

Five Reasons Why Judges Should Become More Involved in Establishing, Leading, and Participating on Collaborative, Policy-Focused Teams



By Richard P. Stroker
October 2006

Introduction

Justice Oliver Wendell Holmes, Jr. once remarked that "a moment's insight is sometimes worth a life's experience." In the course of discharging their responsibilities, judges may have a great many insights into the circumstances of individuals, the operations of systems, and the interaction of the two. In any given case a judge may act, as Socrates once commented, by "listening courteously, answering wisely, considering soberly, and deciding impartially." However, particular situations or circumstances may cause a judge to look well beyond the facts or boundaries of a case. A judge might be concerned about the ability of self-represented parties to access the court or navigate its processes, the security of the courthouse, the absence of meaningful or comprehensive alternatives available to the judge for certain types of cases, the perception of the court by the broader community, or many other issues. These concerns may lead a judge to see the need for, or desirability of, making improvements or modifications in the way that the court discharges its responsibilities.

In some situations, other individuals may be the ones noting particular issues that may involve the outcomes of cases or operation of the court and the impact that these actions or processes have on litigants, system partners or others. These might include areas such as the availability of programs or resources to serve individuals who have had their cases disposed of by the court, difficulties associated with enforcing child support orders or other judgments, issues involving jail or prison overcrowding, or other circumstances. When

these types of issues are identified, system partners may be most anxious to gain the perspectives of judges or see the need for judicial involvement in order to properly address or resolve various matters.

Systemic issues can often have extremely complicated histories, involve the actions or resources of numerous entities, and will most likely not lend themselves to easy solutions. For many of the reasons outlined below, establishing collaborative, policy-focused teams can represent a sound approach to problem solving. The following discussion outlines five principal reasons why judicial leadership and participation on these teams is critical to the successful investigation and resolution of complex issues.

Reason 1: The Perspective of the Judge is Unique and Must be Shared with Others in an Appropriate Context in Order to Make Meaningful Progress on Difficult Issues.

"Life is made up of constant calls to action, and we seldom have time for more than hastily contrived answers." Judge Learned Hand

Judges have a unique perspective regarding court operations, the administration of justice, the work of system partners, and the impact that these and other matters may have on individuals and the broader community. No one else may be able to see or appreciate so many different concerns, or components of issues, from such a neutral, objective position. As Chief Justice Earl Warren once remarked, "Judges are able to see the whole gamut of human nature."

Assuming that judges have insights and opinions about the causes, scope, or ramifications of particular problems that are relevant to the court and its work, how can judges help to bring about an effective review and resolution of these matters? As reflected in the remark from Judge Hand, hastily contrived answers are most likely not the best method of resolving or attending to complex issues. Substantial issues require thoughtful, comprehensive solutions. One way to encourage meaningful consideration of difficult and often long standing issues is to establish collaborative, policy-focused teams. These types of groups can represent individuals from various organizations and differing perspectives who are collectively attempting to understand the dimensions and nature of some set of issues and who strive to achieve something together that they could not do alone. These teams create the opportunity to gain substantial amounts of information from different points of view, review how systems operate, understand root causes or issues, identify possible areas of change or improvement, and develop and implement solutions that are acceptable to a wider range of individuals.

Ron Reinstein, a Superior Court Judge from Arizona, has worked on several collaborative, policy-focused teams that have ultimately implemented intermediate sanctions, revised probation violation responses, and developed innovative solutions to address a variety of other significant matters. Regarding the importance of involving key system partners on these teams, Judge Reinstein notes that:

"If everyone in the justice system engages with each other and works together, it can only improve that system. Going it alone will only create chaos, confusion, and a poor use of scarce resources."

Judges are essential to the establishment and operation of these teams. This is true for at least three reasons:

1. First, a judge may be aware of issues or may have particular concerns that are simply not recognized by others. Court personnel or employees from other agencies have particular jobs to do, and they carry these functions out within their individual chains of command. As long as policies are followed, and their agency's responsibilities are met, these individuals may simply not appreciate the existence of a problem that is

quite evident to the judge. Judicial participation with others is required in order to bring these issues out in the open where they can be studied, considered, and resolved.

2. Second, when special issues or problems are perceived by individuals who work for the court or for other entities, these individuals may be concerned primarily with how this issue or problem impacts, or could impact, them. A broader perspective on the matter may be necessary in order to bring about the most appropriate review, to identify the most critical issues, and to develop the most meaningful outcomes. Because a judge is in a position to see different points of view and the broader landscape associated with numerous issues, a judge can help others to gain a different appreciation of the scope of a problem.

