

Lasting Change or Passing Fad?



Problem-Solving Justice
in England and Wales

Greg Berman and Aubrey Fox
edited by Ben Ullmann



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Published by

Policy Exchange, Clutha House, 10 Storey's Gate, London SW1P 3AY

www.policyexchange.org.uk

ISBN: 978-1-906097-47-9

Printed by Heron, Dawson and Sawyer

Designed by SoapBox, www.soapboxcommunications.co.uk

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Acknowledgements

Policy Exchange would like to thank the Hadley Trust for their generous financial support for this project. The authors would like to thank the following people for their advice and assistance with this project and those who participated in our roundtable policy discussions.

- **Amie Alekna**, Her Majesty's Court Service
- **Andrew Ball**, Salford Magistrates' Court
- **Anton Shelupanov**, Young Foundation
- **Ben Rogers**, Prime Minister's Strategy Unit
- **Carol Freeman-Dunn JP**, Teeside Magistrates' Court
- **Catherine Drew**, Cabinet Office
- **Chris Huhne MP**, Shadow Secretary of State for the Home Department
- **Claire Harney**, Leeds Dedicated Drug Court
- **Clare O'Sullivan**, Courts Improvement Team
- **Dave Stuart**, Office for Criminal Justice Reform
- **David Howarth MP**, Shadow Secretary of State for Justice
- **Dominic Grieve QC MP**, Shadow Secretary of State for Justice
- **Dominic Raab**, Office of Dominic Grieve QC MP
- **Gavin Lockhart**, Conservative Policy Unit
- **Harvey Redgrave**, Prime Minister's Strategy Unit
- **Henry Bellingham MP**, Shadow Justice Minister
- **His Honour Judge Samuels**, National Association of Drug Court Professionals
- **Joan Porter**, North Liverpool Community Justice Centre
- **Jocelyn Green**, Her Majesty's Court Service
- **John McIlveen**, North Liverpool Community Justice Centre

-
- **Judge David Fletcher**, North Liverpool Community Justice Centre
 - **Kate Steadman**, Office of Edward Garnier QC MP
 - **Kieron Boyle**, Prime Minister's Strategy Unit
 - **Linda Maytum-Wilson**, Newham Magistrates' Court
 - **Louise Casey**, Home Office
 - **Paul Maltby**, Home Office Strategy Unit
 - **Phil Bowen**, National Offender Management Agency
 - **Phil Hulme**, Hadley Trust
 - **Rebecca Smith**, Office of David Burrowes MP
 - **Sally Jones**, Leeds Dedicated Drug Court
 - **Sarah Smith**, Office for Criminal Justice Reform

We would also like to thank Natalie Evans, Max Chambers, Neil O'Brien, Barry Maggin and all those who commented on drafts of this report.

Executive Summary

In recent years, government officials in England and Wales have sought to address the public's concerns about crime by importing an innovative crime-fighting strategy from the United States known as "problem-solving" justice. This is the idea that the justice system, and courts in particular, should do more than simply process cases – it should actively seek to aid victims, change the behaviour of offenders, and improve public safety in our neighbourhoods. As former New York State Chief Judge Judith S. Kaye has written:

*"In many of today's cases, the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street. The battered wife obtains a protective order, goes home, and is beaten again. Every legal right is protected, all procedures are followed, yet we aren't making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts."*¹

In their two decades of existence in the United States, problem-solving courts – which have been shown to reduce re-offending, improve compliance with court orders and increase public confidence in justice – have moved from the margins to the mainstream of the American criminal justice system. The results of this new model of community justice have been encouraging: once labeled one of the most 'crack-infested' neighbourhoods in the United States by Life Magazine, today Red Hook is home to the safest police precinct in Brooklyn as a result of a problem-solving court. A similar court in Manhattan has compliance rates for court orders 50% higher than compliance rates at comparable urban criminal courts.

¹ Berman G, Feinblatt J, Problem-Solving Courts: A Brief Primer, Law & Policy, Vol. 23 12; 125 - 140

The problem-solving experiments in England and Wales share with their American counterparts an underlying desire to move the justice system from having a standardised, mechanistic focus on simply processing cases to an emphasis on solving local public safety problems, changing the behaviour of offenders, and giving local communities a greater voice in ‘doing justice.’ The judges in problem-solving courts use a broad array of non-incarcerative tools, including drug treatment and community-restitution projects. And to ensure accountability, the judge requires participants to return to court frequently (sometimes weekly), to report on their progress in treatment, to submit urine tests, and to demonstrate their compliance with court orders. Success in treatment is publicly acknowledged by the judge, sometimes with applause in the courtroom. Graduates of the court programmes typically have the charges against them dropped, while those who fail receive a pre-determined jail or prison sentence.

Examples of this new approach include pilot community justice centres in Liverpool and Salford, established in 2004, with expansion to an additional 11 jurisdictions in 2006; more than 100 specialised domestic violence courts; an expansion of pilot drug courts to a total of six sites; the introduction of a host of new sentencing options and tools; and the recent creation of specialised mental health courts. In just a short period, 130 problem-solving courts have been established across England and Wales and the Government’s intention is to extend the problem-solving justice approach throughout the entire country by March 2012.²

Yet despite some early encouraging results, it is not clear whether these new experiments are simply a fad that will fade away over time, or the beginning of a fundamental shift in how the criminal justice system works and the way that the public interacts with judges, prosecutors, police officers, and other criminal justice officials.

One key challenge for problem-solving reformers in England and Wales is finding ways to encourage some of the entrepreneur-

² *Engaging Communities in Criminal Justice*, Green Paper, 2009

ial and more localised, energy that has powered the problem-solving reform movement in the United States. As impressive as the commitment of central government to problem-solving justice has been, there are some inherent limitations to the pursuit of a ‘top down’ strategy of policy reform – most notably, it tends to undermine buy-in from front-line police officers, magistrates, lawyers, and probation officers. This is particularly important for problem-solving justice, which seeks to engage local actors in solving local crime problems.

This report seeks to identify strategies that reformers can utilise to spread problem-solving justice as broadly as possible in a time of shrinking resources. Its recommendations include:

- Cultivating deeper roots in the lay magistracy by developing a multi-pronged judicial engagement plan that seeks to integrate magistrates (who handle 95% of criminal cases) more closely into the development of problem-solving justice. A problem-solving advisory board, composed of leading magistrates across the country, should be charged with overseeing efforts to expand the use of problem-solving techniques across England and Wales.
- Launching new pilots in high-volume urban courthouses that seek to spread a problem-solving approach in a cost-effective way. The Ministry of Justice and Her Majesty’s Court Service should replicate international examples of the next generation of problem-solving courts (‘problem-solving 2.0’) such as Bronx Community Solutions and pilot such an approach in a high-volume urban court.
- Creating an independent change agent dedicated to supporting problem-solving innovation over the long haul. Government should support the creation of an independent non-partisan ‘Centre for Justice Innovation’ – modeled on and linked with the Center for Court Innovation in New York. Such organisations

play a key role in adopting problem-solving innovation, providing training, technical assistance, and high-quality research and evaluation.

- Where possible, problem-solving courts should have co-located services (e.g. housing, drug & alcohol workers, probation) based physically at the courthouse.
- The Ministry of Justice should consider adopting a leadership development strategy designed to identify the next generation of problem-solving advocates.
- Promoting a more locally-driven approach to evaluation that allows practitioners to pursue their own research agenda. The Ministry of Justice should work with problem-solving court administrators to develop a set of realistic and quantifiable performance indicators. Local courts should be encouraged to develop a set of simple data collection schemes that allow them to track progress against those indicators; and
- Making a range of investments designed to promote innovation within criminal justice, including prizes, open solicitations, and ongoing operational support for problem-solving courts.

