

Problem-solving courts and Mindful Justice

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The criminal justice system can often focus on retribution at the expense of other important goals, especially rehabilitation. Since the 1980s, a movement of lawyers and judges have worked to reform criminal law to develop a special system of alternative proceedings with an emphasis on rehabilitation (Winick 1066). Through these specialized “problem-solving courts,” defendants who have been charged with certain crimes do not go to jail, but instead come to court to develop a plan to address the underlying social or psychological problems in their lives that have led to criminal activities (Winick 1060). The court offers a hands-on treatment program, referrals to local service providers, and frequent check-ins (Goldkamp & Irons-Guynn vii). If participants successfully complete the program, then they do not have to serve any jail time associated with the crime they committed before arriving in the problem-solving court. Problem-solving courts demonstrate an intriguing system of reform that improves on the existing traditional court system by focusing on a personalized, rehabilitation-focused form of justice.

There are many different kinds of specialized problem-solving courts. The precursor to modern problem-solving courts were the juvenile courts, which began in 1899 in Chicago (Winick 1056). In 1989, the first modern problem-solving courts were created (1056). Modern problem-solving courts have included a wide range of specialties, such as veterans court, domestic violence court, juvenile drug treatment court, sex offender court. Two of the most popular and widespread forms of problem-solving courts are drug courts and mental health courts. These two courts will be the focus of this paper.

I. Background on drug courts and mental health courts

A) Drug Courts

Drug courts are modern problem-solving courts designed to “use the criminal justice system to treat drug addiction through judicially monitored treatment rather than mere incarceration or probation” (Burke 40). First established in Miami in 1989, there are now over 3,400 drug courts operating nationwide (“Answering the Critics” 545; Office of Justice Programs 1). Cases are referred to drug court when a criminal defendant is either charged with drug possession or another nonviolent offense related to substance abuse, and the defendant can choose to participate in the drug court program instead of being immediately sent to jail (Burke 41). Drug court programs typically require the participant to stay drug-free for one year and maintain regular court appearances and meetings with the drug addiction team (Burke 41). Once a drug court procedure begins, the judge, prosecutor, and defense counsel work collaboratively to design and follow up on a treatment and recovery plan for each participant (Fischer 243). Drug courts, in many cases, have been successful at addressing drug addiction and decreasing recidivism . According to the 2012 Multisite Adult Drug Court Evaluation, drug court participants are less likely to use drugs 18 months after drug court than addicts who went to traditional criminal court (29% versus 46%), and are also less likely to have committed criminal acts

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18 months later (31% versus 43%) (Rossman & Zweig 2-3). Drug courts may often provide better results than most traditional criminal courts.

B) Mental Health Courts

Mental health courts (also known as behavioral health courts) were developed based on the model pioneered by drug courts. The first mental health court was created in Broward County, Florida in 1997 (Goldkamp & Irons-Guynn viii). Mental health courts were developed in part as a response to a national crisis in community mental health care and out of concern for the status of the large populations of mentally ill prisoners (Goldkamp & Irons-Guynn vii). Mental health courts seek to provide an alternative to incarceration for mentally ill defendants by offering mental health services to address the underlying issues that have led to the criminal behavior. Today, there are over 300 mental health courts operating in over 40 states (Fisler 8).

Mental health courts are voluntary and participants must enter the program willingly. Mental health courts only accept defendants with demonstrable mental illness, while the defendants must still meet the legal requirements to be mentally competent to stand trial (Almquist & Dodd 19). Once defendants are accepted into mental health court, they must voluntarily agree to the conditions of the court. These can include adherence to psychiatric medication, drug and alcohol testing, compliance with the terms of probation, community service work, and attendance at regular court appearances (San Francisco Behavioral Health Court Handbook 7-8).

Since mental health courts are still in the early stages of their development compared to drug courts, there has not been a significant body of research on their success rates (Fisler 10). However, a few studies do appear to show that mental health court participants have a lower rate of re-offending and fewer days of incarceration than defendants in traditional criminal courts (Fisler 10). Case studies of particular mental health courts show encouraging results. In the Brooklyn Mental Health Court, which has had over 1,000 participants, there is a 70% graduation rate from the program (Fisler 12). More research is needed to determine if graduation leads to long-term improvements in participants' mental health and recidivism rates.

