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Problem-Solving Courts

A Brief Primer

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A Brief Primer

Introduction

The past decade has been a fertile one for court reform. All across the country, courts — in concert with both government and community partners — have been experimenting with new ways to deliver justice. This wave of innovation goes by many names and takes many forms. Domestic violence court in Massachusetts. Drug court in Florida. Mental health court in Washington. Community court in New York. Each of these specialized courts targets different kinds of concerns in different kinds of places. And yet they all share a basic organizing theme — a desire to make courts more problem-solving and to improve the kinds of results that courts achieve for victims, litigants, defendants and communities.

"Problem-solving courts" are still very much a work in progress. As yet, there is no clearly articulated definition or philosophy that unites all of those who espouse or practice problem-solving justice. Viewed in the aggregate, however, it is possible to identify several common elements that distinguish problem-solving courts from the way that cases are typically handled in today's state courts. Problem-solving courts use their authority to forge new responses to chronic social, human and legal problems — including problems like family dysfunction, addiction, delinquency and domestic violence — that have proven resistant to conventional solutions. They seek to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to changing the future behavior of litigants and ensuring the well-being of communities. And they attempt to fix broken systems, making courts (and their partners) more accountable and responsive to their primary customers — the citizens who use courts every day, either as victims, jurors, witnesses, litigants or defendants.

The proliferation of problem-solving courts raises some important questions. Why now? What forces have sparked judges and attorneys across the country to innovate? What results have problem-solving courts achieved? And what — if any — trade-offs have been made to accomplish these results?

This essay is an attempt to begin to answer these questions. It traces the history of problem-solving courts, outlines a basic set of problem-solving principles and poses a set of questions that are worthy of further study as problem-solving courts move from experiment to institutionalization.

The Rise of Problem-Solving Courts

Although Professor William Nelson of New York University Law School has argued that the roots of problem-solving courts may stretch back to the 18th century, the more immediate antecedent of this recent wave of judicial experimentation is the opening of the first "drug court" in Dade County, Florida in 1989 (Berman 2000). In an effort to address the problem of drug-fueled criminal recidivism, the Dade County court sentences addicted defendants to long-term, judicially-supervised drug treatment instead of incarceration. Participation in treatment is closely monitored by the drug court judge, who responds to progress or failure with a system of graduated rewards and sanctions, including short-term jail sentences. If a participant successfully completes treatment, the judge will reduce the charges or dismiss the case.

The results of the Dade County experiment have attracted national attention — and for good reason. A study by the National Institute of Justice revealed that Dade County drug court defendants had fewer re-arrests than comparable non-drug court defendants (U.S. Department of Justice 1993). Based on these kinds of results, drug courts have become an increasingly standard feature of the judicial landscape across the country (Feinblatt, Berman and Fox 2000). At last count, there were 500 drug courts nationwide, including one in operation or being planned in every state. An additional 281 are in the planning stages (Drug Court Clearinghouse and Technical Assistance Project 2000). In addition, several states, including New York and California, have begun to look at how some of the principles of drug courts might be institutionalized throughout a state court system (New York State Commission on Drugs and the Courts 2000).

Much of this activity (though by no means all) has been aided by federal funding decisions. In enacting the 1994 Crime Act, Congress authorized the Attorney General to make grants to establish drug courts across the country. (The office charged with administering these grants, the U.S. Department of Justice's Drug Courts Program Office, distributed $50 million in fiscal year 2000.)

This wave of judicial innovation has not been confined to drugs. In the years since the opening of the Dade County drug court, dozens of other specialized, problem-solving courts have been developed to test new approaches to difficult cases and to improve both case outcomes for parties and systemic outcomes for the community at large (Feinblatt, Berman and Denckla 2001). One example is the Midtown Community Court, which was launched in New York City in 1993. The Midtown Court targets misdemeanor "quality-of-life" crimes (prostitution, shoplifting, low-level drug possession, etc.) committed in and around Times Square. Low-level offenders are sentenced to perform community restitution — sweeping the streets, painting over graffiti, cleaning local parks — in an effort to "pay back" the community they have harmed through their criminal behavior (Feinblatt, Berman and Sviridoff 1998). The Court also mandates offenders to receive on-site social services, including health care, drug treatment and job training, in an effort to address the underlying problems that often lead to crime. At the same time, the Court has tested a variety of new mechanisms for engaging the local community in the criminal justice process,

including advisory boards, community mediation, victim-offender impact panels and townhall meetings.

