

THROUGH A GLASS GAVEL: PREDICTING THE FUTURE OF DRUG TREATMENT COURTS

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What are the implications of the rise of drug courts, and other problem-solving courts, for the justice system? A retired drug court judge takes a look into the future of drug courts and how their techniques and operations could be applied in other courts.

I came to the bench with a background in civil law so, of course, my first assignment was to the criminal division. I spent the first year as a judge sentencing people convicted of crimes; telling them not to use drugs; telling them not to drink alcohol; and telling them to complete alcohol-awareness or substance-abuse programs, and, much to my surprise, they disobeyed my orders. I was shocked. If a judge told me not to drink anymore, well there goes the wine cellar. No problem.

As the year wore on and I saw the same people over and over, I began to ask questions. I wanted to know why these people behaved as they did. I wanted to know how to be more effective in my sentencing. I could see 20 years on the bench looming before me where I continued using ineffective methods. I needed to understand how to do a better job so I started taking chemical-dependency courses at my local college and learning everything I could about alcoholism and other addictions.

As luck would have it, other judges were asking similar questions and wondering how to do be more effective. In 1989 the first drug court opened in Miami; I chaired the committee that developed the second one in the United States, the first in California, three years later. I was one of the 100 people who gathered in Miami and created the National Association of Drug Court Professionals in 1994. This year, 2009, marks the 20th anniversary of drug courts, and I will be speaking at NADCP's 15th annual training conference, as I have almost every year before.



National Association of Drug Court Professionals online at www.nadcp.org

I cochaired the first state conference on drugs in California and the first that was interdisciplinary. Never before had judges sat down with prosecutors, defense counsel, treatment providers, and others in a professional-education setting to explore how we could work together to improve the lives of people in trouble. I helped develop a weeklong course on alcohol and other drugs for California judges and for the National Judicial College. Training on addiction is now mandatory at California's judicial college. And I still teach a four-day course at NJC on co-occurring substance-abuse and mental-health disorders.

I've made scores of presentations all over the United States and in other countries on substance-abuse issues and have a particular interest in cultural competence and co-occurring disorders. The U.S. State Department has sent me to Israel and Chile to talk to judges about drug treatment courts, and I will spend 12 weeks in Australia advising the government on issues of therapeutic jurisprudence and restorative justice in 2009-10.

I have written 16 articles for journals and law reviews on drug treatment courts, other problem-solving courts, and the interplay between substance abuse and the justice system. You might say I have found my passion. Having been fortunate to see the beginning of this justice revolution where there are now more than 3,100 problem-solving courts, I decided to take a look into my crystal ball—that is, crystal gavel—to see what the future of drug treatment courts will look like.

Drug treatment courts will go to scale and serve every individual who needs court-supervised treatment in the justice system.

Just as the Center for Substance Abuse Treatment (CSAT) has adopted “treatment on demand,” so are advocates saying drug courts must “go to scale.” These combined themes mean that every person who needs substance-abuse treatment inside or outside of the criminal-justice setting should get it. Drug treatment courts, “the most effective criminal justice strategy for dealing with alcohol and other drug offenders,” only serve 5 percent of the criminal population (Bhati, Roman, and Chalfin, 2008). So, how then can we justify increasing funding for problem-solving courts in this economic climate? The fact that most drug treatment courts are in urban areas has recently been credited with sharply reducing the number of African-Americans who are incarcerated (Fears, 2009). If this trend continues, the large numbers of Americans who are currently disenchanted with a system they see as racist may be reduced. This will increase trust and confidence in the judiciary, and this situation alone could justify the expansion of such courts. However, there are hard economic facts that support expansion as well. “A \$250 million [up from \$15.2 million in 2008 and an average of \$40 million since the first federal funding] annual Federal investment would reap staggering savings, with an estimated annual return of as much as \$840 million in net benefits from avoided criminal justice and victimization costs alone” (NADCP, 2008: 3). Treating the proper criminal-justice target population would save \$2.14 for every \$1.00 spent totaling \$1.17 *billion* in savings annually. Finally, drug courts are one of the most effective strategies in reducing recidivism according to Roger Warren, president emeritus of the National Center for State Courts. “Rigorous scientific studies and meta-analyses have found that drug courts significantly reduce recidivism among drug court participants in comparison to similar but nonparticipating offenders, with effect sizes ranging from 10% to 70%” (Warren, 2007:19).

