

# Problem-Solving Justice: A Law School Course

An Outline for Faculty

A COURSE ORIGINALLY TAUGHT AT FORDHAM LAW SCHOOL AS  
“PROBLEM-SOLVING JUSTICE: COURTS AS AGENTS OF SOCIAL CHANGE”

This publication was supported by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice under Grant Number 98-DC-VX-K007 awarded to the Center for Court Innovation. Points of view and opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

#### **Acknowledgements**

Problem-Solving Justice: Courts as Agents of Social Change was first piloted at Fordham Law School in 2005 in a class co-taught by Valerie Raine, Center for Court Innovation, and the Hon. Susan Knipps, supervising judge of New York County Family Court. The class was taught again in the spring of 2006 with the help of the Hon. Patricia Henry. Special thanks to Associate Dean Matthew Diller of Fordham Law School for his assistance.

Aubrey Fox laid the foundation for this project by conducting research, organizing focus groups and writing early drafts. The following individuals provided valuable counsel in the development of this course: Pam Casey, National Center for State Courts; Alec Christoff, National Drug Court Institute; Cait Clarke, National Legal Aid and Defender Association; Michael Dorf, Columbia Law School; Sidney Haring, CUNY School of Law; Adele Harrell, Urban Institute; Susan Knipps, Supervising Judge, Manhattan Family Court; Eric Lane, Hofstra University School of Law; Anthony Thompson, New York University Law School.

A special thank you to Zach Tripp, a Columbia University law student, who spent a summer researching the literature about problem-solving justice.

**Problem Solving Justice: Courts as Agents of Social Change**  
**Spring 2006 Semester**  
**Fordham University School of Law**  
**140 West 62<sup>nd</sup> Street, Room 215**  
**Monday evenings - 7:50 - 9:35**

**Faculty**

<p><b>HONORABLE PATRICIA HENRY</b>  Acting Supreme Court  Justice  Kings County Supreme Court  Telephone: 347/296-1366  E-mail:  <a href="mailto:phenry@courts.state.ny.us">phenry@courts.state.ny.us</a>  Fax: 646/374-2623  Office Hours: By  Appointment</p>	<p><b>HONORABLE SUSAN KNIPPS</b>  Supervising Judge  New York County Family  Court  Telephone: 646/386-5102  E-mail:  <a href="mailto:sknipps@courts.state.ny.us">sknipps@courts.state.ny.us</a>  Fax: 212/374-2623  Office Hours: By  Appointment</p>	<p><b>VALERIE RAINE</b>  Director, Drug Court  Projects  Center for Court Innovation  Telephone: 212/373-8081  E-mail:  <a href="mailto:vraine@courts.state.ny.us">vraine@courts.state.ny.us</a>  Fax: 212/397-0985  Office Hours: By  Appointment</p>
---	--	--

**Course Syllabus and Schedule**

**Week 1: Introduction to Course and Overview**

- Introduction of instructors
- Discussion of students' backgrounds and interest in course
- Three papers; one class debate (See Attachment for course requirements)
- Site visits

*Presentation:* The processing of criminal cases from arrest to disposition; problem-solving courts; preview of field trip to New York City Criminal Court Arraignment Part

*Power Point Presentation:* Problem-solving Courts—their history and development; courts shift from a focus on process to changing litigants' future behavior; types of problem-solving courts

*Discussion:* What are problem-solving courts? How do they differ from traditional courts? How do they compare to "real life" courts?

**Week 2: Field Trip to Arraignment Part**

*Observation of Arraignment Part, New York City Criminal Court*

*Discussion of observations:* Assess the effectiveness of the system in terms of deterrence, punishment, rehabilitation, litigants' respect for law and system, public trust and confidence. What role did you see prosecutor play? defense attorney? judge? What is accomplished in the Arraignment Part? Is plea bargaining helpful? What did you think of Guidorizzi's solutions, e.g. jury waivers, pre-determined sentencing discounts?

