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The Challenges of Going to Scale

Lessons from Other Disciplines for Problem-Solving Courts

SJI

Written by

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Lessons from Other Disciplines for Problem-Solving Courts

Introduction

In September 2005, the Bureau of Justice Assistance of the U.S. Department of Justice funded 10 demonstration projects and one technical assistance provider under its new Community-Based Problem-Solving Court Initiative. The Initiative aims to broaden the scope of problem-solving courts, expanding their approach (e.g., links to social services, rigorous judicial monitoring, aggressive community outreach) to reach larger defendant populations.

In announcing the awards, the Bureau of Justice Assistance explained that problem-solving courts:

> *have evolved from a lone drug court in Miami-Dade County and a single community court in midtown Manhattan to thousands of initiatives. Research has demonstrated that, if implemented properly, the problem-solving approach can decrease recidivism, reduce crime, improve coordination among justice agencies, enhance services to victims, and increase trust in the justice system. Results like these have led to problem-solving justice being endorsed by national criminal justice mainstream organizations.*[1]

To many in the problem-solving court world, this is not news. Since the nation's first drug court opened in Miami in 1989, more than 1,500 drug courts have opened nationwide. Other models have emerged as well, including domestic violence courts, family treatment courts, mental health courts, community courts, homeless courts, and a number of specialized courts serving juveniles.[2] These court models differ in their specifics but share a common goal: to encourage courts to address the underlying problems of victims, offenders and citizens rather than simply to process cases. To achieve this goal, problem-solving courts rely on a few basic principles, including ongoing judicial involvement to enhance offender accountability and an emphasis on reaching out to the larger community, particularly social service providers that can assist victims and offenders.

As problem-solving courts have grown in number and variety, several states—including California, New York, Ohio, Utah, and Missouri—have gone further, developing coordinated efforts to institute problem-solving initiatives on a statewide level. California, now home to approximately 250 "collaborative justice" courts (as problem-solving courts are known in California), coordinates its efforts through a special Collaborative Justice Courts Advisory Committee. New York has appointed a

deputy chief administrative judge (Judge Judy Harris Kluger) to oversee all of its problem-solving courts statewide.

As the California and New York examples suggest, this is a critical time for drug courts and other problem-solving courts. They've passed the first test, proving themselves as effective small scale innovations in the administration of justice.[3] But their reach is limited. The average adult drug court, for example, enrolls only 40 participants per year—a small fraction of the drug-involved offenders who might benefit from them.[4] The question now is whether problem-solving courts will remain small in scale—isolated islands of success—or whether they will spark wider change in the administration of justice.

The challenge of "going to scale" is not unique to courts—it is faced by innovators throughout government and private industry. President Bill Clinton, referring to school reform initiatives, once said that "nearly every problem has been solved by someone, somewhere ... [but] we can't seem to replicate [the innovations] anywhere else."[5] Social policy innovations, even those that have proven successful as small-scale experiments, don't automatically achieve results on a significant scale. Experience shows that many small-scale successes remain just that, small in scale. Others scale up to reach larger populations, only to find their model diluted, their effectiveness challenged, and their sustainability called into question.

The good news is that there is growing resolve to expand the reach of problem-solving justice. The problem-solving court approach has been embraced by mainstream groups like the American Bar Association and the Conference of Chief Justices and Conference of State Court Administrators. Innovators in the field have begun to explore how to institutionalize and expand problem-solving innovations to reach a greater number and variety of defendants, litigants and cases.[6]

The symbolic value of the Bureau of Justice Assistance's decision to fund experiments in taking problem-solving justice to scale cannot be understated. One common obstacle standing in the way of going to scale is a preference among funders to support innovative efforts. Many good ideas are tested and achieve results. However, dollars don't always follow success—small-scale innovations often lose funding exactly at the time they need the support to scale up and reach larger numbers. With problem-solving courts at a crossroads, the Bureau of Justice Assistance's support of the Problem-Solving Court Initiative is welcome news indeed for the field.

It has often been said that while the wise man learns from his mistakes, the truly wise man learns from the mistakes of others. As court administrators, policymakers and reformers grapple with the question of how innovative problem-solving court projects can be institutionalized, it can be instructive to look at the experiences of other sectors. Toward that end, the goal of this essay is to sift through the challenges and issues of going to scale by drawing on the best thinking from other fields, particularly education, as well as the early efforts and research regarding the institutionalization of problem-solving courts. A key lesson is that there is no cookie-cutter approach. Going to scale is an iterative process. The spread of

problem-solving courts may take many different forms, and the definition of scale may need to change to adapt to different circumstances.

This essay seeks to help court administrators, policymakers, and advocates of problem-solving courts address two key issues. First, what does it mean to go to scale with problem-solving courts? Second, this paper examines different approaches to going to scale, suggesting what to do, and what not to do, when going to scale.

