

## Problem-solving justice: a quiet revolution

*More and more judges across the the country are realizing they have an obligation to attempt to solve the problems that bring people to court.*

by Greg Berman and John Feinblatt

Alexander Hamilton once wrote that the judicial system is the “least dangerous” branch of government because it lacks power over the sword or the purse. Indeed, judicial authority derives from something much harder to quantify, but no less real: the trust and respect of the American people.

Given this reality, it makes sense every now and then to ask: how does the public feel about the job that judges and courts are doing? By some measures, the news is good. There’s an old saying that people vote with their feet. If that’s the case, then public confidence in the courts has never been stronger. More and more people are turning to the courts to resolve their disputes and solve their problems. Case filings in state courts hit an all-time high of 91.5 million in 1998. As these numbers suggest, each day our judges are called upon to handle a caseload of staggering com-

plexity—everything from the intimate affairs of troubled families to the intricate dealings of multi-national corporations. By and large they dispense their duties with compassion, precision, and fairness.

But that’s not the end of the story. While there is much to be proud of—after all, the independence and integrity of the American judiciary is the envy of much of the world—there are troubling signs of public dissatisfaction with courts that we cannot afford to ignore. As an experiment, go to your corner bar and ask a few people what they think of their local courts. Chances are, you’ll find that most people don’t know a whole lot about how courts work and have only the vaguest sense of what judges and attorneys do all day. And if you are lucky enough to happen upon someone who does know a thing or two about courts, you’re likely to hear a long list of complaints—the courts are too slow, judges are out of touch, the same offenders keep cycling through the system again and again.

In recent years, an innovative group of judges and attorneys has decided to do something about this situation. They have begun to test new ways of doing justice, re-engineering the way that courts address such everyday problems as mental illness, quality-of-life crime, drugs, and child neglect. These innovators are united by a common belief: rather than complain that society’s

problems are being dumped in their laps, judges have an obligation to attempt to solve the problems that bring people to court, whether it be as victims, defendants, litigants, or witnesses. There’s a name for this new kind of thinking: it’s called problem-solving justice.

What does a “problem-solving” court look like? Take a typical case involving a defendant arrested for felony possession of drugs. In most such cases, the defendant is not a big-time dealer with a violent history, but rather a hardcore addict caught feeding his or her habit. How should the courts respond? Many judges feel as though they have only two choices: jail or nothing. Neither one feels like a perfect fit for non-violent substance abusers because in neither case does the court get to the underlying problem: the offender’s addiction.

### The heart of the matter

But in a problem-solving court, addressing addiction isn’t an afterthought, it’s the heart of the matter. All of the major players in the courtroom—judge, prosecutor, and defense attorney—explicitly acknowledge that the goal is to move offenders from addiction to sobriety (and from crime to law-abiding behavior). In pursuit of this goal, a problem-solving judge uses a broad array of possible sanctions, including drug treatment, mental health counseling, job training, and community restitution projects. And to ensure accountability, problem-solving judges require offenders to return to court frequently—to report on their progress in treatment, to submit to urine tests, and to demonstrate their compliance with court orders.

The bottom line is that problem-solving courts combine punishment and help in an effort both to improve public safety and prevent recidivism. Everybody wins when this happens. The offender wins because he or she breaks the cycle of drugs-crime-jail. The court wins because it no longer has to spend scarce resources on the same offender again and again. But

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## Viewpoint

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most important, society wins because its streets are safer and its families stronger.

This isn't some sort of judicial fantasy—it's actually happening day after day in thousands of courtrooms across the country. These aren't your grandfather's courts. They include specialized drug courts, community courts, mental health courts, domestic violence courts, and others. And while these problem-solving experiments are still relatively new, there is a growing body of evidence that they are making a real difference. Research indicates that drug courts have reduced drug use and recidivism among program participants while saving the system considerable money. And a recent study of a community court in midtown Manhattan revealed that the court had helped reduce neighborhood street prostitution by as much as 50 percent.

### How quiet?

Despite these kinds of statistics, prob-

lem-solving courts have generated relatively little attention in the mainstream media. In effect, a quiet revolution is taking place in the courts.

Or maybe it's not so quiet. Last year, the Center for Court Innovation—in partnership with the Open Society Institute and the University of Maryland's Survey Research Center—surveyed more than 500 state court judges nationwide about their attitudes toward problem-solving methods and ideas. What we found was that more than 90 percent of judges believed that they should be involved in addressing social problems like drug addiction, domestic violence, and mental illness. A similar percentage favored treatment over jail for non-violent drug addicts or mentally ill individuals arrested for petty crime. And two-thirds said that they should be more involved with community groups in addressing neighborhood safety and quality-of-life concerns.

It's not just judges who are starting to embrace the idea of problem-solving courts. A recent survey conducted by the National Center for State Courts found that a solid majority of the public backs the new

court and judicial roles associated with problem solving. For example, more than 80 percent of all respondents expressed support for such problem-solving hallmarks as bringing offenders back to the judge to monitor compliance, coordinating with community agencies, and using the knowledge of psychologists and doctors in the courtroom. Numbers were even higher among Blacks and Latinos, traditionally among the groups most disaffected with courts. The report concludes that the public believes that "courts are able to make an important contribution to solving some of our most difficult social problems."

Are problem-solving courts a magical elixir that will cure all that ails our justice system? Of course not. Is there a need for more research and reflection about their costs and their impacts? You bet. But it's time to admit that there's real potential here. If problem-solving courts don't have judges and citizens on the same page yet, they at least have them reading from the same book. And for those who care about bolstering public confidence in justice, that's good news indeed. ☞