*Readings:*

Malcolm M. Feeley, The Process Is the Punishment 3-34, 154-243 (1979)

Douglas D. Guidorizzi, Should We Really "Ban" Plea Bargaining? The Core Concerns of Plea Bargaining Critics, 47 Emory L.J. 753-783 (1998)

**Week 3: The Emergence of Drug Courts and Other Problem Solving Courts**

*Power Point Presentation:* Emergence of drug courts-- motivations in establishing, early experiments, federal funding, key attributes of drug courts, generalization of "problem-solving courts"

*First debate:* Are drug courts an appropriate model for the justice system?

- Should courts be in the business of behavior modification?
- Do drug court judges have too much power over participants?
- Should courts be concerned with whether people have jobs, GED's, stable housing?

*Readings:*

Lonny Shavelson, Hooked 221-259 (2001)  
John S. Goldkamp, The Drug Court Response: Issues and Implications for Justice Change, 63 Alb. L. Rev. 923 (2000)

Alan Feuer, Out of Jail, Into Temptation: A Day in a Life, N.Y. Times, Feb. 28, 2002 at B7

**Week 4: Field Trip to Drug Court**

*Observation of Brooklyn Treatment Court*

*Discussion of observations:* How different is drug court from traditional courts? How does the role of the judge, the lawyers and the litigants change in the drug court model? What is the potential for abuse of judicial discretion? Does a non-adversarial system serve the best interests of defendants? Is the legislature or the executive branch better suited to address social ills like addiction?

*Reading:*

Douglas B. Marlowe and Kimberly Kirby, Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research, National Drug Court Institute Review, Vol. II, pp. 1-31 (1999)

**Week 5: Mental Health Courts**

*Guest speakers will present on the mental health court model.*

*Carol Fisler, Center for Court Innovation*

*David Kelly, Kings County District Attorney's Office*

*Discussion:* Do mental health courts risk criminalizing the mentally ill? Should a court incarcerate an individual for failing to take their medications? What are the benefits of handling the mentally ill offender in this type of court?

*Readings:*

John S. Goldkamp and Cheryl Irons-Guynn, Emerging Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts in Fort Lauderdale, Seattle, San Bernadino, and Anchorage, pp. vii-xvi, 59-78 (2000)

Robert Bernstein, PhD and Tammy Seltzer, The Role of Mental Health Courts in System Reform, University of the District Of Columbia Law Review, Spring 2003

**Week 6: The Role of the Judge**

*Second debate:* Does the role of a problem-solving judge violate the separation of powers doctrine?

- Does a problem-solving judge impermissibly interfere with the role of "neutral arbiter"?
- Does a problem-solving judge trespass on the executive branch's prosecutorial and correctional functions?
- Does a problem-solving judge engage in legislative drug policy?

*Discussion:* How do problem-solving courts transform the traditional role of the judge? Should the traditional role of the judge be transformed?

*Readings:*

Alexander v. State, 48 P.3d 110 (Okla. Crim. App. 2002)

Greg Berman, What is a Traditional Judge Anyway?: Problem Solving in State Courts, 84 *Judicature* 78-85 (Sept-Oct. 2000)

Michael C. Dorf, Problem Solving Courts and the Judicial Accountability Deficit, N.Y.U. L. Rev. pp. 8-16

Joshua Matt, Jurisprudence & Judicial Roles in Massachusetts Drug Courts, 30 *New Eng. J. on Crim. & Civ. Confinement* 151 (2004)

**Week 7: The Role of the Lawyer**

*Guest speakers from the criminal defense bar and prosecution will present divergent views on the pros and cons of problem-solving courts.*

*Justin Barry, Esq., New York Citywide Drug Treatment Court Coordinator*

*Carolyn Wilson, Esq., Director, New York County Defenders Office*

*Anne Swern, Counsel to the Kings County District Attorney*

*Discussion:* How can a defense lawyer reconcile zealous advocacy with the team approach that many problem-solving courts require? How do defense attorneys determine what is in the best interests of their clients? What role should the prosecutor play in a problem-solving court? Should a prosecutor respond to community concerns and preferences?