Defining Scale

In May 2000, the Justice Management Institute in cooperation with the Office of Justice Programs, convened a focus group meeting in Denver. Thirty-five participants from a range of courts and other relevant institutions were brought together to discuss the topic of institutionalizing drug courts. At the beginning of the discussion, participants were asked to define what the idea of institutionalizing drug courts meant to them. There were nearly as many different answers as there were participants. Among the definitions offered:

- Drug courts continue to exist.
- Drug courts have a stable funding base.
- Drug courts have the resources to provide services to all who need them.
- Drug courts are closely linked to the rest of the court system, treatment and social service support systems, and other problem-solving courts throughout the State.
- The philosophy and basic concepts underlying drug courts are incorporated into courts and into the justice system and treatment community, regardless of whether what we now call drug courts receive long-term funding.[7]

The list went on. Clearly, the issue of scale is a tricky one, with many possible definitions. Problem-solving court advocates are not alone in grappling with these ideas. In fact, a multidisciplinary conference devoted entirely to the topic of "conceptualizing scale-up" was convened in Washington, DC in the fall of 2003.[8]

Defining scale is more than just an academic exercise. How policymakers and reformers think about scale matters because their assumptions, both explicit and implicit, help to influence the way they craft strategies (as well as the way researchers study the problem of scale). For example, if court administrators think about scale primarily as the replication of specialized problem-solving courts in a larger number of jurisdictions, they are likely to make different choices about funding, technical assistance and follow-up strategies than those who think about scale in terms of integrating problem-solving court practices into other court settings.[9]

Going to scale is most commonly thought of in terms of increasing numbers—for example, opening more problem-solving courts and serving more individuals. Getting to scale, then, is often seen as a series of technical challenges involving changing policy and practice to replicate innovative programs. In recent years, however, a broader conceptualization of scale is gaining widespread support in education and other fields. One of the broadest definitions of "scale" has been offered by

Cynthia Coburn, an education researcher at the University of California-Berkeley, who describes going to scale with school reform as including four key elements:

> **Spread:** the implementation of reforms or new practice at a larger number of sites or to apply to more groups;
> **Depth:** improved quality; an improvement in practice in deep and meaningful ways;
> **Sustainability:** putting the infrastructure and systems in place to support continued, deep improvements in practice over time;
> **Shift in Ownership:** a transfer of the knowledge and authority to sustain a reform to the implementing sites themselves, to allow for continued improvement over time.[10]

Reformers often focus efforts mainly on spread, that is, on increasing numbers. And while this is understandable (getting innovative projects off the ground is challenging enough), scaling up, according to Coburn, is about more than increasing numbers. It hinges on normative changes at all levels and among all key actors, and presents political as well as technical challenges.

For problem-solving court advocates, this definition of scale up focuses attention on several areas:

Depth

The focus on depth means that scaling up goes beyond what judges, attorneys, and other players are doing in the courtroom to affect their beliefs, attitudes, and perception of their professional roles. Judge Peggy Hora of Alameda, California is a good example of such "deep" change. She has said that her experience as a drug treatment court judge changed her attitudes and boosted her job satisfaction.[11] Other judges report that sitting in a problem-solving court has changed the way they view their professional role and how they approach cases. For example, some former problem-solving court judges say that, even in subsequent general calendar assignments, they ask more questions, more frequently set conditions (e.g., attend drug treatment, obtain a GED) as part of probation pleas, use graduated sanctions (e.g., write an essay, sit in court), and generally think "outside of the box."[12]

Sustainability

The focus on sustainability is critical, so new courts or new judging practices don't fall into disuse. Many problem-solving courts were initially developed and implemented with the help of federal funding and technical assistance. These resources won't last forever, so strategies are needed to sustain problem-solving courts over the long haul. Research in education reform suggests that if teachers understand the principles behind a reform, they are better able to respond to changing contexts and sustain the reform over time. In thinking about sustainability, therefore, advocates of problem-solving courts might ask two questions. First, what strategies (e.g., training

and education curricula) are effective at developing and nurturing judges' and attorneys' understanding of problem-solving? Second, how can courts and court systems create the conditions (e.g., sufficient and reliable funding) that support and sustain problem-solving courts and practices over time?

Shift in Ownership

Thinking about institutionalization in terms of a shift in ownership means that it is not enough for California, New York and other states to have central authorities pushing problem-solving. Local jurisdictions, ultimately, have to embrace the approach if it is to be sustained and spread. Reformers and court administrators must consider strategies (e.g., ongoing training opportunities, permitting jurisdictions to adapt a problem-solving model to their local conditions) that will enhance the chances that problem-solving will be adopted and cultivated at the local level.

Coburn's framework also highlights some of the tensions problem-solving court advocates need to navigate when going to scale. For example, there is a tension between spread and depth, and quantity and quality. Implementing problem-solving courts in larger numbers of jurisdictions might mean that less funding, technical assistance and other resources can be offered to any one site. Similarly, judicial education efforts may have to strike a balance between the number of judges reached and the intensity of training efforts.

There is also a tension between reform ownership and fidelity to the model. For example, allowing courts or judges to decide which elements of a problem-solving court model will and will not be implemented in their jurisdictions could raise concerns about "watered down" and, perhaps, less effective problem-solving. If, however, strict adherence to a single model is the goal, it could lead to resistance at the local level and make the innovation difficult to replicate.

Lessons from the Field

It is not easy to transform successful pilot programs into results on a significant scale. In taking an innovation to scale, the challenge is to implement successful practices in a much wider range of settings without sacrificing what it is that made the innovation appealing in the first place. The list of obstacles is daunting: reformers who developed the innovation often have less control over how it is implemented in the other settings, relevant staff (e.g., judges and attorneys) may be less enthusiastic about (or opposed to) the innovation, resources may be strapped, and the institutional or political setting may make it difficult to implement the innovation.

