

THE QUIET BATTLE FOR PROBLEM-SOLVING COURTS

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Many trial courts will face heightened scrutiny from public-funding bodies regarding problem-solving courts. Numerous studies support the cost-effectiveness of such courts, but some court watchers see a struggle looming on the horizon.

The Vulnerability of Problem-Solving Courts

Specialty courts, focused on medical and diagnostic approaches to processing cases involving addictions and other community problems, are often more vulnerable to funding cuts due to their higher evaluation and treatment expenses compared to traditional adjudication. Yet most research indicates they reduce substance abuse, recidivism, jail overcrowding, crime, and victimization more than conventional adversarial approaches.

In the politics of budgeting, however, research and mountains of data on potential cost savings often mean little to those wielding a budget ax. Hard-dollar cost-per-case figures are beginning to trump soft-dollar crime-reduction benefits. Despite the long-term cost-effectiveness of these courts, there is no getting around the fact that they are expensive in relation to the number of offenders treated.

How should court leaders respond? Will the urgent need to preserve adversarial, core adjudication methods weaken the impact and momentum of problem-solving courts? If so, is it a temporary or long-term setback? Can continued federal government grant support for problem-solving courts sustain momentum, or is it too little too late?¹

Answers to these questions and others are being debated by legislative committees funding courts and judicial governing councils developing court budgets. Tough financial times could either stall or set back the diagnostic court movement.

Many Trial Courts Are “Going Back to Basics”

Absent any structural budget increases, the rate of economic growth for the country most likely will never return to what it was between 1990 and 2010. And court and state budgets are certain to face additional strains due to an aging population, declining number of workers, and increasing entitlement costs (Medicare/Medicaid/Social Security), all prompting deeper cuts in discretionary programs.

State budget shortfalls are scary. In January 2011, the Center on Budget Policies and Priorities identified 40 states with projected FY2011/12 budget gaps totaling \$140 billion. Experts contend that figure will likely grow by the start of the current fiscal year on July 1 since revenues usually fall short of projections. Local budgets are down 10 to 20 percent as city and county programs experience reduced tax revenue, state-aid cuts, and employee layoffs (National League of Cities, National Association of Counties, and U.S. Conference of Mayors, 2010). Many state and local courts have taken cuts of 15 to 20 percent since FY2009.

The length and severity of this recession have caused more court leaders to move from short-term responses to more strategic initiatives, directed at remaking basic operations and reexamining overall services. Some courts have researched constitutions, statutes, rules, case law, and administrative orders to identify mandated and nonmandated court functions. Others have followed private-sector approaches that promote business longevity in good times and bad, most notably visions and missions that encourage leaders to remain true to a set of core values and to stop performing functions inconsistent with them. All such approaches narrow programs and services in ways historically and fundamentally supported by the basic purposes of a trial court.

In critically reassessing business practices and services, court policymakers are being encouraged to think seriously about what to stop doing, do less of, do new, do differently, or get someone else to do. Part of the underlying message is not to stray too far from traditional court mandates, many centered on adversarial adjudication, precedent, and limited definitions of due process. As a result, problem-solving courts can find themselves in greater budget jeopardy as court management and performance-based budgeting stress long-established, mandated programs tied to core values.

Trial Court Budget Responses

Tactical

Hiring freezes
Across-the-board cuts
Travel; education reduction
Raise fees; surcharges
Lay-off staff; hire temps
Delay salary increases
Improve collections
Scale back purchases
Reduce hours
Salary give backs
Temporary furloughs

Strategic

Consolidate back-office services
Merge divisions; departments
Flatten organization structures
Force use of online services
Outsource; homesource functions
Cross-train; liberalize work rules
Increase technology
Eliminate non-core functions
Reengineer business processes
Create new revenue flows
Partner with other agencies

Source: John Hudzik, Michigan State University

Is Evidence-Based Probation an Option?

Another potential weakening of the problem-solving court movement may be more cost-efficient approaches from new evidence-based probation (EBP) initiatives. The EBP movement began over 15-20 years ago, about the same time problem-solving courts gained a foothold in trial courts. It is founded on similar principles and methods: research-proven approaches for changing behavior in specific offender populations. Just as problem-solving courts and associated social services address anti-social thinking, push positive reinforcement, reduce recidivism, promote public safety, decrease victimization, and stimulate behavior change, so do evidence-based probation programs. Similarly, violations in expected behavior meet with swift and certain sanctions (i.e., short jail terms), often triggered directly by probation officers. National Institute of Corrections (NIC) and American Probation and Parole Association (APPA) officials are training community correction and probation departments in this new methodology.