3. Third, regarding issues that involve the work of the court, no other person has the same vantage point as the judge. System partners who are interested in bringing about changes to pre-sentence reports or developing new criminal sentencing options may be notably disappointed if judges do not agree with the products or alternatives developed. To avoid this waste of effort and time, judges need to become involved with issues and areas that are impacted by their actions and decisions so that teams can be well-focused and directed. Groups that are working on issues that are related to the court or its operation absolutely need to understand how judges perceive these issues.

Individuals who have participated with judges on collaborative, policy-focused teams certainly appreciate the indispensable value of gaining judicial perspective regarding the issues under consideration. For instance, Todd Nuccio, Trial Court Administrator in North Carolina's 26th Judicial District, recently participated in a very successful inter-entity effort that focused on issues concerning self-represented litigants in his District. Several key judges within the District provided leadership to the overall effort, guided work groups, and fully participated in the development of new partnerships, approaches, and tools. Regarding the involvement of judges in this effort, Mr. Nuccio offers the following:

"Judges bring valuable insights that others simply do not have. They can analyze

information, interpret it in a number of contexts, and draw appropriate conclusions based upon their special position. The contributions they made to the discussions were particularly invaluable to our pro se project. Those of us who play more limited roles and have a narrower view needed to know how our proposals would truly impact operations. Without the participation of judges, we simply would have been hoping that we were working on the right things and moving in the right direction.”

In summary, by sharing their perspectives, observations or concerns with members of collaborative, policy-focused teams, judges create a necessary foundation for the work of these teams.

Reason 2: Judicial Participation on Teams Helps Bring Other Stakeholders to the Table.

“No one learns more about a problem than the person at the bottom.” Justice Sandra Day O’Connor

Participation by judges in groups has the general effect of encouraging participation by others. The Conference of Chief Justices and the Conference of State Court Administrators recently indicated that¹:

“While leadership can come from different facets of the justice system or community, judges are well positioned to lead reform efforts because of their unique ability to convene stakeholders.”

The fact that a judge wants to be involved in a discussion raises the importance of that issue in the eyes of others. Teams need the active participation of numerous individuals and many organizations in order to solve complex problems, so the mere presence of a judge on a team may help a group to overcome one of the first and most important of issues – getting the right members to attend and participate in meetings.

When judges lead and participate in the work of collaborative teams, it can have a magnetic effect on others – it inexorably pulls necessary parties into the discussion. As Judge Ron Reinstein from Arizona relates:

“I definitely believe judges are in a unique position to bring disparate groups to the table to resolve issues and move the system forward. We’re all partners in the justice system. You can accomplish more by working together than on your own, while still maintaining your autonomy as well as judicial independence.”

When a project is initiated by one particular organization, it may simply be seen as that organization’s effort. Others may be skeptical about the motivations of that entity and may be unwilling to share their thoughts or ideas. While some agencies and their personnel work well together, many others do not. This may be driven in part by the fact that organizations often see themselves as competitors, rather than partners, with each other. This competition may be over resources, recognition, or any number of other factors. In this environment, trust levels between various organizations may be rather low.

Judges – in large part because of the belief by others in their authority, judgment, and neutrality – cannot only help to bring people together from various organizations, they can help to create an atmosphere of trust. When judges lead groups, it encourages others to believe that matters will be dealt with in a fair, comprehensive, and appropriate way, and will not be slanted to serve the interests or desires of a single entity. As Todd Nuccio from North Carolina observes:

“The involvement of judges conveys a sense of legitimacy, brings about essential ‘buy-in’ from others, and makes it possible to bring many other individuals to the table. Without the involvement of judges, and the participation of others who joined the efforts because of the involvement of judges, it would not have been possible for us to realize the attainment of so many lofty goals.”

Once the right members of a team are involved in a discussion and there is sufficient trust to speak openly about issues, three interesting things can begin to happen. First, the true nature of the problem will receive further scrutiny. Second, the importance of developing a common understanding about system issues and operations will emerge. Finally, a more comprehensive effort will be made to arrive at mutually acceptable, long term solutions.

¹ COSCA and CCJ (2006).