Despite the challenges, examples of successful scale up do exist, and the lessons learned from other fields can provide guidance when moving forward with problem-solving justice. Education is a particularly fruitful field to examine. As President Clinton's remark at the beginning of this essay suggests, education is a field with a history of near-constant innovation, and equally constant difficulty in replicating those innovations on anything other than a small scale. The challenge of scaling up innovation led the U.S. Department of Education, National Institutes of Health, and the National Science Foundation, in 1999, to partner to create an Interagency

Education Research Initiative for the express purpose of identifying the "conditions under which effective evidence-based interventions to improve preK-12 student learning and achievement succeed when applied on a large scale."[13] In addition, there is an extensive research literature documenting the continuous innovations in public schools and the many challenges with taking these innovations to scale.

Certainly, the differences between public schools and courts are not insignificant. Schools are not adversarial institutions. Schools have a longer history of embracing reform, and arguably school-based reform efforts receive more public attention (at the local level) than those of courts. There are also many relevant parallels between public schools and courts. Both are public institutions. Trial court judges and public school teachers both operate in more or less hierarchical organizations, yet both have wide latitude in their everyday operations—judges in how they run their courtrooms, teachers in how they run their classrooms. Both education and trial court reform often, though certainly not always, are encouraged or mandated in a "top-down" fashion. Given all this, schools offer some valuable lessons for court reforms.

Elements of Successful Scale Up

Why do some reforms go to scale and others fail?[14] Efforts to institutionalize public education reforms suggest that there are six reasons:

Program Design

Some types of reform are more likely than others to endure. Elements of the successful long-term programs include:

Focus: programs with clear missions and that are easy to understand and explain are more likely to scale up.

Coherence: programs whose elements work together to meet goals fare better.

Speed: it is easier to build support for change when the reforms achieve short-term results that support long-term objectives.

Comprehensiveness: programs with ambitious goals have been more successful than less ambitious programs which do not seek to alter the core of teaching and learning, in part because teachers feel like they are part of a larger movement.

Buy-In at the Local Level

Schools that have a free choice among reform programs and that have a good understanding of the changes involved make greater progress once a reform effort is launched. However, there is evidence that teachers who are initially suspicious of or even outright opposed to an innovation can eventually become supportive. Some observers argue that the most successful reforms follow a "mutual adaptation" process where local actors adopt specific elements of the reform to suit their local circumstances within constraints dictated by the need for fidelity to the program model.

Support during Implementation

Successful reforms provide teachers and schools with support in various forms, by providing the appropriate resources (e.g., materials, time, funds), ongoing training and feedback, and opportunities for collaboration and reflection with others. This support is often provided by intermediary agents, who advocate for training, best practices, and quality control.

Leadership

Leadership is critical to sustaining reform efforts. Principals and other leaders achieve success by communicating clearly the goals of sought-after reform, setting high standards for teaching and learning, and in some situations, combining pressure and support.

Quality Assurance

Reformers need to maintain program quality and measure results. This requires:

- Developing effective methods for data collection.
- Communicating the results of evaluations to the community—such openness is necessary if support for the program, and program quality, is to be maintained.
- Modifying training and support as needed—by adjusting training and professional development opportunities, leaders can strengthen aspects of the program that are not getting the expected results.

Building Constituencies for Change

Successful reformers have built internal and external constituencies to support their efforts. The education reform literature is replete with examples documenting the need for school district support to alleviate bureaucratic barriers. Many innovators also attempt to organize and engage the public, although such efforts take time and resources. Another avenue of support is through professional networks. Policymakers and critics have argued that national organizations such as the National Council of Teachers of Mathematics can be an important influence on teacher practice, for example.

Challenges to Scaling Up

While successful scale-ups do exist, a host of challenges exist to scaling up educational innovations.

Changing Practice and Achieving Buy-In

Studies of many different kinds of educational innovation have reached the conclusion that the core practices of the education system (i.e., the process of teaching and learning) are extremely difficult to change. Changing core practices requires "deep" change; it requires teachers to unlearn the beliefs, values, and assumptions that underlie their work. This requires the sustained engagement and commitment of

teachers and other local actors—a commitment of time and energy that is difficult to mandate.

Reformers have faced problems attempting to change school culture so that it is conducive to new ways of thinking about learning and teaching. The structure and organization of public schools adds to the challenges. Teachers (like most trial court judges) operate in relatively self-contained units—their classrooms—so those who do not agree with a reform effort often can just shut the door and go on doing what they always have. Positive peer pressure has been hard to develop because teachers are isolated and have little time outside of their classrooms. Many teachers also suffer from "reform fatigue"—they have seen too many reforms come and go when interest wanes or money runs out. Therefore, they adopt a wait-and-see attitude before embracing new reforms.

The structure of school reform can also present a challenge to their long-term sustainability. Many education reforms are tested in model classrooms or schools, staffed with highly-motivated people. While this can be a short-term benefit, it can be a long-term liability by separating the converts from the rest of teachers who are more resistant, virtually ensuring the innovations will not spread to other classrooms or schools.

Limited Resources

Not surprisingly, limited resources have presented a constant challenge for those attempting to take education reforms to scale. The successful spread of new programs usually requires additional upfront funds and a reallocation of existing dollars from less to more vital activities. There are other resource issues—for example, finding capable people to facilitate programs and train teachers in new methods, as well as finding the time in teachers' busy schedules to attend trainings. Partly for these reasons, most school districts involved in comprehensive reform offer one-time workshops rather than ongoing, targeted training in new practices.

Going to Scale with Problem-Solving Courts

So far, the institutionalization of problem-solving courts has taken one of three general forms. Each general approach to scaling up strikes a somewhat different balance among the challenges and goals.