Implementing these recommendations would go a long way towards ensuring that the seeds planted in recent years take deep root and that the criminal justice system in England and Wales becomes more user-friendly and problem-solving in orientation.

Introduction

The past decade has been a time of growing public concern about crime and a troubling lack of faith in the justice system in England and Wales. More than 50% of citizens list crime and violence as major problems. Only 25% report confidence in the ability of government to respond to crime and violence, a far lower proportion than in other Western countries.³ Notably, these views have persisted even in the face of reductions in crime – as measured by citizen surveys, crime has dropped by 32% over the last decade, and the risk of being a victim of crime is lower than at any time since the British Crime Survey was introduced in 1981.⁴ Yet only one in five citizens believes that crime is falling, and cynicism about the government’s response is so great that many have questioned the validity of crime statistics.⁵

In recent years, government officials in England and Wales have sought to address the public’s concerns about crime in various ways. One of the more surprising choices they have made has been to look to the United States – a country that has received international criticism for its high rates of violent crime and over-reliance on incarceration – for innovative crime-fighting strategies. Among these is problem-solving justice. This is the idea that the justice system should do more than simply process cases - it should actively seek to aid victims, change the behaviour of offenders and improve public safety in our neighbourhoods.

Problem-solving justice seeks to improve court outcomes for victims, defendants, and communities. In doing so, it builds on the desire of judges, prosecutors, defense lawyers, court managers, and other justice system players to respond more creatively and effectively to local crime problems (e.g. domestic violence, drug dealing,

3 Duffy B, Wake R, Burrows T, and Bremmer P, *Closing the Gap: Crime and Public Perceptions*, Ipsos MORI Social Research Institute, 2007

4 *Ibid.*

5 “The British Crime Survey? It’s all lies, damned lies and crime figures,” *The Daily Mail*, 20th July 2008; <http://www.dailymail.co.uk/news/article-1036722/The-British-Crime-Survey-Its-lies-damned-lies-crime-figures.html>

and quality-of-life offending) as well as the kinds of individual problems that often fuel crime (e.g. drug addiction and mental illness).

Problem-solving initiatives are in existence across the United States, in both big cities and small towns. Some address low-level offending, others tackle more serious crimes. Some emphasise prevention, seeking to deter crime before it happens. Others focus their efforts after the fact, working intensively with ex-offenders. Types of problem-solving courts include drug courts, community courts, mental health courts, and domestic violence courts. Despite this diversity, it is possible to identify some common underlying principles of problem-solving justice:⁶

- **Enhanced Information** - Problem-solving justice seeks to provide better information about defendants, victims and the community context of crime to judges, lawyers, and other justice officials to help improve decision making. For example, a community court in Oregon developed a simple psycho-social assessment that collects information on defendants' educational history, employment background, health and mental illness. Staff members present the assessment results to the judge, who uses this information to develop more nuanced sentencing mandates.
- **Community Engagement** - By actively engaging citizens in identifying, prioritising, and solving local problems, problem-solving justice aims to improve public trust in justice, help people feel safer, foster law-abiding behaviour, and make members of the public more willing to cooperate in the pursuit of justice. At San Diego's community court, volunteers participate in community impact panels in which citizens explain to low-level offenders the impact of their offenses on neighbourhood quality of life.
- **Collaboration** - By reaching out to potential partners beyond the courthouse, problem-solving justice seeks to improve inter-

⁶ See "Problem-Solving Justice in the United States: Common Principles", available at [http://www.courtinnovation.org/_uploads/documents/Problem_Solving_Justice_in_the_US\[1\].pdf](http://www.courtinnovation.org/_uploads/documents/Problem_Solving_Justice_in_the_US[1].pdf)

agency communication, encourage greater trust between citizens and government, and foster new responses to problems. The Seattle Community Court has a community advisory board that brings government and non-profit partners together to share ideas and offer feedback.

- **Accountability** - By insisting on rigorous compliance monitoring, problem-solving justice aims to improve the accountability of offenders. Problem-solving justice also seeks to enhance the accountability of service providers by requiring regular reports on their work with participants. The Midtown Community Court holds low-level offenders accountable by requiring them to perform community service — such as street sweeping and graffiti removal — in the neighbourhood where they offended. Those who fail to comply are returned to court for re-sentencing.
- **Outcomes** - By encouraging the active and ongoing collection and analysis of data, problem-solving justice promotes the values of continuous improvement and public accountability. For example, Bronx Community Solutions has a researcher who measures compliance rates and other variables, providing regular feedback to staff. In one instance, the researcher found that approximately 15% of individuals sentenced to perform a community-based sanction never made it from the courtroom to the intake office to be processed – they were simply leaving the courthouse after sentence. Based on this information, programme administrators instituted a service in which volunteers escort defendants to the intake office immediately after sentencing.
- **Individualised Justice** - Using risk and needs assessment instruments, problem-solving justice seeks to help the justice system make more nuanced decisions in individual cases. In a special court in Ohio for substance abusers and the mentally ill, clients with dual disorders of mental illness and substance abuse

are carefully assessed and then matched with community-based service providers that can address their specific needs.

The problem-solving experiments in England and Wales that have adapted these principles share with their American counterparts an underlying desire to move the justice system from having a standardised, mechanistic focus on simply processing cases to an emphasis on solving local public safety problems, changing the behaviour of offenders and giving local communities a greater voice in ‘doing justice.’

Examples of this new approach to justice in England & Wales include the North Liverpool Community Justice Centre, the West London Drug Court, specialised domestic violence courts, mental health courts and a range of efforts designed to increase the visibility and impact of community service projects – now called Community Payback. All of these initiatives have attempted to solve public safety problems in new ways, make the criminal justice system more user-friendly, and inspire renewed public confidence in government.

This paper seeks to take stock of the movement toward problem-solving justice in England and Wales. It reviews what has been accomplished to date and addresses some of the challenges faced by individual projects and the problem-solving movement as a whole. In particular, we seek to answer a basic question: What will it take to achieve real, lasting problem-solving reform in England and Wales? Or, put another way, what can reformers do to spread the concept of problem-solving justice as broadly as possible in a time of shrinking resources?

This paper argues that over the past decade, reformers in England and Wales have planted the seeds for substantial change within the justice system. But planting seeds is not enough, of course. As with any garden, reform efforts need to be tended with patience and care if they are to survive and thrive over the long haul.

Will problem-solving justice become a permanent part of the DNA of the English justice system? Is problem-solving justice simply a fad that will fade away over time? Or will reformers succeed in changing the way the criminal justice system works and the way that the public interacts with judges, prosecutors, police officers and other criminal justice officials?

This report is the product of dozens of interviews with criminal justice experts on both sides of the Atlantic, a public roundtable with leading scholars and practitioners in London, and site visits to several prominent problem-solving programmes in England and Wales. This paper has a simple three-act structure. We begin by taking a closer look at the development of problem-solving justice in the United States with a particular eye to the obstacles that reformers in the US have had to overcome that may have relevance to the experience in England and Wales. We then examine the scene in England and Wales and the developments of various problem-solving initiatives since 1998. Finally, we close by defining the key challenges that problem-solving justice must face if it is to succeed in England and Wales - along with a set of recommendations for addressing these challenges.

