of many specialized collaborative justice courts, and argued that taking these practices to scale would similarly require support from the top. The judges included in the Phase One research placed the greatest emphasis upon judicial leadership, while the stakeholders included in the current study also discussed the role of leadership emanating from prosecutor offices, public defenders, other county agencies, and the public.
- III. *Addressing resource constraints.* While acknowledging the enormous challenge posed by any attempted expansion of resources, participants urged the court system to explore possibilities in this area, including the potential for making more efficient use of the resources now available. Specific suggestions in this regard included centralization of service coordination and compliance monitoring within courthouses, development of jurisdiction-wide lists of community service providers, and greater funding of treatment.

The Phase Two sessions were intended to explore implementation issues in somewhat greater detail than had been done with judges in Phase One. A few of the more notable recommendations were for public defenders to play an expanded role in identifying potentially eligible cases for a collaborative approach; and for some level of specialization to be maintained in the courthouse, whereby certain court partners, judges, and attorneys might dedicate at least a portion of their time to a “collaborative justice track,” while others would not have to be

involved. This type of system would require screening litigants at the earliest possible time, so that they could be routed to the appropriate track near the outset of case processing.

Future Research

This research project was conducted among multiple justice system and treatment/service provider stakeholders with experience in and familiarity with collaborative justice courts. A common message from these stakeholders was that promoting collaborative justice throughout court systems will depend on the receptivity and participation of judges, attorneys, and others who may not have any collaborative justice court experience. Therefore, it is recommended, as a first step for future research, that systematic surveys be conducted among general calendar judges and attorneys to aid court systems by providing a fuller understanding of the judicial landscape. Survey topics might include knowledge, attitudes, and current practices relating to collaborative justice; as well as receptivity to collaborative justice training and to changing judging and litigating practices in the future. Subsequent research might conduct similar surveys among other justice system partners or might test the effects of any pilot experiments implemented in California or elsewhere.

Appendix A. Focus Group Protocols

A1) Focus Group Protocol for Justice System Stakeholders

I. WELCOME AND INTRODUCTIONS

- Introduction to the project (Nancy Taylor);
- Introduction of the research team;
- Brief explanation of the purpose of the research and goals of the focus group;
- Focus group logistics, guidelines, and norms;
- Participant introductions.

II. WARM-UP

- To begin, I'd like you all to discuss how collaborative justice courts differ from conventional courts.
 - Write responses on the board and categorize.
 - Draw out differences in courtroom practices, not just treatment mandates.
 - Promote discussion of treatment mandate options other than drug treatment.

III. PRESENTING THE CONCEPT OF COLLABORATIVE JUSTICE IN CONVENTIONAL COURTS

Hand out concept statement to all participants (see Appendix B).

IV. REACTIONS TO THE MODEL

- Do you have any reactions or feedback to this concept? (Just say anything that comes to mind.) Why do you say that?
- Would you support doing this?
 - PROBE: Which aspects would you support and not support?
 - PROBE: Is any of this currently being done in general courts? Tell me about it ...
(*probe on which current practices work and do not work, and why*)
- What do you consider the biggest strength of this idea?
- What concerns do you have? (*probe on how important these concerns are*)
- What barriers or concerns, if any, would you anticipate coming up (e.g., staffing, court time and resources, appropriate treatment options in the community, willingness of judges, willingness and training of colleagues or other stakeholders)?
- How would your colleagues react to this? (*probe on how informed/educated they think their colleagues are about collaborative justice*)

V. OPERATIONAL ISSUES AND CHANGES

The next series of questions deals with what collaborative justice in conventional courts might look like ...

