

The Hardest Sell?

Problem-Solving Justice
and the Challenges of Statewide Implementation

Written by

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About the Author

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Introduction

Visitors to the Red Hook Community Justice Center in Brooklyn, New York, are often overwhelmed by what they find there. That's not surprising — after all, the Justice Center is designed to be a state-of-the-art experiment in problem-solving justice.

Located in the heart of a low-income, predominantly minority neighborhood, the Justice Center is the nation's first multi-jurisdictional community court. An official branch of the New York State Unified Court System, the Justice Center handles criminal, civil and family cases that would otherwise be addressed in multiple courthouses. Operating out of a refurbished parochial school, a single judge hears cases involving drugs, quality-of-life crime, delinquent youth, domestic violence and landlord-tenant disputes. Offenders are linked to a wide range of on-site services (e.g., drug treatment, job training, GED classes) and are mandated to pay back the neighborhood through visible community restitution projects (e.g., painting over graffiti, cleaning local parks, fixing broken windows). Compliance with these alternative sanctions is rigorously monitored – the judge requires offenders to return to court regularly to report on their progress.

Like the other first-generation problem-solving courts – which include drug courts, domestic violence courts, mental health courts, and family treatment courts – the Red Hook Community Justice Center seeks to achieve several goals simultaneously. First and foremost, it is designed to make a difference in Red Hook, improving public safety and bolstering public confidence in justice. But the project has broader ambitions as well. The Justice Center is intended to be a conversation-starter, encouraging practitioners around the country to re-think business as usual in the courts and to test new approaches to cases where legal issues and social problems are inextricably intertwined.

Unfortunately, it is not uncommon for visitors' first reaction to Red Hook to be: "We can't do this in _____ (pick your city)." That's an understandable response to the new technology, architecture, on-site services and staffing resources at Red Hook, but it is not exactly the reaction that the project is intended to provoke.

It may be unrealistic – for reasons of philosophy or resources or political will – for most jurisdictions to replicate the Red Hook Community Justice Center model wholesale, but that doesn't mean that other places can't adopt some of the problem-solving principles and practices that Red Hook has tested. All of which begs the question: What are the elements of a problem-solving court like Red Hook that

are most easily replicable? And how might these components be implemented within conventional state courts rather than specialized, stand-alone courtrooms?

More and more, these are the kinds of questions that are occupying our thinking at the Center for Court Innovation. We are far from alone in grappling with these issues, however. Given the increasingly well-documented results of problem-solving courts, court systems across the country are also trying to come to grips with the problem-solving phenomenon and how it fits within the regular administration of justice.

One such court system is California's, which has made a significant investment in what is known locally as "collaborative justice." Several years ago, the California Administrative Office of the Courts established a Collaborative Justice Courts Advisory Committee, which was charged with, among other things, looking at the application of problem-solving approaches on a statewide basis.

Focus Groups

Recognizing a shared interest in "going to scale" with court innovation, in 2003, the California Administrative Office of the Courts and the Center for Court Innovation embarked upon a unique partnership designed to gather more information about how some of the practices associated with specialized, problem-solving courts might be applied within regular state courts.

Together, we convened a series of focus groups in both New York and California with judges who had presided over problem-solving courts. All told, 35 judges from drug courts, domestic violence courts, mental health courts and other specialized, problem-solving courtrooms participated in the study. While all of the judges had experience in problem-solving courts, all had since gone on to sit in "regular" criminal courts.

Each of the focus groups featured broad-ranging conversation. At the most basic level, the underlying question driving the discussions was: Is it possible to uncouple problem-solving from specialization? That is, is it possible to practice problem-solving outside of the specialized courtroom setting? Encouragingly, the answer to this question appears to be "yes." Participants identified a number of practices that could be transferred from problem-solving courts to conventional courts, including:

Problem-Solving Orientation Problem-solving courts require a significant shift in judicial orientation, demanding that judges measure their success in new ways. The operative question in most criminal courts is fairly straightforward: guilty or not guilty? By contrast, in a problem-solving court, judges are encouraged to ask an expanded array of questions: How can we improve public safety given the facts of this case? How do we address the harm to victims? What are the underlying problems of the defendant and how can we address them? The focus group participants suggested that this kind of problem-solving orientation could be adopted by judges in a variety of court settings.

Social Service Integration Problem-solving courts have sought to expand the menu of sanctioning options available to judges by creating new links with community-based social service providers (drug treatment, job training, adult education, anger management, etc). The focus group judges suggested that improving access to, and coordination of, social services was crucial to doing problem-solving within conventional courts.