1. Problem-Solving Justice in the United States

The United States' first problem-solving court was a drug court in Miami, Florida. The court, which links drug-addicted defendants to judicially-monitored treatment instead of incarceration, was launched in 1989 by local officials struggling to come to terms with a crack cocaine epidemic that threatened to engulf the city.⁷ Similarly, the nation's first community court was developed by local officials in New York City in 1993, in response to a pressing local problem: the rising tide of crime and disorder in and around the theatre district in Manhattan. That court, the Midtown Community Court, attempts to re-engineer the justice system's response to quality-of-life offences such as prostitution, illegal vending, graffiti, shoplifting, and vandalism.⁸

The motivation for starting the courts was driven by the nature of crime in each community. In the early 1990s, as part of the planning process for the Midtown Community Court, researchers looked at how misdemeanor (low-level) offences were typically handled in Manhattan's centralised criminal court. The researchers found that the majority of misdemeanor cases were disposed of by plea bargain at the defendant's first appearance in court, meaning that these cases received only the most minimal legal attention and judicial scrutiny.

And what kinds of sanctions did these offenders receive? The research team found that judges had basically two options in these cases: jail or nothing. Neither felt like a satisfactory response to minor offending. Allowing offenders to walk out of court without any sanction for their misbehavior failed to demonstrate that the

7 Smothers R, "Miami Tries Treatment, Not Jail, in Drug Cases", *The New York Times*, 19th February 1993; <http://www.nytimes.com/1993/02/19/us/miami-tries-treatment-not-jail-in-drug-cases.html>

8 *A Decade of Change: The First 10 Years of the Center for Court Innovation*, Center for Court Innovation; http://www.courtinnovation.org/_uploads/documents/10th_Anniversary.pdf

system understood the impacts of crime on victims and neighbourhoods. It also offered nothing in the way of rehabilitative services for defendants. Short-term jail sentences (typically less than 30 days) arguably had the same problems, but with the added issue of being expensive.

Drug cases and misdemeanors were not the only kinds of cases where the conventional approach was found wanting. Similar stories could be told about cases involving domestic violence or defendants with mental illness.

All of this bad news led many American jurists to conclude that the current system was broken. As former New York State Chief Judge Judith S. Kaye has written:

“In many of today’s cases, the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street. The battered wife obtains a protective order, goes home, and is beaten again. Every legal right is protected, all procedures are followed, yet we aren’t making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts.”⁹

The Miami drug court, the Midtown Community Court, and the other problem-solving courts that followed in their wake sought to address this situation, providing better sentencing options for criminal court judges. These early experiments achieved well-documented results, including reductions in substance abuse, reductions in local crime and improvements in public attitudes toward courts. This in turn led to calls for broad replication of these models.

The expansion of problem-solving in the United States

One of the most striking aspects of the development of problem-solving justice in the United States is that it began without any cen-

⁹ Berman G, Feinblatt J, Problem-Solving Courts: A Brief Primer, *Law & Policy*, Vol. 23 12; 125 - 140

tral direction. Although the federal government has played an important role over the years, by and large problem-solving justice in the United States represents a ‘bottom up’ rather than ‘top down’ phenomenon.¹⁰ Much of the momentum for problem-solving justice has come from leaders at the state and local level. Indeed, this is one of the distinguishing features, not just of the problem-solving movement but of the American federal model of government, in which law enforcement is primarily a local responsibility.

Today, there are more than 2,500 drug courts, community courts, domestic violence courts and mental health courts in operation in the United States.

Non-governmental support

Another key element of the American problem-solving story is the role that non-governmental organisations have played in pushing the cause of reform. The Center for Court Innovation is one such organisation. The success of the Midtown Community Court in making justice more visible and more meaningful led the court’s planners, with the support of the New York State court system, to establish the Center for Court Innovation to serve as an engine for ongoing court reform in New York. The Center’s mission quickly grew to include consulting work with jurisdictions across the country and the world. The Center has received numerous awards for its efforts, including the Innovations in American Government Award from Harvard University.

The Center - an independent, non-partisan, charitable group - has helped to advance the cause of problem-solving justice in several ways. First, it has created dozens of demonstration projects, including the Red Hook Community Justice Center (see Box 1) – a project in Brooklyn that served as the inspiration for the North Liverpool Community Justice Centre and dozens of similar projects in England and Wales (about which, more later). Second, the Center

¹⁰ The federal Justice Department has provided hundreds of millions of dollars to support problem-solving courts, spanning several Presidential administrations with very different political ideologies. This includes President Barack Obama, who in his first budget included \$59 million for problem-solving courts.

Box 1. Red Hook Community Justice Center

Launched in June 2000, the Red Hook Community Justice Center was the United States' first multi-jurisdictional community court. Operating out of a refurbished Catholic school in the heart of a low-income Brooklyn neighbourhood, the Justice Center seeks to solve neighbourhood problems like drugs, crime, domestic violence and landlord-tenant disputes. At Red Hook, a single judge hears neighbourhood cases that under ordinary circumstances would go to three different courts—Civil, Family and Criminal. The goal is to offer a coordinated, rather than piecemeal, approach to people's problems. The Red Hook judge has an array of sanctions and services at his disposal, including community restitution projects, on-site educational workshops and classes, drug treatment and mental health counselling—all rigorously monitored to ensure accountability and drive home notions of individual responsibility. But the Red Hook story goes far beyond what happens in the courtroom. The courthouse is the hub for an array of unconventional programmes that engage local residents in 'doing justice.' These include mediation, community service projects that enlist local volunteers, and a 'youth court' where teenagers resolve actual cases involving their peers. The idea here is to engage the community in proactive crime prevention, solving local problems before they even come to court. Key features of the Justice Center include:

- **Coordination:** The Justice Center handles low-level criminal cases (including some felonies), as well as selected juvenile delinquency and housing matters. In hearing these cases, the Justice Center recognises that neighbourhood problems do not conform to the arbitrary jurisdictional boundaries of the modern court system. By having a single judge – the Honorable Alex Calabrese - handle matters that ordinarily are heard by different decision makers at different locations, Red Hook offers a swifter and more coordinated judicial response.
- **Restitution:** By mandating offenders to restore the community, the Justice Center makes justice more visible to local residents and acknowledges that communities can be victims just like individuals. Restitution projects include painting over graffiti, sweeping the streets and cleaning the Justice Center.
- **Help:** By linking defendants to drug treatment and by providing on-site services like domestic violence counselling, health care and job training, the Justice Center seeks to strengthen families and help individuals avoid further involvement with the court system. Services are not limited to court users but are available free of charge to anyone in the community.

- **Accountability:** Compliance with social service and community restitution sanctions is rigorously monitored by the Red Hook judge, who requires defendants to return to court frequently to report on their progress and to submit urine tests. State-of-the-art technology helps ensure that cases do not fall between the cracks.
- **Prevention:** The Justice Center actively seeks to resolve local problems before they become court cases. The Justice Center’s prevention programs include community mediation, a Youth Court that offers intensive leadership training to local teenagers, and the Red Hook Public Safety Corps, which provides 50 local residents with full-time community service jobs each year.

The results of this new model of community justice have been encouraging: once labeled one of the most “crack-infested” neighbourhoods in the United States by *Life Magazine*, today Red Hook is home to the safest police precinct in Brooklyn. As crime and levels of fear have gone down, investment and levels of confidence in justice have gone up. While Red Hook still has its problems, it is fair to say that the dark cloud of drug and disorder no longer hangs over the community.

has performed original research – including a national evaluation of drug courts – that has helped to document the efficacy of problem-solving courts. Finally, the Center has played a training and technical assistance role, helping prosecutors, probation officials, judges and other criminal justice actors across the United States launch their own innovations.

Thanks in no small part to the work of the Center for Court Innovation, problem-solving justice has moved from the margins to the mainstream of the American criminal justice system. Indeed, the U.S. Conference of Chief Justices has endorsed the concept (calling for the “broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice”), as has the American Bar Association, the principal organisation of lawyers in the United States.

What does a problem-solving court look like in practice?

