

INTRODUCTION

A New Approach to Justice

This book is about a quiet revolution among American criminal courts. In some respects, the fact that change is happening within the judicial branch should come as little surprise. After all, no civic institution has experienced a greater loss of public faith in recent years, even in the face of historic reductions in crime in many parts of the country. Public opinion polls consistently reveal frustration with “revolving-door justice”—the perception that criminal courts recycle offenders through the system. The list of complaints is long: courts are too slow, judges are out of touch, the needs of victims are ignored, and offenders continue to commit the same crimes again and again.

In response, an innovative group of judges and attorneys has begun to test new ways of doing justice, reengineering how courts address such everyday problems as quality-of-life crime, drugs, and domestic violence. These innovators are united by the common belief that courts need to reassert their relevance in society and that judges and attorneys have an obligation to address the problems that bring people to court, whether as victims, defendants, or simply concerned citizens.

This book is an attempt to describe the history, objectives, and achievements of a national movement toward “problem-solving justice” that, in just a little more than a decade, has moved from a handful of isolated projects to the brink of achieving real and lasting change within the judiciary.

For too long, American courts have taken a one-size-fits-all approach to criminal cases. No matter what kind of case—murder or misdemeanor—the courts offered the same basic process: an adversarial contest between two advocates moderated by an impartial third party. This system, at least in theory, offers the comfort of uniformity, fairness, and neutrality. And in many cases, the current system works just fine. For murders, rapes, and robberies, it can be argued that the traditional approach does a more-or-less effective job of protecting both public safety and the rights of defendants. But these crimes represent just a tiny fraction of the caseload of state courts, which each year are asked to resolve millions of cases involving minor offenses (such as prostitution, low-level drug possession, and disorderly conduct) that are committed by offenders with a range of serious social problems (including mental illness, addiction, and homelessness). While these cases may be “minor” in a legal sense, they are anything but to the victims and the communities directly affected by crime. And when the same process that works for murderers and rapists is applied to shoplifters, prostitutes, and petty drug offenders, the result, all too often, is the kind of homogenized, assembly-line justice that leaves all parties dissatisfied.

In contrast, hundreds of entrepreneurial, reform-minded judges, attorneys, and administrators working in every state in the nation have come to believe that cases cannot be treated as an undifferentiated mass, regardless of the nature or complexity of the issue at hand. Problem-solving justice is an umbrella term that describes a wide range of

specialized courtrooms that are working to ensure not just that the punishment fits the crime (as courts have always tried to do, with varying degrees of success) but that the process fits the problem. These innovative courts encourage judges and attorneys to think of themselves as problem solvers rather than as simply case processors.

For problem-solving judges and attorneys, a case is a problem to be solved, not just a matter to be adjudicated. Moreover, instead of seeing each case as an isolated incident, judges and attorneys in problem-solving courts analyze the cases in front of them for patterns and then fashion responses that seek to change the behavior of offenders, enhance the safety of victims, and improve the quality of life in our communities.

Broadly speaking, there are five key elements to the problem-solving reform agenda:

- *A Tailored Approach to Justice.* A problem-solving court disaggregates the criminal caseload, making sure that judicial resources match the special needs of each case. This is not unlike the “small is better” movement in education, which seeks to break large schools into smaller, more manageable units with specialized themes. Another analogue is the movement toward problem-oriented policing, which requires police officers to analyze crime patterns and then fashion tailor-made responses instead of simply responding to calls for service.
- *Creative Partnerships.* Problem-solving courts welcome new players into the courthouse. They aggressively reach out to neighborhoods to educate community groups and find new ways for citizens to get involved in the judicial process. They also seek to integrate social services—including drug-treatment providers, job-training programs, victim-support groups, and others—into their standard operating procedures. The idea is to give judges and attorneys access to a broader

range of sentencing options. By mandating offenders to receive drug treatment or mental-health counseling or job training or community service, problem-solving courts seek to reduce the criminal justice system's reliance on incarceration, probation, and dispositions that allow offenders to leave court with no sanction whatsoever for criminal behavior.

- *Informed Decision Making.* Problem-solving courts seek to provide judges and attorneys with more information about the cases in front of them, including psychosocial information about offenders and data about the impact of crimes on particular neighborhoods. Shouldn't district attorneys who prosecute domestic violence cases understand the unique dynamics of intimate abuse? Shouldn't a defense attorney who represents clients with substance-abuse problems know something about pharmacology and the recovery process? And shouldn't judges who hear cases from a particular neighborhood understand the crime patterns and hot spots in that community? Problem-solving courts ensure that they do, providing both continuity in the courtroom and enhanced expertise in the issue at hand, be it domestic violence, addiction, or neighborhood crime.
- *Accountability.* Problem-solving courts make aggressive use of judicial monitoring. Instead of diverting offenders out of the system or giving them a get-out-of-jail-free card, problem-solving judges rigorously supervise offenders' performance in social services and community restitution projects. Requiring regular court appearances by offenders reinforces the importance of complying with court orders. It also sends a message to the rest of the system (police, probation, prosecutors, social-service providers, and others) and to the public at large that the courts mean business.
- *A Focus on Results.* Problem-solving justice asks courts to use data to assess their own effectiveness, moving beyond simply

tracking how many cases are handled (and how quickly they are processed) to ask hard questions about the impacts of case processing on victims, offenders, and communities. This includes documenting the safety of victims, the number of offenders who are re-arrested, and local perceptions of neighborhood quality of life.

