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BEST PRACTICES

Principles of Problem-Solving Justice



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Principles of Problem-Solving Justice

Introduction

Problem-solving justice can trace its theoretical roots to innovations in policing, particularly community and problem-oriented policing, which attempted to replace traditional law enforcement's focus on responding to individual offenses with a focus on identifying and addressing patterns of crime, ameliorating the underlying conditions that fuel crime, and engaging the community as an active partner.¹

In the 1990s, these new policing strategies helped inspire similar approaches in the rest of the criminal justice system, helping give rise to innovations like community prosecution, community courts, and problem-solving probation. These new experiments shared an emphasis on data analysis, community engagement, crime prevention, and problem solving. At their core was the idea that it was no longer enough just to arrest, process, and adjudicate an offender, but law enforcement officers, prosecutors, judges, and probation officers also needed to try to reduce recidivism, improve public confidence in justice, and prevent crime down the road.

These ideas influenced not only community courts but the other specialized courts—drug, domestic violence, reentry, mental health courts—that emerged in the United States in the 1990s. It was while describing these various court initiatives that New York State's chief judge, Judith S. Kaye, catapulted the idea of “problem-solving justice” to a national audience. Kaye, in a column in *Newsweek* in 1999, extolled the virtues of these problem-solving courts for their ability to address problems like drug addiction, mental illness, and homelessness. The Conference of Chief Judges and Conference of State Court Administrator soon passed resolutions endorsing continued experimentation in this area. The American Bar Association quickly followed suit.

Today there are over 2,500 problem-solving courts in the United States, and a growing body of research literature has begun to validate their effectiveness.² In recent days, innovators have begun to tackle a new challenge: applying the principles of problem-solving courts beyond specialized courts. A real-life example of this approach is Bronx Community Solutions, an initiative in the criminal courthouse in the Bronx, New York, that offers alternative sanctions—including social services and community restitution—to judges in more than 40 courtrooms. The goal is to provide judges who preside over conventional courtrooms with access to the same sanctions, links to social services, and rigorous monitoring that are more commonly offered in drug, mental health, or community courts.

If there are to be more projects like Bronx Community Solutions that seek to “go to scale” with problem-solving justice, there needs to be agreement on just what defines problem solving. Various experts and organizations, including the Center for Court Innovation, have attempted to define problem-solving justice in recent years. This is no simple task.

Perhaps the biggest challenge has been identifying principles that are broad enough to encompass all problem-solving initiatives without being so broad that the description becomes meaningless. The diversity of problem-solving models is reflected in the different assumptions about rehabilitation posited by drug and domestic violence courts. While drug courts seek to return offenders to society as productive citizens, domestic violence courts emphasize punishment and victim safety. In other words, drug courts are focused on rehabilitation, and domestic violence courts are focused on holding offenders accountable and keeping victims safe.

Despite their differences, however, there are a number of principles that domestic violence, drug, and other problem-solving courts share. This paper is an attempt to describe those principles.

The six principles outlined below are based on the Center for Court Innovation’s experience developing problem-solving initiatives in New York. The Center has also served as a consultant to dozens of jurisdictions throughout the United States and the world, including as the technical assistance provider under the Bureau of Justice Assistance’s Community-Based Problem-Solving Criminal Justice Initiative.

In developing these principles, the Center analyzed problem-solving projects from across the country and also consulted with experts from national organizations, including The National Judicial College, the National Center for State Courts, and the National Association of Drug Court Professionals.

Principles

Enhanced Information

Better staff training (about complex issues like domestic violence and drug addiction) combined with better information (about litigants, victims, and the community context of crime) can help improve the decision making of judges, attorneys, and other justice officials. High-quality information—gathered with the assistance of technology and shared in accordance with confidentiality laws—can help practitioners make more nuanced decisions about both treatment needs and the risks individual defendants pose to public safety, ensuring offenders receive an appropriate level of supervision and services.