Systemwide Expansion of Specialized Problem-Solving Courts

Perhaps the most common model of problem-solving court institutionalization is the systemwide acceptance, expansion, and coordination of specialized problem-solving courts. In all states, problem-solving courts began as experimental programs in a small number of jurisdictions. The scope of most of these first-generation courts was also limited in various ways. Most tended to have strict program eligibility requirements—for example, many drug courts accepted only first-time offenders or only misdemeanor offenders. Other courts, particularly community courts, reached only some geographic areas within a jurisdiction—for example, the Midtown Community Court in Manhattan serves only three police precincts (out of 22 in New York City).

Recognizing these limitations, some states have begun to cast a wider net with specialized problem-solving courts in two key ways: by entering new jurisdictions and by intensifying efforts within a jurisdiction.

Entering New Jurisdictions

The most common going to scale strategy has been to take specialized problem-solving courts to new jurisdictions.

In her State of the Judiciary Address in January 2001, New York Chief Judge Judith Kaye announced a three-year plan to expand drug courts to all 62 counties in the state. To carry out this plan, she created the Office of Court Drug Treatment Programs. By the end of 2003, more than 19,000 people had participated in drug court programs throughout the state. Today, every New York county is served by a drug court (and some counties have several).

The spread of drug courts in New York State nicely illustrates the tension between flexibility and ease of implementation on one hand, and the need to protect the integrity of the model, on the other hand. Court administrators in New York did not issue binding rules about how drug courts should be structured, but did take several steps to support these courts and promote fidelity to basic elements of the drug court model. For example, the state court system convened a series of trainings for drug court judges, conducted a statewide evaluation of drug court outcomes, and is in the process of developing a series of best practice manuals as a resource for practitioners. A universal management information system has also been created for all drug courts, so they can track critical program outcome information. All of these efforts are meant to encourage local municipalities to learn and implement basic elements of the drug court model. Within this context, court administrators in New York did allow flexibility among individual courts in determining their structure (e.g., pre- or post-plea, length of program phases) as well as day-to-day operations.

In her 2003 State of the Judiciary Address, Kaye announced the statewide expansion of Integrated Domestic Violence courts. Integrated Domestic Violence courts address the problem of domestic violence victims and their families needing to appear in different courts, and before multiple judges, through the use of a "one family-one judge" model. These courts allow a single judge to hear multiple cases types—criminal, family and matrimonial—related to one family where the underlying issue is domestic violence. As of June 2005, there were 18 Integrated Domestic Violence Courts in operation in New York State, with another 11 in the planning. By the end of 2005, it is anticipated that more than three-quarters of the residents of New York State will live in counties served by these courts.

Judge Judy Harris Kluger, New York's deputy chief administrative judge for court operations and planning, is responsible for overseeing problem-solving courts in New York. Kluger has noted a number of operational challenges in opening Integrated Domestic Violence Courts. Key among these is the need to identify eligible cases, which can be in any one of three separate courts each of which has a separate court-

house and computer system. Another challenge is to get victim support, child support and other services linked to the court.

Achieving buy-in from judges, prosecutors, the defense bar and others is always a challenge. According to Kluger, this challenge was lessened somewhat because of Chief Judge Kaye's strong support for Integrated Domestic Violence Courts and because of the fact that these courts are simply a good idea: "everyone you talk to around the state—be it litigants, lawyers, prosecutors ...realizes it makes sense to have these cases in one court. So as the years go by and we begin to increase the number of courts, we don't have to convince people that this is the right thing to do."[15]

New York's Integrated Domestic Violence Courts, according to Kluger, follow what is "pretty much a set model around the state." While emphasizing the need to remain loyal to the model, however, she also cited the need, in a state as large and diverse as New York, to "recognize local differences while understanding that there are certain concepts that have to translate both in a big city and a rural area." As such, there is some local flexibility in the operation of Integrated Domestic Violence Courts across the state. For example, courts in some smaller jurisdictions sit only a half-day or one full day per week while in other areas they are full-time courts.

Certainly, the geographic spread of drug courts and other specialized problem-solving courts has not been limited to New York. States such as Missouri, Louisiana, Ohio, Utah, Wyoming and California have undertaken efforts to manage and oversee the growth of drug courts and other problem-solving courts.[16] And jurisdictions need not necessarily adopt existing specialized court models. In Wyoming, for example, the state legislature is currently considering a bill to broaden the state's drug court framework and help communities establish other kinds of problem-solving courts, including domestic violence, child abuse and neglect, and truancy courts that do not currently operate in the state. The bill would allow communities to apply for funding, administered by the state Department of Health. Kurt Zunker, of the Wyoming Drug Court Association, supports the bill. He also suggested that drug courts be given a permanent "home" within the State's Department of Health, so that problem-solving courts can be located within a long-standing state agency. This, Zunker believes, will give the system stability at the same time that it expands to include a wider variety of cases.[17]

Intensifying Efforts Within a Jurisdiction

Scaling up specialized problem-solving courts doesn't necessarily require entering new jurisdictions—it can also take the form of handling more cases, or a wider array of cases, within a jurisdiction. This can happen simply by expanding the number or variety of cases handled by an existing specialized problem-solving court framework, or it may require developing an entirely new infrastructure. Bronx Community Solutions is an example of the latter approach.

Bronx Community Solutions represents an ambitious attempt to expand the reach of community courts. The project attempts to apply a problem-solving model to the

entire Bronx Criminal Court, which handles at least 50,000 misdemeanor cases each year. New York City's community courts in Midtown Manhattan, Harlem and Red Hook, Brooklyn, have demonstrated the potential of community courts operating in specific neighborhoods.[18] Bronx Community Solutions is designed to test this model on a boroughwide scale, among larger numbers of cases.