II. The Unique Benefits of Problem-Solving Courts

Collaboration

Problem-solving courts benefit from collaboration. In contrast to the adversarial nature of the traditional criminal court, problem-solving courts bring together prosecutors, defense attorneys, and judges with a common goal: to help the participant address the problems that led to their criminal behavior and successfully complete the court's program. To this end, there is a "conference" before every session of problem-solving courts. The judge, lawyers, and service providers meet together to discuss the progress of each participant and plan what the judge should say to the participant in court. This gives the judge a detailed picture of each participant's progress: their employment and housing situations, whether they have been compliant with their treatment plan, and many other issues. If the participant has been facing a setback, the judge can help them address it. In one session of the San Francisco Behavioral Health Court that I observed, one of the participants was struggling to pay off some traffic tickets. The judge

personally intervened in Traffic Court on behalf of the participant. In a successful problem-solving court, each participant has a whole team working with them to address their problems and also any roadblocks that emerge.

Personalization

Problem-solving are also unique because they personalize the treatment of each offender. Every day, traditional courts must process thousands of offenders for petty criminal offenses. The majority of cases take only a few seconds each of the court's time (Feeley 11). Individuals with a drug addiction or mental health problem often repeatedly commit crimes and end up cycling back through the criminal courts again and again. The experience of appearing in criminal court usually has a minimal effect on their behavior. As the literature on desistance theory illustrates, in order for a person to make a significant lifestyle change such as ending criminality, perfunctory proceedings in criminal court will not be likely to bring about such a change. Instead, desistance theory suggests that social bonds can be a key for a person to break off from their history of criminal acts (Gottfredson 9). While incarceration decreases social bonds because it removes the individual from their social bonds to their family, problem-solving courts increase social bonds for the participants with judges and treatment providers (9). These positive social bonds can help an individual to make the decision to end criminal behavior and focus on recovery.

Problem-solving courts create individualized treatment plans that address the unique circumstances of each participant. Problem-solving courts help to connect participants to social services, such as subsidized housing and employment assistance services, so they can increase the stability in their lives and not feel the need to rely on criminal activity for income. Problem-solving courts also individualize the consequences to motivate each participant in the most effective way. Traditional criminal courts only use negative consequences to motivate offenders; if an offender commits a crime, they will be sent to jail (Burke 44). But problem-solving courts can also offer positive reinforcement for participants. They reward cooperation with reduced supervision, dismissal of criminal charges, and importantly, positive reinforcement from the judge (Burke 44). This individualized, tailored process is more likely to help the participant make a lifestyle change than the traditional court process.

When participants complete the year or more of requirements of the problem-solving court, they are rewarded with a graduation ceremony. I was fortunate to attend a drug court graduation ceremony in San Francisco in July 2015. This graduation ceremony was very emotional and personal. Each of the 12 graduates gave a speech about their experience in drug court, and the judge gave each graduate two roses: one to keep and one to give to a person who helped them stay sober. The judge was charismatic and seemed to know each of the graduates well. The graduates had family and friends in attendance and clearly took the milestone seriously. Unlike any other courtroom in the building, this courtroom was full of cheering, balloons, and flowers. It was a celebration of an accomplishment that was well earned. This kind of positive, personalized ceremony is more likely to encourage the graduates over the long-term than a negative reinforcement like a few days in jail.

Potential for Innovation

Traditional criminal courts have become stagnant, repetitive institutions; in contrast, problem-solving courts are laboratories for innovation and the improvement of programs. Because problem-solving courts are a newer alternative to the traditional system, they have flexibility to innovate. Different problem-solving courts have tested a variety of new ideas, ranging from gift cards as prizes for program compliance to developing more ties with community-based organizations to smooth the transition for participants after the program has been completed (Burke 46). As new research emerges on the successes of different problem-solving courts, new best practices are continuing to develop (National Association of Drug Court Professionals vi). For example, jail sanctions for participants who were not compliant with their program used to be frequent. New research indicates that jail sanctions actually have a negative effective on participants and lead to higher recidivism (Finigan et al. III). This new information allows drug courts to adapt their rewards and sanctions, replacing jail sanctions with another negative reinforcement like mandatory weekly appearances in court. The constant cycle of new research and modification gives problem-solving courts many opportunities to continue to improve.

