

Advocating for Clients:

Defenders and Collaboration in the Criminal and Juvenile Justice Systems

By Judith Berman, Ph.D.

When it comes to providing services to the poor, the word “collaboration” comes up frequently. It is perhaps because the numbers of poor are so large, their needs so great and the resources provided to serve them are so limited, that legal services professionals and public defenders are forced to create partnerships that will help them address their clients’ problems. Legal services has frequently needed to partner with social service providers, advocates for the homeless, domestic violence advocates and others to reach their target population with necessary services. Defenders who take a “holistic advocacy” perspective routinely work with social workers and other community service providers to try to address the root causes of criminal behavior for their clients and identify alternative dispositions that will both keep clients out of jail or prison and serve their long-term interests.¹ Defenders, though, traditionally seem to have fewer “natural” allies in their work within the justice system. As Catherine Beane has pointed out, even assigned counsel and private attorneys don’t always see their way to collaborating on policy issues with their public defender colleagues.² And, as Cynthia Works has argued, the lack of collaboration between civil and criminal legal services providers threatens to exacerbate the myriad problems facing ex-offenders upon their reentry to the community following incarceration.³

The case has been made by Cait Clarke, Beane, Works and others that collaboration is a vital part of the work of defenders, both in case management and policy making

arenas. Yet, collaboration is challenging and time consuming and often fails to meet the high hopes participants bring to it. What is it that makes collaboration so difficult? And what can defenders do to help increase the likelihood of success in their collaborative endeavors? This article will briefly outline some of the keys to collaboration success and provide resources for those interested in furthering the effectiveness of collaborative teams in their jurisdictions.

What is Collaboration?

Collaboration has become something of a buzzword in the last several years. Federal grant programs often require evidence of a multidisciplinary project team as a condition of funding and projects in both the public and private sectors are touted as collaboratives, as if this signifies either particular creativity, efficiency or both. Collaboration has been recognized as an appropriate and effective strategy for addressing some of the country’s most complicated and multidimensional problems, as well as for maximizing efficient use of available resources. But this does not mean that everyone who uses the term collaboration is actually doing it.

In some jurisdictions, holding interdisciplinary meetings to share information passes for collaboration. In others, signing a memorandum of understanding supporting another agency’s project is considered collaboration. But these activities fall short of the commitment, investment and vision necessary for true collaboration. Collaboration, according to David Chrislip and Carl Larson, two prominent experts in the field, “is a mutually beneficial relationship between two or more parties to

achieve common goals by sharing responsibility, authority and accountability for achieving results. It is more than sharing knowledge and information (communication) and more than a relationship that helps each party achieve its own goals (cooperation and coordination). The purpose of collaboration is to create a shared vision and joint strategies to address concerns that go beyond the purview of any particular party.⁵

In the context of the criminal and juvenile justice systems, there are many concerns that affect each organization or agency that “go beyond the purview of any particular party.” Collaboration makes change possible within the criminal and juvenile justice systems that would be otherwise impossible.

While definitions of collaboration can vary according to the particular context to which they are applied, all researchers in this field identify the need for a shared vision or common purpose to both motivate and structure the collaborative endeavor. Chris Huxham, for example, notes that when we collaborate, we exchange information, alter our activities, share resources and “enhance the capacity of another for the mutual benefit of all and to achieve a common purpose.”⁶ Collaborations may be built around values that are common to those working in a particular field. Many working in the justice system, for example, share a commitment to promoting “justice.” But as those working in the field of indigent defense know, justice means different things to different people. The shared vision or common purpose must be defined and articulated by those stakeholders that comprise the collaborative team to ensure buy-in and agreement. Each member must see the team’s purpose as larger than their individual interests, whatever those may be (reputation, revenue, publicity, personal satisfaction, etc.). Members need to believe that any member of the team can be trusted to advance that larger purpose.

Indeed, when Carl Larson and Frank LaFasto studied the work of teams from a diverse set of fields including business, sports, community development and public health in order to determine what makes teams succeed, the presence of a “clear and elevating goal” was the first and most important characteristic they identified.⁶ This goal provides motivation as well as direction and guidance. Interestingly, in order to be sufficiently inspiring, it needs to be something that is just out of reach, an ideal. It needs to elevate the work of the collaborative team above the mundane and the everyday and direct it toward the future. “A shared vision can provide a revolutionary reconception of future possibilities,” writes David Chrislip in *Collaborative Leadership* (2002).