The program targets offenders convicted of less serious misdemeanor offenses (e.g., drug possession, prostitution and shoplifting). It features enhanced sentencing options for these types of cases, including social service classes and community service projects, so judges need not rely on short-term incarceration sentences, which are both expensive and ineffective, according to Bronx Community Solutions organizers. The goal is to combine punishment (community service) with help in the form of court-mandated drug treatment, job training and mental health counseling.

Since pilot operations began in January 2005, nearly 4,000 individuals have been assigned to perform community service and to receive social services through Bronx Community Solutions. When fully operational, the program expects to handle more than 10,000 cases annually.

Bronx Community Solutions is very young, so its lessons are necessarily preliminary. That said, the early months of operations demonstrate the ability to spread substantially within a jurisdiction—applying a problem-solving approach to 10,000 individuals a year is ambitious indeed. Reaching so many people does come at a cost. Time and resources have been ongoing concerns—designing a rapid-fire assessment tool to screen defendants, and figuring out where and when to administer it, has been a challenge. It's also worth noting that the Bronx Community Solutions intervention, like that of all community courts, is less intensive than that of other problem-solving court models—five days of community service and five sessions of social service is a common sentence for Bronx Community Solutions participants. It's questionable, for example, whether a jurisdiction would have the resources to provide a drug court intervention, which typically involves months of drug treatment, to such large numbers of individuals. While 10,000 may be an unrealistic goal for a drug court, jurisdictions can still take steps to handle larger numbers within the existing drug court framework: recall that the average drug court handles just 40 cases per year.

Integrating Elements of Problem-Solving in Quasi-Specialized Courts

A second general approach to scaling up is to take pieces of, but not the full, problem-solving court model and integrate them into quasi-specialized courts on a broader, systemwide scale. An example of this is Proposition 36 courts in California.

The Substance Abuse and Crime Prevention Act, more commonly known as Proposition 36, was passed by 61 percent of California voters in November 2000. Proposition 36 diverts first- and second-time drug offenders convicted of drug possession-related charges into court-mandated treatment, and provides $120 million for treatment services annually for five years. The court system created special "Prop 36"

courts to streamline the processing of eligible cases and to monitor defendants agreeing to enter treatment.

Proposition 36 clearly broadens the reach of court-imposed substance abuse treatment in California. As a result of Proposition 36, more individuals receive court-mandated treatment—more than 35,000 individuals per year enter treatment through Proposition 36, compared to an estimated 3,000-4,000 in the state's drug treatment courts. Proposition 36 courts also reach some new populations, such as nonviolent parole violators, who are not involved in drug courts.

Many Proposition 36 courts operate with less than a "full" drug court model. Part of the reason for this is built into the legislation itself. Proposition 36 court judges have less legal leverage than drug court judges—a fact that led many drug court advocates to lobby against the proposition, despite their commitment to treatment for addicted offenders. For example, by statute, Proposition 36 court judges must impose a final sentence after only two drug relapses (drug courts typically allow more relapses before a final sentence is imposed).

Beyond setting up a general framework, Proposition 36 provides considerable flexibility for localities in operating their courts. Each of California's 58 counties has its own list of eligible charges, case processing methods, and programmatic features. According to an evaluation, 19 percent of California's counties report handling Proposition 36 cases within a preexisting drug court and an additional 55 percent say they handle at least some Proposition 36 cases with a "drug court approach"—although what exactly that means is not entirely clear.[19] As Judge Stephen Manley, a California drug court pioneer, points out, in areas such as promoting early intervention and creating links between courts and substance abuse treatment agencies, "the drug court model is being used by the vast majority of counties to implement Proposition 36."[20]

At least some Proposition 36 courts have adapted and streamlined the drug court model to accommodate their larger caseloads. Problem-solving court advocates have mixed feelings about this. Some, like Stephen Manley, view it as a positive development—these courts take only the "the best part of the drug court model" such as drug testing. Others, including judges who participated in a series of focus groups convened by the Center for Court Innovation and California Administrative Office of Courts, expressed concern about fidelity to the model, arguing that in their counties, Proposition 36 courts fall well short of drug court standards—less frequent court appearances, less time for in-depth interaction between judge and offender, and a lack of staffing resources to coordinate treatment services and provide progress reports to the judge.[21]

Treatment capacity has been another key area of concern as Proposition 36 courts attempt to scale up court-mandated treatment. In the Center for Court Innovation-California Administrative Office of Courts focus groups, a treatment provider argued that the level of funding for treatment agencies under Proposition 36 is far less than what's needed. A prosecutor agreed that treatment is a big problem: "my experience as a prosecutor, especially with drug cases, is that beds aren't available." The challenge is

especially acute for residential substance abuse treatment, which is far more expensive than outpatient treatment. Said another official, "Residential is full; we just don't have the money for it." Partly because of limited resources, most offenders in Proposition 36 courts are mandated to outpatient treatment. Some have suggested that this could be part of the reason why heroin users, who often require residential treatment early in recovery, have the lowest rate of completion of all Proposition 36 clients.

Resource constraints present a challenge to any scale up effort, and Proposition 36 is no different. Within these constraints, however, the state is attempting to make the most efficient use of the resources that are available. For example, in March 2005, the state's Department of Alcohol and Drug Programs developed a proposal to reallocate excess treatment funding allocation from counties that had not used the dollars. Proposition 36's full story has yet to play out—the legislation will sunset in June 2006, and the governor and state legislature will decide whether to continue funding these courts in the next budget cycle, and if so, at what level. Whatever ends up happening, California offers an important case study for advocates of problem-solving justice.

