

# APPLYING PROBLEM-SOLVING PRINCIPLES IN MAINSTREAM COURTS: LESSONS FOR STATE COURTS

DONALD J. FAROLE, JR., NORA PUFFETT, MICHAEL REMPEL,  
AND FRANCINE BYRNE

*In recent years, an array of specialized “problem-solving courts” has emerged throughout the country in an effort to address the underlying social problems facing defendants, victims, and communities. This article presents results of an exploratory study concerning the potential to apply specialized problem-solving court practices more broadly throughout conventional court and general calendar settings. Focus groups were conducted among judges in California and New York with experience in drug courts and other problem-solving courts. Judges identified many opportunities to practice problem solving in mainstream courts, at least on a limited basis, but also discussed numerous barriers to more widespread practice. The discussion also suggested shorter- and longer-term strategies to overcome the barriers and disseminate information about problem solving among a larger cross-section of the judiciary.*

In recent years, an array of innovative courts has emerged throughout the country in an effort to address the underlying problems of defendants, victims, and communities. Drug courts, which seek to break the cycle of addiction, crime, and repeat incarceration by mandating that addicted defendants go to treatment programs, represented the first such innovation. Since the original Miami Drug Court opened in 1989, other analogous models have also arisen—domestic violence courts, juvenile drug courts, family treatment courts, mental health courts, community courts, peer/youth courts, and homeless courts. Generally known as “problem-solving” or “collaborative justice” courts, these innovations are distinguished by a number of unique elements: a problem-solving focus; team approach to decision making; integration of social services; judicial supervision of the treatment process; direct interaction between defendants and the judge; community outreach; and a proactive role for the judge inside and outside of the courtroom.<sup>1</sup>

At the same time that the number of problem-solving courts has grown, several states—including California, New York, Missouri, Louisiana, and Ohio—have begun to go further, developing efforts to coordinate at least some of their problem-solving initiatives on a statewide level. For example, California, which now features approximately 250 such court dockets, that is, problem-solving dockets within the regular trial courts, coordinates its efforts through a special Collaborative Justice

<sup>1</sup> In California, these projects are referred to as “collaborative justice courts,” while in New York and other states they are referred to as “problem-solving courts.” Throughout this report, we use the more prevalent “problem-solving” terminology. See Garcia (2003) and NADCP (1997) for more about key problem-solving court elements.

Courts Advisory Committee to the state's Judicial Council. These institutional efforts reflect, in part, the demonstrated effectiveness of drug courts as well as the public attention and support all of these innovations have garnered.<sup>2</sup>

While specialized problem-solving courts have proliferated, and we have learned much about the practice of problem solving within them (Casey and Rottman, 2005; Berman and Gulick, 2003), interest in the potential of applying problem-solving court practices *outside* the specialized court setting has recently begun to surface. In other words, will problem solving be restricted to stand-alone specialized courts dedicated to discrete interventions, for example, for substance addiction, domestic violence, or mental illness, or can their core principles and practices be productively applied throughout court systems? The answer to this question can directly inform the growing efforts in many states to institutionalize a problem-solving approach.

Contingent upon what is feasible and appropriate, institutionalization can involve the system-wide expansion and coordination of *specialized* problem-solving courts, the incorporation of problem-solving practice throughout *conventional* court operations, or both. Interest in this issue among justice system representatives was enhanced by an August 2000 resolution of the Conference of Chief Justices and Conference of State Court Administrators, which advocated

encourag[ing], where appropriate, the broad integration over the next decade of the principles and methods of problem solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, and meeting the needs and expectations of litigants, victims, and the community (Becker and Corrigan, 2002).

This article presents results of an exploratory study, conducted by the California Administrative Office of the Courts in collaboration with the Center for Court Innovation, concerning the opportunities and barriers to applying problem-solving principles and practices outside of specialized problem-solving courts, that is, in conventional courts and on general calendars and other specialized calendars. Focus groups were conducted among judges in California and New York with experience in drug, domestic violence, mental health, and other problem-solving courts. The research addressed three principal questions:

<sup>2</sup> Although it is premature to offer a definitive assessment of newer problem-solving court models, a consensus has recently emerged regarding the efficacy of adult drug courts. Wilson, Mitchell, and Mackenzie (2003) reported that thirty-seven of forty-two completed studies found lower recidivism rates among drug court participants than comparison groups of otherwise similar nonparticipating defendants. A random assignment study of the Baltimore City Treatment Court (Gottfredson, Najaka, and Kearley, 2003) and a study of six New York State drug courts (Rempel et al., 2003) both reported recidivism reductions that extended up to three years after the initial arrest, although the magnitude of reductions varied across courts. Such evidence led Goldkamp (2003) and Harrell (2003) to concur that the evaluation literature now offers clear support for the effectiveness of adult drug courts in reducing recidivism, although others caution that it remains unclear which drug court components (other than judicial involvement) are more or less critical to the model's overall success (Marlowe, DeMatteo, and Festinger, 2003).

1. Which problem-solving principles and practices are more easily applied in conventional courts and which are less easily applied?
2. What barriers might judges face when attempting to apply these principles and practices in conventional courts and how might those barriers be overcome?
3. How might problem solving be disseminated among judges and judicial leaders throughout the court system?

We begin with a brief review of the study background and methodology. We then present key themes and findings from the focus groups. We conclude by discussing the implications of these findings for court managers and next steps for future research.