Take a typical case involving an offender convicted of felony possession of drugs. In most such cases, the offender is not a big-time dealer with a violent history, but rather a non-violent addict caught feeding his habit. How should the courts respond? Many American judges have come to realise that none of the standard choices at their disposal - jail, probation, or dismissal - truly offers a viable, long-term resolution to the case. If you don't tackle the offender's addiction, you haven't really solved the problem - either for the community or the offender.

In a problem-solving drug court, addressing addiction isn't an afterthought - it is the heart of the matter. After an offender opts into the programme by pleading guilty to the charge, all of the major players in the courtroom - judge, prosecutor, and defense lawyer - explicitly acknowledge that the goal is to change his behaviour, moving him from addiction to sobriety and from a life of crime to law-abiding behaviour.

In pursuit of this goal, the judge uses a broad array of non-incarcerative tools, including drug treatment and community-restitution projects. And to ensure accountability, the judge requires participants to return to court frequently (sometimes weekly), to report on their progress in treatment, to submit urine tests, and to demonstrate their compliance with court orders. Success in treatment is publicly acknowledged by the judge, sometimes with applause in the courtroom. Graduates typically have the charges against them dropped, while those who fail receive a pre-determined jail or prison sentence.

This carrot-and-stick approach has successfully motivated thousands of addicts in the United States to lead productive (and tax-paying) lives. Everybody wins when this happens: the offender because he breaks the cycle of drugs-crime-jail; the court because it no longer has to spend scarce resources on the same offender again and again; and most importantly, the general public wins, because its streets are safer.¹¹

11 Berman G, Feinblatt J, *Good Courts: The Case for Problem-Solving Justice*, New Press, 2005

Box 2. Case Study – Brooklyn Mental Health Court

At age 26, Tom was living on Long Island in a supported residence for people with mental illness. He had been working for several years, first at a furniture factory and then at a restaurant. However, he had a lapse in taking his Clozaril, a powerful antipsychotic that requires weekly blood monitoring because of its potentially lethal side effects. (Tom doesn't recall whether he forgot to take his medication or whether the pharmacy wouldn't renew his weekly prescription because the lab work was missing.) During the lapse he spotted a car with keys in the ignition and heard a voice telling him to "take the car and have fun." He started driving toward Manhattan but had no money to pay the toll at the Brooklyn-Battery Tunnel – and that's when he was arrested for driving a stolen car.

By taking a guilty plea and agreeing to comply with a court-mandated treatment plan for 18 to 24 months, Tom became a participant in the Brooklyn Mental Health Court, a unique judicial experiment that links offenders with mental illness to community-based treatment. He now lives in a supported residence in New York City, attends a day treatment program, has an intensive case manager who helps coordinate services for him, and appears regularly before Judge Matthew D'Emic, the presiding judge of the Brooklyn Mental Health Court. Tom has never missed a court appearance, and the reports provided to the court by his housing and treatment providers are consistently positive. He is moving toward employment again, hoping to work at a concession stand in a sports arena. Since coming under the court's supervision, Tom has been, in all respects, a model citizen.

Objections to problem-solving justice

While the trajectory of problem-solving justice in the United States is one of growing accomplishment and expansion, it has not been without hurdles. Indeed, a great deal of time and effort has been spent inoculating problem-solving justice from three persistent concerns:

Is problem-solving justice soft on crime?

Problem-solving courts emerged at a moment of heightened public concern about crime in the U.S. Starting in the 1970s and continuing for a generation, elected officials on both the national and local

level sought to address public fear of crime by focusing the energies of the criminal justice system on offender accountability. In practical terms, this meant an emphasis on increasingly punitive responses to crime – e.g. ‘mandatory minimums,’ ‘truth in sentencing’ and ‘three strikes and you’re out’ laws – and the inevitable prison expansion as a result. In this environment, many alternative-to-incarceration programs were looked at with suspicion if not outright scorn.

Recognising this, advocates of drug courts, mental health courts, and community courts have underlined that their projects were different. In particular, they highlighted the active involvement of judges and the importance of judicial monitoring as a tool for promoting compliance with treatment and community orders. The early research demonstrated that this approach was effective: to cite just one example, compliance rates for court orders at the Midtown Community Court were 50% higher than compliance rates at comparable urban criminal courts. These kinds of results have gone a long way toward disarming some of the fiercest American critics of problem-solving courts, including tough-on-crime prosecutors and skeptical members of the media. These statistics should make the ears of policymakers in England and Wales prick up given the generally low levels of public and judicial confidence in community sentences.

Is problem-solving justice at odds with core American legal values?

Like the British system from which it emerges, the American legal system is built on process and precedent. One of the core values of the system is a belief in due process and the rights of the accused. The question problem-solving courts initially raised for many skeptical defense lawyers and judges in the United States was a fundamental one: in their efforts to achieve better outcomes, were problem-solving courts guilty of trampling the rights of individual

defendants? Or put another way, were problem-solving courts an example of government over-reach, of the state attempting to coerce individuals into treatment, big brother-style?

In response to these questions, reformers have pointed out that most problem-solving courts are “opt-in” programs, in which defendants have to affirmatively choose to participate. Moreover, advocates of problem-solving justice have attempted to demonstrate that compared to current practice in American criminal courts, problem-solving courts actually have the potential to improve the case processing experience for defendants. Malcolm Feeley’s description of “low-stakes, high-volume” American criminal courts from his seminal work *The Process Is The Punishment* still holds true in all too many American cities:

“In the lower courts trials are rare events, and even protracted plea bargaining is an exception...These courts are chaotic and confusing; officials communicate in a verbal short-hand wholly unintelligible to accused and accuser alike...by conventional standards nearly all of the defendants are failures, both in life and in crime. They are poor, often unemployed, usually young and from broken homes...A great many of them have come to rely on alcohol and drugs...The solemnity that the words “crime” and “criminal court” imply aside, lower court officials—judges, prosecutors and public defenders alike—feel frustrated and belittled. Trained to practice law, they are confronted with the kinds of problems that social workers face.”¹²

Recent research at the Red Hook Community Justice Center confirms that problem-solving courts have improved perceptions of procedural fairness – 86% of defendants reported that their case was handled fairly, a result that was consistent regardless of the race and socio-economic status of defendant.¹³ While this by no means answers all of the questions, to date reformers have shown that, if implemented correctly, problem-solving courts are not at odds with American legal, ethical and constitutional standards.

¹² Feeley M, *The Process Is The Punishment: Handling Cases in a Lower Criminal Court*, Russell Sage Foundation, 1992, p. 3-4

¹³ Somjen Frazer M, “Examining Defendant Perceptions of Fairness in the Courtroom,” *Judicature*, July-August 2007, pp 36-37

Is problem-solving justice cost-effective?

While few American criminal justice experts question that projects like the Red Hook Community Justice Center have achieved positive results, there are some who argue that these initiatives only achieve better outcomes because they expend more resources. Problem-solving advocates have offered two principal responses to this concern. First, they have made the argument that the up-front expenditure of resources on problem-solving courts results in long-term savings to the criminal justice system. A broad range of cost-benefit studies have been conducted with regard to American drug courts. These studies have consistently shown significant cost savings, primarily in the form of reduced incarceration due to reduced recidivism. In a recent report on Californian drug courts, eight of the nine drug courts studied produced cost savings – an average of \$3.50 in savings for every dollar invested.¹⁴ By and large, drug court evaluations have confined themselves to criminal justice costs – if they broadened their lens to look at reduced victimisation (e.g. property damage, lost wages, medical costs), the savings would be exponentially greater.