In traditional courtrooms, judges and court staff often don’t have specialized knowledge of the problems affecting offenders or victims, such as drug addiction, mental illness, family dysfunction, and domestic violence. Sometimes judges and attorneys argue that they should deliberately avoid gaining specialized knowledge, fearing it might affect their objectivity. But those who have worked in problem-solving courts have found that background knowledge

about an issue doesn't contribute to bias and only enhances their ability to make informed decisions.

In Brooklyn, New York, for example, judges many years ago routinely dismissed charges if a victim of alleged domestic violence withdrew her complaint. But after the founding of the Brooklyn Domestic Violence Court in 1996, all felony domestic violence cases were brought before a single judge, who'd been trained in the dynamics of domestic violence and therefore knew that victims often drop charges for reasons having nothing to do with the veracity of the complaint—typically because they feel intimidated. With that knowledge, Judge John Leventhal considered—on a case-by-case basis—whether to improve the victim's sense of safety by increasing pre-trial monitoring of a defendant or encourage prosecutors to seek corroborating evidence (apart from the victim's testimony).

To make more informed decisions, judges and other staff also need another kind of knowledge: specific information about the physical and psychological health of defendants and litigants. An essential ingredient of many problem-solving programs is a thorough intake interview during which a case manager (or other trained staff) gathers information about individual defendants and litigants. A typical psycho-social assessment collects information on education, employment, health, mental illness, and other issues. Staff can use this information to develop individualized service plans for defendants and to help the judge and other decision makers make better decisions.

Defendants are not the only ones who can benefit from services, of course. Indeed, in domestic violence courts, the focus of social service intervention is typically not the defendant but the victim. Victim advocates in domestic violence courts conduct intake interviews with victims who are seeking assistance. With knowledge of each victim's needs, advocates can customize a safety plan to provide appropriate support and resources.

Whether information comes from a victim or a defendant, problem-solving courts must ensure that personal information (which may be potentially incriminating or may undermine someone's safety) is protected. Many problem-solving courts have established confidentiality protocols and agreements in advance by engaging prosecution, court administrators, probation officials, and defense attorneys in the planning process.

Another kind of information often lacking in conventional courts is knowledge about the community context of crime. Clearly it matters if a drug sale is a lone incident on an out-of-the-way street corner or one of many similar crimes taking place near a school or an apartment building full of children. But most judges rarely have access to such contextual information. In contrast, community court judges routinely meet with community groups and make a point of touring neighborhood locations to get a better understanding of conditions and local concerns. Many community courts also have advisory boards whose membership is drawn from community residents and other stakehold-

ers. The Hartford (Connecticut) Community Court, for example, has an advisory board whose members are drawn from 17 problem-solving committees throughout the city. Every month, the committee meets with representatives of the court—including the judge—to discuss community conditions (but not specific cases).

There are other tools that can be used to enhance information:

Education Some states have sponsored training sessions for judges and other key courtroom players. Through such trainings states can, for example, ensure that all drug court judges understand basic pharmacology or how to apply sanctions and rewards. Training can also be conducted on a more local and less formal basis. Individual projects, for instance, can host brown bag lunches and lectures to keep staff up to date on best practices and topics of interest.

Meetings To make sure all the relevant stakeholders stay informed about participants' progress, many courts hold regular meetings. In many drug courts, for instance, representatives of the court (including judges, prosecutors and defense attorneys) and treatment provider agencies regularly meet to discuss each participant's progress.

Computers Many problem-solving courts rely on management information systems to maintain relevant client information. Computer systems to which all partners have access (with appropriate safeguards to protect confidentiality) allow everyone to share reliable data instantaneously. This is especially helpful when trying to hold participants accountable. For instance, the sooner a judge discovers a participant has failed to comply with a treatment mandate, the sooner the court can respond with an appropriate sanction. An effective management information system can also help programs to collect data to measure success.