1. *Understanding the problem.* For a variety of reasons, people who are working on complicated issues or problems often want to rush quickly to the development of solutions. Groups that have failed to spend a sufficient amount of time learning the true nature, depth, or factors associated with a particular situation may be able to move swiftly – but it may be in an unfortunate direction. Groups that are working on the “wrong” problems will very seldom arrive at the “right” solutions. In order to understand all of the most important aspects of a problem, it is critical to have knowledgeable individuals from various entities participating in the discussion. The ability of judges to attract other individuals to the table makes it possible for teams to gain a better understanding of the true nature of the problems they are facing.

2. *Understanding the system.* What often becomes obvious during a discussion about the nature of a problem is that no one individual has a full appreciation of how an entire system actually works. Many individuals will understand how some portion of a system operates, or should operate, but it is relatively uncommon for people to come together to truly consider how a system does operate. Different entities often work in relative isolation from each other. While it may be clear where the lines of authority or responsibility lie, individuals operating within the system are seldom offered the opportunity to consider how the system components work together. Systems are often developed over long periods of time, and some steps, aspects, or methods may be convoluted, confusing, or unnecessary. In order to understand how a system operates you must have the participation of everyone who is involved in the operation of that system. Once again, the ability of judges to attract numerous individuals to participate on policy-focused teams creates the opportunity for these teams to have a better understanding of the context and implications of their work.

3. *Developing better solutions.* Finally, individuals who have participated in discussions concerning potential problems and system operations are much more likely to reach a common understanding about the need for, or value of, certain solutions. Having all the “right” people participate from the beginning of a policy-focused team’s

work helps to generate collectively embraced solutions, and their involvement in the process helps to generate commitment to its outcomes. Therefore, the ability of judges to attract appropriate individuals to discussions about complex problems helps to ensure that the best solutions will be generated and implemented.

Teams working on difficult problems are much more likely to realize successful outcomes if they have all the necessary parties involved in the discussion. Judges have a unique ability to encourage this critical participation.

Reason 3: Collaborative, Inter-Entity Groups Need the Leadership of Judges.

“The greatest thing in life is not so much in knowing where we are, but in knowing what direction we are moving.” Justice Oliver Wendell Holmes, Jr.

Individuals who work in the courthouse or who work for agencies that have responsibilities that are impacted by what happens in the courthouse look to judges to provide leadership, guidance, structure, and vision regarding an array of important issues. Judges are armed with what might be termed “positional leadership” authority. This is leadership authority that is derived entirely from the nature of one’s position. When a person is seen as having positional leadership, other individuals expect that certain actions will be taken or qualities demonstrated. The lack of interest in a project or effort by a positional leader carries a fairly clear message and may spell disaster for that effort. As Mr. Nuccio from North Carolina explains:

“Judges are the “face” of the organization, and if they are not seen in a prominent role, the project almost always becomes suspect and the chances of its success are diminished.”

When individuals see someone else as having positional leadership authority, they may be reluctant to explore issues without permission or an instruction to do so. Even though some problem or issue may be appreciated by a variety of other individuals, little work might be done to resolve such matters until the judge or the positional leader identifies the existence of this issue or problem and directs someone to do

something about it. Therefore, both because judges are viewed as leaders and because others will wait for direction to be provided or instructions to be given, leadership by judges is often required in order for significant issues that involve the court to be addressed. But what does it mean to show leadership on an issue?

As many management and leadership books make abundantly clear, leadership involves the demonstration of particular qualities or actions – put simply, leaders “act” like leaders. Leaders exert influence through their actions and they are followed because of their credibility. Unlike positional leadership, “personal leadership” involves the nature and types of actions that are taken by an individual. While people will ordinarily do what a positional leader requires, people will *want* to do what a personal leader suggests. Perhaps this distinction between positional and personal leadership can be demonstrated by a remark once made by Dwight Eisenhower: “Leadership is not about hitting people over the head – that’s assault, not leadership.”

In the courtroom, judges are required to determine what is allowed, to consider issues and make rulings, and to determine who is right and who is wrong. They have the authority to be decision makers, and they are viewed by others as natural leaders in this environment. However, these very traits – the ability to be decisive and authoritative – may often not be the types of qualities that help people to be effective as personal leaders. In his books entitled *The 7 Habits of Highly Effective People* and *Principle-Centered Leadership*,² Stephen R. Covey provides some thoughts regarding how good leaders can or should act. Among the traits he mentions are the abilities to:

- Be proactive;
- Start with the end in mind;
- Think win/win; and
- Try and understand, before trying to be understood.