By one estimate, there are no fewer than eleven different kinds of problem-solving courts.¹ For the purposes of this book, we will focus on the three most well developed examples: community courts, domestic-violence courts, and drug courts.

Community courts are neighborhood-focused courtrooms that attempt to tackle the problems of specific, crime-riddled communities, bringing criminal justice officials and local residents together to improve public safety. Most community courts focus on low-level criminal cases—so-called “quality-of-life” crimes like drug possession, prostitution, and vandalism. Offenders are typically sentenced to a combination of punishment and help, including community service to pay back the neighborhood and social services geared toward preventing them from having to return to court again. At the same time, community courts reach out aggressively to local residents, community groups, and businesses, asking them to play a number of roles, including sitting on advisory boards, identifying community-service projects, and meeting face-to-face with offenders to explain the impact of chronic low-level offending.

While community courts typically handle minor criminal cases, domestic-violence courts exclusively handle serious cases involving intimate abuse, a problem that for centuries received scant (and some would say hostile) attention from the criminal justice system. Here, the goal is to provide victims with extensive services—counseling, shelter,

advocacy—aimed at preventing further abuse at the hands of their batterers. At the same time, domestic-violence courts strengthen the supervision of defendants, requiring them to participate in batterers' intervention programs and to report to the judge about their compliance with restraining orders while a case is pending.

The most popular brand of problem-solving court is undoubtedly the drug court. Drug courts seek to help addicted offenders achieve sobriety by mandating community-based drug treatment as an alternative to incarceration. Eligibility criteria are established by the judge, prosecutor, and defense attorney. Typically, participants must be addicted (as opposed to recreational users), nonviolent, and must voluntarily agree to a formal plan that details both the length of treatment and the consequences for failure. In most cases, successful participants can avoid jail time by completing treatment. The drug-court judge, who receives special training in how to respond effectively to relapse, establishes accountability by requiring frequent reports and drug tests.

While drug courts, domestic-violence courts, and community courts have received the lion's share of attention to date, they represent just the tip of the iceberg; other problem-solving courts currently being tested include mental-health courts, reentry courts, juvenile drug courts, DWI courts, family-treatment courts, homeless courts, and youth courts.

What does a problem-solving court look like in practice? Take a typical case involving an offender convicted of felony possession of drugs. In most such cases, the offender is not a big-time dealer with a violent history, but rather a hard-core, nonviolent addict caught feeding his habit. How should the courts respond? Many judges are coming to realize that none of the standard choices at their disposal—jail, probation, or dismissal—truly offers a viable, long-term resolution to the

case. If you don't tackle the offender's addiction, you haven't really solved the problem—either for the community or for the offender.

In a problem-solving drug court, addressing addiction isn't an afterthought—it's the heart of the matter. After an offender opts into the program, all of the major players in the courtroom—judge, prosecutor, and defense attorney—explicitly acknowledge that the goal is to change his behavior, moving him from addiction to sobriety and from a life of crime to law-abiding behavior.

In pursuit of this goal, the judge uses a broad array of tools, including drug treatment, mental-health counseling, job training, and community-restitution projects. And to ensure accountability, the judge requires offenders to return to court frequently (sometimes weekly)—to report on their progress in treatment, to submit urine tests, and to demonstrate their compliance with court orders. Success in treatment is publicly acknowledged by the judge, sometimes with applause in the courtroom. Graduates typically have the charges against them dropped, while those who fail receive a predetermined jail or prison sentence, no questions asked.

This carrot-and-stick approach has successfully motivated thousands of offenders to get clean and lead productive (and tax-paying) lives. Everybody wins when this happens: the offender because he breaks the cycle of drugs-crime-jail; the court because it no longer has to spend scarce resources on the same offender again and again; and most importantly, the general public wins, because its streets are safer.

Since the opening of the nation's first drug court in Miami-Dade County, Florida, in 1989, problem-solving justice has become an increasingly standard feature of the judicial landscape in the United States. There are now more than 2,000 problem-solving courts.² Every state has at least one.