## PROJECT BACKGROUND

Many of the issues associated with the application of problem-solving principles in conventional courts are so new that justice system representatives and researchers are only beginning to consider them. Thus the available literature consists largely of descriptive accounts chronicling individual judges' perspectives or personal attempts to apply problem solving in conventional courts (e.g., Bamberger, 2003; Casey and Rottman, 2000; Gilbert, Grimm, and Parnham, 2001). A related literature considers how judges and attorneys might apply therapeutic jurisprudence, defined as a normative legal theory regarding the potential of law to contribute to therapeutic outcomes, in various contexts (e.g., Abrahamson, 2000; Leben, 2000; Wexler, 2000). In addition, others have considered opportunities and challenges to institutionalizing specialized problem-solving courts (e.g., Berman, 2004; Fox and Wolf, 2004; Feinblatt, Berman, and Fox, 2000). While these literatures are varied, three consistent themes emerge:

1. The broader use of problem solving requires changing traditional attitudes and role orientations of judges, attorneys, and other justice system actors;
2. Resource constraints (lack of time, money, and staff) can pose serious barriers to attempts to apply specific problem-solving practices more widely; and
3. Judicial leadership is critical in any efforts to expand problem solving, either through the expansion of specialized courts or the integration of problem-solving practice in conventional courts.

Different perspectives also exist regarding the extent to which the practice of problem solving—and therapeutic justice—requires specialized courts (and judges) or, alternatively, can be productively applied in conventional courts (see, e.g., Rottman, 2000, for discussion in the therapeutic justice context). Most writings that address these issues, however, do not examine discrete, specific problem-solving principles and practices that may be more or less easily applied on general court calendars. Only one evidence-based study directly addresses this question. Preliminary results of a survey

conducted among a small and nonrandom sample of problem-solving court judges suggest that the judges generally agreed that some features of problem-solving courts, such as including a wide range of participants in the court process and adopting a needs-based approach, could be adapted to courts more generally (Casey and Rottman, 2003).<sup>3</sup> Further analysis of the survey results, however, has not been conducted.

## METHODOLOGY

The lack of evidence-based hypotheses in the literature prompted use of an exploratory approach in the present study and made focus groups a more appropriate research methodology than a formal survey of problem-solving court judges because the goal is to generate information on attitudes, opinions, personal experiences, and suggestions concerning topics about which limited prior information exists.

Accordingly, focus groups were conducted among judges in California and New York, two states at the forefront of testing new problem-solving court models. In selecting participants, attempts were made to recruit judges familiar with problem-solving practices. In nearly all cases, eligibility was restricted to judges with experience serving in a problem-solving court who had simultaneous or subsequent experience in a general court assignment. This made it possible to explore those judges' personal experiences in attempting to apply practices they learned in the specialized problem-solving court. The research team worked with the California Administrative Office of the Courts and the New York State Office of Court Drug Treatment Programs to identify and invite judges familiar with the issues of interest.

Four focus groups—two each in California and New York—were conducted in August and September 2003. Because it was expected that participants would not only be knowledgeable about the research topics but also be eager to discuss them, we attempted to recruit six to ten judges per session to ensure that each judge had sufficient time to address the issues. The recruitment was generally successful; most judges were willing and able to participate. In total, twenty-nine judges participated in the focus groups, sixteen judges in California (ten in Burbank, six in San Francisco) and thirteen in New York (ten in Rochester, three in New York City).<sup>4</sup> These judges were diverse in terms of location, that is, urban versus rural and geographic region; current assignments; and current and prior problem-solving court assignments. Twenty judges had experience in an adult drug court, eleven in domestic violence court, four in juvenile drug court, four in family treatment court, and three in mental health court, and

<sup>3</sup> The research, conducted in 2002, relied on a modified Delphi methodology, in which multiple waves of survey questionnaires are used to first elicit ideas and then to refine the issues and determine the extent of agreement among respondents. Three surveys were conducted, with nineteen judges completing the first questionnaire; fourteen, the second; and twelve, the third.

<sup>4</sup> Individual interviews were conducted with six other judges, bringing the total number participating in the research to thirty-five. As the information and opinions gathered in interviews did not differ meaningfully from that gathered in the focus groups, all analyses presented here are based solely on focus group results.

many had experience in more than one type of problem-solving court. Many, although not all, judges were involved in initiating the specialized courts with which they had experience. Despite this diversity, neither the focus group participants nor the findings they yield can be considered representative of the general population of judges.

An exploratory framework was used in the focus groups; they followed a semi-structured protocol designed to give participants considerable latitude to raise issues while addressing three general topic areas: 1) core principles and practices of problem-solving courts that differ from conventional courts; 2) the extent of possible application of these principles and practices within conventional courts; and 3) strategies to disseminate problem solving more widely throughout the court system. The groups were moderated by three of the coauthors, one of whom led the sessions while the others asked follow-up questions. All moderators, who adopted an open and nondirective style, probed as much as possible to learn about participants' experiences in attempting to apply specific problem-solving principles and practices in conventional court settings and barriers that may have precluded their doing so. Discussion focused principally on what judges could do to practice problem solving in conventional courts; the role of attorneys and other players received considerably less attention. All focus groups averaged two hours in length; participants were not paid but were provided lunch and travel reimbursement. The focus groups were audio recorded and transcribed, but participants were assured that no comments would be personally attributed to them.

Each session began with a warm-up asking participants to identify what they perceived as the core principles and practices that distinguish problem-solving from conventional courts. The nature and specificity of the ensuing discussion varied: Some judges framed their responses in terms of abstract principles—such as the need to resolve the parties' underlying problems versus the need to preserve due process and fairly determine guilt—or an overarching approach or philosophy—nonadversarial, team oriented. Other participants, sometimes in response to moderators' probes, cited specific practices. Discussion was often spontaneous and moved rather abruptly from topic to topic, as is expected from a loosely structured protocol.