Judges are often in a unique position to apply these personal leadership principles to the work of collaborative teams:

1. *Taking a proactive approach to issues.* The most difficult time for anyone to try and solve a problem is when it has already overwhelmed them. And yet, people may

often wait for problems to become extensive before decisions are made to address them. Effective leaders are able to appreciate the current situation and anticipate logical developments of the future. Instead of being stuck in a reactive mode, constantly trying to keep your head above some rising flood, good leaders try to anticipate and develop strategies to address the issues that are just forming. Judges are constantly receiving information from numerous sources, and this information allows them the opportunity to form a broader perspective. In fact, judges may often be in the best position to appreciate the current nature of things and the predictable direction of future actions. Freed from some of the conflicts that impact so many system partners, judges are in an excellent position to show personal leadership by encouraging other individuals to work collaboratively toward meaningful outcomes. When judges offer their insights about the nature of an emerging problem, it encourages others to take a fresh look at existing situations.

For instance, Judge Linda Morrissey, who has participated on collaborative teams focused on significant criminal justice issues in Oklahoma, relates that:

“I was interested in joining a collaborative team because I believed that the criminal justice system could be a lot more efficient, more proactive, more restorative, and more effective in managing nonviolent offenders. I believed that we could find ways to re-acclimate these offenders in the community with greater life skills that would enable them to be more functioning members of the community. I had a criminal docket at that time and wanted to be as informed and as innovative as I could be in managing the individuals on that docket.”

2. *Begin work by starting with the end in mind.* Among all of the other traits of leadership, having a clear vision for the future may be the most important. Perhaps the notion of “starting with the end in mind” means that the leader imagines a preferred destination towards which a group could strive. At least, as Justice Holmes might observe, it may help others to appreciate the direction in which things could be moving. When this preferred destination is shared

² Covey (1989); Covey (1992).

with others who have the capacity to impact future events and a collectively shared vision is embraced, teams can become powerful vehicles for change. Groups that have no sense of where they are trying to go or what they hope to generally achieve may wander in the wilderness for a long time. Groups are anxious to know what judges or other positional leaders want to see happen in the future. When judges share their thoughts about how things could be, they play a critical role in helping groups to establish direction. This, in turn, allows groups to properly frame their most important objectives.

Regarding the role that judges can play in helping groups to identify their direction or desired outcomes, Suzanne Brown-McBride, Executive Director of the California Coalition Against Sexual Assault, indicates that:

“Judges have an ‘end analysis’ perspective of the intersection of statute and case construction that is completely unique. No other element of the criminal legal process is able to consider and evaluate the process of an investigation, presentation of a case, the impact of a defense, and the application of statute and sentencing as completely as a judge. As a result, the judicial perspective has the potential to be broadly informative to the development of policy and the implementation of practice.”

3. *In problem solving, think win/win.* Many individuals who work in or are impacted by the court system may see problems or their solutions in terms of a win/lose scenario. Judicial leaders can help set the tone for inter-entity discussions by indicating the importance of reaching mutually acceptable outcomes, by giving individuals the opportunity to identify and speak to their concerns, and by demonstrating a willingness to listen. Judges also have considerable experience at helping individuals to arrive at a common understanding regarding troublesome or long standing issues. Negotiation and mediation are concepts understood and routinely utilized by judges. Thus, consistent with both their position and experience, judges are uniquely qualified to help others to better understand issues,

reach mutually acceptable accords, resolve disputes, and move forward with their work.

4. *Before trying to be understood, try first to understand.* Some positional leaders might identify a problem and its solution on their own. They then inform, instruct, or require others to accept both their analysis and their outcomes. While this may represent a certain type of decisiveness, it may not be a particularly helpful way of approaching difficult issues or developing long-term solutions. Chief Justice John Marshall once remarked that “to listen well is as powerful a means of communication and influence as to talk well.” Learning all of the details or ramifications associated with some particular situation is a necessary part of developing sound solutions. Judges have considerable experience at listening to all sides of an argument, sorting fact from opinion, and approaching complicated issues from a problem-solving perspective. These qualities, when exercised by a judge and incorporated into the work processes of a policy-focused team, can help groups to successfully work on the matters before them.

For all of the reasons indicated above, judges are specially qualified by position, perception, and experience to provide both positional and personal leadership to collaborative teams.

Reason 4: Participation on Collaborative Teams can be Entirely Consistent with a Judge’s Ethical Responsibilities.