In Midtown's wake have come eleven replications. An additional two dozen community courts are in the works (Lee 2000). This replication has taken place in jurisdictions big and small, rich and poor. And it has been driven by a variety of different players, including judges, prosecutors, community advocates and business leaders. As community courts have proliferated, so too have community court models. The next generation of community court innovators has not been content to simply replicate the Midtown Community Court. Rather, they have sought to push the model in new directions. This includes Portland, Oregon, which has created community courts throughout the city, in many instances holding court sessions at local community centers. It also includes Memphis, Tennessee, which is targeting problems related to neglected and abandoned property (Feinblatt and Berman 2001). As with drug courts, the U.S. Department of Justice has played a key role in community court replication, providing seed money to a number of jurisdictions and providing technical assistance and advice to dozens of others.

Similar stories can be told about the birth and expansion of domestic violence courts, mental health courts and others: an initial innovation seeks to address a recurring problem within the courts, attracts the attention of the press, elected officials and funders, and is quickly followed by a wave of replications.

Why Now?

What's going on here? Why are judges, attorneys and court administrators all over the country experimenting with new ways of doing business? A number of social and historical forces have helped set the stage for problem-solving innovation (Berman 2000). These include:

- Breakdowns among the kinds of social and community institutions (including families and churches) that have traditionally addressed problems like addiction, mental illness, quality-of-life crime and domestic violence.
- The struggles of other government efforts, whether legislative or executive, to address these problems. This includes the difficulties that probation and parole departments have faced in linking offenders to services and effectively monitoring their compliance.
- A surge in the nation's incarcerated population and the resulting prison overcrowding, which has forced many policymakers to re-think their approach to crime.
- Trends emphasizing the accountability of public institutions, along with technological innovations that have facilitated the documentation and analysis of court outcomes.
- Advances in the quality and availability of therapeutic interventions, which have given many within the criminal justice system greater confidence in using certain forms of treatment (particularly drug treatment) in an effort to solve defendants' underlying problems.

- Shifts in public policies and priorities — for example, the way the "broken windows" theory has altered perceptions of the importance of low-level crime or the way that the feminist movement has increased awareness about domestic violence.

But perhaps the most important forces that have contributed to the development of problem-solving courts are rising caseloads and increasing frustration — both among the public and among system players — with the standard approach to case processing and case outcomes in state courts.

In recent years, many state court systems have been inundated with growing caseloads. And in the eyes of many judges, attorneys and court administrators, much of this growth has been driven by the intersection of social, human and legal problems, including domestic violence, addiction and chronic low-level offending. From 1984 to 1997, for example, the number of domestic violence cases in state courts increased by seventy-seven percent (Rottman 1999). National research also suggests that as many as three out of every four defendants in major cities test positive for drugs at the time of arrest (National Institute of Justice 1998). Many jurisdictions have also experienced an explosion in quality-of-life crime. In New York City, for example, over the past decade the number of misdemeanor cases has increased by eighty-five percent (Rohde 1999).

The sheer volume of cases has placed enormous pressure on judges and attorneys to process cases as quickly as possible, with little regard to the problems of victims, communities or defendants. This has led many — victims, police officers, journalists and even judges and attorneys — to conclude that many front-line state courts are practicing "revolving door" justice. As New York State Chief Judge Judith S. Kaye has written:

> In many of today's cases, the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street. The battered wife obtains a protective order, goes home and is beaten again. Every legal right of the litigants is protected, all procedures followed, yet we aren't making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts (Kaye 1999).

Chief Judge Kaye is hardly alone in her analysis; a sense of growing frustration with 'business as usual' in the state courts can be felt among the general public, among judges and among attorneys.