## EMERGENT THEMES AND FINDINGS

The dialogue in all focus groups was surprisingly consistent, with few differences across states or groups. Participants reported that in problem-solving courts, the judge is more proactive (attending team meetings, speaking directly to defendants) than in conventional courts; treatment providers and others participate in the court process; and defendants are actively supervised via repeat court appearances, are held accountable for noncompliance with court mandates, and are given more chances to succeed in treatment. Most judges, while describing themselves as naturally inclined toward such a collaborative, problem-solving approach, agreed that their own problem-solving court experience enhanced the frequency and effectiveness of their subsequent use of problem-solving principles and practices in conventional courts.

However, some judges raised fundamental objections to the idea of applying problem-solving practices outside the specialized problem-solving court setting. They argued that the first relevant question was not whether principles and practices *could* be applied more broadly but whether they *should* be applied. Two reasons why they ought not be applied were offered. First, problem-solving courts were created in part because the prior ad hoc administration of problem solving on general calendars was “haphazard” and “non-uniform.” Now that specialized problem-solving courts are established, focus group participants raised the concern that encouraging problem-solving practice in conventional courts would result in a return to poor, inconsistent practice, and possibly siphon off the resources available to the specialized courts. Second, practicing problem solving might ethically or legally compromise the judge and the court process. Some judges perceived certain elements of problem solving—particularly its nonadversarial, team approach—as incompatible with conventional legal processes. However, these were minority views, which were generally disputed by other focus group participants. Most advocated its broader application, at least under certain circumstances and to the extent feasible.

We now turn to discuss the principal points that developed in the focus groups’ discussions, organized according to the three key research questions. We note first that, somewhat unexpectedly, graduated sanctions and rewards, often identified as a unique and critical element of most problem-solving court models (e.g., NADCP, 1997), received little attention in the discussions and were not raised in any focus group without prompting from the moderators. Why the topic was not explicitly raised is not entirely clear. Since judges frequently underlined the role of direct interaction between judge and litigant, judges may have viewed these fluid, conversational interactions, rather than the application of sanctions and rewards from a set list, as a defining element of problem-solving court appearances.

### ***Which problem-solving principles and practices are more easily applied in conventional courts and which are less easily applied?***

In all focus groups, the initial response was to cite barriers that might prevent or limit judges from practicing problem solving in conventional courts. However, with further probing, suggestions for overcoming barriers emerged. Five principles and practices emerged as easiest or most appropriate to apply on general court calendars.

**1. Judge’s Problem-Solving Orientation.** Focus group participants generally agreed that the proactive role of the judge in problem-solving courts could be applied to other cases and calendars in various ways—asking more questions, seeking more information about each case, and exploring a greater range of possible solutions:

Where I otherwise may have just taken the proposed orders of probation from the probation department [and] signed them . . . I will now ask the questions, did you look into X, Y and Z, did you look into this treatment option, have

they had treatment before, and have they been examined for any mental health [issues]? I will ask those questions where I wouldn't have before.

The information gained may lead judges to craft highly individualized, unconventional court orders—one judge gave the example of mandating an offender to visit the morgue and write an essay on what he saw.

The proactive, problem-solving orientation was deemed widely helpful outside of the problem-solving court setting, particularly in negotiation situations. Judges mentioned matrimonial court, family court, and other civil assignments as particularly appropriate venues. One judge claimed to have become known, after leaving a problem-solving court, for “thinking outside the box” in civil negotiations.

**2. Direct Interaction with the Defendant/Litigant.** Direct interaction with the defendant/litigant was deemed a prerequisite for effective behavior modification, enabling the judge to motivate defendants to make progress in treatment, bringing to light the most crucial needs of parties in civil cases, and laying the groundwork for positive solutions. Judges regarded this as one of the easiest practices to apply in conventional courts, perhaps because it requires no additional resources. While some expressed concern that defense attorneys in criminal cases would not allow such interactions for fear clients would incriminate themselves, several judges reported that they routinely address defendants directly, with few objections from the defense bar. Explained one judge:

I have never had an attorney say to me, “Judge, I won't let you ask him any questions.” I may ask questions they don't like and then they say, “I am directing my client not to answer that” and they don't answer it. It helps us get through a lot of paperwork and a lot of malarkey.

Several judges drew attention to specific aspects of their interactions with defendants that were deemed valuable both inside and outside the problem-solving court context—treating defendants with respect, showing compassion, having faith in their ability to improve, and seeing them as potential law-abiding citizens.

**3. Ongoing Judicial Supervision.** Requiring defendants, particularly probationers, to report back to court for treatment updates and judicial interaction was identified as one of the least controversial and most effective practices that could be applied in conventional criminal courts:

I used to give probation terms and wait for them to violate probation, and then we would file a petition and they would come back to court. Now I set review dates so that they have to come back in and prove to me that they have done something. And [I do that] because I know that that's what makes the drug court work, that they have to come back and tell me what is going on.

Recognizing that caseloads are too heavy for probation officers to supervise cases effectively, another judge introduced return court appearances to ensure direct judicial supervision and accountability:

I have started telling people that they are ordered back and I will have them come back once a month. And I intend to use sort of a drug court model. I don't have all the resources of a drug court, I don't have the testing and I can't get probation to really supervise them. But I think the issue of judicial supervision and accountability . . . makes a difference.

Judges in all focus groups, however, expressed concern about the limited time available to devote to supervision in conventional courts. Time limitations may force judges to select only a subset of cases for supervision. And the lack of clinical staff means that judges often cannot obtain the thorough treatment reports that could better inform their interactions with defendants. Nonetheless, many judges acknowledged that they had instituted enhanced supervision in their conventional court with at least some cases.