Problem-Solving in Conventional Courts

A third general approach to scaling up problem-solving courts is to incorporate at least some of the practices associated with specialized problem-solving courts into the administration of justice in regular state courts. This differs from the previous two approaches in that it is information, practices, or a general philosophy to the administration of justice, and not a specific program, that actually "scales up." In the words of Jonathan Lippman, Chief Administrative Judge for the New York State Unified Court System, it means integrating "problem-solving concepts into the fiber of what we do." Says Lippman:

> *We're not going to be content just because we have reached "X" number of drug courts. We will be satisfied when the drug court concept—the concept of treating nonviolent addicted offenders and reintroducing them into society as valued members of the community—is the way we do our business in relation to nonviolent addicted offenders.*[22]

The Conference of Chief Justices and Conference of State Court Administrators endorsed such an approach in 2000 and again in 2004, enhancing interest in which problem-solving techniques could effectively be applied in general court settings. The National Center for State Courts is convening a national forum on this topic in March 2006. The National Judicial College is working on a bench book for judges in conventional courts that want to apply problem-solving principles. And, the California Administrative Office of Courts and the Center for Court Innovation have partnered to perform research on the topic of spreading problem-solving principles. In 2003, a series of focus groups were held among problem-solving court judges in both

California and New York.[23] Participating judges felt a number of practices could effectively be replicated on general calendars, including:

- Adopting a problem-solving orientation,
- Interacting with defendants,
- Judicial monitoring,
- Reducing the adversarial nature of the judicial process (in some situations).

Some judges are already adopting these practices. For example, a judge in a felony trial court in New York established a compliance calendar to manage felony probation cases for which he requires repeat court appearances. Other judges in the courthouse make use of the compliance calendar as well, transferring appropriate cases to the calendar after sentencing, with the goal of enhancing the court's ability to monitor offenders.

The focus group judges also discussed a number of barriers to replicating problem-solving approaches in the conventional court context. Chief among those were the shortage of resources and staff to give individualized attention to cases; a traditional view of the judge's role ("deciding cases, not solving problems"); legal and constitutional constraints, especially in adult criminal courts; and opposition from attorneys, probation officers and others.

Recognizing that problem-solving courts are created through the joint efforts of multiple agencies, the California Administrative Office of Courts and the Center for Court Innovation conducted a second set of focus groups, this time among other key players—prosecutors and defense attorneys, probation and parole officers, substance abuse treatment and service providers, and representatives of statewide organizations.[24] These stakeholders voiced many of the same hopes and concerns as the judges. They felt it was a good idea to integrate problem-solving practices in general courts. The support was tempered by concerns about limited time and resources (e.g., heavy caseloads in the courts, limited availability of treatment services). Stakeholders, particularly the attorneys, also spoke about the need to preserve the adversarial process in some cases.

The second series of focus groups unearthed a number of practical suggestions for how to integrate problem-solving methods into general courts. Focus group participants recommended proceeding cautiously, perhaps by establishing pilot projects in a small number of jurisdictions or initially restricting efforts to particular types of cases (such as defendants with substance abuse or mental health problems). They spoke about the need for training and education among members of the bench and bar, and for strong support from judicial leaders. Focus group participants also suggested a number of intriguing ideas about specific operational changes, at the courthouse level, that could help problem-solving methods operate more effectively:

Early Screening and Assessment: Defendants in criminal cases would need to be screened as early as possible, ideally prior to arraignment. Public defenders

were seen as possible candidates to conduct these screenings, though focus group participants were aware that this could raise potential conflicts of interest and that most defenders lack clinical expertise.

New Roles for Justice System Stakeholders: Judges, attorneys and other relevant players would need to embrace new roles and become more collaborative.

Continued Specialization: Some specialization may still be needed. A criminal courthouse could, for example, establish two "tracks"—one for cases warranting a "problem-solving" approach and another for traditional prosecution.

Revised Protocols for Judicial Supervision: Recognizing that caseloads in some jurisdictions are just too heavy for judges to monitor a large number of cases, probation officers could conduct at least some monitoring (although they too face overwhelming caseloads).

Courthouse-Based Case Management Resources: Some participants felt that having case management and treatment resources available in the courthouse would be invaluable. Caseworkers might be available to judges throughout a courthouse or county. One defense attorney suggested that defense agencies might also expand their own social work resources.

In an effort to encourage general calendar judges to incorporate problem-solving practices into the administration of justice, the Center for Court Innovation and the New York State Unified Court System convened a day-long pilot training among 24 judges in Syracuse in May 2005. The training sought to explore how approaches in use in problem-solving courts might be adaptable to other court setting. Its curriculum was developed by an advisory committee consisting of judges, attorneys and court administers from New York State. Later that year, a similar training was held in California.

Compared to the other models of scaling-up, applying problem-solving principles in conventional courts presents the sharpest trade-off between depth and spread. There are certainly unanswered questions about how effective it is to apply one or two elements of the problem-solving model—say, direct interaction with litigants or repeat court appearances—in regular state courts, with their heavier caseloads and more adversarial court process. At the same time, problem-solving in regular courts provides the opportunity to reach literally millions more cases than can be reached in specialized problem-solving courts or quasi-specialized venues like Proposition 36 courts.