“By providing a broader context for action, a shared vision allows people to break out of historic mind-sets. It shifts emphasis from the present to the future by redirecting energy toward positive, desirable outcomes rather than avoidance of negative, undesirable consequences.”

Note that, according to Larson and LaFasto, the goal must be both elevating and clear. In order to unite the purpose of the team, the vision must be fully and unambiguously understood by each team member.

Vision is therefore absolutely necessary to a successful team. But it is not sufficient. Other characteristics Larson and LaFasto discovered among the variety of successful teams included:

- A results-driven structure, a structure that best suits the

results the team is trying to achieve, whatever those may be

- Competent team members, individuals who possess both the substantive or technical skills and knowledge required to accomplish the tasks, as well as the personal attributes that make them good at working with others
- Unified commitment, an enthusiastic sense of loyalty and dedication to the team, fostered by active involvement
- A collaborative climate, one where honesty, openness, consistency and respect are prominent and trust is established and maintained
- Standards of excellence that create pressure on each team member to perform
- External support and recognition such that the team has sufficient resources to accomplish its goals
- Principled leadership establishes the vision, makes it compelling, creates change and unleashes the energy and talent of team members without over-involvement of the leader’s ego⁷

As Larson and LaFasto identify in their description of a “collaborative climate,” the presence of trust among team members is one of the hallmarks of a collaborative endeavor. We must trust that our teammates will respect our positions and our limits. We must trust that our discussions will be kept confidential; that conflict, whether of opinion or style, will be managed such that the team is better rather than worse off for having opened the conflict to scrutiny; and that team members will support each other publicly in the face of either success or failure along the project’s path. The level of trust required takes both time and effort to develop, but it is an essential prerequisite to any collaborative accomplishment.

Leadership is essential to the development of trust. A skilled collaborative leader will model the kind of interaction that should occur between all members. The leader of a collaborative needs to understand group dynamics and help create the kind of working atmosphere where defenses can be let down and honest exchange take place. Judge John West, Hamilton County, Ohio, describes the work of a policy team for which he served as co-chair as, in part, the creation and institutionalization of “a forum for the key players to listen, learn, discuss and resolve the most difficult and sensitive issues.”⁸ If any team member violates the group’s trust, or is acting in a way that will undermine trust if allowed to continue, the leader has the responsibility to address that behavior either in private or with the group, whichever the leader deems will be most effective. Ultimately, team members need to trust the leader will enforce standards of behavior as well as standards of performance. From there, team members can begin to hold each other accountable to the group’s standards, knowing the leader will support any team member’s legitimate efforts to do so.

Contributing to a climate of trust is easy, as is intentionally or unintentionally engaging in behaviors that will undermine trust. Part of the challenge for all criminal and juvenile justice professionals is simply workload and limited time, but in order for team members to build trust, they must make a

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genuine commitment. For a collaboration to work, team members need to commit to these basic practices:

- Showing up on time and giving their full attention
- Showing up consistently. When members make an effort to be present, others understand that as a demonstration of commitment, and are more willing to make the commitment themselves
- Adhering to whatever ground rules or standards are established by the group and, if none are articulated, setting their own high standards
- Being prepared, participating and being willing to be held accountable. If there is a group assignment (such as reading a report) or if someone agrees to perform a specific task for the group, they should do it
- Being aware of body language, not allowing posture or facial expressions to communicate a lack of interest or lack of respect for another team member's contributions. Listen actively and make an effort to understand what others are trying to say before responding

These basic practices are fundamental to all kinds of group work, but are especially important when working in collaboration with others. Successful collaboration requires trust and these practices help to build a climate of trust so that effective collaborative work can take place.

Challenges and Benefits of Collaboration

For many in the defense community, the challenge of collaboration is simply being invited to the table. Not everyone recognizes the importance of having all stakeholders represented in policy discussions, even or especially those who are likely to disagree with the majority view. Often, the role of the public defender in criminal justice policy making can feel like damage control, preventing bad policy from being implemented. But as former Maricopa County (Arizona) Public Defender Dean Trebesch points out, "If we weren't there to discuss it, it wouldn't get discussed." Clients need the voice of the defender community to inform criminal justice policy, as do the other criminal justice policymakers. Effective collaborations recognize that dissent is essential to the policy making process, and that diversity serves everyone's interests. Research demonstrates, writes James Surowiecki in *The Wisdom of Crowds*, "that the simple fact of making a group diverse makes it better at problem solving ... a large group of diverse individuals will ... make more intelligent decisions than even the most skilled 'decision maker.'¹⁰

For others in the defender community, though, the challenge is in being at the table. They find it difficult to reach consensus with those whose jobs seem to involve streamlining the process of convicting and sentencing their clients. They dislike being perceived as obstructionist rather than being recognized for their role in preserving the integrity of the Constitution. They also fear talking too much to prosecutors or judges, believing, perhaps, to do so is to let down their guard and not serve clients as well. But as Trebesch has also argued, "we're all part of the process and if we stay on the sidelines, that's not going to necessarily serve our clients' best interests."