**4. Integration of Social Services.** Many judges reported that service coordination was a valuable tool in any court—especially for litigants with addiction, mental illness, or vocational/educational needs. However, referring parties to treatment or other services was seen as more difficult in conventional courts, because they lack the additional staff/case management resources typically available in specialized problem-solving courts. Nonetheless, several judges from both California and New York added that their problem-solving court experience increased the frequency with which they set treatment and other conditions, such as obtaining a high-school diploma or GED or attending drug treatment or other programs as part of probation pleas. Explained one judge, “When you are in the [problem-solving] court you tend to come out looking at probation as a treatment plan.”

**5. Team-Based, Nonadversarial Approach.** There was less consensus and greater skepticism about adopting a team-based, nonadversarial approach in general court calendars than about other practices, but judges identified opportunities to adopt such an approach, particularly in juvenile or family law settings, where rules often explicitly foster a problem-solving approach—seeking the “best interests of the child.” Most focus group participants believed the judge plays a critical role in determining the extent to which an individual courtroom can and will adopt a nonadversarial approach. However, most also stressed that others—particularly attorneys—can enable or derail that approach, and gaining the trust and participation of attorneys greatly facilitates judges' ability to practice problem solving. It was generally agreed that the players tend not to act as a team until they develop trust, and that takes time. For example, one judge attributed the defense bar's willingness to let him talk directly to defendants to a “reputation” that inspires trust: “They know I am not going to slam [defendants] into jail . . . [so] they allow their clients to talk to me.”

Most problem-solving courts hold regular case management meetings of court partners during which they address any recent developments or difficulties with specific cases, for example, relapses, problems at an assigned program, and questions about additional treatment needs. Some, but not all, judges felt that this practice was essential to functioning as a team, and could be adopted, albeit on a limited basis, in

a conventional court. One judge reported that he had successfully introduced a team approach on his family court calendar:

I started with reviews, a kid who I know was in really rough shape . . . they come back into court and then in chambers would be all of the service providers, probation officers, the mental health person, the staff worker. Occasionally, we bring the parents in, sometimes we bring a whole crew in and try to problem solve as a group. . . . It has been a real positive experience.

**Particular Case Types.** As suggested above, focus group discussion extended to the types of cases and calendars most ripe for problem-solving solutions. Appropriate case types were characterized in part as those in which the underlying problem can be resolved by court intervention, as well as situations in which a lack of appropriate services contributed to the defendant's criminal behavior. Unsurprisingly, problems identified as appropriate included drug addiction, domestic violence, mental illness, and DUI—all issues for which specialized problem-solving courts have been created. Criminal cases involving younger defendants were also cited. One judge summarized by noting that appropriate (criminal) case types are those “where the level of punishment required is diminished by the need to solve the underlying problem and so you'd rather solve the problem than punish the behavior.”

Crimes of serious violence were virtually the only matters that a significant number of judges suggested as inappropriate for problem solving; yet it was also observed that violent offenses are staples of some problem-solving courts (primarily domestic violence, but sometimes mental health courts as well). In fact, some judges conceded that if violence were tied to an underlying problem such as substance abuse, a problem-solving response might be appropriate.

Judges also identified specific stages in the criminal justice process—most notably bail and sentencing—as points at which problem solving was both appropriate and easy to implement. Although judges in several groups extended that to include plea negotiations, at least one judge objected on the grounds that plea bargaining is “a negotiation for what kind of punishment . . . they are going to receive, which is not a [problem-solving] court model and is probably inappropriate.” Criminal trials were also generally seen as inappropriate for problem solving.

In addition to criminal matters, other court calendars were also discussed extensively. Juvenile delinquency and dependency courts were widely cited as appropriate venues for problem solving, particularly for practices such as addressing the problems that contribute to recidivism, using a team-based approach, and interacting directly with all parties. Judges in both California and New York noted that the rules governing juvenile court explicitly encourage these practices: “there is already a rule [in California] that says it shall be nonadversarial to the maximum extent possible. There is already a rule in place that says the well-being of the child . . . takes precedence over any issue.”

In the California focus groups, family court—like juvenile courts—was perceived as inherently more problem oriented and as allowing greater flexibility and discretion than other courts. Judges in California also cited Substance Abuse and Crime Prevention Act (SACPA) courts, which administer court-mandated treatment programs for a wide range of drug possession offenders, as particularly appropriate for problem-solving approaches.<sup>5</sup>

Finally, probation—not a court calendar, but a court-imposed sentence—was widely regarded as an excellent vehicle for problem solving. Setting probation conditions, monitoring compliance, and responding to violations were all activities in which judges reported using problem-solving techniques. However, because probation departments are often overburdened and underfunded, judges in both states emphasized that judicial follow-up would often be required to ensure defendants were in fact linked to programs and services, and that other probation conditions were met (see Bamberger, 2003, for a similar discussion).

### ***What barriers might judges face when attempting to practice problem solving in conventional courts? How might those barriers be overcome?***

Focus group participants believed a number of barriers could seriously impede the ability to practice problem solving more widely. Limited time and resources and conflicting ideas about the judicial role received the most attention. Other barriers cited included attorney unwillingness or lack of education about the problem-solving approach, legal and constitutional constraints on what can or should be done in a conventional court, and public safety concerns with regard to violent defendants. The latter three issues, however, appeared to concern fewer judges and arose specifically during discussions of conventional adult criminal courts, not juvenile, family law, or civil calendars.