Moving Forward

Problem-solving courts are at a crossroads. Their success as small-scale experiments has led a growing number of people, both inside and outside the court system, to support "mainstreaming" problem-solving justice. But moving from the margins to

the mainstream is no easy task. It's more than just a matter of expanding what is currently being done. Replicating the success of problem-solving courts, and bringing a deep and lasting change to the administration of justice, means dealing with the realities of limited resources; judges, attorneys and others who may be less than enthusiastic; political and institutional settings which do not necessarily encourage problem-solving; and other challenges.

This essay has attempted to help court administrators, policymakers and problem-solving court advocates face these challenges. Taken together, the topics covered—defining scale, lessons from innovations in education, and current approaches to institutionalizing problem-solving courts—suggest some common lessons for advocates to consider as they decide which scaling up strategies are most appropriate in their jurisdictions. Taking problem-solving to scale will ultimately depend on what happens in the courtroom but there are steps that can be taken to enhance the chances of success.

Lesson 1: Be Flexible

There is no one way to go to scale with problem-solving justice. In some cases, going to scale may mean expanding specialized problem-solving courts in larger numbers of jurisdictions or taking on larger caseloads. In others, it may mean applying pieces of a problem-solving court model in a larger number of cases. In yet others, integrating problem-solving practices into general judicial practice. Likely, it will entail a blend of these strategies.

The goal of scaling up is to replicate problem-solving courts' results, not necessarily to reproduce every one of its features. Thus, court administrators and problem-solving court advocates should be flexible when implementing going to scale strategies. For example, if substantial resistance from local courts or judges is anticipated, less centralized coordination or greater flexibility to adapt court models to suit local needs may be preferable. This approach does, however, make it more difficult to provide quality control and assure fidelity to the model.

Lesson 2: Create Incentives

In some ways, problem-solving courts may be victims of their own success. It's common to hear the view that some judges are "naturals" at problem-solving and others are not. While there's certainly truth to this, it assumes that problem-solving is an individual trait rather than a professional expectation. Judicial leaders and court administrators can take important steps to change this reality. They can encourage judges to seek out assignments to specialized problem-solving courts. They can value problem-solving practices and encourage judges to engage in those practices when appropriate.

Perhaps more important, problem-solving can also be built into judges' career incentives. Administrators can make clear, for example, that engaging in problem-solving or taking an assignment on a problem-solving court will reflect well on judi-

cial evaluations. There are other incentives available as well—salary increases, greater choice in future assignments, travel opportunities, to name just a few.

Lesson 3: Education and Training are Critical

Many legal professionals are understandably hesitant to embrace problem-solving justice because they feel it goes against the notion that their job is to resolve cases, not solve problems. This belief is based on a view of courts as neutral, independent dispute resolution institutions. Thus, scaling up problem-solving justice requires judges, attorneys and others to change their standard approach to the administration of justice. This won't happen by accident—professional training is critical. Ideally, training should occur on an ongoing basis and be as targeted as possible. Some judges need to learn the ABC's of problem-solving—its history, underlying philosophy, how and why it works.

Standard trainings can be incorporated into new judge orientation, judicial college and at other professional conferences. These venues provide opportunities for judges to receive training and feedback, and opportunities for collaboration and reflection with their colleagues. Similar training opportunities can be developed for prosecutors, defense attorneys, and others. An intermediary authority, with the goal of pushing reform, can be a valuable player in education and training efforts, by providing technical assistance, disseminating best practices, and serving as a clearinghouse for information.

In the long run, education and training should begin where the judges and lawyers begin: law schools. There are already some examples of problem-solving courses in law school, but on an ad hoc basis. The goal is to integrate problem-solving into the standard required curriculum for all law schools.

Lesson 4: Provide Data

If a problem-solving approach is to be taken to scale, and to sustain itself, courts and judges need to understand their successes and areas of need, and how to improve over time. A system of quality assurance is critical so that everyone can see progress and what can be done to improve performance. This requires a continued investment in research, evaluation, and technical assistance. Often a special unit or external agency is called upon to play this role. It also requires that the management information systems and performance measures be in place to allow courts to collect the information they need (e.g., treatment referrals, links to community service, compliance with court mandates, recidivism information).

Lesson 5: Address Capacity Issues

In taking problem-solving to scale, limited capacity is the gorilla in the room. Most judges face heavy caseloads, a lack of staff to connect litigants with needed services, and limited knowledge of available services, and in some communities, limited service availability. If there are no beds available in the county, there's little a court can do for an offender who needs residential treatment.

While resource constraints limit how far a problem-solving approach can realistically extend, advocates may need to take steps to try to enhance capacity as they go to scale. This can take the form of obtaining new funding or reallocating resources toward more successful or vital activities. It may require the formation of new partnerships with treatment and social service providers, state agencies, and other organizations, to help achieve wider coverage and impact. Advocates of problem-solving courts can also take steps to build constituencies of support for problem-solving justice, not only among those in the courts but also among the executive and legislative branches (who have the power of the purse) and among the general public (who elected those who have the power of the purse). It is important to "market" the problem-solving approach because policy issues—e.g., sufficient and stable funding—may need to be addressed before scaling-up can be realized.

Steps can also be taken to make efficient use of the existing capacity by targeting resources where they are needed most. For example, recent research suggests that in drug courts, judicial status hearing are more critical for higher-risk offenders (those with longer criminal history or have done poorly in treatment before) than for those who pose a lower risk. Judges with heavy caseloads, who have to make choices about who to monitor intensively, might look first to the higher-risk offenders. Another idea voiced in the Center for Court Innovation-California Administrative Office of the Courts focus groups is for all judges in a courthouse to share case management or other resources, to the extent necessary and feasible. This discussion also highlights the benefits of court-wide screening, assessment and case management systems. Screening and assessment can assist courts to effectively target resources and get the biggest bang for their buck in any scale-up effort.