“The man of character, sensitive to the meaning of what he is doing, will know how to discover the ethical paths in the maze of possible behavior.” Chief Justice Earl Warren

If the reasons explored above help to explain why it is so important for judges to establish, lead and participate on collaborative, policy-focused teams, are there reasons or factors that might inhibit this activity? Judges may have difficulty finding the time to adequately or appropriately participate with a group. But if time constraints can be overcome, are there ethical considerations that might restrict judicial participation with certain types of teams?

In her paper entitled *Ethics and Judges’ Evolving Roles Off the Bench: Serving on*

Governmental Commissions,³ Cynthia Gray discusses and explores a variety of ethical issues that may arise when judges participate on various types of governmental teams. Ms. Gray explores the most pertinent portions of the American Bar Association's (ABA) *Model Code of Judicial Conduct*⁴ and offers insights concerning some of the more relevant advisory opinions that have been provided to judges who were seeking guidance on the ethical implications of their participation on various types of public sector groups. The language of the ABA's Model Code, viewed rather broadly, conveys the importance of judges acting as impartial and neutral arbiters, preserving the integrity of the judicial branch, not being unduly influenced by others or becoming involved in matters that may give rise to controversy, accepting no appointment that might interfere with the proper performance of judicial duties, and refraining from political activities.

Regarding a judge's participation on collaborative, policy-focused, inter-entity teams, a few of the Model Code's canons seem to be particularly relevant. Canon 4(C)(2) indicates that judges should not participate on governmental commissions concerned with issues of fact or policy except as they relate to the law, the legal system, and the administration of justice. Canon 4(C)(3) provides that a judge may serve as an officer, director, or trustee of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. Further, the commentary to section 4(B) indicates that:

" . . . a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice . . . To the extent that time permits, a judge is encouraged to do so, either independently, through a bar association, judicial conference or other organization dedicated to the improvement of the law."

In determining whether an activity is genuinely involved with the improvement of the law, the legal system, or the administration of justice, some advisory opinions focus squarely on the connection between the purpose or nature of the group's efforts and the responsibilities of the

court.⁵ Even so, the language contained in canons, commentaries, and advisory opinions may sometimes make it difficult for judges to have confidence in the exact position of the line separating activities that seek to "improve the law, the legal system, or the administration of justice" from those that do not. In her paper, Ms. Gray identifies several factors that appear to be significant in resolving ethical questions regarding the participation of judges on governmental commissions. These include whether the commission:

- Is primarily concerned with the delivery of unbiased, effective justice;
- Addresses matters that are central to the legal system and that directly affect the judicial branch;
- Serves the interests of individuals who use the legal system;
- Deals with issues that a judge is uniquely qualified to address;
- Has diverse membership;
- Focuses on recommendations that generally benefit the legal system; and
- Has a structure that permits judges to be involved with issues that pertain to the improvement of the law, the legal system, and the administration of justice.

To reiterate, judicial involvement with groups that are focused on matters unrelated to the delivery of effective justice, deal with issues of a non-judicial nature, reflect a narrow point of view, seek to advance the cause of a particular group, or involve topics that are largely outside of the legal system or the administration of justice may give rise to a variety of ethical concerns.

Many states have adopted rules of judicial conduct that are patterned after the ABA's Model Code. At least forty-six states have language in their judicial rules of ethics that permit judges to participate in extra-judicial activities concerning the law, the legal system and the administration of justice. Thirty-five states have language that encourages judges to do so.⁶ At least thirty-one states have language in their judicial conduct standards that reflect the sentiments contained in the commentary to

³ (Gray, 2002).

⁴ See: <http://www.abanet.org/cpr/mcjc/toc.html>.

⁵ See, e.g.: *Massachusetts Advisory Opinion 98-13* at <http://www.mass.gov/courts/courtsandjudges/courts/supremejudicialcourt/cje/98-13h.html>.

⁶ See, e.g.: *Nebraska Code of Judicial Conduct*, comment to Canon 4(B) at http://court.nol.org/rules/Judcon_30.htm.

Canon 4(A) of the *Kentucky Code of Judicial Conduct*⁷:

“Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives.”