*Readings:*

Anthony Thompson, It Takes a Community to Prosecute, 77 Notre Dame L. Rev. 321 (2002) pp. 8-13

David B. Wexler, Therapeutic Jurisprudence and the Rehabilitative Role of the Criminal Defense Lawyer, 17 St. Thomas Law Review 743 (2005)

Eric Lane, Due Process and Problem Solving Courts, 30 Fordham Urb. L.J. 955 (2003), pp. 2-19

Cait Clarke and James Neuhard, "From Day One": Who's in Control as Problem Solving and Client-Centered Sentencing Take Center Stage?, 29 N.Y.U.Rev.L.& Soc.Change 11 (2004) pp. 34-48

**Week 8: Modified Adversarialism**

*Third debate:* Does the non-adversarial system of drug courts, and to some degree other problem-solving courts, impermissibly compromise a defendant's constitutional rights? Does traditional litigation

provide the greatest protection for minorities and other disadvantaged groups?

- Does the non-adversarial system leave defendants exposed to overreaching by the court?
- Can the relative informality and easing of traditional legal rules and protocols adversely affect the fairness of the proceedings?

*Discussion:* What is the impact of reduced adversarialism on litigants and the criminal justice system?

*Readings:*

Gary Goodpaster, Criminal Law: on the Theory of American Adversary Criminal Trial, 78 J. of Crim. L. & Criminology 118 (1987)

Richard Delgado, Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution, 1985 Wis. L. Rev. 1359 (Nov/Dec. 1985)

*Optional:*

Willlliam H. Simon, Criminal Defenders and Community Justice: The Drug Court Example, 40 Am. Crim. L. Rev. 1595 (2003)

## **Week 9: Domestic Violence Courts**

*Guest speaker will present on the domestic violence and integrated domestic violence court models.*

*Honorable Matthew D'Emic, Kings County Supreme Court*

*Discussion:* Why were domestic violence courts created? Are domestic violence courts really problem solving courts? What problem are they solving? Does the judicial branch risk the appearance of "taking sides" in a domestic violence court?

*Readings:*

Judith Kaye and Susan Knipps, Judicial Responses to Domestic Violence: the Case for a Problem Solving Approach, 27 W. St. U.L. Rev. 1 (2000)



James Ptacek, Battered Women in the Courtroom 40-69  
(1999)

**Week 10: Field Trip to Domestic Violence Court**

*Observation* of Brooklyn Domestic Violence Court

*Discussion:* Court observations, including the court's impact on victims of domestic violence and on the presumption of innocence. What are the benefits of the domestic violence court model? Do domestic violence courts create a presumption of guilt? Does a domestic violence judge lose the mantle of neutrality and become more of a parole officer and monitor of social services? Does the prosecution in a domestic violence case take on too controlling a position of the complainant and potentially re-victimize her? What do victims want/think?

*Reading:*

Jane C. Murphy and Margaret J. Potthast, Domestic Violence, Substance Abuse, and Child Welfare: The Legal System's Response, 3 *Journal of Health Care Law and Policy* 88-124 (1999)

**Week 11: "Therapeutic Jurisprudence"**

*Discussion:* Should courts be "therapeutic?" What is the relationship between therapeutic jurisprudence and problem-solving courts?

*Readings:*

James Nolan, Redefining Criminal Courts: Problem-Solving and the Meaning of Justice, 40 *Am. Crim. L. Rev.* 1541 (2003)

Bruce J. Winick, The Jurisprudence of Therapeutic Jurisprudence, *Psychology, Public Policy, and Law* 1997, 1997, Vol.3, No.1, 184-206

Morris B. Hoffman, Therapeutic Jurisprudence, Neo-Rehabilitationism and Judicial Collectivism: The Least Dangerous Branch Becomes the Most Dangerous, 29 Fordham Urb. L.J. 2063 (2002)

**Week 12: Community Courts**

*Guest speaker will present on the community court model.*

*Julius Lang, Center for Court Innovation*

*Discussion:* What are the positive impacts of community courts? What are the net-widening effects of these courts? Should they raise concerns about community influence on the prosecution of crime?