Community Engagement

Citizens and neighborhood groups have an important role to play in helping the justice system identify, prioritize, and solve local problems. Actively engaging citizens helps improve public trust in the justice system. Greater trust, in turn, helps people feel safer, fosters law-abiding behavior, and makes members of the public more willing to cooperate in the pursuit of justice (as witnesses, jury members, etc.)

Courts have often sought to minimize contact between themselves and their communities. The belief is that courts, to retain their independence and impartiality, need distance. Some judges understandably want to protect themselves from people who might try to influence their actions on pending cases.

Judges who work in community courts, however, report that it is possible to maintain impartiality while actively collaborating with the community and listening to their concerns. Judges, of course, need to make clear at public meetings that they're not there to address specific cases but rather to discuss broad topics of interest to the community, such as categories of crime and local "hot spots."

Problem-solving programs have used various strategies to engage communities. Some have used questionnaires—mailed or completed by volunteers who go door-to-door—to identify community problems. Others have focused on community gatherings, such as meetings of block associations and business groups, where staff answer questions about the initiative and ask attendees for feedback.

Market research tools can also help. For instance, some planners have used surveys, focus groups, and one-on-one interviews to gain a better sense of community needs, strengths, and priorities. In Kalamazoo, Michigan, for example, prosecutors administered a door-to-door survey that asked residents to identify problems that affected quality of life. The prosecutors used the results of the survey—which found that juveniles' loitering was a significant concern—to help develop a community prosecution program.

Another strategy that has been used effectively by individual problem-solving programs is to educate the public through the media. Regular contact with media outlets can yield opportunities—such as drug court graduation ceremonies—to invite press coverage.

Finding roles for the public also helps keep the community engaged. Even better, it can help expand resources, allowing the criminal justice system to do more with less. Some use community volunteers to staff "impact panels" in which residents explain to low-level offenders the negative consequences of their offenses on neighborhood quality of life. And some use community groups to oversee offenders performing community service.

Collaboration

Justice system leaders are uniquely positioned to engage a diverse range of people, government agencies, and community organizations in collaborative efforts to improve public safety. By bringing together justice partners (e.g., judges, prosecutors, attorneys, probation officers, court managers) and reaching out to potential stakeholders beyond the courthouse (e.g., social service providers, victims groups, schools), justice agencies can improve inter-agency communication, encourage greater trust between citizens and government, and foster new responses—including new diversion and sentencing options, when appropriate—to problems.

Courts are at the hub of a complex system. They rely on law enforcement to conduct investigations and make arrests; they rely on prosecutors and defense attorneys to sort through the facts and help protect individual rights; and they

rely on probation, corrections, and parole officials to deliver and oversee punishment.

Despite their interconnectedness, however, courts traditionally behave as if they are more or less self-contained, focusing on the specifics of cases and less on the circumstances that bring defendants through the door or what happens after they leave. Although they determine sentences, they often don't have a large voice in the types of punishments at their disposal, and rarely measure their results.

Problem-solving justice takes advantage of the centrality of courts within the justice system—and the prestige, visibility, and reputation for neutrality they have outside the system. The point is not for courts to dictate solutions but to facilitate planning and inter-agency partnerships, allowing all players in the criminal justice system—along with relevant stakeholders in the community—to work together toward a common goal.

A typical community court, for example, is the result of a collaborative process. Bringing together justice agencies, community groups, and social service providers, community courts attempt to test new approaches to low-level crime. They create new options for punishment, like community service, which seeks to “pay back” the community for the harm caused by offending, and mandated social services, such as drug treatment for addicts and health counseling for prostitutes—all options that require the expertise and resources of numerous partners. The Red Hook Community Justice Center in Brooklyn, New York, focuses on at-risk youth and low-level drug offending—priorities identified by local stakeholders during a two-year feasibility study. To address these problems, the justice center relies on dozens of partners, including local non-profits and government agencies that have agreed to place staff on-site to provide health care, youth counseling, job training, and other needed services.