Whether challenging proposals that do not sufficiently safeguard client interests, or making proposals that would ensure better representation or the likelihood of better long-term outcomes for clients and defenders can and should play a significant role in efforts to change policies and practices.

Working Together

Once a group has decided to come together across agencies and disciplines to try to solve problems facing the criminal and/or juvenile justice system, the difficult work begins. When teams come together, the work they do consists of both task functions and process functions. Task functions include those that directly address the substantive topic at hand, such as collecting data on the number and types of offenders coming through the system, or discussing the use of a particular type of intermediate sanction and under what circumstances it might be applied. Process functions include those that address how the team is going to do its work together. Process functions include setting a schedule of meetings, articulating a confidentiality policy for the group, as well as setting up ground rules for team meetings, and articulating the vision and mission that will guide the team's work. Both task and process functions are necessary for teams to be successful, but most teams are both more familiar and more comfortable with task functions. Indeed, process functions can make some team members very uncomfortable since many criminal justice professionals are "doers," who have achieved success in their fields because they are confident, decisive and action-oriented.

What many "doers" miss is that actions are most effective when the goals are clear. If a team does not dedicate time to establishing a shared vision and mission, then an action (which a particular individual might consider effective) may not get the team any closer to its goals, since each team member may have a different idea of what those goals should be. Larson and LaFasto, whose book *TeamWork: What Must Go Right, What Can Go Wrong* (1989) documents the factors that contribute to successful teams, point out that "whenever an ineffectively functioning team was identified and described, the explanation for the team's ineffectiveness involved, in one sense or another, the goal."¹¹ Similarly, if time is not dedicated to articulating roles and responsibilities of team members, accountability will be impossible and low standards will dominate. Getting a team ready to collaborate on substance does not require that all task functions be set aside. In fact, incremental progress on task is essential to building team momentum and securing commitment. But it does mean that time is also dedicated to the process of effective collaboration.

One way for teams to improve their likelihood of success, then, is to commit to at least a limited set of process activities. These include:

- Setting ground rules for meetings and member participation, reviewing them regularly and using them to hold each other accountable
- Creating vision and mission statements and using them to ensure that activities of the group stay on track
- Discussing roles and responsibilities of each team member so that each person knows what is expected of him or her,

and what he or she can expect of others

- Setting concrete, measurable goals with timelines and assignments

- This limited set of activities will help to ensure some of what tends to remain unspoken when groups work together is instead articulated and used to further the purpose of the group

Collaborative Justice

In recognition of the need for support in jurisdictions across the country where collaborations are being developed by necessity or by funding requirements (or both), the State Justice Institute (SJI) and the Center for Effective Public Policy (the Center) developed a website, www.collaborative-justice.org, to contain several products dedicated to supporting collaboration in the criminal and juvenile justice systems. Products on the Web site include a training curriculum for a multi-day workshop to enhance the effectiveness of criminal justice teams (Collaboration: A Training Curriculum to Enhance the Effectiveness of Criminal Justice Teams). The curriculum includes nine modules addressing such issues as values, vision, problem identification and mission, group dynamics, and roles and responsibilities of team members. It also includes an experiential learning exercise that gives teams a new and vital perspective on themselves and their work together. The curriculum has been piloted successfully with hundreds of teams from around the country, including reentry policy projects, sex offender management teams, drug courts, juvenile justice enhancement teams, domestic violence coordinating councils and others. Attendees, including judges, prosecutors, defenders and corrections professionals have called the workshops “inspirational” and “extremely effective.”¹²

Monographs on the Collaborative Justice Web site cover a number of topics of importance to teams. These include effective facilitation (The Role of Facilitators and Staff in Supporting Collaborative Teams), leadership (The Importance of Collaborative Leadership in Achieving Effective Criminal Justice Outcomes) and information-based system planning (The Use of Data and Information to Guide Collaborative Decisionmaking). Other products include several in-depth case studies from jurisdictions that sought assistance from SJI and the Center in improving and sustaining their collaborative efforts and an article addressing the growth of collaboration in criminal justice contexts (The Emergence of Collaboration as the Preferred Approach in Criminal Justice). These resources are unique insofar as they address the particular benefits and challenges specifically for criminal justice professionals who are attempting to use collaborative approaches to problem-solving in their jurisdictions.