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Every innovation—from cars to computers—started small, and their naysayers said cost would prevent the average person from owning one. However, once the product is mass produced, there is no need to repeat the initial investment. So, too, is the case of drug courts because, if brought to scale, they can spread small incremental returns over large numbers of cases. Drug courts will be cheaper and more efficient. The 2009 Omnibus Appropriation Bill allocates \$63.9 million for drug courts, a 250 percent increase over last year and the largest appropriation in the history of drug courts. Based on both the economic and social benefits of drug treatment courts, funding on both the federal and state level will continue to expand.

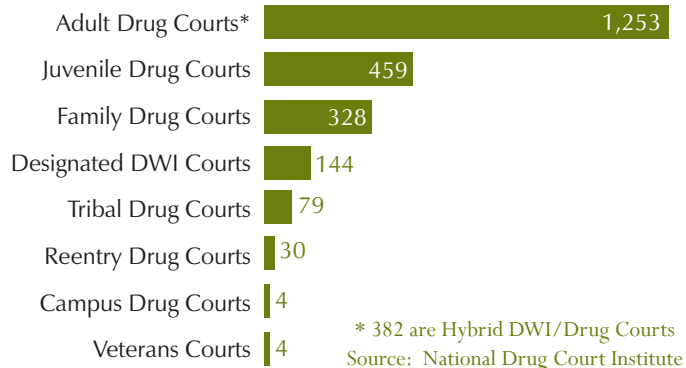
Current promising practices of other problem-solving courts will continue to evolve and be evaluated for efficacy.

Drug courts, it turns out, are only the beginning of the justice-system revolution that started 20 years ago. The first drug treatment court in Miami in 1989 spawned a movement of adult drug courts in the United States, which, as of December 2008, now number 2,301, plus some 1,191 other types of courts using similar principles (Huddleson, Marlowe, and Casebolt, 2008). These problem-solving courts, as they have come to be known, now number more than 3,100 in the United States, including at least one drug court in every state; federal district courts; and over 70 tribal healing-to-wellness courts. There are problem-solving courts in some 20 other countries, as well. Evaluations of the second wave of problem-solving courts are not nearly as numerous as those of adult drug treatment courts, but many show promise.

The verdict is in on drug treatment courts (Marlowe, 2008a, b). It has been proven beyond a reasonable doubt that drug courts work (U.S. General Accounting Office, 2005). Slightly less clear is the efficacy of *family-dependency drug treatment courts* where parents are at risk of losing custody of their children and agree to enter into

Drug Courts in the United States (As of January 1, 2009)

2,301 Drug Courts in Operation in the United States



substance-abuse treatment as part of their reunification plan. There have been fewer analyses, but we can say with clear and convincing evidence (or 75 percent certainty) that these courts are helpful in retention and completion of parents in treatment; result in less time for the children in out-of-home placements; and provide greater rates of reunification of families (Green et al., 2007).

The more than 300 *driving-while-impaired (DWI) courts* operating in the country do not have sufficient evaluation literature yet, and studies that have been published show mixed results (Bhati, Roman, and Chalfin, 2008). There has been one recent, quasi-experimental study but with quite small samples. DWI courts can only be considered as likely to be effective in reducing DWI recidivism.

Juvenile drug courts, where the minor is the participant, show extremely mixed outcomes. There have been two meta-analyses of evaluations, but both showed null results (Bhati, Roman, and Chalfin, 2008). This may be because less is known about the treatment of juveniles, juveniles themselves are very difficult to manage, or the adult-drug-court model may not be appropriate for juveniles. Likewise, there is a dearth of scientific evidence on the efficacy of mental health courts—diversion programs to keep people with mental disabilities from going to jail or

prison (Thompson, Osher, and Tomasini-Joshi, 2008). We can say that both these courts are likely to help children who are in trouble with alcohol or other drugs or people with mental-health issues; clearly, both areas are ripe for more research to determine efficacy.

The problem-solving approach has been applied to all manner of behaviors from gambling to domestic violence and to special classes of people like women, college students or, as in the latest initiative, veterans. The first *veterans court* began in Buffalo, New York, in June 2008 (Russell, 2009), and these courts are now found in Alaska, California, and Oklahoma, with 20 other states planning to start them (Riley, 2009). In addition to all the “specialty courts” mentioned thus far, there are *community courts* and *reentry drug courts*. But in the future we will see a different type of court. The need for these dedicated courts will eventually fade as more judges learn and practice problem-solving techniques in their courtrooms. Eventually, every court will be a problem-solving court, and every judge will use motivational interviewing and evidence-based sentencing while presiding over people’s lives, not just “cases.”