Public Public frustration gets expressed in many ways, most notably in declining confidence in the criminal justice system (and those who work within it) and increasing fear of crime (even as crime rates across the country fall). Michael Schrunk, the district attorney in Portland, Oregon, has said that his endorsement of problem-solv-

ing courts grows out of a concern about the gaps between communities and the justice system. According to Schrunk, "It's all well and good for us to read about the Microsoft trial or the O.J. Simpson trial, but that's a very, very small percentage of what goes on in the world of our constituents. I strongly believe we've got to work on public credibility, because a lot of citizens, quite frankly, they don't think judges are relevant" (Berman 2000).

Judges Many state court judges have reported that the pressure of processing hundreds of cases each day has transformed their courtrooms into "plea bargain mills," which place the highest value on disposing of the maximum number of cases in the minimum amount of time (Kaye 1999). Additionally, they bemoan their lack of tools – both information and sentencing options — for responding to the complexities of drug addiction, mental illness and domestic violence cases. Chief Justice Kathleen Blatz of Minnesota neatly summarized the feelings of many judges: "Judges are very frustrated. ... The innovation that we're seeing now is a result of judges processing cases like a vegetable factory. Instead of cans of peas, you've got cases. You just move 'em, move 'em, move 'em. One of my colleagues on the bench said, 'You know, I feel like I work for McJustice: we sure aren't good for you, but we are fast" (Berman 2000).

Attorneys In recent years, many attorneys have begun to take a closer look at the roles they play and the outcomes they achieve. In addition to problem-solving courts, this examination has led some to advocate for new forms of lawyering, including calls for "therapeutic jurisprudence," "public safety lawyering," "client-centered counseling" and others. What all of these new approaches share is an understanding that lawyers need to employ new sets of tools — in many cases outside of the traditional adversarial model — to effectively represent the interests of their clients. According to Patrick McGrath, deputy district attorney in San Diego, California, "I think it's fair to say there's a sense of yearning out there [among attorneys]. If you grab a judge, a defense attorney and prosecutor and sat them down together and bought them a round of drinks ... they'll all complain about the same thing: 'I have all of this education and what do I do? I work on an assembly line. I don't affect case outcomes.'" While the yearning for a new way of thinking about advocacy is far from universal — there are still, after all, plenty of practitioners of win-at-all-costs advocacy — the voices of reform are now plentiful and strong enough that they can no longer be easily dismissed.

Both internal and external critics of state courts have cited a number of examples to underline their concerns with the standard approach to case processing. For instance, they have pointed to low-level criminal cases, where many offenders walk away from court without receiving any conditions at all. Researchers found that prior to the opening of the Midtown Community Court in New York, more than forty percent of the misdemeanor cases in the downtown, centralized court received no

court sanctions at all (e.g. sentences of "time served") (Sviridoff 2000: 127). This means that four out of every ten offenders walked out of court without receiving either a meaningful punishment or any kind of help for their underlying problems. Outcomes in domestic violence cases are equally problematic. High probation violation rates are one sign that court mandates are not deterring continued violence (Tsai 2000). One study showed that thirty-four percent of batterers violated orders of protection (National Center for State Courts 1997). Nor is the problem of recidivism confined to domestic violence — it is estimated that over fifty percent of offenders convicted of drug possession will recidivate within two or three years (Office of Justice Programs 1999).

In short, advocates of problem-solving justice have argued that state courts find it difficult to address the underlying problems of individual litigants, the social problems of communities or the structural and operational problems of a fractured justice system. As Ellen Schall of New York University's Wagner Graduate School of Public Service has noted, "I think we have to begin from the notion that the system from which the problem-solving courts have emerged was a failure on any count. It wasn't a legal success. It wasn't a social success. It wasn't working" (Berman 2000).

What is a Problem-Solving Court?

