Arizona Supreme Court
Judicial Ethics Advisory Committee

ADVISORY OPINION 03-08
(December 17, 2003)

Participation in Law Enforcement Training Programs and Criminal Law Seminars

Issues

1. May a judge participate in a program to train law enforcement officers on how to prepare valid search warrants?

   Answer: No.

2. May a judge participate in a program to teach law enforcement officers on general legal topics such as search and seizure law?

   Answer: Yes, with strong reservations.

3. May a judge participate in a specialized program designed to teach prosecutors on "the care and feeding of a superior court judge?"

   Answer: Yes, with qualifications.

4. May a judge participate in a state bar conference on search and seizure law that is open to prosecutors and defense counsel alike?

   Answer: Yes.

5. May a judge attend a judicial conference or bar-sponsored seminar that is taught by police personnel and prosecutors, or conversely, taught by defense counsel?

   Answer: Yes.

6. May a judge attend a law enforcement training program at which officers discuss or demonstrate new devices, technologies, or police procedures?

   Answer: No.

Facts

A judge (and former prosecutor) has been invited by the Drug Enforcement Administration to participate in a federally-funded training program for local law enforcement officers. The attendees are police officers from state and local agencies, e.g., Department of Public Safety, sheriff's department, and city police, who are new narcotics officers. The subjects would be search and seizure law and search warrant preparation. The presentation would focus on the content of and legal requirements for preparing a proper search warrant.

The judge is willing to speak on this subject to any group or organization, including prosecutors, defense attorneys, and various public service groups. One of the reasons the

judge wants to conduct this type of training for police officers is to prevent mistakes in the preparation of warrants, thus reducing the chance that a legally defective warrant might be approved by a judge who is awakened in the middle of the night to review it.

The additional issues addressed in this opinion were either raised by other judges and resolved in informal opinions or are logical extensions of the facts presented here.

Discussion

Issue 1

The canons provide some guidelines on when a judge may participate in an educational seminar as either presenter or participant. Under Canon 4B, "[a] judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of [the] code." *See* Op. 97-05; 94-16. "[A] judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including . . . improvement of criminal and juvenile justice." Commentary, Canon 4B. Therefore, "[t]o the extent that time permits, a judge is encouraged to do so, either independently or through a bar or judicial association, judicial conference or other organization dedicated to the improvement of the law." *Id*.

The extra-judicial activities permitted under Canon 4B, however, are subject to the code's requirements. *Id*. (permissive language "does not relieve a judge from the other requirements of the code that apply to the specific conduct"). Thus, a judge at all times must act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. Canons 1A, 2A, 2B, 4A(1), 4C(4). Judicial participation in training or teaching programs with law enforcement officers directly implicates these principles and therefore must be approached with great caution.

On the first issue, the judge would be training officers on issues relating to search warrants that are routinely attacked by criminal defendants whose charges arise from the execution of the warrant. The overriding concern is that a judge must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2A. Clearly, judges will put themselves in danger of being perceived as advocates for law enforcement if they embark upon a mission to train police officers on how to perform their duties. Additionally, were judges to do so, it would raise significant separation of powers issues. See generally Op. 99-02 ("there must be a separation between law enforcement and the judiciary in fact and in appearance"); Op. 96-15; *In re Walker*, 153 Ariz. 307, 736 P.2d 790 (1987).

Engaging in this type of training also would put judges in the position of possibly having to testify that they trained certain officers on how to prepare a legally valid search warrant and that the officer had, or had not, followed the training instructions. Judges might also find themselves in the position of hearing evidence on motions about search warrants from officers they had trained. The key in any training program is whether a judge's participation will make the judge appear less neutral or impartial. *See* Op. 94-16 (December 15, 1994) (a judge may speak and write about the problems with crime and violence, but such activities

must not cast doubt on judge's impartiality and must not interfere with or detract from the dignity of the judicial office).

Training police officers on how to prepare search warrants that will withstand judicial scrutiny gives rise to an appearance of the judge acting as an advocate for the state and, therefore, is impermissible. *See*, *e.g.*, N.Y. Adv. Op. 95-121 (September 21, 1995) (judge should not give seminar to police officers on how to successfully prosecute certain traffic cases because doing so would constitute advice to government on how to obtain convictions); Utah Adv. Op. 88-5 (September 15, 1988) (judge may not teach law enforcement officers about proper courtroom demeanor and testimony because such a course would be devoted to improvement of a single adversarial component rather than to improvement of the legal system generally); Va. Adv. Op. 01-4 (March 28, 2001) ("[T]o the extent the judge presents himself or herself as an advocate for a particular approach to criminal enforcement or appears to be 'coaching' police on how best to get convictions or otherwise causes himself or herself to be too closely identified with the police effort, the judge has crossed the line and placed into jeopardy the appearance of independence of the judiciary.").

This committee agrees with the judge that better training of officers should lead to fewer mistakes in the content and drafting of search warrants. But law enforcement agencies will not be left without a resource for training if judges are not available to conduct this training. Most police agencies are connected with a prosecutorial office that has attorneys who can conduct this training, and some larger police agencies have their own in-house counsel to advise and train them on such issues.