The other response to concerns about costs has been programmatic. Some reformers have attempted to move beyond resource-intensive, specialised courtrooms to test the effectiveness of ‘going to scale’ with problem-solving principles. For example, the Center for Court Innovation launched Bronx Community Solutions, an effort to bring the approach to fighting misdemeanor crime pioneered at the Midtown Community Court and Red Hook Community Justice Center to the Bronx – a borough of nearly 2 million residents. Instead of working in just one neighbourhood or with a single judge, Bronx Community Solutions seeks to work with defendants from all Bronx communities and with four dozen judges. For less than the annual cost of the Red Hook Community Justice Center, Bronx Community Solutions works with nearly three times as many criminal defendants. In 2008, Bronx Community

14 http://www.npcresearch.com/Files/California_Drug_Courts_Outcomes_Costs_and_Promising_Practices_An_Overview_of_Phase_II_in_a_Statewide_Study.pdf

Solutions supervised over 12,000 mandates for low-level offenses, which included coordinating over 70,000 hours of community payback projects (e.g. sweeping the streets, painting over graffiti and cleaning local parks) and linking thousands of offenders to social services like drug treatment and mental health counseling. The project has significantly changed sentencing practice at the first court appearance in the Bronx, reducing the use of jail by a third and doubling the utilisation of community-based sentences.

While new challenges to problem-solving justice are certain to emerge in the United States, reformers there have met every challenge that has come their way for two decades. Problem-solving justice is now an accepted way of doing business in the American justice system.

2. Problem-Solving Justice in England and Wales

Although problem-solving justice is a relatively new phenomenon in England and Wales, it already shows signs of following a similar arc to the United States but with some important differences. Beginning with the passage of the 1998 Crime and Disorder Act, policymakers in England and Wales have sought to test new approaches to problems like drug addiction, youth crime, domestic violence, and a lack of public trust in justice. This includes pilot community justice centres, similar to Red Hook, in Liverpool and Salford, established in 2004, with expansion to an additional 11 jurisdictions in 2006; more than 100 specialised domestic violence courts; an expansion of pilot drug courts to a total of six sites; the introduction of a host of new sentencing options and tools; and the recent creation of specialised mental health courts.

The development of problem-solving courts in England and Wales

Drug courts and court-ordered drug treatment

In 1998, two drug courts – based on a model originally created in the United States – were launched in the West Yorkshire cities of Wakefield and Pontefract. The same year, as part of the Crime and Disorder Act, the government introduced a new community sentence for drug offenders, known as the Drug Treatment and Testing Order (DTTO). The order, which included a combination of regular drug testing, outpatient drug treatment (to be monitored by probation), and regular court reviews, was piloted in three areas

15 "The Drug Treatment and Testing Order: early lessons", Report by the Comptroller and Auditor General, HC 366 Session 2003-2004, 2004

and then later expanded to all 42 of Britain's probation services.¹⁵ By December 2003, over 18,000 drug treatment orders had been made.

Box 3. Timeline of problem-solving justice in England and Wales

- 1998**
 - Passage of Crime and Disorder Act
 - First drug courts launched
 - Introduction of drug treatment and testing orders
 - Establishment of youth offending teams across England and Wales
 - Creation of Youth Justice Board
 - Introduction of strategies designed to address anti-social behaviour
- 2003**
 - Passage of Criminal Justice Act
 - Introduction of community orders and suspended sentence orders
 - Creation of Anti-Social Behaviour Unit
- 2004**
 - North Liverpool Community Justice Centre launched
 - Seven pilot specialist domestic violence courts launched
- 2005**
 - Salford Community Community Justice Initiative launched
- 2006**
 - Expansion of community justice initiative to 3 sites
 - Expansion of specialist domestic violence courts to 23 sites
- 2007**
 - Expansion of specialist domestic violence programme to 64 sites
- 2008**
 - Expansion of specialist domestic violence programme to 98 sites
 - Engaging Communities in Fighting Crime (Casey Review) published
- 2009**
 - Engaging Communities in Criminal Justice Green Paper published
 - First two mental health courts launched

With the passage of the 2003 Criminal Justice Act, drug treatment orders became part of the arsenal of expanded community sentencing authority available to courts in England and Wales. Even as these drug treatment and testing requirements were rolled out across the country, government officials retained their interest in specialised drug courts. In 2005, dedicated drug courts were launched in two adult magistrates' courts in Leeds and West London, and expanded to four additional sites in 2009.

The drug court framework seeks to reduce drug-related offending by applying the following elements.¹⁶

- **Focus:** Within the existing magistrates' structure, drug courts exclusively handle drug-abusing offenders from conviction through to sentencing and on to completion (or breach) of any order.
- **Continuity:** Drug courts ensure the presence of the same judicial personnel at sentencing and review (magistrates or district judges).
- **Training:** Judicial officers and other court staff receive specialised training on working with addicts.
- **Improved information:** New protocols are designed to ensure that decision makers have access to all necessary information about each participant
- **Partnership:** The drug courts seek to establish effective multi-disciplinary working groups with other criminal justice agencies.

A key feature of drug courts in England and Wales is that they help courts to manage offenders who have been given a Drug Rehabilitation Requirement (DRR) (an updated form of the Drug Treatment and Testing Order) as part of their community orders or suspended sentences. Under a DRR, offenders are required to attend treatment, are tested regularly for drug use and are required to attend court re-

¹⁶ Matrix Knowledge Group, *Dedicated Drug Court Pilots: A Process Report*, Ministry of Justice 2008

views. Although offenders with DRRs can be managed through normal courts, under the drug court model all offenders eligible for DRRs who reside within the jurisdiction of the court would have their cases managed by the drug court.¹⁷ In 2009, the Ministry of Justice announced the creation of four more dedicated drug courts in Cardiff, Barnsley, Salford, and Bristol Magistrates' Courts.¹⁸

Community Justice Courts

Another development in problem-solving justice in England & Wales, community justice courts, can be traced back to 2002 when the then Lord Chief Justice of England and Wales (Lord Woolf) visited the Red Hook Community Justice Center in New York and was impressed with the problem-solving approach used there. The then Home Secretary David Blunkett also visited Red Hook and decided to test some of the community justice concepts in a pilot based in North Liverpool.¹⁹

North Liverpool Community Justice Centre

A pilot community justice centre was launched in North Liverpool in 2005 at a cost of £4.2 million and was modeled after the pioneering Red Hook Community Justice Center in Brooklyn, New York. The first of its kind in England and Wales, the justice centre aims to be a community resource – a one-stop shop for tackling crime, addressing the underlying behaviour of offenders, and delivering a wide range of social services to offenders, victims, and the general public. The justice centre is located in a refurbished former school building in the heart of a working class neighbourhood with high rates of crime and troubled relations with the criminal justice system. Run by a single circuit court judge, the justice centre hears a variety of cases (it can sit as a magistrates' court, a youth court, a Crown Court, and a county court), and has the authority to bring offenders back to court to review their progress with court orders.²⁰ The objectives of the North Liverpool Community Justice Centre are to:

¹⁷ Matrix Knowledge Group, *Dedicated Drug Court Pilots: A Process Report*, Ministry of Justice, 2008

¹⁸ <http://www.justice.gov.uk/news/newsrelease080409a.htm>

¹⁹ <http://www.communityjustice.gov.uk/whatis.htm>

²⁰ See <http://www.communityjustice.gov.uk/northliverpool/index.htm> for an overview of the Liverpool Community Justice Centre

- Reduce low-level offending and anti-social behaviour;
- Reduce fear of crime and increase public confidence in the criminal justice system;
- Increase compliance with community sentences;
- Increase victims' and witnesses' satisfaction with the criminal justice system;
- Increase the involvement of the community in the criminal justice system;
- Reduce the time from arrest to sentence.

Offenders on community orders given by the Justice Centre worked a total of 42,199 hours of Community Payback projects in North Liverpool between April and December 2008, a benefit to the area worth £250,000 at minimum wage rates. The Centre engaged with 1447 people at 18 different community events during December 2008, bringing the total for the year to 12,519 via 165 events.