The Important Role of the Judge

A good judge is the key to success in a problem-solving court. Unlike in rushed proceedings in traditional criminal courts, problem-solving court judges spend much more time getting to know participants and developing relationships with them over time. A judge in the Brooklyn Mental Health Court said that engagement is a key reason for success, because “if I engage with someone, and that person engages with me, we don’t want to disappoint each other.” (Fisler 12)

Most judges in effective problem-solving courts strive to create an atmosphere of politeness and respect for participants during proceedings. In one study of female drug court participants in California, the participants frequently expressed their trust and respect for the judges they appeared before (Fischer 720). They felt that the judges cared about their progress and wanted them to recover. They had never had such positive experiences within the criminal justice system. Judges can sometimes be seen as parental figures, who offer personalized encouragement that can incentivize a participant to work harder to address their problems (Senjo 259). Creating relationships with judges also strengthens participants’ perceived fairness of court procedures, which in turn can lead to greater compliance with the law (Fisler 12).

Some judges are better than others. A study of a drug court in Portland, Oregon over ten years found that depending on who the judge was that year, “the reductions in re-arrests ranged from 4% to a substantial 42%” (Finigan et al. III). The 2012 Multisite Adult Drug Court Evaluation found that the most effective drug courts frequently “had judges whose interactions with the participants were respectful, fair, attentive, enthusiastic, consistent, predictable, caring, and knowledgeable.” (Rossman & Zweig 4) The successful drug courts usually had judicial interactions twice or more per month and high levels of praise from the judge.

It is essential that the judge actually wants to be on the problem-solving court assignment. One study found that when judges are assigned to drug courts on a voluntary basis and their term is indefinite, there are significantly greater reductions in crime for those participants (National Association of Drug Court Professionals 22). In many ways,

this system has not been too difficult to achieve. Many of the judges who founded problem-solving courts in their counties have continued to preside over those courts. For example, both the Bronx and Brooklyn Mental Health Courts have been presided over by the same judges since their inception (Rossman et al. 33, 58). But it is unclear what will happen when these founder-judges retire, and when they are replaced by new judges who are probably inexperienced and less invested in the programs.

III. Criticisms of Problem-Solving Courts

Problem-solving courts are not perfect. Some critics worry that problem-solving courts put too much power in the hands of the judge. If the judge is inefficient or disrespectful, it can cast a pall over the entire court program.

Problem-solving courts also risk denying participants their right to due process and infringing on many of their personal and medical freedoms (Burke 52). Mental health courts in particular are often criticized for their coerced use of psychiatric medication.

Additionally, the research on problem-solving courts is not rock-solid, but policy-makers have proceeded nonetheless. This raises concerns about whether problem-solving courts sound like a good idea, or are a good idea based on strong research.

IV. Mindfulness Implications of Problem-Solving Courts

Mindfulness is, according to Jon Kabat-Zinn, “paying attention on purpose, in the present moment, and nonjudgmentally, to the unfolding of experience moment to moment” (Baime). There are many principles of mindfulness that are relevant to aspirations for the criminal justice system. Mindfulness encourages non-judgment, compassion, and wishing for all beings to be happy (Greenberg). Problem-solving courts, in many instances, can advance these mindfulness principles through connecting to the participants with a compassionate desire for them to improve their lives.

In particular, mindfulness can drive a court’s success when the judge is mindful. A mindful judge would show compassion for participants and strive to create a respectful environment in court. In turn, the participants would feel more connected to the judge and might feel more inspired to work harder to overcome their problems. This could lead to the court having an overall increased success rate. Mindful judges have the potential to make their problem-solving courts both more compassionate but also more effective.

In addition, during the San Francisco Drug Court graduation I attended, several key mindfulness themes popped up. When each of the graduates was giving a speech about their path to sobriety, almost every person mentioned spirituality in some form as a guiding force. One participant mentioned “letting go of attachments” and negative people, and another participant talked about “learning to be in the moment” and enjoy life without substance abuse. There may be an interesting future role for mindfulness within problem-solving courts as a part of the therapeutic plan to address addictions and mental health disorders.

V. Conclusion

Problem-solving courts, at their best, represent the remarkable potential of the law to improve the future lives of participants through personalized, rehabilitative justice. A mindful and compassionate judge can inspire a participant to desist with their criminal behavior and address long-term social and psychological problems. More research is

needed to determine the effectiveness of problem-solving courts on the national level, but in the mean time, they are a promising start to reforming a criminal justice system that is severely lacking in rehabilitative programs.