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”
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Acknowledgements

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

Faculty

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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:**


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)


**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:*


**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:


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:


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

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

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:


Optional:

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:
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:


Week 11: **“Therapeutic Jurisprudence”**

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

Readings:


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


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)

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 20th and April 24th.
Class Debates

Each student will be required to participate in one of three class debates. The debates are scheduled for January 30th, February 21st, and March 6th. 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.