Salford Magistrates' Court – Community Justice Initiative

Also in 2005, the Ministry of Justice created the Salford Community Justice Initiative to test the feasibility of delivering Liverpool-style reforms in a traditional magistrates' court. The initiative was established in a pre-existing magistrates' court (in contrast to North Liverpool) at a much lower cost.

In Salford, cases from three local areas are heard one day a week. As with Liverpool, the initiative takes a problem-solving approach, mandating offenders to community payback schemes nominated by local residents and linking them to social services, though unlike Liverpool, it does not co-locate services at the justice centre itself. Eleven more replications of the Salford-style have been launched across England and Wales.²¹ In addition, in a recent Green Paper, the Ministry of Justice announced its intention to extend the community justice approach throughout the entire country by March 2012.²²

21 The 13 community justice courts in England and Wales are located at Birmingham, Bradford, Plymouth, Hull, Leicester, Merthyr Tydfil, Middlesbrough (Teesside Magistrates' Court), Nottingham, North Liverpool, Salford, and three locations in London: Haringey, Newham (Stratford Magistrates' Court), and Wandsworth (South Western Magistrates' Court)

22 *Engaging Communities in Criminal Justice*, Green Paper, 2009

Box 4. Liverpool Community Justice Centre Case Studies

Chris was sentenced to an 18 month Community Order with 100 hours of community restitution in September 2007. He was given additional hours for breaching the order in January 2008 and has since made good progress, reducing his alcohol consumption, getting help with housing problems and engaging with Progress to Work (a program that offers support to individuals to overcome barriers in accessing training, education or employment). He has had seven reviews during the course of his order and, in January 2009, Judge Fletcher congratulated him on his progress and was optimistic he would complete the order without any difficulty.

Sally was sentenced to 12 months supervision with a six month Drug Rehabilitation Requirement in August 2008. She was taken from court to her parent's home by Probation, where she made contact with her children. She has since tested negative for illicit drugs, committed no new offences and is reducing her Methadone use by 2mls per fortnight. In January 2009, Judge Fletcher revoked her order on the grounds of her good progress and congratulated her on turning her life around.

Domestic Violence

Domestic violence courts are designed to improve victim safety and enhance defendant accountability. In domestic violence courts, a dedicated court team works to ensure that defendants are carefully monitored, victims have access to comprehensive services, and judicial officers have the information they need to make quick and effective decisions. In recent years, England and Wales have created 122 Specialist Domestic Violence Courts.²³ The centrepiece of the strategy has been to provide training to magistrates and other court players as well as new resources for victims, such as dedicated victim advocates.

In 2006, the Ministry of Justice launched an Integrated Domestic Violence Court in the London borough of Croydon, based on a model developed in New York. The court is designed to consolidate domestic violence cases with overlapping jurisdiction (criminal,

23 Domestic Violence: 18 new special courts announced, Ministry of Justice Press Release, 26 March 2009; <http://www.justice.gov.uk/news/newsrelease260309a.htm>

civil, family) into a single courtroom, and in the process encourage a more unified approach to the issues faced by a single family.²⁴

New problem-solving initiatives

Two reports issued in the last two years (the *Casey Review* and *Engaging Communities Green Paper*) have sought to extend problem-solving reform throughout the justice system. The *Casey Review*, issued in 2008, called for a new commitment to improving public confidence in justice, including increasing the visibility of community payback projects, providing more information to local communities about crime, and appointing a Public Commissioner on Crime responsible for championing public and victim concerns.²⁵ More recently, the Ministry of Justice's *Engaging Communities Green Paper* proposed hiring 30 community prosecutors, introducing community impact statements, and expanding the ability of magistrates and judges to bring offenders back to court to review progress with meeting the conditions of their community orders. One example of this new approach can be found in the London neighbourhood of Lambeth, which announced the appointment of a new community prosecution coordinator dedicated to creating links with citizens and community groups.²⁶

Finally, following a report by Policy Exchange,²⁷ the first two mental health courts in England and Wales – which seek to link offenders with a mental illness to long-term community-based treatment – were formally launched in July 2009 by Justice Secretary Jack Straw, at the Brighton and Stratford magistrates' courts.²⁸

24 According to a Ministry of Justice evaluation, the small number of cases referred to the project (five in its first year) made it 'not possible to assess effectively whether the aims of the court had been fulfilled.' Hester M, Pearce J, and Westmarland N, *Early evaluation of the Integrated Domestic Violence Court, Croydon*, Ministry of Justice Research Series, 2008

25 *Engaging Communities in Fighting Crime: A Review by Louise Casey*, Cabinet Office. Crime & Communities Review, 2008.

26 Watts M, "Crown Prosecution Service to examine how crimes hurt Lambeth community", *Streatham Guardian*, 24th June 2009; http://www.streatham-guardian.co.uk/news/4452979.CPS_to_examine_how_crimes_hurt_community/

27 Brooker C and Ullmann B, *Inside Out: the case for improving mental health care across the criminal justice system*, Policy Exchange, 2009

28 "Jack Straw launches first mental health courts," Press Release, Ministry of Justice, 2nd July 2009; <http://www.justice.gov.uk/news/newsrelease020709a.htm>

3. Challenges

Problem-solving reforms face a number of significant challenges if they are to become a permanent feature of the criminal justice system in England and Wales. The following challenges were identified following dozens of interviews with criminal justice experts on both sides of the Atlantic, a public roundtable with leading scholars and practitioners in London, and site visits to several prominent problem-solving programs in England and Wales.

The balance between local and central government

‘How’ a country implements reforms is often as important as ‘what’ the reforms are. England and Wales do not have the same government structures and traditions of local control that the United States does. There are decided advantages to the English system: central government can push national-level policy change much faster than is possible in the United States. Take the rapid expansion of community courts to over a dozen sites in England and Wales: this was accomplished in a matter of months, whereas the same development took nearly a decade in the United States, because each community court required reformers to go individually to a local jurisdiction and win over a local judge, prosecutor, and the defense bar.

As impressive as the commitment of central government to problem-solving justice in England and Wales has been, there are some inherent limitations to the pursuit of a “top down” strategy of policy reform. One of the enduring lessons of policy change within the criminal justice system is the importance of buy-in at the ground level, amongst front-line police officers, magistrates, lawyers, and probation officers. This is particularly true in the case of problem-solving justice,

which seeks to engage local actors in solving local crime problems. As one judge told us, “most crime problems are local, so criminal justice solutions also have to be locally driven.”

The development of problem-solving in the magistrates’ courts has some of the hallmarks of top-down policy change. For some ground-level practitioners, there is a feeling that problem-solving reform is the ‘flavour-of-the-month’ being forced upon them from above. This attitude highlights the importance of local buy-in – without support at the ground level, even the best ideas can wither and die. As a quick rundown of the primary problem-solving reforms currently being tested in England and Wales shows, many of these experiments are in a state of flux – with success or failure in the hands of local practitioners charged with carrying them out.

There is an inherent tension between local and central government ownership of problem-solving justice reform. For example, according to one criminal justice expert we interviewed, the formal targets that national government imposes on local criminal justice agencies can have the unfortunate effect of deterring inter-agency collaboration and innovation – core values of problem-solving justice. A key challenge for reformers in England and Wales, then, is to find ways to encourage some of the entrepreneurial, and more localised, energy that has powered the problem-solving reform movement in the United States.