**Time and Resources.** Limited resources were unquestionably thought to be the most significant barrier to practicing problem solving in conventional courts. Judges emphasized the limited time for providing individualized attention to each case, ongoing judicial supervision, and direct interaction with defendants. They also cited institutional pressures to “move cases along.” Explained one judge:

When you leave treatment court . . . you don't have time for the individualized attention . . . you don't have access to the wide array of services, you are under a great deal of pressure to move cases. . . . The concern is not what are you doing for the defendant, but what are you doing about reducing your caseload, and you don't have the same kind of pressure in drug courts or [other] problem-solving courts. . . . It is just kind of frustrating, because you know that it [problem solving] works.

<sup>5</sup> In November 2000, California voters passed Proposition 36, the Substance Abuse and Crime Prevention Act (SACPA), mandating treatment in lieu of incarceration for nonviolent drug offenders, which led many counties to establish specialized drug-court-like calendars.

Across all focus groups, judges expressed particular concern about limited time and resources in relation to return court appearances. While ongoing judicial supervision was cited as among the most readily applicable practices (see above), multiple return dates create costs for a large number of personnel, not only the judge, and can incur resentment from other court staff. One judge explained that return appearances are

problematic, I think, especially in the budgetary crunch . . . and a judge is going to set it, it has to go back to his or her calendar. So then you start getting backlash from your staff . . . you are the only judge that does it; nobody else does it. And then we have to break . . . we break before noon, we have to break before five, our clerk's offices close down at three.

All judges agreed that limited resources posed a problem, but resources were perceived as more critical by judges in higher-volume, generally urban courts. Note, too, that domestic violence court judges from both states indicated that they faced high caseloads and pressure to move cases along rapidly *within* their specialized problem-solving courts. By contrast, drug and mental health court judges were far more likely to contrast the plentiful time available in their problem-solving courts to the severely limited time available in other assignments.

Judges further lamented the lack of additional staff resources in conventional courts to link defendants to appropriate services and provide the court with detailed progress reports. Although probation departments have historically been asked to perform similar functions, judges reported that chronic underfunding has rendered probation far less effective than desired. Ideally, if treatment programs could themselves provide detailed progress reports, the need for court-based case management might be lessened. However, judges were generally critical of progress reports directly from the treatment programs. Several believed that without court staff demanding accountability, programs would not provide timely reports with a "sufficient depth of information about client progress" to assist judicial decision making.

Could resource barriers be overcome? Some judges initially seemed paralyzed by the limited resources in conventional courts and could see no way to overcome them, with one noting "only Don Quixote could do them." Ultimately, however, two broad sets of strategies emerged. The first involved what judges themselves could do, in their own courts and with their current caseload. Among the suggestions was a "triage" approach, in which only the most appropriate cases would be selected for ongoing judicial monitoring: "You have to be able to decide what sort of cases you are going to concentrate on and be able to take that smaller number and give it the increased attention." Another suggestion was that judges assume greater personal responsibility for calling treatment providers, demanding timely progress reports, and exerting courtroom leadership to build trust and encourage attorneys and other parties to change their practices over time. Since building trust often depends on seeing the same parties regularly, this would appear particularly effective for judges in smaller jurisdictions, where rotation among key players might be less frequent. A second

set of recommendations focused on longer-term, more systemic (and costly) solutions. Among the suggestions was to make the resources of existing specialized problem-solving courts available to all courts and to establish courtwide screening, assessment, and case management systems, as well as additional dedicated staff.

**Judicial Role and Personality.** Conflicting judicial philosophies were also thought to be a barrier to the wider dissemination of a problem-solving approach. The consensus among participants was that in any courthouse, some judges' conception of the judicial role is inconsistent with problem-solving practice. Judges contrasted a "traditional" judicial role ("deciding cases," not "solving problems") with a more problem-solving, collaborative judicial philosophy. One noted that many colleagues view problem-solving approaches as "social work" and, thus, inconsistent with the "proper judicial role" of "deciding cases." (See also Hanson, 2002.) A philosophical preference for punishment over rehabilitation was also seen as a barrier in criminal cases:

I just get so frustrated at times working with colleagues who snicker and laugh and make fun of the collaborative approach, because they say, well, "punishment" . . . I have had PJs [presiding judges] who said, this is the purpose of why we have courts, [it] is to punish people.

In both states, judges from more rural and politically conservative counties tended to report that many, perhaps even the majority, of their colleagues have a more traditional conception of the judicial role. By contrast, several judges from large urban jurisdictions suggested the predominant philosophy in their courts was more conducive to a problem-solving approach, making the primary challenge not one of changing judges' philosophies but of imparting specific knowledge about how problem solving could be employed in their courtrooms. Indeed, focus group participants repeatedly invoked their experience in a specialized problem-solving court as critical in helping them find productive ways to apply problem solving elsewhere. This in turn raises the question of how to ensure that more judges receive such court experience and how the relevant skills might be imparted to judges who are without experience in problem-solving courts.

Participants also debated how the judge's personality and temperament affect the ability to apply a problem-solving approach effectively. The issue of whether certain "innate" personality characteristics are necessary to practice problem solving aroused considerable emotion in all focus groups, and produced no consensus. Some judges were vehement that problem solving was inherent to their personality: "Most of us sitting at this table have a personality that no matter what assignment we are in, we are going to be creative problem solvers." A few specific personality traits—empathy, honesty, and interpersonal communication skills—were cited. Some felt that, even with training or experience in problem-solving courts, colleagues without the right personality traits would be ineffective, but others disagreed, with one observing, "There are some [problem-solving court judges], [whose] personality would be the total antithesis of what you would expect of a collaborative justice court." Another

stated that judges must always “be who they are,” but that they can still be effective so long as they talk to defendants like real people and have faith in the defendants’ ability to succeed.