Ethical questions regarding the participation of judges on particular groups or in various activities have arisen in a number of circumstances. Differences in the exact focus or nature of the group's activities, the role of the judge on the group, the degree to which the activity is considered to be connected to judicial responsibilities, whether the judge would be placed in too delicate a position with regards to individuals who might routinely appear in court, and a variety of other considerations seem to drive the outcomes achieved in many of the advisory opinions.⁸

Given the sometimes broad nature of the language contained in rules of judicial conduct, there may also be room for different interpretations depending on the jurisdiction and the particular facts presented. For instance, while it may be seen as ethically appropriate for a judge to serve on a local criminal advisory committee in one state,⁹ serving on a police department's advisory board has been viewed as contrary to ethical considerations in other states¹⁰. Serving on a community corrections advisory board or being a member of a local drug abuse council may be seen as consistent with ethical considerations in some jurisdictions,¹¹ while chairing a committee that is revising mental health code provisions or

serving on a local jail overcrowding task force may be seen as inappropriate elsewhere¹².

Perhaps in order to bring further clarity to the language and intentions of rules of judicial conduct, and through them to provide more guidance to judges who are considering service on a policy-focused collaborative team, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) recently adopted a resolution (Resolution 8, August 2, 2006)¹³ that recommended to the American Bar Association that its Model Code of Judicial Conduct be amended in ways that will encourage judicial leadership on matters related to the administration of justice. CCJ and COSCA indicated that:

“... the Model Code should be strengthened to acknowledge and recognize the leadership responsibility of judges to the extent that the leadership responsibilities do not interfere with the adjudication process.”

Noting that they believed “the following concepts would strengthen and provide the needed specificity to encourage judicial leadership,” CCJ and COSCA specifically recommended that:

- Rule 2.10 be amended regarding ex parte communications so as to permit a judge's consultation with a problem solving court team;
- Rule 2.12 be altered so that a judge should not be disqualified from a case on a per se basis due to official communications received in the course of performing a judicial responsibility or knowledge gained through training programs or experience; and
- Rule 2.14 be amended so as to reflect the judge's responsibility to seek the necessary time, staff, expertise, and resources needed to discharge administrative responsibilities.

⁷ See: <http://www.sunethics.com/kycodejudconduct.htm>.

⁸ See, e.g.: *Virginia Advisory Opinion 00-2* at <http://www.courts.state.va.us/jirc/opinions/2000/00-2.html>; *Utah Informal Advisory Opinion 98-6* at <http://www.utcourts.gov/resources/ethadv/98-6.htm>.

⁹ See: *Florida Advisory Opinion 2004-14* at <http://www.jud6.org/LegalPractice/opinions/judicialethicsadvisoryopinions/2004/2004-14.html>.

¹⁰ See: *Kansas Advisory Opinion JE 70* at <http://www.kscourts.org/clerkct/JE69-72.PDF>; *West Virginia Advisory Opinions 1998 - 4A* at <http://www.state.wv.us/wvsca/JIC/advop.htm#Extrajudicial>.

¹¹ See, e.g.: *Wisconsin Advisory Opinion 01-1* at <http://www.wicourts.gov/sc/judcond/DisplayDocument.html?content=html&seqNo=874>; *Maryland Advisory Opinion 2004-24* at <http://www.courts.state.md.us/ethics/op200424.pdf>.

¹² See, e.g.: *Delaware Advisory Opinion, JPC 1991-1* at <http://courts.delaware.gov/jeac/opns/91-1.pdf>; *South Carolina Advisory Opinion 19-2003* at http://www.judicial.state.sc.us/adv_opinion/displayadvopin.cfm?advOpinYR=2003&advOpinNO=19.

¹³ See: <http://cosca.ncsc.dni.us/Resolutions/JudicialConduct/resolution8ModelCodeJudicialConductJudLdrshp.html>.

Most importantly for purposes of this discussion, CCJ and COSCA also recommended that Canon 4 be amended as follows:

“Language should be added to Canon 4 recognizing a judge’s civic responsibilities, including (1) providing leadership in: (a) identifying and resolving issues of access to justice; (b) developing public education; (c) engaging in community outreach activities to promote the fair administration of justice; and (d) convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, and/or the administration of justice and (2) publicly or individually endorsing project goals concerning the law, the legal system, the provision of services or the administration of justice, in principle, and actively supporting the need for funding of such organization or governmental agency.