Interaction with Defendants Rather than rely on prosecutors and defenders for all of their information, problem-solving judges often directly engage defendants as part of their effort to encourage behavior modification. The focus group judges regarded this as one of the easiest practices to transfer to other types of court calendars.

Judicial Monitoring Problem-solving courts rely on ongoing judicial supervision to help ensure the compliance of offenders with community-based sanctions. While acknowledging the time limitations of practicing judges, focus group participants thought that judges in conventional state courts could be encouraged to promote greater accountability in alternative sanctions by requiring offenders to return to court to report on their progress.

Redefining Adversarialism Problem-solving courts have asked whether it is possible to achieve better outcomes in selected cases by reducing the adversarial nature of the courtroom and encouraging prosecutors and defenders to craft mutually agreeable case resolutions. There was a fair amount of conversation about this subject in the focus groups, with the consensus being that Family Court offered a particularly ripe area to promote increased collaboration among courtroom advocates.

Obstacles

So what's the bad news? Participants in the focus group identified a number of significant obstacles to the spread of problem-solving justice. Generally, they can be grouped into two major categories. The first is resources. Effective problem-solving takes both time and money. Who is going to pay for the kinds of tools – technology, staffing, social service provision – that problem-solving requires?

The second major hurdle is philosophical. Problem-solving in the courts requires the active engagement of attorneys and judges, many of them deeply invested in the traditional approach to case processing. How do we convince them that problem-solving isn't antithetical to American legal values, that courts can perform their traditional roles – weighing the merits of each case, safeguarding the rights of individual citizens and ensuring that laws are obeyed – while also attempting to address the problems of individuals and communities?

As the focus groups make clear, courts are by design the most tradition-oriented of our government institutions. But this is by no means the end of the obstacles. Court systems are also sprawling bureaucracies that do not lend themselves to centralized control. A number of factors – including the fact that many judges are elected, the importance of preserving the independence of the judiciary, and the inter-dependent

nature of court systems, which require the active participation of numerous players (e.g., prosecutors and defenders) – stand in the way of any reform idea, no matter how good, spreading quickly and broadly throughout a state court system.

All of which is a long way around to saying that cultural change within the courts is going to take time – and it won't come easy. Replicating discrete problem-solving courts is one thing. Attempting to spread problem-solving values, principles and approaches throughout a state court system is quite another.

So, is spreading problem-solving the judicial equivalent of selling fiscal restraint to George Steinbrenner? Is it, in fact, the hardest of hard sells?

Six Strategic Investments

Recognizing the challenges, there are six strategic investments that problem-solving advocates – both those within the courts (judges, attorneys, administrators) and those outside the courts (foundations, think tanks, academics) – might want to consider as they seek to influence the culture of state courts over the long haul:

Information At the core of the problem-solving approach is a reliance on data to identify problems, improve operations, promote accountability and document results. Institutionalizing problem-solving will require a deep commitment to data collection, analysis and dissemination. One of the best ways to promote problem-solving is to build effective management information systems and to create a new set of performance measures for courts. This means providing administrators with regular research reports that detail not just how many cases are handled and how fast, but problem-solving indicators as well: How many individuals received treatment mandates? How many were linked to community service? What was their compliance? How many have been rearrested for new crimes? By asking these questions on a regular basis, administrators would begin to change the institutional culture of the court system.

Education/Training Institutionalizing problem-solving will require judges, clerks, attorneys, court officers and other court players to change their standard operating practice. You can't ask professionals, many of whom have been in their current jobs for decades, to do this without showing them how – and why. Training is crucial. States should develop standard curricula to introduce all judges to problem-solving. This could include the history of problem-solving, the underlying philosophy and a detailed exploration of the methods employed by problem-solving judges. Curricula could also include a component on judicial ethics to help define the boundaries of appropriate judicial behavior in this new context. States should invest in training clerks and court administrators in problem-solving as well.

Incentives State court administrators have a particularly important role to play if problem-solving is going to spread more broadly. First and foremost, they can use their bully pulpit to explain the value of the problem-solving approach and encourage its practice. Just as important, they can reward those who engage in problem-solving. A variety of incentives are possible, including salary increases, public recogni-

tion, choice assignments/promotion, travel opportunities and prime office space. Using these kinds of levers aggressively will send a strong signal to those within a state court system that problem-solving work is valued.

Ongoing R&D History tells us that today's innovation is tomorrow's conventional wisdom. To stay at the cutting edge, state court systems must continue to invest in seeking out new ideas, questioning accepted practices and testing new approaches even as they attempt to go to scale with problem-solving innovation. In this way, they can guard against the danger of institutionalization becoming bureaucratization. One of the lessons from statewide implementation efforts in other fields is the value of creating an intermediary authority charged with the responsibility of promoting the idea of change – providing technical assistance, disseminating best practices, and serving as an information clearinghouse.