Problem-solving courts are a response to the frustrations engendered by overwhelmed state courts that struggle to address the problems that are fueling their rising caseloads. They are an attempt to achieve better outcomes while at the same time protecting individual rights. While drug courts, community courts, domestic violence courts, mental health courts and other problem-solving initiatives address different problems, they do share some common elements:

Case Outcomes Problem-solving courts seek to achieve tangible outcomes for victims, for offenders and for society. These include reductions in recidivism, reduced stays in foster care for children, increased sobriety for addicts and healthier communities. As Chief Judge Kaye has written, "... outcomes — not just process and precedents — matter. Protecting the rights of an addicted mother is important. So is protecting her children and getting her off drugs" (Kaye 1999).

System Change In addition to re-examining individual case outcomes, problem-solving courts also seek to re-engineer how government systems respond to problems like addiction, mental illness and child neglect. This means promoting reform outside of the courthouse as well as within. For example, family treatment courts that handle cases of child neglect have encouraged local child welfare agencies to adopt new staffing patterns and to improve case management practices.

Judicial Authority Problem-solving courts rely upon the active use of judicial authority to solve problems and to change the behavior of litigants. Instead of passing off cases — to other judges, to probation departments, to community-based treatment programs — judges at problem-solving courts stay involved with each case through-

out the post-adjudication process. Drug court judges, for example, closely supervise the performance of offenders in drug treatment, requiring them to return to court frequently for urine testing and courtroom progress reports.

Collaboration Problem-solving courts employ a collaborative approach, relying on both government and non-profit partners (criminal justice agencies, social service providers, community groups and others) to help achieve their goals. For example, many domestic violence courts have developed partnerships with batterers' programs and probation departments to help improve the monitoring of defendants.

Non-Traditional Roles Some problem-solving courts have altered the dynamics of the courtroom, including, at times, certain features of the adversarial process. For example at many drug courts, judges and attorneys (on both sides of the aisle) work together to craft systems of sanctions and rewards for offenders in drug treatment. And by using the institution's authority and prestige to coordinate the work of other agencies, problem-solving courts may engage judges in unfamiliar roles as conveners and brokers.

The cumulative impact of these changes has been significant, and not just on the judges and lawyers who staff problem-solving courts. Problem-solving courts are still relatively new, but there are signs that they have begun to have a tangible impact on thousands of victims, defendants and community residents. This includes domestic violence victims who have been linked to safe shelter, residents of high-crime areas who no longer have to avoid local parks at night, formerly-addicted mothers who have been reunited with their children, and mentally-ill defendants who have received meaningful treatment for the first time.

Results

How much is known about the results of problem-solving courts? Rigorous, independent evaluations of their impacts are just starting to emerge, but the early results have been promising. As the most well-established brand of problem-solving court, drug courts have the longest track record. The evidence shows that drug courts have achieved solid results with regard to keeping offenders in treatment, reducing drug use and recidivism and saving jail and prison costs.

The most authoritative review of drug courts is a meta-analysis by Columbia University's National Center on Addiction and Substance Abuse (CASA) that looked at fifty-nine independent evaluations covering forty-eight drug courts throughout the country (Belenko 1998). Among other findings, this study revealed that drug court participants are far more likely to successfully complete mandated substance abuse treatment than comparable participants who seek help on a voluntary basis. One-year treatment retention rates are sixty percent for drug courts, compared to ten to thirty percent among voluntary programs (Belenko 1998: 29-30). In addition, the CASA analysis found that defendant drug use and recidivism are substantially reduced during the period of drug court participation (Belenko 1998: 36). While less

conclusive, there is also evidence to suggest that the benefits of drug court participation don't end when a defendant graduates from the program. According to the CASA study, drug court participants have lower post-program re-arrest rates as well. Of nine drug court evaluations that used a comparison group, eight found positive recidivism results (Belenko 1998: 39-41).

In addition to these impacts on participants, the CASA meta-analysis found that drug courts generated significant cost savings. In general, incarceration is far more costly than either residential or outpatient treatment. As a result, drug courts save money even after accounting for administrative costs. A study of the Multnomah County, Oregon drug court found that over a two year period, the court had achieved $2.5 million in criminal justice cost savings, based on 440 participants (Belenko 1998: 34). Additional savings outside the criminal justice system — reductions in victimization, theft, public assistance and medical claims — were estimated to be an additional $10 million (Belenko 1998: 34).