Because of the importance of role orientation and personality, general consensus emerged that widespread adoption of problem solving would be a long-term process, and some judges would simply be unwilling to adopt new practices and roles: “You are talking about evolving or changing the role of the judicial officer and the colleagues . . . the judicial officers who [came in] twenty to twenty-five years ago as a general rule don’t perceive the position that way.” However, some left the door open for judges to come around to new ideas, noting that problem solving is to some extent a “learned behavior”—and “exposure to the concept” is key to changing attitudes. While some participants affirmed that all judges would benefit from exposure to the problem-solving concept, many suggested that *new judges* would be most receptive and thus ought to be a principal focus of any efforts: “New judges tend to be won over,” and “the key is the crop coming out . . . so you gradually over time change the concept or perception.”

### ***How might problem solving be disseminated among judges and judicial leaders throughout the court system?***

Discussion focused extensively on the need to change the attitudes and practices of judges who may not be familiar with or receptive to opportunities to apply problem solving in general court calendars. According to participants, this is critical to promoting broader use of problem solving throughout the court systems. Indeed, the topic was raised by judges in all focus groups, and it received at least as much attention as did the other issues. As one judge noted, “One of the biggest challenges is convincing other judges to do this.” In general, the dialogue in all four focus groups was consistent, and several common themes emerged from the conversation about problem-solving dissemination.

**Education and Training.** Judges emphasized the need for greater education and training of judges and others in the principles and practices of problem solving. Education was seen as the most appropriate and effective method available, with judicial colleges and orientation for new judges the preferred venue for disseminating information. Many, although not all, judges expressed support for mandatory training: “If you make it voluntary, the people who want it come, and the people who don’t, don’t.” One judge noted that orientations for new judges have recently placed greater emphasis on the “art of being a judge” and teaching ethics and fairness, so a section on problem-solving justice might be especially appropriate. While discussion focused on the education and training of bench judges, focus group participants also cited the need to educate and train others, including attorneys and presiding judges “across the board,” to build broader understanding and support for problem solving.

**Informal Exposure/Word of Mouth.** In all focus groups, judges recommended a number of less formal means by which judges might be exposed to problem solving, including mentoring, organizing brown-bag lunches among judges to discuss relevant

issues, and exposing judges to the results of this new approach, for example, by sharing success stories. One judge felt that the mere presence of the drug court, and the resulting informal dissemination of information about how it worked, *had* in fact already generated a change of attitudes in the local judiciary. Specifically, it had resulted in a greater understanding of addiction and a greater acceptance of practices that could be used in other courtrooms, such as mandating defendants to treatment and giving them multiple chances after initial noncompliance. A common theme was that receptivity to problem solving is enhanced if judges “hear it from other judges” rather than from administrators, attorneys, or academics.

**Assignment/Rotation.** Assignment to specialized problem-solving courts also received considerable discussion in the focus groups, on the hypothesis that such experience would enable judges to develop new attitudes and skills that they would take with them to subsequent general calendar assignments (e.g., Chase and Hora, 2000). Participants appeared to distinguish—though most often implicitly—the impact of such assignments on judges’ attitudes from their impact on judges’ skills. Participants were skeptical that problem-solving court assignments *alone* enhance judicial receptivity to problem solving. While a few noted that their own experiences had moved them from mild opposition or disinterest to enthusiastic support for problem solving, most reported that colleagues who began as strongly opposed to problem solving had been unmoved by their experience in a problem-solving court.

By contrast, there was general consensus that experience can have a lasting, positive impact on judges’ *skills* as well as their ability to apply those skills in future assignments. Despite this, focus group participants were largely unenthusiastic about mandatory assignment to specialized problem-solving courts. When the judges were asked how to facilitate broader use of problem solving throughout the court system, mandatory assignment emerged unsolicited in one of the four groups, where several judges received it negatively. Participants in the other focus groups, probed on the issue, all agreed that problem-solving court assignments ought to be voluntary. The lack of enthusiasm was due primarily to concern about the potentially deleterious impact of mandatory assignment and frequent rotation on the problem-solving courts themselves. Participants noted that the assigned judge might be hostile to the court’s goals or methods, and that too frequent rotation might introduce discontinuity in the problem-solving court team and harm program participants. Similar concerns and themes are found in discussions of other specialized court contexts (see, e.g., Domitrovich, 1998; Rottman, 2000; Stempel, 1995).

**Judicial Leadership.** Judges in California emphasized the need for presiding judges and other judicial leaders to encourage broader use of problem solving throughout the court system. This need was a prominent theme in the California focus groups but not in the New York ones, and was the only significant cross-state difference to emerge in the research.

Participants cited the need for leaders to provide “encouragement” and “institutional validation.” Some articulated this in terms of sending positive messages granting judges “permission” to apply problem-solving court principles on general calendars:

And so to transfer some of these principles, there has to be permission from above. . . . There are people who are in authority for judges, that [have to say] it is okay to do this, it is not really crazy, you are not some kind of radical outlaw bandit. . . . In fact, it may actually be encouraged. That message needs to be given if you are going to be successful.

Another way [to encourage broader applications] is for the presiding judges to accept that this is appropriate. . . . I am sure all of you have had people make fun of you for what you do . . . who absolutely disagree with what we do in our courts. . . . Until we can get rid of that pervasive opinion that exists within our system, I think we are going to have problems and you are not going to see these great concepts being passed on to other assignments.