In adopting this Resolution, CCJ and COSCA asked the American Bar Association’s Joint Commission to Evaluate the Model Code to include the above concepts in its revised Model Code. CCJ and COSCA also formed a task force to draft and submit proposed language regarding the above matters. The actions taken by CCJ and COSCA indicate their positions and preferences regarding the exercise of judicial leadership on critical issues involving the legal system and the administration of justice. If individual jurisdictions’ rules of judicial conduct follow this lead there should be greater clarity regarding, and clearer indications of support for, judicial involvement in the work of policy-focused teams. In the interim, the advice offered by Ms. Gray in her paper, *Ethics and Judges’ Evolving Roles off the Bench*, may certainly provide some important guidance.

Reason 5: Collaborative Teams are More Successful at Achieving Meaningful Outcomes when Judges are Involved.

“Most of the things that were worth doing in the world were declared impossible before they were done.” Justice Louis D. Brandeis

In the final analysis, successful policy-focused team efforts are ones that identify the most basic or significant problems, involve the right people in meaningful discussions, produce appropriate and achievable solutions, see those solutions

implemented, and are evaluated over time to determine if the objectives of the effort have been met. For all of the reasons mentioned thus far, when judges demonstrate leadership and become involved with inter-entity groups, these results are simply more likely to occur. Perhaps this is true because judges are in excellent positions to help create the neutral, reflective, future-oriented, optimistic atmosphere that is necessary for successful teams to possess. When judges are involved, team members can easily believe that the work they are engaged in is important, and that meaningful outcomes will be realized. This, in turn, encourages the commitment of time and energy that is so critically required in order to make meaningful progress on difficult issues.

Judge Jefferson Sellers from Oklahoma, who has been participating on a team that is focused on a variety of important criminal justice issues, expresses it this way:

“Judges come to the collaborative effort to make the system better respond to the needs of the principal actors, but more importantly because they want to make as big a difference as possible in improving the results of the criminal justice system. A presiding judge can make things happen and has a unique opportunity to advance the policies and plans of the collaborative effort.”

Also, as positional leaders, judges can exert great influence over the actions, attitudes, and work efforts of others. A positive or encouraging word from a judge can work wonders on an individual’s perspective, demeanor, and general willingness to help with the work of a group. Teams that are trying to solve complex issues often need to find ways of encouraging changes in the activities of many actors or system partners. Judges who are sensitive to the dynamics of groups, exercise personal leadership in effective ways, stay focused on overall objectives, are willing to share credit, do not show favoritism, and know how to influence behaviors with positive observations can be instrumental in fostering these changes.

It is no coincidence that judges who have been actively engaged in leadership roles on collaborative, policy-focused teams have been able to successfully develop drug courts and mental health courts, create new sentencing alternatives, improve court operations, foster better security in the courthouse, help develop tools or methods that may aid self-represented

parties in having more appropriate or meaningful access to justice, and generate many other creative solutions or outcomes. Judges provide the authority, neutrality, momentum, and information that can help teams accomplish meaningful results. Judges can help to build bridges between system partners, and to foster the collaboration that is essential to the work of policy-focused teams.

One example of this can be found in the pro se project in North Carolina's 26th Judicial District. In this project, the District's "Self Serve Center" was revitalized, new partnerships were established with the bar, local attorneys agreed to volunteer a considerable amount of time to assist pro se litigants on a variety of issues, new technology was acquired to simplify the completion and filing of forms, and a variety of other innovative actions were taken. Regarding these outcomes, Todd Nuccio indicates that:

"With the involvement of judges, we had the confidence to move forward and make things happen, because we knew that they supported this effort, and would keep all of us on the right track. Without the judges' participation and commitment to this project we could not have started our project work, and we would not have made the progress, or reached the outcomes, that we were able to achieve."

Conclusion

Chief Justice Earl Warren once said that "To get what you want, stop doing what isn't working." Collaborative, policy-focused groups are entities that can help a jurisdiction to figure out what is not working, why it is not working, and what to do about it. Judges who are willing to establish and participate on policy-focused teams have the opportunity to provide their unique perspective, critical leadership, and powerful collaborative capacities to important problem solving efforts. This investment of judicial time and energy is essential to the work and outcomes achieved by many policy-focused groups.

Judges bring indispensable qualities to teams. When judges wisely apply their particular positional and personal leadership characteristics, constructively involve the participation of necessary parties, and act in ways that are consistent with ethical

considerations, they provide a powerful impetus for successful outcomes.