The most detailed evaluation of a community court is the National Center for State Courts's recently-published assessment of the Midtown Community Court. The National Center's team of researchers found that the Court had helped reduce low-level crime in the neighborhood: prostitution arrests dropped sixty-three percent and illegal vending dropped twenty-four percent (Sviridoff et al. 2000: 155). The compliance rates for community service at Midtown were the highest in New York City — an improvement of fifty percent. Supervised offenders performing community service contributed more than $175,000 worth of labor to the local community each year.

Just as important, preliminary findings from a telephone survey of 500 area residents suggest that the Midtown experiment had made an impression in the court of public opinion. Sixty-four percent of the respondents said that they were willing to pay additional taxes for a community court. And according to evaluators, these results have been achieved without sacrificing efficiency. In fact, by keeping defendants and police officers in the neighborhood instead of transporting them to the downtown courthouse, the Midtown Court cut the time between arrest and arraignment in 1994 by forty-five percent (Sviridoff et al. 2000: 203).

Less is known about the impacts of domestic violence courts, family treatment courts, mental health courts, re-entry courts and other newer forms of problem-solving justice. Their self-reported results are, perhaps predictably, encouraging — improved services for victims of domestic violence, reductions in probation violations, and increased numbers of defendants receiving needed services. Whether these findings will withstand the rigors of independent evaluators remains to be seen. The days ahead will see the completion of several important evaluations of problem-solving courts, including a national, multi-site review of domestic violence courts by the Urban Institute.

Tensions

The preliminary results of problem-solving courts have earned these projects high marks from many corners, including elected officials, press and funders. They have

also fueled the field's rapid expansion. Good initial results do not insulate problem-solving courts from scrutiny, however. After all, the problem-solving reform efforts of the last several years have taken place within a branch of government that is understandably cautious about innovation. Core judicial values — certainty, reliability, impartiality and fairness — have been safeguarded over many generations largely through a reliance on tradition and precedent. As a result, efforts to introduce new ways of doing justice are always subjected to careful scrutiny.

Problem-solving courts are no exception to this rule, nor should they be. Critics have questioned both their results (Hoffman 2000) and their ability to preserve the individual rights of defendants (Baar 2000). While the academic literature on problem-solving courts is still emerging, it seems clear that there are a number of areas of potential tension between this new brand of jurisprudence and standard practice in state courts:

Coercion What procedures exist to ensure that a defendant's consent to participate in a problem-solving court is fairly and freely given? Are problem-solving courts any more coercive than the current practice of plea bargaining that resolves the large majority of criminal cases in this country?

Zealous Advocacy Is advocacy in a problem-solving court more or less zealous than in a traditional court? Does problem-solving demand new definitions of effective lawyering? How should attorneys measure their effectiveness — by the case or by the person? To what extent do problem-solving courts actually help attorneys — both prosecutors and defenders — realize their professional goals?

Structure Do problem-solving courts give greater license to judges to make rulings based on their own idiosyncratic world views rather than the law? Or, with their predetermined schemes of graduated sanctions and rewards, do problem-solving courts actually limit the discretion of judges and provide more uniform justice than traditional courts?

Impartiality As judges become better informed about specialized classes of cases, is their impartiality affected? As they solicit the wisdom of social scientists, researchers and clinicians, are they more likely to become engaged in ex parte communication?

Paternalism Are problem-solving judges imposing treatment regimes on defendants without reference to the complexity of individuals' problems? Do problem-solving courts widen the net of governmental control? Or are they simply an effort by judges and attorneys to deal more constructively and humanely with the underlying problems of the people who come to court?

Separation of Powers Do problem-solving courts inappropriately blur the lines between the branches of government? As judges become involved in activities like

convening, brokering and organizing, are they infringing upon the territory of the executive branch? Are they, in effect, making policy? Or are judges simply taking advantage of the discretion they have traditionally been afforded over sentencing to craft more meaningful sanctions?