We also note that judges, especially in a smaller jurisdiction, will sometimes be called upon to answer questions by the police department on how to properly prepare a search warrant, how to testify in court, and generally how to conduct various law enforcement functions. A judge must remember in those situations the canons discussed above and ask whether the requested information is a "training" question, and if so, whether such training is better left to the prosecutors' office. Judges generally should refrain from giving instruction or advice on such "how to" topics.

Issue 2

Much of the discussion above also relates and applies to the second issue—whether judges may participate in programs to teach law enforcement officers on specific legal subjects such as search and seizure law. The Virginia Judicial Ethics Advisory Committee has concluded that a judge may teach about recent legal developments in a program for police officers, but with several qualifications. Va. Adv. Op. 01-4 (March 28, 2001). First, the lecturing or teaching must be done under circumstances which are clearly educational. Second, the presentation must give no appearance of the judge acting as an agent of the sponsoring law enforcement agency, advocating for particular police philosophies or prosecution tactics, or being biased in favor of the police in the courtroom. Third, any presentations must be limited rather than done on a frequent or regular basis so as to avoid risking the appearance of the judge being too closely associated with the police. Finally, the judge must make clear that his or her comments are not intended as advisory opinions or to commit the judge or any other judge to a particular legal position in a court proceeding.

We generally concur with the Virginia approach. The code does not clearly prohibit judges from teaching law enforcement officers on various areas of the law. Nonetheless, participation in such programs could give rise to an appearance of impropriety and potentially compromise judicial independence, integrity, and impartiality. *See* Wash. Adv. Op. 92-10 (August 26, 1992) ("The content of any speech or presentation and the response to questions at such seminars must be carefully structured to avoid giving the impression that the judge will do other than apply the law, or that the judge has a bias or predisposition toward any questions that the judge might be called upon to decide."). Therefore, we recognize not only the caveats discussed in the Virginia opinion but also some additional qualifications.

Before teaching law enforcement officers or anyone else on a legal topic, the judge must be specifically trained and qualified to address the particular subject. In addition, as noted earlier, the judge may not suggest how the law should be applied or used by law enforcement officers, how they should do their jobs, or how to succeed in the judge's court. And the judge must be willing and available to teach other interested groups on the same subject. In sum, because of the inherent dangers in a judge's teaching of law enforcement officers and the significant qualifications that apply to that, a judge must use great caution if he or she engages in any such activity.

Issue 3

Judges also have been asked to participate in seminars for a specialized group of attorneys on the "care and feeding" of judges by attorneys who appear in their court. When they choose to do so, judges must be careful to consider their presentation in this type of program, so that the information disseminated is limited to issues concerning the law, the legal system, and the administration of justice, rather than on how to gain an advantage in front of a particular judge. And the judge must be willing to provide this same information to any group that might ask the judge to do so.

Issues 4 and 5

Judges may attend or present at many educational seminars which are attended by attorneys who represent a wide variety of areas of law. As long as judges do not favor one group of lawyers over another, or appear to do so, they may participate in continuing education for lawyers, both as participants and presenters. *See generally* Op. 00-02; *see also* Fla. Adv. Op. 98-5 (April 20, 1998) (judge may attend educational program designed for and attended by criminal defense attorneys).

Sometimes judges attend seminars in which police officers present information to judges and others on various law enforcement topics. That situation is distinguishable from the first scenario, in that police officers are merely presenting information to judges. They are not instructing or training judges on how to prepare documents that will withstand legal scrutiny, how to view or treat certain evidence, how to handle cases, or how to perform their jobs. Nonetheless, a judge might preside over cases that involve issues or evidence of the type discussed at a seminar the judge attended (for example, operation of a radar instrument).

Judges in that position must rule on the case based on the evidence introduced at trial and, for example, cannot consider any information about radar guns they might have learned from law enforcement at a seminar.

Issue 6

Finally, judges should not attend seminars or training programs sponsored by or presented at a law enforcement agency in which officers might discuss new devices, technologies, or police procedures. To do so would unduly blur the line between judicial and law enforcement activities. It would impair if not directly contravene the fundamental principles of judicial independence, integrity, and impartiality. *See* N.Y. Adv. Op. 94-31 (March 10, 1994) ("It is unethical for judges to attend 'training sessions' sponsored by a law enforcement agency if the purpose is 'to maximize enforcement."). And that is particularly so when the program is not open to all interested parties in the criminal law arena, such as defense counsel or investigators, but rather is limited to police officers and prosecutors.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 1A, 2A, 2B, 4A(1), 4B and 4C(4) (1993).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions 00-02 (reissued March 8, 2001); 99-02 (July 2, 1999); 97-05 (May 12, 1997); 96-15 (Dec. 4, 1996); 94-16 (Dec.15, 1994).

In re Walker, 153 Ariz. 307, 736 P.2d 790 (1987).

Florida Committee on Standards of Conduct Governing Judges, Opinion 98-5 (April 20, 1998).

New York Advisory Committee on Judicial Ethics, Opinions 95-121 (Sept. 21, 1995); 94-31 (March 10, 1994).

Utah Ethics Advisory Committee, Opinion 88-5.

Virginia Judicial Ethics Advisory Committee, Opinion 01-4 (March 28, 2001).

Washington State Ethics Advisory Committee, Opinion 92-10 (Aug. 26, 1992).