Legal Curriculum Because today's students are tomorrow's judges and attorneys, law schools are a crucial vehicle for advancing problem-solving. Already, problem-solving has started to sneak into law schools on an ad-hoc basis thanks to judges and other adjunct faculty. The trick is to figure out how to build on this progress to make problem-solving part of the standard legal education across the country.

Communications The court system doesn't operate in a vacuum. It is affected by a variety of external forces, including policymakers in the executive and legislative branches, the media and public opinion (not to mention the opinions of those who staff the courts). For all of these reasons, it is important to have a communications strategy in place to support the institutionalization of problem-solving. This means looking for every possible opportunity – PSAs, op-eds, public events – to spread the gospel of problem-solving justice.

Over time, these kinds of investments have the potential to achieve a significant shift in the orientation of state courts. It is important to make clear, however, that even if all of these dominoes fall into place, there are limits to how far the problem-solving approach can realistically extend. It is difficult to imagine that every judge in every courtroom across an entire state is going to engage in something that looks like problem-solving justice in every case. It is also difficult to imagine that state courts will want to abandon the idea of specialization entirely – there is likely to be an ongoing need for special approaches to certain kinds of problem cases.

Perhaps the best analogy for how problem-solving might spread comes from the world of art history. As law professor Bruce Winick has pointed out, there are interesting parallels between problem-solving courts and the impressionist movement. The advent of impressionism – which was widely reviled by critics at the start – didn't result in every painter suddenly producing art that looked exactly like Monet's. Rather, over time, painters began to take certain elements from impressionism – the use of color, the choice of subject matter, a move away from strict realism – and apply

them to their own work. As the focus groups highlight, there are a range of problem-solving elements that might be spread – and indeed, are already being spread – through the judiciary in a similar fashion.

Judge Survey

Encouragingly, it is worth noting that the 35 judges who participated in the focus groups are hardly alone in their interest in problem-solving. A few years back, we commissioned a survey by the University of Maryland's Survey Research Center. More than 500 criminal court judges, randomly selected, participated in a phone survey. While most were unfamiliar with the term “problem-solving court,” they were broadly supportive of a range of problem-solving activities. For example:

- Participants supported treatment as an alternative to incarceration for addicted, non-violent offenders (77 percent agreed that treatment was more effective than jail).
- Judges overwhelmingly agreed that the bench should be involved in reducing drug abuse among defendants (91 percent).
- Judges cited the need for more information about past violence when deciding bail and sentences in domestic violence cases (90 percent agreed).
- Sixty-three percent of the judges surveyed said they should be more involved with community groups in addressing neighborhood safety and quality-of-life concerns.

All of this runs counter to the popular assumption that judges, concerned with neutrality and independence, are unwilling to engage with communities or address the problems of individual defendants and victims.

Moreover, a 2001 survey by the National Center for State Courts found strong support – particularly among African-American and Hispanic respondents – for common problem-solving strategies, including the hiring of treatment staff and social workers; bringing offenders back to court to report on their progress in treatment; coordinating the work of local treatment agencies to help offenders; and bringing in relevant outside experts to help courts make more informed decisions. The report concluded:

“A solid majority of the public backs new court and judicial roles associated with problem-solving. Support for these new roles is strongest among African-Americans and Latinos. For example, more than 80 percent of those groups support courts hiring counselors and social workers. The highly positive response of African-Americans to changes that would increase the involvement of the courts in people’s lives is a marked contrast with the negative views African-Americans generally have of judges and the courts.” (David B. Rottman and Randall M. Hansen, *How Recent Court Users View the State Courts: Perceptions of African-American, Latinos and Whites*, p. 3)

Even taken together, the existing research into public attitudes and judicial attitudes toward problem-solving courts just begins to scratch the surface of what we might learn about this new approach. Going forward, it is worth testing some of the operating assumptions of problem-solving advocates with regard to procedural fairness (how do defendants perceive problem-solving courts?), job satisfaction (are judges and attorneys who practice in problem-solving settings more satisfied with their jobs than those who do not?) and public confidence in justice (how does interacting with a problem-solving court affect citizens' perceptions of courts?).

While there is much work to be done, it is already possible to say with a fair degree of confidence that there is a growing number of people, both inside and outside the court system, who are interested in exploring new approaches to justice. 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 that's good news indeed.

Center for Court Innovation

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

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

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping courts 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, journal articles and white papers like this one. The Center also provides hands-on technical assistance, advising court and criminal justice planners throughout the country. Current areas of interest include community prosecution, court technology, drug courts, domestic violence courts, mental health courts and research/evaluation.

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