There are several important realities to keep in mind as one attempts to make sense of these tensions. The first is context. When weighing the merits of any reform effort, it's always important to ask the question: compared to what? Proponents of problem-solving courts have been adamant about not allowing critics to pick apart these new initiatives by comparing them to an idealized vision of justice that does not exist in real life. They point to the fact that the large majority of criminal, housing and family court cases today are handled in courts that Roscoe Pound and John Marshall would scarcely recognize. Judge Judy Harris Kluger, the administrative judge for New York City's criminal courts, has described standard practice in the state courts this way: "For a long time, my claim to fame was that I arraigned two hundred cases in one session. That's ridiculous. When I was arraigning cases, I'd be handed the papers, say the sentence is going to be five days, ten days, whatever, never even looking at the defendant" (Berman 2000). Under these circumstances, it is fair to question the extent to which many frontline state courts measure up to their own ideals of doing justice. While the excesses of today's "McJustice" courts do not justify any and all reform efforts, they do help explain why so many judges and attorneys have been attracted to new ways of doing business. And they do provide a valuable context for evaluating the merits of problem-solving courts.

In addition, any effort to separate the wheat from the chaff with problem-solving courts must take into account what might be called the "shoddy practice effect." Put simply, some of the concerns raised by critics of problem-solving courts are a response to the failings of individual judges, attorneys and courtrooms rather than an indictment of anything intrinsic to problem-solving courts. These issues include courts that have been created without any consultation with the local defense bar; courts that have failed to offer specialized training to the attorneys that work within them; courts in which defendants are not given a meaningful opportunity to raise factual and Fourth Amendment defenses; courts in which 'back-up' incarceration sentences for defendants who fail to comply are considerably longer than the sanctions that the defendant would have originally faced; and courts that have done little to ensure that social service interventions are effective and culturally appropriate.

While serious, these are all issues that might reasonably be resolved by better planning and the development and dissemination of best practices. In fact, there are already signs that problem-solving innovators in the field are beginning to adapt their models to address these issues. For example, problem-solving courts in Seattle and Portland have instituted structures that give defendants several weeks to test out treatment while their case is still pending. Defendants can use this period to decide whether to opt into or out of the program, while their defense attorneys can use

the time to investigate the strength of the case against their client (Feinblatt and Denckla 2001).

Fairness

Not all questions about problem-solving courts can be explained away by bad practice or the widespread problems of today's mill courts, however. The most pointed critiques have asked whether problem-solving courts' emphasis on improving case outcomes and protecting public order has come at the expense of the rights of defendants (Baar 2000). Are problem-solving courts fair? Have they fundamentally altered the rights protections typically found in today's criminal courts? Courts have traditionally relied on zealous advocacy as a bulwark against these kinds of concerns, so the role of attorneys at problem-solving courts is an issue that merits special scrutiny (Feinblatt, Berman and Denckla 2001).

Michael Smith of the University of Wisconsin Law School has been particularly vocal in articulating the importance of advocates to problem-solving courts: "One of the things that judges and courts are particularly useful at when they're not just milling people is fact-finding. But a fact-finding court is heavily reliant on advocates if its any good. ... If we don't figure out a way to take advantage of that, then we're not going to have very good problem-solving courts. The courts will be no better than the social service clinics, which have failed to address these problems. So the adversary system and the presence of defense counsel are of enormous value in problem-solving" (Berman 2000).

The nature of advocacy in problem-solving courts is the subject of some debate. Some look at the "team approach" of drug courts, where all of the courtroom players work together to support defendant's participation in treatment, and declare that defense attorneys have abdicated their role as forceful advocates on behalf of their clients. Others argue that adversarialism is alive and well in problem-solving courts. They point to the fact that throughout the adjudication process — up until a defendant decides, by virtue of pleading to reduced charges, to enter treatment — prosecutors and defenders in problem-solving courts typically relate to one another as they always have: as adversaries. In addition to contesting the merits of each case, advocates in drug courts also argue about eligibility criteria, the length of treatment sentences and appropriate treatment modalities (Feinblatt, Berman and Denckla 2001).