- I'd like you to discuss how the collaborative justice model might work in the courtroom.
 - PROBE: Would a team approach be feasible or not?
 - PROBE: Would attorney, judge, clerical, or other roles have to change? How so?
 - How, specifically, would this change your role as an attorney?
 - PROBE: What role would [name of different players: justice, law enforcement, probation, treatment/service system, etc.] play?
- What are the key barriers to applying collaborative justice in conventional courts?
 - PROBE: Would there be sufficient time, staffing, other resources?
- What recommendations do you have for overcoming these barriers and practicing collaborative justice in the general courtroom?
 - PROBE: Would changing the organization of court parts facilitate collaborative justice in general courts? If so, what changes would you recommend?
 - PROBE: Could collaborative justice be applied in all courtrooms? On what court calendars would it be easier to apply? Harder?
 - PROBE: What other policy issues would have to be addressed (e.g., relationships between the court and treatment providers; court staff union issues, etc.)?

VI. SPREADING COLLABORATIVE JUSTICE

- What strategies are available to disseminate information about collaborative justice among colleagues who currently work in conventional court settings?

VII. CONCLUDING REMARKS

- Review of the purpose of the focus group and of what had been covered
- Participants asked individually for any concluding remarks—issues not raised that should have been, issues that should be underscored, etc.
- Thank for participation.

A2) Focus Group Protocol for Probation and Treatment System Stakeholders

I. WELCOME AND INTRODUCTIONS

- Introduction to the project (Nancy Taylor);
- Introduction of the research team;
- Brief explanation of the purpose of the research (and the goal of this focus group);
- Focus group logistics, guidelines, and norms;
- Participant introductions.

II. CURRENT EXPERIENCE WORKING WITH COURTS

- I'd like you all to discuss how you personally and your agency interact with courts?
Write responses on the board and categorize.
 - PROBE: What has worked well in your interactions with courts?
 - PROBE: What are your greatest challenges or problems in working with courts? (communication, standards/expectations, underlying philosophy, appearances, and court interactions)
 - PROBE: Describe the differences between working with collaborative justice courts and with conventional courts. Do collaborative justice courts have greater expectations, and is the workload greater in working with them?
 - PROBE: Have you worked with probation? Could you describe your relationship with probation, and how you work together?
(And for probation, what are the challenges of coordinating between courts and treatment?)

III. PRESENTING THE CONCEPT OF COLLABORATIVE JUSTICE IN CONVENTIONAL COURTS

Hand out concept statement to all participants (see Appendix B).

IV. REACTIONS TO THE MODEL

- Do you have any reactions or feedback to this concept? (Just say anything that comes to mind.) Why do you say that?
- Would you support doing this?
 - PROBE: Which aspects would you support and not support?
 - PROBE: Is any of this currently being done in general courts? Tell me about it ...
(*probe on which current practices work and do not work, and why*)
- What do you consider the biggest strength of this idea?
- What concerns do you have?

- What barriers or concerns, if any, would you anticipate coming up (e.g., staffing, court time and resources, appropriate treatment options in the community, willingness of judges, willingness and training of colleagues or other stakeholders)?
- Are there concerns you might have had when you knew less about collaborative justice courts but which you do not have, as a result of your experiences ?
- How would your colleagues react to this?

V. OPERATIONAL ISSUES AND CHANGES

The next series of questions deals with what practicing collaborative justice in conventional courts might mean for your agency ...

- Discuss how this new model might affect your agency or agencies like yours.
 - PROBE: Would your agency have the staff and resource capacity to handle a significantly greater volume of court-referred clients? Overall, could agencies that provide services like yours throughout the county or state handle greater capacity? Are certain treatment modalities particularly likely to be pressed for capacity?
- If the new model resulted in larger numbers of clients and cases, how might your agency respond or have to change? [*For all barriers, challenges cited, probe on how those barriers might be overcome*]
 - PROBE: New staff roles and responsibilities (to coordinate with the courts, probation)? Increased client caseload for staff?
 - PROBE: Would the responsibilities of probation change? How so?
 - PROBE: Court-reporting protocols (standardization across counties, type of courts)?
 - PROBE: How would your agency feel about power-sharing issues—e.g., with courts potentially referring more clients and in turn having specific requirements for probation and service providers? Have you had to confront these kinds of issues in working with courts in the past, and how has that been?
 - PROBE: Would your agency be willing to develop new programs and services requested by courts to meet special needs among court-mandated clients?
- In sum, what would be the most important operational challenge to address (either mentioned or unmentioned in earlier discussions)?