Conclusion

The decisions court administrators, judges, and problem-solving advocates make in the coming months and years will help determine whether problem-solving brings a deep and lasting change to the administration of justice, or whether, like so many innovations, it remains small in scale and confined to the margins of the justice system. Taking problem-solving justice to scale is a significant challenge but there is reason to be optimistic: more and more people, in state and federal government, in leadership positions and in the trenches, recognize the value of problem-solving justice and the need to invest in it over the long term. If problem-solving is to become standard practice in the justice system, advocates will need to consider the full range of options, make thoughtful decisions about how to define their innovation, select feasible and promising strategies, and continue to refine and adapt their strategies as events warrant. The hope is that this paper will help them find the most promising strategies to achieve widespread impact.

Appendix: Selected Going-to-Scale Resources

Problem-Solving Courts

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Endnotes

1. United States Department of Justice, Bureau of Justice Assistance. Community-Based Problem-Solving Criminal Justice Initiative (2005): http://www.ojp.usdoj.gov/BJA/grant/cb_problem_solving.html The grantees are Pima County Juvenile Court Center (Arizona), San Diego City Attorney's Office (California), City of Atlanta Community Court Division (Georgia),Sault Tribe of Chippewa Indians (Michigan), Bronx Community Solutions (New York), Athens County Municipal Court (Ohio), Clackamas County (Oregon), Fourth Circuit, South Carolina, Office of the Commonwealth's Attorneys, Lynchburg (Virginia), City of Seattle (Washington).
2. Greg Berman and John Feinblatt, Good Courts: The Case for Problem-Solving Justice (The New Press, 2005).
3. The Government Accountability Office recently agreed that the evidence shows that adult drug courts do reduce recidivism. Adult Drug Courts: Evidence Indicates Reduced Recidivism and Mixed Results for Other Outcomes, United States Government Accountability Office, Report to Congressional Committees, February 2005. For a good discussion of the results of drug court evaluations, see Amanda Cissner and Michael Rempel, "The State of Drug Court Research: Moving Beyond 'Do They Work'?" New York: Center for Court Innovation, 2005. For a more general review of studies about all problem-solving courts, see Berman and Feinblatt, Good Courts, supra note 2.
4. Christine Schafer and Janine Zweig, "National Portrait of Adult Drug Courts: Findings from the 2004 Drug Court Survey." Presented at American Society of Criminology Annual Meeting, November 2004.
5. Lynn Olson, "Growing Pains," Education Week, Nov. 2, 1994, p.29.
6. There is a growing literature discussing issues and challenges to taking problem-solving courts to scale, with most pieces focusing on drug court institutionalization. These studies include Tashiro et. al. "Institutionalizing Drug Courts: A Focus Group Meeting Report," Bureau of Justice Assistance, 2000, http://www.ncjrs.org/html/bja/idc/, 12/02/2005; Aubrey Fox and Greg Berman, "Going to Scale: A Conversation about the Future of Drug Courts" Court Review, Fall 2002; Aubrey Fox and Robert V. Wolf, "The Future of Drug Courts: How States are Mainstreaming the Drug Court Model," New York: Center for Court Innovation, 2004; Greg Berman, "The Hardest Sell?: Problem-Solving Justice and the Challenges of Statewide Implementation." New York: Center for Court Innovation, 2004.
7. Tashiro et. al. "Institutionalizing Drug Courts: A Focus Group Meeting Report," Bureau of Justice Assistance, 2000, http://www.ncjrs.org/html/bja/idc/, 12/02/2005. See also Fox and Berman, "Going to Scale," supra note 6.
8. The Data Research and Development Center (University of Chicago) hosted "Conceptualizing Scale-Up: Multidisciplinary Perspectives," November 3-4, 2003. The conference was organized with support of the National Science Foundation as part of the Interagency Education Research Initiative.
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11. See Deborah Chase and Peggy F. Hora, "The Implications of Therapeutic Jurisprudence for Judicial Satisfaction," Court Review, Spring 2000, pp. 12–20.
12. Donald Farole et. al., Collaborative Justice in Conventional Courts: Opportunities and Barriers. Report submitted to the California Administrative Office of the Courts, 2004.
13. http://www.ed.gov/about/offices/list/ies/ncer/pgms.html, 12/2/2005.
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15. Quoted from:
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17. See Anthony Lane, "Bill Would Allow 'Problem Solving' Courts," Casper Star Tribune, December 13, 2005.
18. See, e.g., Michelle Sviridoff et. al., Dispensing Justice Locally: The Implementation and Effects of the Midtown Community Court. Harwood Academic Publishers, Amsterdam.

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23. Farole et. al., Collaborative Justice in Conventional Courts, supra note 20. For a briefer summary of the report's findings, see Farole et. al., "Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts," Justice System Journal, Vol. 26, p. 57, 2005.
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Notes

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 Red Hook Community Justice Center and the Midtown Community Court as well as drug courts, domestic violence courts, youth courts and mental health courts.

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping practitioners across the country launch their own problem-solving innovations. The Center contributes to the national conversation about justice through a variety of written products, including original research, books and white papers like this one. The Center also provides hands-on technical assistance, advising courts, prosecutors and other criminal justice planners throughout the country.

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