A Note to Readers

The Center for Effective Public Policy administered a national training and technical assistance project entitled the National Resource Center on Collaboration in the Criminal and Juvenile Justice Systems. This project, sponsored by the State Justice Institute, along with several federal partners including the National Institute of Corrections and the U.S. Department of Justice, Office of Justice Programs, assisted selected jurisdictions in building stronger collaboratives as they sought to enhance justice in their communities. This is the last in a series of articles produced under this project.

Acknowledgements

I would like to thank my colleagues at the Center for Effective Public Policy, Madeline Carter, Becki Ney, and Rachelle Giguere, for their assistance in conducting research and for their insights regarding the content of this article. I would also like to thank Suzanne Brown-McBride, Linda Morrissey, Todd Nuccio, Ron Reinstein, and Jefferson Sellers for participating in interviews and providing comments regarding the subject of this paper.

Works Cited

Advisory Committee on Standards of Judicial Conduct (2003). *South Carolina Advisory Opinion 19-2003*. http://www.judicial.state.sc.us/adv_opinion/displayadvopin.cfm?advOpinYR=2003&advOpinNO=19, last accessed October 9, 2006.

American Bar Association (2004). *ABA Model Code of Judicial Conduct, 2004 Edition*. <http://www.abanet.org/cpr/mcjc/toc.html>, last accessed October 9, 2006.

Commonwealth of Virginia Judicial Ethics Advisory Committee (2000). *Virginia Advisory Opinion 00-2*. <http://www.courts.state.va.us/jirc/opinions/2000/00-2.html>, last accessed October 9, 2006.

Conference of State Court Administrators and Conference of Chief Justices (2006). *Resolution 8: In Support of Modification of the Model Code of Judicial Conduct to Encourage Judicial Leadership*. <http://cosca.ncsc.dni.us/>, last accessed October 9, 2006.

Covey, S.R. (1992). *Principle-Centered Leadership*. New York, NY: Fireside.

Covey, S.R. (1989). *The Seven Habits of Highly Effective People*. New York, NY: Fireside.

Delaware Judicial Ethics Advisory Committee (1991). *Delaware Advisory Opinion JPC 1991-1*. <http://courts.delaware.gov/jeac/opns/91-1.pdf>, last accessed October 9, 2006.

Florida Judicial Ethics Advisory Committee (2004). *Florida Advisory Opinion 2004-14*. <http://www.jud6.org/LegalPractice/opinions/judicialethicsadvisoryopinions/2004/2004-14.html>, last accessed October 9, 2006.

Gray, C. (2002). *Ethics and Judges' Evolving Roles Off the Bench: Serving on Governmental Commissions*. Des Moines, IA: American Judicature Society.

Kansas Appellate Courts (1996). *Kansas Advisory Opinion JE 70*. <http://www.kscourts.org/clerkct/JE69-72.PDF>, last accessed October 9, 2006.

Kentucky Supreme Court (2003). *Kentucky Code of Judicial Conduct*. <http://www.sunethics.com/kycodejudconduct.htm>, last accessed October 9, 2006.

Maryland Judicial Ethics Committee (2004). *Maryland Advisory Opinion 2004-24*. <http://www.courts.state.md.us/ethics/op200424.pdf>, last accessed October 9, 2006.

Massachusetts Committee on Judicial Ethics (1998). *Massachusetts Advisory Opinion 98-13*. <http://www.mass.gov/courts/courtsandjudges/courts/supremejudicialcourt/cje/98-13h.html>, last accessed October 9, 2006.

The Nebraska Supreme Court (1992). *Nebraska Code of Judicial Conduct*. http://court.nol.org/rules/Judcon_30.htm, last accessed October 9, 2006.

Supreme Court of Wisconsin, Judicial Conduct Advisory Committee (2002). *Wisconsin Advisory Opinion 01-1*.

<http://www.wicourts.gov/sc/judcond/DisplayDocument.html?content=html&seqNo=874>, last accessed October 9, 2006.

Utah State Courts (1998). *Utah Informal Advisory Opinion 98-6*. <http://www.utcourts.gov/resources/ethadv/98-6.htm>, last accessed October 9, 2006.

West Virginia Judicial Investigation Commission (1998). *West Virginia Advisory Opinion 1998 - 4A*. <http://www.state.wv.us/wvsca/JIC/advop.htm#Extrajudicial>, last accessed October 9, 2006.

Contact Information

Madeline M. Carter, Principal
Center for Effective Public Policy
8403 Colesville Road, Suite 720
Silver Spring, MD 20910
Phone: (301) 589-9383
Fax: (301) 589-3505
Web site: www.cepp.com