Some problem-solving initiatives not only harness existing resources but use the synergy of collaboration to meet the needs of unique clients. In Clackamas County, Oregon, for example, the county's seven problem-solving courts worked with the local housing committee of the federal Department of Housing and Urban Development and two local non-profit agencies to create a staffed, permanent, six-unit housing facility for female court participants with children.

Individualized Justice

Using valid, evidence-based risk and needs assessment instruments, the justice system can link offenders to individually tailored community-based services (e.g., job training, drug treatment, safety planning, mental health counseling) where appropriate. In doing so (and by treating defendants with dignity and respect), the justice system can help reduce recidivism, improve community safety and enhance confidence in justice. Links to services can also aid victims, improving their safety and helping restore their lives.

Problem-solving justice is dedicated to the notion that defendants should be treated as individuals not numbers on a docket. Indeed, one of the primary forces that has driven the expansion of problem-solving courts is the frustration of many front-line judges and attorneys, who have vowed not to practice “assembly-line justice.” In contrast, problem-solving courts seek to move away from a one-size-fits-all approach to justice. Many court cases are not complicated in a legal sense, but they involve individuals with complicated lives. Problem-solving justice recognizes this and seeks to give judges the tools they need to respond appropriately.

By customizing punishment, problem-solving courts seek to address offenders’ underlying problems, thereby reducing the likelihood of repeat offending and increasing the likelihood that the offender can become a productive member of society. The goal, in many cases, is to reduce the use of incarceration, which is both an expensive and arguably ineffective intervention, particularly for low-level and non-violent offenders.

To facilitate individualized justice, some problem-solving initiatives invite service providers to share space in the courthouse or at a centralized service center. Such “one-stop shops” make it easier for offenders to get the help they need. The Seattle Community Court, for example, has an on-site clinic staffed by community-based organizations that address offenders’ problems, including mental illness, substance abuse, and homelessness. Services are geared primarily to mandated offenders but are also available on a voluntary basis to walk-ins from the community.

Many initiatives, especially domestic violence courts, also provide services to victims, including links to shelter and safety planning as well as advocacy. The goal is to prevent “re-victimization” (the sense that victims are abused twice: once by the batterer and again by the system), to encourage involvement in the court case (including corroborating affidavits), and to reduce the likelihood of continued abuse.

Accountability

The justice system can send the message that all criminal behavior, even low-level quality-of-life crime, has an impact on community safety and has consequences. By insisting on regular and rigorous compliance monitoring—and clear consequences for non-compliance—the justice system can improve the accountability of offenders. It can also improve the accountability of service providers by requiring regular reports on their work with participants.

Problem-solving courts are not the first initiatives to attempt to link defendants to alternative sanctions. Unfortunately, past efforts to use community service, drug treatment, and other programs have often been undermined by significant no-show or drop-out rates. Clearly, it is not enough to hand someone a

piece of paper and hope they will show up for an appointment with a drug counselor or a batterer intervention program.

An important goal of problem-solving justice is to demonstrate that criminal behavior—even minor, quality-of-life crime—has consequences. Thus problem-solving courts strive to enforce their sanctions and emphasize accountability. One of their primary tools for achieving this goal is compliance monitoring. By requiring offenders to check in regularly with the judge, clerk, or local partners, problem-solving courts can ensure that sanctions—even diversion programs and alternatives to incarceration—have real teeth. Dade County, Florida, for example, launched a judicial monitoring program that requires participants on probation to come back to court regularly to report on their progress in treatment.

Problem-solving initiatives have found that clear communication and rapid response is essential for holding offenders accountable: non-compliance must be communicated as soon as it is discovered and the court must make it clear that sanctions (e.g., letters of apology, curfews, increased frequency of reporting, even short-term jail) will be issued in response. By creating effective vehicles for communication between the court and probation and other service providers, problem-solving courts have helped improve service delivery and the accountability of treatment providers. The Brooklyn Domestic Violence Court, for example, stopped referring cases to a particular batterer intervention program when the program failed to report participants' absences swiftly and accurately.