VI. CONCLUDING REMARKS

- Review of the purpose of the focus group and of what had been covered
- Participants asked individually for any concluding remarks—issues not raised that should have been, issues that should be underscored, etc.
- Thank for participation.

A3) Focus Group Protocol for Representatives of Statewide Organizations

I. WELCOME AND INTRODUCTIONS

- Introduction to the project (Nancy Taylor);
- Introduction of the research team;
- Brief explanation of the purpose of the research and the goal of this focus group;
- Focus group logistics, guidelines, and norms;
- Participant introductions.

Note: In the introduction, mention that participants have been invited because, as representatives of their various agencies, they can bring a statewide perspective to the table, and that they are encouraged to do so as much as possible during the discussion.

II. WARM-UP

- To begin, I'd like you all to discuss how collaborative justice court practices differ from those in conventional courts.
 - Write responses on the board and categorize
 - Draw out differences in courtroom practices, not just treatment mandates
 - Draw out the degree to which collaborative justice court practices are already used within conventional court settings
 - Promote discussion of treatment mandate options other than drug treatment

III. PRESENTING THE CONCEPT

Hand out concept statement to all participants (see Appendix B).

IV. REACTIONS TO THE CONCEPT

§ Initial Reactions: What are your reactions to this idea? (Just say anything that comes to mind.)

- PROBE: What are its strengths?
- PROBE: What concerns do you have?
- PROBE: What things about collaborative justice courts can and should be brought into wider use in conventional courts? What should not be brought into wider use?
- PROBE: Are there unique issues or challenges that would be involved in implementing this idea statewide as opposed to judges and/or attorneys deciding to use certain elements within individual jurisdictions or court parts?

§ Current Examples: What has been the experience to date (including strengths, challenges, or other lessons learned) in applying models of collaborative justice to certain whole categories of cases (e.g., handling large numbers of drug cases within Proposition 36 courts)?

- PROBE: Besides Proposition 36, are there other examples in California in which the courts attempted to handle large numbers of cases with a model incorporating some or all elements of collaborative justice?
- Readiness/Capacity: Is the state ready for this? How would this affect your agency/those whom you represent?
 - PROBE: Impact on resources, workload.
- Model of Expansion: How would you envision the concepts and techniques of collaborative justice courts being integrated into mainstream courts? What steps need to be taken for this to happen throughout the state?
 - PROBE ON FUNDING ISSUES: Would additional funding be necessary? What would need funding? What else? What are the funding priorities?
 - PROBE ON LEGISLATIVE CHANGE: In addition to funding issues, would other legislative policy changes be necessary?
 - PROBE ON POLICY CHANGE: In addition to funding issues, would other statewide or countywide court policies be necessary (e.g., that could be implemented by the judiciary as opposed to requiring legislation)?
 - PROBE ON EDUCATION/TRAINING: What are the education, training needs?

Note: For all ideas discussed (funding, training, etc.), probe on whether these changes are necessary (or just would be beneficial) for this to happen.

V. CONCLUDING REMARKS

- Review of the purpose of the focus group and of what had been covered
- Participants asked individually for any concluding remarks—issues not raised that should have been, issues that should be underscored, etc.
- Thank for participation.

Appendix B. Concept Presentation

Hypothetical Model of the Administration of Justice

This model of the administration of justice envisions the practices and techniques of collaborative justice courts, such as drug courts, mental health courts and domestic violence courts, applied broadly in mainstream courts throughout the court system. The approach could be applied in all courts—not just specialized courts—with the goal of enhancing courts’ ability to address the underlying problems of litigants, victims, and communities.

Under this model, court operations could be characterized by elements such as:

- Problem-solving focus;
- Proactive role for the judge;
- Non-adversarial team approach to decision-making;
- Integration of treatment and social services into the court process;
- Ongoing judicial supervision of the treatment process;
- Direct interaction between litigants and the judge; and
- Community outreach.