In general, what's different about problem-solving courts are the activities that take place after adjudication, as judges and attorneys become engaged in the ongoing monitoring of defendants instead of leaving this job to probation departments or community-based organizations (or, in all too many cases, to no one at all). (It is worth noting that some drug courts and community courts — and many domestic violence courts — depart from the standard problem-solving model, mandating defendants to pre-trial rather than post-disposition interventions. These courts may raise additional questions from those concerned with due process protections.) As John Goldkamp of Temple University has observed, "Generally, adversarial procedures are employed at the screening and admission stage and at the conclusion of drug court, when participants are terminated and face legal consequences or gradu-

ate. During the drug court process, however, formal adversarial rules generally do not apply" (Goldkamp 2000: 952). As Goldkamp's formulation makes plain, by and large, problem-solving courts seem to emphasize traditional due process protections during the adjudication phase of a case and the achievement of tangible, constructive outcomes post-adjudication. In doing so, problem-solving courts have sought to balance fairness and effectiveness, the protection of individual rights and the preservation of public order (Feinblatt, Berman and Denckla 2001).

To what extent have problem-solving courts achieved this delicate balancing act? It varies from jurisdiction to jurisdiction. And it depends upon the perspective of the person asking the question. Conversations about the fairness of problem-solving courts often spark a Rashomon effect, with judges having one response, prosecutors another and defenders yet a third (Feinblatt and Denckla 2001).

There is little doubt that the tensions between problem-solving courts and conventional state courts are felt particularly acutely by defenders. There is an almost palpable sense of ambivalence on the part of many defenders towards problem-solving courts. After all, defense attorneys have been arguing for years that courts should make more aggressive use of drug treatment, mental health counseling and other alternative sanctions. Problem-solving courts have begun to deliver on this expectation, but at the cost of greater state involvement in the lives of their clients. Are there any historical antecedents that might guide defenders as they wrestle with competing professional demands? What are their ethical obligations to their clients, given the changing judicial landscape? Is there a need for new standards of effective lawyering at problem-solving courts? These are issues that merit deeper investigation and additional scholarship.

Conclusion

Now is an important moment to begin to look at the questions raised by problem-solving courts. Problem-solving courts have achieved a kind of critical mass. They are no longer just a set of isolated experiments driven by entrepreneurial judges and administrators. According to John Goldkamp, "What we have now is not a bunch of little hobbies that judges have in isolated jurisdictions, but rather a paradigm shift that larger court systems are trying to come to grips with. They're at your door step. The question isn't: Gosh, are courts supposed to be doing this? It's: What are you going to do about it? How does it fit in? It's no longer a question of whether this should have been invented. They're here" (Berman 2000).

Problem-solving courts have begun to spark the interest of not just front-line practitioners, but the chief judges and administrators who make decisions about court policies and court operations. The signs are unmistakable. Problem-solving courts continue to multiply. California and New York are overhauling the way that their courts handle drug cases. And the Conference of Chief Justices and the Conference of State Court Administrators has passed a joint resolution that pledges to "encourage the broad integration, over the next decade, of the principles and methods employed in problem solving courts into the administration of justice."

Formal institutionalization of any new idea does not come easy, however. If

problem- solving courts are to accomplish this goal — if they truly hope to infiltrate the mainstream of thinking about law and justice in this country – they must begin to preach to the unconverted. This means reaching out to the skeptics and the uninitiated within state courts — defenders concerned about due process protections, administrators worried about the allocation of limited resources, and prosecutors and judges who see nothing wrong with the way they've been doing their jobs for years. And it means reaching outside of the system as well — to law schools and bar associations and elected officials. In the process, advocates of problem-solving courts must tackle some of the policy and procedural concerns that have been outlined in this paper. And they must begin to think through the problems of going to scale, of how small-scale experiments can be translated into system-wide reform.

These are not insignificant challenges, to be sure. But given the tangible results that the first generation of problem-solving courts have achieved — reduced recidivism among drug-addicted offenders, reduced probation violation and dismissal rates in domestic violence cases, and improved public safety (and confidence in justice) in communities harmed by crime — they are challenges well worth pursuing.

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