Evidence-based sentencing will be employed by every judge in every court, and mandatory sentencing will become obsolete.

The move toward evidence-based practices has been evolving since the 1990s. Drug treatment courts were among the first to apply some of these doctrines on a large scale. In the field of substance-abuse and mental-health treatment, interventions that have been rated and peer reviewed are eligible for inclusion in the National Registry of Evidence-Based Programs and Practices (NREPP) at the Substance Abuse and Mental Health Services Administration (SAMHSA). The goal of the registry is to “improve access to information on tested interventions and thereby reduce the lag time [currently 12 years] between the creation of scientific knowledge and its practical application in the field” (NREPP Web site). Similar to SAMHSA’s initiative, evidence-based sentencing is evolving to use problem-solving techniques to reduce recidivism and promote fairness in the courtroom. The chief justices of the 50 states were surveyed by the National Center for State Courts in 2006, and among their major concerns were 1) high rates of recidivism; 2) ineffectiveness of traditional probation supervision in reducing recidivism; 3) absence of effective community corrections programs; and 4) restrictions

on judicial discretion that limit the ability of judges to sentence more fairly and effectively (Warren, 2007).

Traditionally, judges were given limited tools in their criminal-justice kit—incarceration and probation. Yet we know that jail or prison is ineffective as a deterrent for many crimes, and without treatment for the underlying causes of criminal behaviors, recidivism rates are off the charts. Seventy percent of drug offenders, for instance, are rearrested within three years of release from custody (Hora and Stalcup, 2008:721). One out of every 31 adults is under supervision by probation or parole in the United States (Pew Center on the States, 2009), and caseloads so far exceed every standard that mass supervision is no longer an effective strategy.

Modern practices rely on scientifically proven risk-assessment tools, so the level of interventions afforded each individual is tailored to their needs and takes multiple factors, not just prior arrest history and the nature of the crime, into account. Thomas Jefferson is credited with saying, “Nothing is more unequal than the equal treatment of unequal people.” Imposing conditions beyond those directly related to an offender’s risks or needs is ineffective, is wasteful, and may be perceived as unfair, thus eroding confidence and trust in the judiciary.

Risk-assessment instruments measure the likelihood that a defendant will reoffend so that resources can go to the highest-risk offender, and low-risk offenders can be managed with fines, volunteer work, and other low-level sanctions. Clearly, the one-size-fits-all requirements imposed by mandatory sentences are at best outdated and ineffective, costly, and often counterproductive to the community and the individual (Wolff, 2008). There will be a move away from mandatory sentencing as was recently done in New York State with the elimination of the “draconian Rockefeller drug laws.” We will shift toward evidence-based sentencing that will include the problem-solving approach in all courts (Kerr, 2009).

Drug courts will be peer accredited and employ “industry” standards.

What makes a drug court a drug court? The first use of the term “drug court” arose in Chicago, where a special “rocket docket” was initiated to send drug offenders to prison faster. The founders of the drug-treatment-court movement

had something else entirely in mind in 1994 when the National Association of Drug Court Professionals was founded. They envisioned a process of court-supervised interventions that kept people *out* of jail and prison and fostered their recovery from the disease of addiction. In 1997, with the help of a grant from the Department of Justice, NADCP attempted to define a drug court for the first time. The resulting document, *Defining Drug Courts: The Key Components* (NADCP Drug Court Standards Committee, 1997), has become the Rosetta Stone for drug courts both nationally and internationally. Each “Key Component” is accompanied by “Performance Benchmarks,” which seek to further refine the principles set forth in the document. “While each drug court should maintain fidelity to the drug court model, the design and structure of drug courts are developed at the local level to reflect the unique strengths, circumstances, and capacities of each community” (Clark County Drug Court, 2008). Just as one of the strengths of the entire movement has been to eschew an imposed template of strict rules and regulations to define courts, this has led to some courts calling themselves drug courts that may not adhere to the underlying principles. To combat this issue, the field will develop standards and a peer-accreditation process to be sure that systems operating as drug courts truly do adhere to drug court principles. This process would allow funders to be more confident their money is going into the right budgets, and it would increase integrity for the whole justice system.

Wide acceptance of problem-solving courts in the government and in the community will continue to be the norm.