All fifty state-court chief justices have endorsed the further expansion of problem-solving justice, as has the American Bar Association. The interest in problem-solving justice is not confined to the United States. Tony Blair's government has moved to introduce drug courts, community courts, and domestic-violence courts in England and Wales. Problem-solving courts are also being tested or planned in South Africa, Canada, Scotland, New Zealand, Australia, Ireland, Bermuda, Jamaica, and other countries.

Problem-solving courts are not without their critics. Inside the courtroom, problem-solving courts have asked judges and attorneys to alter their behavior in ways both profound and subtle. This includes welcoming new players into the process, monitoring the provision of social services, and focusing the energies of the court on addressing the problems of victims, communities, and defendants. These changes have raised concerns about judicial paternalism, reduced adversarialism, and the appropriate limits of judicial authority.

Outside the courthouse walls, problem-solving courts have asked judges to establish relationships with community groups, to broker relations with government and non-profit agencies, and to think through the real-life impacts of their decisions. As judges have performed this work, they have called into question the independence and neutrality of the judiciary and even the separation-of-powers doctrine.

These concerns—some serious, some minor; some real, some imagined—must be weighed against the tangible benefits of problem-solving courts. Among other things, problem-solving courts have demonstrated the ability to increase judicial access to information, improve the accountability of both offenders and service providers, satisfy communities, and bring new resources into the courthouse. More than this, problem-solving courts have established a solid

track record in changing the life trajectories of victims, offenders, and community residents in crime-plagued neighborhoods. Researchers have documented the following results at problem-solving courts across the country³:

- *Reduced Substance Abuse*: Research shows that offenders in court-ordered drug treatment succeed at twice the rate of those who seek help voluntarily.
- *Reduced Recidivism*: Graduates of New York drug courts reoffend at a rate that is 71 percent lower than offenders who go through conventional courts.
- *Reductions in Crime*: A study of New York's Midtown Community Court revealed that it helped reduce street prostitution by 56 percent and illegal vending by 24 percent.
- *Increased Accountability*: The Midtown Community Court also improved compliance with community-service sentences by 50 percent.
- *Enhanced Victim Services*: While victim services in conventional courts tend to be a haphazard affair, researchers documented that nearly every victim who appeared in a domestic-violence court in Brooklyn was offered access to shelter, advocacy, and other vital supports. In a study of a domestic-violence court in Tennessee, 76 percent of victims said the court's handling of their case helped them feel safe.
- *Stronger Families*: By helping addicted parents achieve sobriety, drug courts can dramatically shorten the length of time children spend in foster care. A drug court in Manhattan reduced foster-care stays from an average of four years to less than twelve months.
- *Improved Public Confidence in Justice*: Approval ratings for criminal justice agencies have more than doubled in Red Hook, Brooklyn, since the opening of a community court in that neighborhood. Levels of fear have been reduced dramatically.

Despite these kinds of results, there has been surprisingly little reflection about problem-solving innovation to date. With this book, we hope to provide a theoretical and historical framework for problem-solving justice, describing what it is, where it came from, and where it may be headed. Chapter 1 takes a hard look at the current state of American criminal courts. Chapter 2 describes the problem-solving alternative and explores the intellectual foundations of this new movement. Chapter 3 offers a snapshot of several problem-solving courts in action, providing case studies of community courts in Portland, Oregon, and New York City. Chapter 4 takes a look at how problem-solving justice affects the work of judges, with a particular focus on issues of judicial discretion, neutrality, impartiality, and independence. Chapter 5 tells the stories of several individuals who have had their lives changed by problem-solving courts, including a victim and several offenders. Chapters 6 and 7 examine the issues of effectiveness and fairness, detailing the results that problem-solving courts have achieved and the principal criticisms they have generated. We conclude by offering some thoughts about future applications of the problem-solving approach.

Along the way, we make the case that problem solving is not antithetical to the American legal tradition, but rather an embodiment of some of its highest principles. As New York State Chief Judge Judith S. Kaye has written: “Problem-solving courts are courts. They strive to ensure due process, to engage in neutral fact-finding, and to dispense fair and impartial justice. What is different is that these courts have developed a new architecture—including new technology, new staffing and new linkages—to improve the effectiveness of court sanctions like drug treatment and community restitution.”⁴ Problem-solving courts are simply good courts.

There is little doubt that problem-solving justice will require state courts to make significant investments in research, technology, training, and social-service provision.⁵ But the costs of *not* pursuing problem-solving justice are far greater: victims whose needs go unaddressed, offenders who continue to commit crime after crime, and the continued erosion of public trust in justice. Indeed, the evidence suggests that an up-front investment in problem-solving justice reaps significant dividends on the back end—one Oregon study suggests that every dollar spent on drug courts yields ten dollars in cost savings from reduced incarceration, victimization, and crime.⁶

With this in mind, the pages that follow make the case for problem-solving justice, offering a glimpse of what may well turn out to be the future of the American judiciary.