Choosing to Collaborate

In 1999, the U.S. Department of Justice held a National Symposium on Indigent Defense, which focused on the importance of collaboration. The symposium report identified unifying themes of the meeting, among which was “the challenge of reconciling adversarial defense skills with the imperative of collaboration in a complex, increasingly interconnected system.”¹³ The benefits of meeting this challenge are both immediate and long lasting. Edwin Burnette, public defender for Cook County (Chicago), Illinois, explains that, by participating in a collaborative system change effort to increase options

for women offenders, “we have established friends in other agencies that still believe in our effort and take every opportunity to support each other when that issue (and others) arises. The after effects may be of more long term good for the system than the changes that were institutionalized.”¹⁴ In addition to substantive knowledge about rights, criminal procedure, and the law, a good defender brings to the table a commitment to the process of collaboration and the knowledge of how to assist collaborative efforts to succeed. While some defenders will always feel that working in partnership with prosecutors, judges, administrators, law enforcement officers and others from within the system represents a compromise of values, others will recognize that participating in criminal and juvenile justice system collaborations represents an opportunity to bring the voice of the accused to the policymaking table.

Resources

In addition to the resources found on www.collaborative-justice.org, the following resources are available to assist criminal and juvenile justice teams with their collaborative work:

- David Chrislip and Carl Larson (1994). *Collaborative Leadership: How Citizens and Civic Leaders Can Make a Difference*. San Francisco: JosseyBass.

- Frank LaFasto and Carl Larson (2001). *When Teams Work Best: 6,000 Team Members and Leaders Tell What It Takes to Succeed*. Thousand Oaks, CA: Sage Publications.

- Frank LaFasto and Carl Larson (1989). *TeamWork: What Must Go Right, What Can Go Wrong*. Thousand Oaks, CA: Sage Publications.

- David Straus (2002). *How to Make Collaboration Work: Powerful Ways to Build Consensus, Solve Problems, and Make Decisions*

Postscript

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¹Clarke, Community Defenders in the 21st Century: Building on a Tradition of Problem-Solving for Clients, Families and Needy Communities, UNITED STATES ATTORNEYS' BULLETIN, January 2001, 20-29.

²Beane, Strengthening Alliances Between Public Defenders and the Private Bar: The Practical Value of Collaboration, CORNERSTONE 26 (4) 2004-2005, pp 1 seq.

³Works, Reentry – The Tie that Binds Civil Legal Aid Attorneys and Public Defenders, CLEARINGHOUSE REVIEW JOURNAL OF POVERTY LAW AND POLICY, Sept-Oct. 2003, 328-338.

⁴Chrislip and Larson, COLLABORATIVE LEADERSHIP 5, (1994): 42.

⁵Huxham, CREATING COLLABORATIVE ADVANTAGE 28 (London: SAGE Publications, 1996).

⁶Larson and LaFasto, TEAMWORK, (California: SAGE Publications, 1989).

⁷Ibid.

⁸Cited in Judy Berman (2005). Systemic Criminal Justice Planning: Improving Responses to Women Offenders in Hamilton County, Ohio. National Institute of Corrections Gender Responsive Strategies for Women Offenders Bulletin Series, December 2005. Washington, DC: National Institute of Corrections. NIC Accession Number 020872.

⁹Center for Effective Public Policy, A VIDEO SEMINAR FOR JUDGES: IMPLEMENTING EFFECTIVE SENTENCING STRATEGIES FOR SEX OFFENDERS (2000).

¹⁰James Surowiecki, THE WISDOM OF CROWDS (New York: Anchor Books, 2004) pp 30, 32.

¹¹TEAMWORK, 27, original emphasis.

¹²Evaluations, First Annual Collaboration Institute, Washington, DC, December 2005.

¹³Improving Criminal Justice Systems Through Expanded Strategies and Innovative Collaborations: Report of the National Symposium on Indigent Defense, February 1999. Washington, DC: US Department of Justice, xi.

¹⁴Edwin Burnette, Personal Communication, December 27, 2005.