Mainstreaming problem-solving justice

In a time of shrinking resources, it may be difficult to sustain the problem-solving initiatives already in place, let alone expand their use. For example, some observers have noted the difficulty of replicating the North Liverpool Community Justice Centre given its expense, which includes both the upfront cost of refurbishing an abandoned parochial school as well as the ongoing cost of on-site social services.²⁹ Indeed, in July 2009, the Attorney General, on a visit

29 Stone L and Rogers B, “The Personal Touch”, *Safer Society*, No. 25, 2005

to the North Liverpool Community Justice Centre, ruled out the possibility of replicating similar centres but said that ‘lessons that have been learned from it can be used elsewhere.’

Is it possible to envision a cost-effective approach to problem-solving justice that achieves similar results to North Liverpool at lower cost? The problem-solving courts at Salford, Newham, and Leeds for instance were an attempt to deliver problem-solving principles without the £4.2 million price tag of North Liverpool. Early evaluations suggest that the process of transferring the principles of community justice into a traditional magistrates’ court setting has proven to be a challenge: a report issued by the Ministry of Justice noted that among stakeholders, “there does not appear to be a single, clear picture of what community justice in Salford would be.”³⁰ Contrast this with evaluations of North Liverpool which show that the court has succeeded in increasing accountability for low-level offenses, reducing unnecessary delay, serving victims and witnesses, and linking offenders to social services (e.g. drug treatment and job training) that address their underlying problems.³¹ The point here is not that the government shouldn’t attempt to ‘mainstream’ problem-solving principles into existing courts, however it should be acknowledged that this is an ambitious goal and must be pursued thoughtfully, with appropriate strategic planning and a commitment to broad-scale training.

Magistrates

Unlike in the United States, where criminal cases are adjudicated by professional judges, 95% of criminal cases in England & Wales are handled by magistrates – sometimes single, paid District Judges (stipendiary magistrates) but more often a panel of three part-time, volunteer, lay magistrates who are chosen on the basis that they are active members of the local community. For problem-solving justice, this presents a number of challenges.

30 Brown R and Payne S, *Process Evaluation of the Salford Community Justice Initiative*, Ministry of Justice Research Series, 2007

31 McKenna K, *Evaluation of the North Liverpool Community Justice Centre*, Ministry of Justice Research Series, 2007.

If the goal is to spread problem-solving principles and practices across England and Wales, lay magistrates offer a potentially valuable tool. Unfortunately, problem-solving reformers have yet to figure out how to take advantage of the nearly 30,000 volunteers who hear the overwhelming majority of criminal cases in England and Wales.³² As one criminal justice official told us, “95% of criminal cases are heard in the magistrates’ courts, but as yet there is no strong voice for reform from within the magistrates.” There are few champions of problem-solving justice at the magistrate’s level. This is partly understandable; magistrates are, after all, part-time volunteers. There are some who are enthusiastic but do not have the profile (or institutional support) to provide real leadership on this issue. Figuring out a way to strengthen the commitment of magistrates to problem-solving justice is crucial to the future health of the movement.

One way to broaden the pool of magistrates who are committed to problem-solving reform is through training. As it stands, training for magistrates is extremely limited and often designed and run by the courts themselves without any clear understanding of the principles of problem-solving justice. If magistrates are to engage the public, link with social service providers, and monitor offenders in new ways, they must be given the knowledge and training to perform these complicated tasks.

Another challenge with respect to magistrates is continuity. The North Liverpool Community Justice Centre benefits greatly from having one full-time judge who sees all cases. The consistency of having the same judge as well as the continuity of criminal justice agency staff has allowed the project to fine-tune its operations and develop relationships both inside and outside the criminal justice system.

Such continuity of contact is difficult to achieve at the typical magistrates’ court. Some courts have been able to achieve a reasonable level of judicial continuity either through having a district

32 See <http://www.judiciary.gov.uk/keyfacts/statistics/mags.htm>

judge (stipendiary magistrate) who will be present at all of an offender's reviews or, if presided over by a bench of three lay magistrates, at least one or two of them will see the same offenders for their reviews.

However, this continuity is not always possible and in the cases where offenders' reviews are seen by different magistrates, the offender is unable to build a relationship with the judges, an important feature of problem-solving.

Evaluation

Collecting robust data for the purposes of analysis and evaluation is important for the problem-solving movement for a number of reasons. If the goal is to restore public confidence in the criminal justice system, being able to demonstrate results is not an 'extra' that can be sidelined – it is central to the problem-solving agenda. Put simply, without substantive data, it will be impossible to make the case – to criminal justice officials, to the public, and to the government that must foot the bill – that problem-solving reform is worthwhile.

Yet equally important is the role that research plays in helping problem-solving courts recognise their success and failure and react accordingly. Large-scale, independent evaluations play an important role in answering 'bottom line' questions about reductions in re-offending and cost savings. Yet they are often of limited value to local courts that are struggling to address day-to-day operational issues. For example the Ministry of Justice recently conducted an evaluation of the effect of the Liverpool and Salford problem-solving courts on recidivism.³³ Although the data is useful for the bottom line, it offers little help for the local court staff who are tasked with improving their outcomes. Put another way, 'how' and 'under what circumstances' problem-solving courts work is as important as 'whether' these courts work. The key is creating a different research model that gives local courts an integral role in

33 <http://www.justice.gov.uk/about/docs/community-justice-evaluation.pdf>

defining questions to be answered and provides immediate and useful feedback about everyday programme operations and performance.³⁴

Court visibility and community engagement

Government guidelines say that problem-solving courts should be at “the heart of the community” and “visible and responsive to local people. Local people should be better informed about the work of the Court and have increased opportunities to influence the way in which it tackles offending, whilst preserving judicial independence”.³⁵

More effort is needed in this area. At present, little work has been done to measure the effects of problem-solving initiatives on public perceptions of the criminal justice system. In designing this research, reformers in England and Wales might look to the experience of the Red Hook Community Justice Center, which conducts an annual, door-to-door survey of local residents.³⁶

Support services

Problem-solving justice strives to bring new players on board and to integrate these services into the standard operating procedures of the justice system. Collaboration enables consistency, builds trust and promotes a team approach to decision making and dealing with offenders. In North Liverpool, collaboration is achieved by co-locating services and agencies in one place. They are able to speed up court processes and effectively problem-solve for the individual offenders.

At the magistrates’ courts it is a different story. In general, the magistrates’ courts have limited resources in comparison to the North Liverpool Centre. Most have to make do with what is available in their local area. In some places, the services are simply a ‘helpdesk’ with a single staff member who has access to Google and a phone. While the desire to spread problem-solving justice in a

34 Michael Rempel, “Action Research: Using Information to Improve Your Drug Court,” Center for Court Innovation, 2005.

35 *Delivering Simple, Speedy, Summary Justice*, Department for Constitutional Affairs, 2006

36 These surveys show that 71 percent of Red Hook residents report confidence in the community court, up from 12 percent before the Justice Center began operations in 2000. See <http://www.ncjrs.gov/html/bja/197109/pg4.html> for a description of survey methodology.

cost-effective fashion is understandable and even admirable, it is simply not possible to ask magistrates to solve the complicated problems of offenders without giving them the necessary tools to do so.

Creating a culture of innovation and risk-taking

To be successful, reformers need the time and space to make mid-course corrections, calculating what works, what doesn't, and what needs improvement. As one recent evaluation of the North Liverpool and Salford Community Justice Initiatives noted, "New initiatives and ways of working take time to become embedded within the community."³⁷ In the world of criminal justice, however, the media and political environment is so overheated that criminal justice officials are rarely given the time and space to engage in a rigorous process of trial and error. It is exceedingly tempting for practitioners to abandon reform efforts before they are given a chance to succeed.³⁸ Problem-solving reformers in England and Wales should seek to change this dynamic in order to foster criminal justice innovation over the long haul. Change of the kind contemplated in England and Wales – having courts think of themselves as problem-solvers – generally takes a generation to achieve.