The first national meeting of drug court professionals in Miami in 1994 was attended by about 100 judges, prosecutors, defense counsel, treatment providers, and probation officers who shared a vision of a better way to handle drug cases. There was no identified underlying jurisprudential basis for what they were doing,

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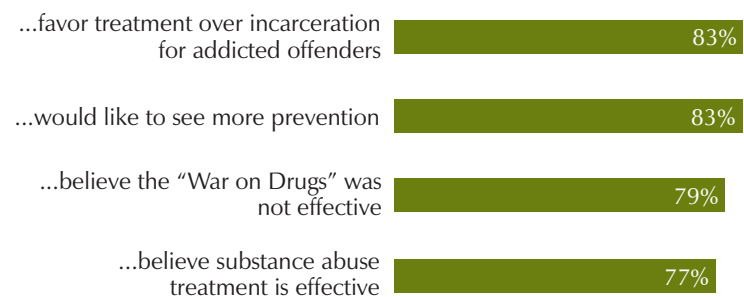
and often no legislation specifically authorizing it. But these were the innovators, the pioneers, the “early adapters” who started the drug-treatment-court movement. Six years later there were 500 drug courts; 1,000 by 2002; and more than 2,000 today (NADCP Drug Court Standards Committee, 1997). The movement came into its own when drug courts received the imprimatur of the Conference of Chief Justices (CCJ) in a resolution approved 50-0 at its 2000 annual meeting. This commitment was reaffirmed in 2004 and expanded to include support of mental-health courts in 2006. In its commentary accompanying these resolutions, CCJ and the Conference of State Court Administrators (COSCA) said they would encourage the “broad integration over the next decade of the principles and methods employed in the problem-solving courts,” support national and local education and training on the principles and methods, and advocate for the resources necessary to advance and apply the principles and methods of problem-solving courts (CCJ and COSCA, 2000).

Federal legislation that funded the first drug courts began under the administration of President Bill Clinton. He said, “Three quarters of the growth in the number of federal prison inmates is due to drug crimes. Building new prisons will only go so far. Drug courts and mandatory testing and treatment are effective. I have seen drug courts work. I know they . . . make a difference.” Presidential support continued and funding increased under President George W. Bush, who said, “Drug courts are an effective and cost efficient way to help non-violent drug offenders commit to a rigorous drug treatment program in lieu of prison” (NADCP, 2007: 7, 16). And President Barak Obama not only made campaign promises about the expansion of drug courts, but also increased the 2009 drug court appropriation by 250 percent. Presidents Clinton and Bush chose directors of the White House Office on National Drug Control Policy who supported drug courts, and this endorsement was best articulated by Director John Walters: “Drug courts are a vital, essential element of our National Drug Control Strategy. While offering incentives to stay off drugs, they hold individuals accountable and simultaneously deal with the deadly disease of addiction. America is better off because of drug courts.” Finally, when introducing Seattle Police Chief Gil Kerlikowske in March 2009, President Obama’s choice for ONDCP director, Vice President Joseph Biden said, “That’s why the Drug Courts I spoke about are so important—as are prisoner reentry programs—because these can serve as the light at the end of a tunnel, a very long, long, dark tunnel, for those who are stuck in the cycle of drug addiction and incarceration” (NADCP, 2009).

Drug courts have support from the highest level of the judiciary and the federal government, but equally as important is their support by the public. In many ways, the citizenry was ahead of the politicians in support of treatment over incarceration. Voters are tired of building more prisons at the expense of education budgets and social programs. They realize “smart on crime” makes much more sense than “tough on crime,” and the appropriate way to “get tough” is to demand treatment for those offenders who have addictions. Hazelden, one of the oldest treatment centers in the United States, found in a recent survey that 77 percent of those questioned believe that substance-abuse treatment is effective, 79 percent believe the “War on Drugs” was not effective, 83 percent would like to see more prevention, and 83 percent favor treatment over incarceration for addicted offenders (Center for Public Advocacy, 2008). Given the outcomes achieved by drug courts and the fact that almost every family is touched by addictions, there is no reason to believe that public support will fade. In fact, just the opposite is true: increased funding and increased participation of criminal defendants in drug treatment courts will advance both the government’s and the public’s support of these innovative courts.

Results from the Fall 2008 National Study of Public Attitudes Toward Addiction

Percentage of survey respondents who ...



Source: Results from the “Fall 2008 National Study of Public Attitudes toward Addiction Center for Public Advocacy,” Hazelden Foundation

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