One judge suggested that leaders might help to promote problem solving by redefining opportunities for promotion and advancement to place less emphasis on traditional caseload management, trials, or publishing, and greater emphasis on solving problems:

If one were really honest, one would have to talk about opportunities for promotion and advancement. . . . I think one way [to promote problem solving] would be to get a very clear message from people who determine judges' career paths and promotions—administrators—that this kind of approach is as important as how many days on trial you had in the last year. Everybody wants to be looked upon favorably by people who evaluate their performance.

Discussion was often vague in terms of which specific leaders were and were not sufficiently supportive of problem solving. While focusing primarily on presiding judges at the county level, participants in both California focus groups cited the need for judges at all levels of the court system and elected officials as well to buy into the idea.

## CONCLUSION

Most judges participating in the research expressed some degree of optimism about the prospect of applying problem-solving practices outside of specialized courts; they believe that judges willing to practice problem solving in conventional court assignments can do so, if only on a limited basis and for cases most clearly in need of a creative, collaborative approach. Practices such as adopting a problem-solving judicial orientation, engaging in direct interaction with defendants and other litigants, and conducting ongoing supervision of treatment cases were deemed feasible and appropriate in many conventional court contexts. However, the optimism was quite guarded, and the list of barriers undeniably long and daunting. Chief among those were the limited judicial time and resources in conventional courts, the lack of additional staff to effectively manage treatment program coordination, and philosophical opposition or lack of education among colleagues both on the bench and in judicial leadership positions.

The consistency of opinions and experiences across focus groups suggests that key issues, both barriers and opportunities, do not vary significantly across the states. However, this may be due in part to similarities between the two states represented, as both California and New York have been at the forefront of testing new problem-solving court models and institutionalizing them system-wide. The experiences and policy challenges in these states are not necessarily representative of those faced by problem-solving court judges nationally.

Participants proposed specific steps that might be taken in the short term to better inform their colleagues. These included education, both formal and informal. The former include incorporating problem-solving courses in new judge orientation and in judicial college curriculum and encouraging training for prosecutors and defenders; the latter includes having problem-solving court judges mentioning general bench judges and those new to problem solving and encouraging judges to observe specialized problem-solving courts. Focus group participants, particularly those in California, also suggested positive steps judicial leaders might take, such as encouraging bench judges to practice problem solving when appropriate and to volunteer for assignments to specialized problem-solving courts.

Longer-term, more systemic changes to make the most effective use of limited resources were also suggested. These included centralizing treatment coordination and compliance-monitoring staff and resources within each courthouse; sharing specialized, problem-solving courts' case management resources with other courts and judges; and developing jurisdiction-wide directories of community-based service providers to inform all judges about available programs (e.g., substance abuse treatment, mental health treatment).

The findings allow us to reflect on the original purpose of specialized problem-solving courts and on whether problem solving *ought* to be encouraged in conventional courts. Specialized problem-solving courts were designed specifically to promote problem-solving responses where few previously existed with use of a collaborative model different from the process and organization of traditional courts. These specialized forums allow the adversarial process to be relaxed and problem solving or treatment to be emphasized, judges and court staff to develop problem-solving/therapeutic skills, and court jurisdiction to be structured to facilitate a proportionate response to problems that occur during the treatment process, for example, by fostering multiple "chances" as well as intermediate sanctions and rewards. It is, therefore, perhaps not surprising that judges in the focus groups, all of whom were veterans of these specialized courts, focused considerable attention on what they perceive as barriers to problem solving in conventional courts, whose inadequacies led the specialized court approach to emerge in the first place.

The application of problem solving in conventional courts presents the challenge of adapting a problem-solving intervention to conventional court processes. In the focus groups, judges expressed concern about the efficacy of therapeutic interventions in conventional court settings, with their heavier caseloads, more adversarial

process, and court personnel who may not be sensitive to the issues. Problem solving, if applied in a more piecemeal fashion outside of the specialized court context, might be distinctly less effective than it would otherwise be in a specialized problem-solving court. However, while specialized courts may be optimal for some categories of cases, these forums can reach only a relatively small number of litigants. For instance, a recent nationwide survey found that the average adult drug court enrolls only thirty participants per year, a small fraction of arrestees with substance addiction problems who might benefit from court-monitored treatment (Schafer and Zweig, 2004). Specialized problem-solving courts' narrow focus and location outside of the court system's mainstream necessarily limit their impact on public safety, substance abuse, and the other problems that they are designed to remedy. By contrast, problem solving in conventional courts offers the prospect of reaching much larger numbers in individual cases. What the impact of these interventions might be in this context, however, is unclear.

Efforts to encourage problem solving in conventional courts might also affect the existing specialized courts. Focus group participants speculated that such practice could result in fewer cases referred to the specialized courts. In addition, most specialized problem-solving courts are not, strictly speaking, courts—defined as judicial bodies established by constitution or statute—but rather are special divisions or dockets that can be relatively easily dismantled and, therefore, may be politically vulnerable (Rottman, 2000). The introduction of problem-solving techniques into conventional courts could conceivably undercut support for the existing specialized courts—for if problem solving can be practiced in conventional courts, why have specialized courts?<sup>6</sup>

Of course, problem solving can be practiced both in specialized court and general court settings, and there is ample reason to continue to explore opportunities to integrate the practice into generalist courts, particularly as the growth of specialized problem-solving courts appears to be declining in recent years, due at least in part to financial shortfalls in state and federal governments (Casey and Rottman, 2005). Toward that end, our findings suggest avenues for future research. Participants argued that promoting problem solving more broadly depends on the participation of judges without experience in specialized problem-solving courts, and they raised several hypotheses regarding these judges: that their attitudes and role orientations are unreceptive to problem-solving approaches, that they are uninformed about problem solving, and that they have little or no experience with problem-solving practice. A survey among judges could test these hypotheses and provide a fuller understanding of the judicial landscape.