37 Darrick Jolliffe and David P. Farrington, "Initial evaluation of reconviction rates in Community Justice Initiatives," Ministry of Justice Research Summary 9/09.

38 Berman G and Fox A, "Embracing Failure: Lessons for Court Managers", *The Court Manager*, Vol. 23, Issue 4, 2008 pp 27

4. Recommendations

While they have shown some promising early results, the problem-solving reforms that have been launched in England and Wales over the last decade will take many years to bear fruit. To support the reforms already in place, as well as encourage the next set of innovations, we make the following recommendations.

Cultivating the lay magistracy

For problem-solving reform to take hold in England and Wales, it must develop deeper roots in the lay magistracy. Reformers should develop a multi-pronged judicial engagement plan that seeks to integrate magistrates more closely into the development of problem-solving justice. This could include creating a problem-solving advisory board, composed of leading magistrates across the country, charged with overseeing efforts to expand the use of problem-solving techniques across England and Wales. The advisory board would also be charged with reaching out to their colleagues, taking steps such as commissioning a national survey of magistrates' attitudes towards problem-solving to determine levels of support for the model. The advisory board could also help craft bench books and training materials for magistrates.

Recommendation 1:

A problem-solving advisory board, composed of leading magistrates across the country, should be charged with overseeing efforts to expand the use of problem-solving techniques across England and Wales.

Recommendation 2:

In order for the problem-solving agenda to be delivered effectively, magistrates should be trained more extensively in problem-solving principles and how to be a problem-solving judge. The training should be devised nationally and delivered locally, taking into account the needs of individual communities.

Promoting cost-effective justice

The recently released Green Paper on Engaging Communities in Criminal Justice outlines plans to implement problem-solving approaches in six areas throughout England and Wales in 2009, in anticipation of a nationwide rollout by 2012. Given that the Attorney General has ruled out replicating the North Liverpool Centre, the Government should take this opportunity to test the feasibility of bringing Liverpool-style justice to a high-volume urban courthouse, based on the model of Bronx Community Solutions (see page 9). Bronx Community Solutions has succeeded in showing that it is possible to introduce problem-solving principles on a much larger scale, without disrupting the operations of a large urban courthouse.³⁹ It can also be more cost effective; for less than the annual cost of the Red Hook Community Justice Center, Bronx Community Solutions works with nearly three times as many criminal defendants.

Recommendation 3:

The Ministry of Justice and HMCS should replicate international examples of the next generation of problem-solving courts ('problem-solving 2.0') such as Bronx Community Solutions and pilot such an approach in a high-volume urban court.

39 See <http://www.courtinnovation.org/index.cfm?fuseaction=Page.ViewPage&PageID=597> for an overview of Bronx Community Solutions

Creating an independent change agent

One of the lessons of the United States experience is the importance of dedicated champions outside of government that can provide critical support for problem-solving courts. These so-called ‘intermediary’ organisations (such as the Center for Court Innovation) have played a key role in adopting problem-solving innovation, providing training, technical assistance, and high-quality research and evaluation. As some observers have noted, England and Wales would benefit from the presence of an independent change agent dedicated to supporting problem-solving innovation over the long haul.⁴⁰ The basic idea would be to create a permanent, non-partisan and distinctive voice for justice innovation that extends past any individual political cycle.

Recommendation 4:

Government should support the creation of an independent non-partisan ‘Centre for Justice Innovation’ – modeled on and linked with the Center for Court Innovation in New York.

Data collection and evaluation

Government officials should seek to promote a more locally-driven approach to research and evaluation that allows practitioners to pursue their own research agenda. The focus should be on improving the capacity of local courts to gather data about everyday programme operations and performance – everything from caseload volume to time taken to process cases and compliance rates.

Recommendation 5:

The Ministry of Justice should work with problem-solving court administrators to develop a set of realistic and quantifiable performance indicators. Local courts should be encouraged to develop a set of simple data collection schemes that allow them to track progress against those indicators.

⁴⁰ For example, see Escape from the Titanic: Why Britain’s criminal justice needs systematic innovation and how innovation can help secure a justice dividend for local Communities, Young Foundation, 2008.

Co-location of services

Much of the success of problem-solving courts like Red Hook, Bronx Community Solutions and North Liverpool relies on the support services that are co-located at the centres. These services, like housing officers, drug & alcohol workers and probation are immediately available to the offender once they have received their sentence. At magistrates' courts where these services are not co-located or where the provision of support is rudimentary (e.g. only a helpdesk), the ability to have an impact on the offender's behavior is severely diminished.

Recommendation 6:

Where possible, problem-solving courts should have co-located services (e.g. housing, drug & alcohol workers, probation) based physically at the courthouse.

Encouraging innovation and leadership

Whether problem-solving criminal justice reform will stand the test of time in England and Wales depends in no small measure on its ability to cultivate leadership from within to sustain the movement. Many a reform movement has run out of steam when the initial, charismatic leaders move on to other challenges or other positions of responsibility. To be successful, then, problem-solving innovation needs to continually attract new advocates from within the field of criminal justice. To achieve this goal, the Ministry of Justice could consider adopting a leadership development strategy (such as creating an annual fellowship programme) designed to bring together lay magistrates, lawyers, probation and police officers, and policymakers in central government. In addition to building a constituency for change over time, such a programme might have the added benefit of bringing down some of the barriers between central policymaking and local practice that tend to inhibit innovation.

In addition, the Ministry of Justice might consider adopting strategies designed to ensure that innovation is viewed as a core professional value among the disciplines that comprise the criminal justice system. For example, building on the experience of the National Health Service in setting up a €20 million prize fund as part of their ‘Innovation for a Healthier Future’ program, government officials might consider creating an open solicitation program that allows practitioners in England and Wales to nominate – and receive funding – for the next set of ‘big ideas’ that will drive criminal justice innovation.⁴¹ Or they might consider creating an annual Innovations Award programme targeted specifically at problem-solving justice.

Recommendation 7:

The Ministry of Justice should consider adopting a leadership development strategy designed to identify the next generation of problem-solving advocates.

Recommendation 8:

Government officials should actively promote an innovation agenda within the criminal justice system.

Conclusion

This is a crossroads moment for problem-solving justice in England and Wales. The stakes are high: if the past is any indicator, all too often promising criminal justice reforms have been abandoned, or severely curtailed, before they were given a chance to succeed. The decisions that policymakers and practitioners make today could determine whether problem-solving justice meets that fate – or flourishes.

41 Helm T, “Cash-strapped NHS offers millions in prizes to its staff”, The Guardian, 26th April 2009; <http://www.guardian.co.uk/politics/2009/apr/26/nhs-efficiency-savings-prizes-millionaire>



The past decade has been a time of growing public concern about crime and a troubling lack of faith in the justice system in England and Wales. More than 50% of citizens list crime and violence as major problems. Only 25% report confidence in the ability of government to respond to crime and violence, a far lower proportion than in other Western countries.

Problem-solving justice, the topic of this report, seeks to improve court outcomes for victims, defendants, and communities. In doing so, it builds on the desire of judges, prosecutors, lawyers, court managers, and other justice system players to respond more creatively and effectively to local crime problems as well as the kinds of individual problems that often fuel crime.

In this report, Greg Berman and Aubrey Fox take stock of the movement toward problem-solving justice in England and Wales. They review what has been accomplished to date and address some of the challenges faced by individual projects and the problem-solving movement as a whole. In particular, the report seeks to answer a basic question: What will it take to achieve real, lasting problem-solving reform in England and Wales? Or, put another way, what can reformers do to spread the concept of problem-solving justice as broadly as possible in a time of shrinking resources?

£10.00
ISBN: 978-1-906097-54-7

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