Outcomes

The active and ongoing collection and analysis of data—measuring outcomes and process, costs and benefits—are crucial tools for evaluating the effectiveness of operations and encouraging continuous improvement. Public dissemination of this information can be a valuable symbol of public accountability.

Courts have customarily measured their effectiveness by studying process: How many cases are handled per day, week, and month? What is the average time between arrest and arraignment? How quickly do cases move through the system? What is the clearance rate? How long is the backlog?

Problem-solving initiatives take a different approach. They, too, are concerned about process, but they ask additional questions as well. Often these questions are rooted in research and the knowledge of experts outside the courtroom. Among other things, drug courts try to determine what participant demographics are associated with program success. The answers can help drug courts establish appropriate eligibility criteria and also hone their programs to better address participants' needs and thereby produce better outcomes.

Problem-solving initiatives also focus on the impact of courts on victims and communities. Domestic violence courts track compliance with orders of protection with an eye toward improving victim safety. Reentry courts monitor participants' success finding jobs and housing. Juvenile drug courts monitor participants' school attendance and grades. Mental health courts monitor success in treatment, and use that information to identify factors (such as client demographics, treatment modalities, and frequency of court appearances) that have a positive impact on clients' success in treatment. Community courts monitor neighborhood attitudes, including public confidence in justice. And virtually all problem-solving courts monitor recidivism, trying to determine if problem-solving justice can reduce the likelihood of a defendant's re-offending.

While some problem-solving programs have been able to partner with outside agencies, such as university researchers, to collect and analyze data about their performance, many initiatives make do with limited resources. Many use the data they collect to monitor operations, identify areas of success, and bring to light emerging problems. The key, they have found, is collecting basic data—such as demographics about participants, length of participation, and compliance—and analyzing it. This kind of “action research” is vital to ensuring that an initiative adapts to changing community conditions and priorities, and remains as effective as possible over the long haul.

Conclusion

Problem-solving justice adapts to local conditions. That's why the principles described in this article emphasize collaboration, engagement with local stakeholders, and individualization of sanctions—strategies that avoid cookie-cutter approaches and encourage justice practitioners to embrace local priorities, resources, and circumstances.

Yet despite the emphasis on adapting to local conditions, the broad spectrum of problem-solving justice initiatives share a common outlook, an outlook that, at its heart, emphasizes outcomes over process.

In attempting to articulate the common underlying principles that define problem-solving justice, our goal is not simply to highlight what is but to help shape what will be. In the future, as courts explore how best to institutionalize problem-solving justice, it is our hope that these principles will serve as an important resource, ensuring that even as problem solving finds more applications outside specialized courts, it remains true to its tenets, which have made it one of the justice system's most successful and resilient innovations of the past generation.

Notes

1. See Goldstein, H., "Problem-Oriented Policing," New York: McGraw-Hill, 1990.
2. See C. West Huddleston III, Karen Freeman-Wilson, Douglas B. Marlowe, and Aaron Roussell, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*, National Drug Court Institute, 2005; and Berman, G., Rempel M. and Wolf, R.V. (eds.) *Documenting Results: Research on Problem-Solving Justice*, (New York: Center for Court Innovation) 2007.

Further Reading

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Center for Court Innovation

The winner of an Innovations in American Government Award from the Ford Foundation and Harvard's John F. Kennedy School of Government, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how courts and criminal justice agencies can aid victims, change the behavior of offenders, and strengthen communities.

In New York, the Center functions as the state court system's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts, and others.

Beyond New York, the Center disseminates the lessons learned from its experiments, helping courts across the country and the world launch their own problem-solving innovations. The Center contributes to the international conversation about justice through a variety of written products, including books, journal articles, and white papers like this one. The Center also provides hands-on technical assistance, advising court and criminal justice planners across the globe. Current areas of interest include problem-solving justice, community prosecution, court technology, drug treatment courts, domestic violence courts, mental health courts, and research/evaluation.

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