<sup>6</sup> As an anonymous reviewer suggested, the expansion of problem solving into conventional court practices might be cited by some as evidence of co-optation, a process by which public organizations absorb new elements into their policy-making structure as a means of averting threats to their stability or existence (Selznick, 1949).

Specialized problem-solving courts are created through the cooperation of multiple agencies, including probation, prosecutors, defense attorneys, law enforcement, and treatment providers. The integration of these innovative principles and practices into mainstream courts will similarly depend on support from throughout the criminal justice and treatment systems. Additional research can explore the receptivity and commitment to the widespread use of problem-solving practices among these players. **jsj**

## REFERENCES

- Abrahamson, S. S. (2000). "The Appeal of Therapeutic Jurisprudence," 24 *Seattle University Law Review* 223.
- Bamberger, P. S. (2003). "Special Series: Problem Solving Courts and Therapeutic Jurisprudence: Specialized Courts: Not a Cure-All," 30 *Fordham Urban Law Journal* 1091.
- Becker, D. J. and M. D. Corrigan (2002). "Moving Problem Solving Courts into the Mainstream: A Report Card from the CCJ-COSCA Problem-Solving Courts Committee," 39:1 *Court Review* 4.
- Berman, G. (2004). "Think Piece: The Hardest Sell?: Problem-Solving Justice and the Challenges of Statewide Implementation." Center for Court Innovation, New York.
- Berman, G., and A. Gulick (2003). "Just the (Unwieldy, Hard to Gather, But Nonetheless Essential), Facts Ma'am: What We Know and Don't Know about Problem-Solving Courts," 30 *Fordham Urban Law Journal* 1027.
- Casey, P. M., and D. B. Rottman (2005). "Problem Solving Courts: Models and Trends," 26 *Justice System Journal* 35.
- (2003). "Problem Solving Courts: Models, Commonalities, and Trends: The View from the United States." Prepared for "Problem Solving Courts: An International Perspective," Psychology and Law International, Interdisciplinary Conference, July, Edinburgh, Scotland.
- (2000). "Therapeutic Jurisprudence in the Courts," 18 *Behavioral Sciences and the Law* 445.
- Chase, D., and P. Hora (2000). "The Implications of Therapeutic Jurisprudence for Judicial Satisfaction," 37:1 *Court Review* 12.
- Domitrovich, S. (1998). "Utilizing an Effective Economic Approach to Family Court: A Proposal for a Statutory Unified Family Court in Pennsylvania," 37 *Duquesne Law Review* 1.
- Feinblatt, J., G. Berman, and A. Fox (2000). "Institutionalizing Innovation: The New York Drug Court Story," 28 *Fordham Urban Law Journal* 277.
- Fox, A., and R. Wolf (2004). *The Future of Drug Courts: How States Are Mainstreaming the Model*. New York: Center for Court Innovation.

- Garcia, P. A. (2003). *Problem Solving Courts*. Chicago: American Bar Association, Coalition for Justice.
- Gilbert, J., R. Grimm, and J. Parnham (2001). "Applying Therapeutic Principles to a Family-Focused Juvenile Justice Model (Delinquency)," *52 Alabama Law Review* 1153.
- Goldkamp, J. (2003). "The Impact of Drug Courts," *2 Criminology and Public Policy* 197.
- Gottfredson, D., S. Najaka, and B. Kearley (2003). "Effectiveness of Drug Treatment Courts: Evidence from a Randomized Trial," *2 Criminology and Public Policy* 171.
- Hanson, R. (2002). "The Changing Role of a Judge and Its Implications," *38:4 Court Review* 10.
- Harrell, A. (2003). "Judging Drug Courts: Balancing the Evidence," *2 Criminology and Public Policy* 207.
- Leben, S. (2000). "Thoughts on Some Potential Appellate and Trial Court Applications of Therapeutic Jurisprudence," *24 Seattle University Law Review* 467.
- Marlowe, D. B., D. S. DeMatteo, and D. S. Festinger (2003). "A Sober Assessment of Drug Courts," *16 Federal Sentencing Reporter* 153.
- NADCP (National Association of Drug Court Professionals) (1997). *Defining Drug Courts: The Key Components*. Washington, DC: U.S. Department of Justice.
- Rempel, M., D. Fox-Kralstein, A. Cissner, R. Cohen, M. Labriola, D. Farole, A. Bader, and M. Magnani (2003). *The New York State Adult Drug Court Evaluation: Policies, Participants, and Impacts*. New York: Center for Court Innovation.
- Rottman, D. B. (2000). "Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges)?," *37:1 Court Review* 22.
- Schafer, C., and J. Zweg (2004). "National Portrait of Adult Drug Courts: Findings from the 2004 Drug Court Survey." Paper presented at the Annual Meeting of the American Society of Criminology, November, Nashville, Tennessee.
- Selznick, P. (1949). *TVA and the Grassroots: A Study in the Sociology of Formal Organization*. Berkeley: University of California Press.
- Stempel, J. W. (1995). "Two Cheers for Specialization," *61 Brooklyn Law Review* 67.
- Wexler, D. B. (2000). "Just Some Juvenile Thinking about Delinquent Behavior: A Therapeutic Jurisprudence Approach to Relapse Prevention Planning and Youth Advisory Juries," *69 UMKC Law Review* 93.
- Wilson, D. B., O. Mitchell, and D. L. MacKenzie (2003). "A Systematic Review of Drug Court Effects on Recidivism." Draft MS.