*Readings:*

Greg Berman and John Feinblatt, Good Courts, pp. 59-76

Anthony C. Thompson, Courting Disorder: Some Thoughts on Community Courts, 10 Washington U. J.L. & Pol'y 63-99 (2002)

James Q. Wilson and George Kelling. Broken Windows: The Police and Neighborhood Safety, Atlantic Monthly, March 1982

**Week 13: Sustainability of Judicial Experiments: The Historical Record/The Case of the Family Court**

*Discussion:* The child-saving movement and juvenile delinquency - progressive reform or class-driven oppression? What are the lessons for problem-solving justice?

*Readings:*

In re Gault, 387 U.S. 1 (1967)

Anthony M. Platt, The Child Savers: The Invention of Delinquency 137-175 (1969)

David J. Rothman, Conscience and Convenience: The Asylum and Its Alternatives in Progressive America 206-235 (rev. ed. 2002)

**Week 14: Summing Up: Drug Court Graduate**

*Guest Speaker, a drug court graduate from the Brooklyn Treatment Court, will describe her experience with drug treatment court, events that led her to the court, and her life since graduation.*

*Discussion: Conclusions regarding problem-solving justice, its history and issues for the future.*

*Reading:*

Greg Berman and John Feinblatt, Good Courts, pp.189-198

## COURSE REQUIREMENTS AND GRADING CRITERIA

### I. Course Requirements

- ✓ Three Papers (or two longer papers - see below)
- ✓ Participation in One Class Debate
- ✓ Class Discussion

#### Paper Topics and Due Dates

Certain common issues consistently emerge when examining problem-solving courts. They include:

- Paternalism
- Net widening
- Social control of individual behavior by the court
- Separation of powers doctrine
- Dangers of a non-adversarial model
- Previous failure of the rehabilitative model
- Pro-active judging vs. the neutral arbiter
- Focus on process vs. outcome

Students will write three papers, 4-5 pages each, which address any of these issues or other concerns identified by the students in the context of the following problem-solving courts.

- ✓ Drug Courts
- ✓ Mental Health Courts
- ✓ Domestic Violence Courts
- ✓ Community Courts
- ✓ Family Courts

The papers are not intended to require a great deal of research but rather should include student reactions to and analysis of the issues and questions raised by these courts. Papers are due on February 21; April 3; and April 24, 2006. Note: Students have the option of writing two papers, 7-8 pages each. They are due on March 20<sup>th</sup> and April 24<sup>th</sup>.

## Class Debates

Each student will be required to participate in one of three class debates. The debates are scheduled for January 30<sup>th</sup>, February 21<sup>st</sup>, and March 6<sup>th</sup>. Please refer to your Course Outline for topics. Course professors will assign students to their specific debate.

For the debate, please read assigned materials and be prepared to respond to questions posed by the professors and the students.

## Class Discussion

Given the structure and size of the class, active participation from all students is critical to a stimulating and thought provoking experience. Accordingly, a percentage of the final grade will reflect the student's contribution to class discussion.

## II. Grading Criteria

- Three papers 60% (20% for each paper)\*

Each paper should be approximately 4-5 pages.

The following will be assessed:

- ✓ *Basic Content-Issue identification*
- ✓ *Depth of analysis*
- ✓ *Originality*
- ✓ *Effectiveness of expression*
- ✓ *Style, citation form*

- One debate 20%
- Class participation 20%

100%

\*If two papers (7-8 pages) are submitted, each paper will constitute 30% of the grade.