Adding impetus to the EBP movement is the prevalence for problem-solving courts to function more as an organizational extension of probation than a part of the court. In these settings, the judge frequently acts like a super-level probation

officer rather than an independent judicial officer. In such situations, critics have questioned why court leaders do not just move to a cleaner, more streamlined EBP model and redirect judge time to other things.

Muddying the waters further for problem-solving courts are new efforts inside court systems encouraging judges to embrace evidence-based sentencing. The Conference of Chief Justices, Conference of State Court Administrators, and National Center for State Courts recently launched a nationwide sentencing reform project, "Getting Smarter About Sentencing," to encourage the adoption of parallel evidence-based sentencing protocols for judicial officers (Warren, 2006). Although not in competition with problem-solving tribunals, some NIC and APPA advocates feel evidence-based probation and sentencing costs can be less per client and outcomes as good as or better than some problem-solving courts dealing with the same offender populations.

In support of their position, most studies about the role a judge plays in problem-solving courts show varied results. For example, the Sentencing Project reported that although intense judicial involvement with high-risk offenders produced better outcomes than with lower-risk participants, to maximize effective outcomes court staff must craft individual responses of graduated sanctions based on each client's personal drug abuse and criminal history. For low-risk offenders, the number of times a judge was involved with a defendant had no measurable impact on outcomes (King and Pasquarella, 2009). These conclusions call into question the intensity of judicial participation practiced in some problem-solving courts and feed the contention that EBP, without large-scale judge involvement, may work as well and be less costly.

All Politics Is Local

A factor strengthening problem-solving courts is scattered evidence that where advocates are closely allied with funders the courts fare better. Many court watchers feel there is a greater chance of such a situation locally, where county-board and city-council term limits are frequently absent, leadership judges tend to be on a first-name basis with elected officials, and outcomes from problem-solving courts are more visible to local funders. Ubiquitous lobbying for diagnostic courts at city and county levels is also touted by many seasoned trial court professionals as easier.

“So we’ve had to cut back on important programs to keep the doors open to do the work the constitution requires us to do.

“Let me give you one example, our DWI and Drug and other problem-solving courts. They go beyond traditional court functions of applying the law and deciding guilt and punishment. These courts actually work on changing behavior that’s dangerous to the people who engage in it, behavior that’s dangerous to all of us and our families. . .

“We want to keep these programs working, even though the constitution doesn’t say we have to run them. But to keep our doors open to do the things the constitution does say we have to do, we’ve had to cut back on problem-solving courts, we’ve cut needed personnel, we’ve reduced numbers of people helped, and in some cases we’ve even had to eliminate whole programs.”

- Chief Justice Charles W. Daniels, New Mexico Supreme Court, 2011

For example, the Seattle Municipal Court has maintained community, domestic violence, and mental health/homeless courts at pre-recessionary levels despite substantial budget cuts throughout city government and a recent reduction in judicial positions. The court routinely presents data to show how lives are rehabilitated, jail costs curtailed, and downtown neighborhoods improved. Other justice system stakeholders, including prosecutors, public defenders, and the Seattle Police Department, help support the court’s specialty programs. Outside consultants have done cost-effectiveness studies, and when specialty court funding looks to be in trouble, the court appears before the council to showcase program value.

Other state-funded problem-solving courts may have a tougher road, whether decisions are made by the judicial branch or before state legislative committees. Specialty-court understanding and sensitivity among state-level policymakers can pale at a distance; legislators could be too busy to notice impacts in their districts; and local trial judges too disconnected, reluctant, or unwelcome at the statehouse to help with lobbying. Even when positive cost-benefit data is presented, the urgency to continue or expand statewide funding for local problem-solving courts can be lost amid larger, more pressing budget problems.

The evidence, however, remains mixed. Dr. Roger Hartley, a noted court budget expert at Western Carolina University, is exploring state-funded drug courts. His data indicate that state-funded drug courts once developed tend to be more institutionalized. One possible reason, he posits, is there may be a more organized set of drug court advocates in states that secure state funds versus those that do not. They also may be better able to mobilize political support to sustain those courts. Whether these early conclusions apply to other types of problem-solving courts has not been substantiated.

Florida, the first state to create a drug court in 1989, supports those specialty courts today through state and local funding. The four drug courts at the Thirteenth Judicial Circuit Court in Hillsborough County (Tampa) offer a glimpse of how it works. Depending on the type of drug court, treatment and rehabilitation dollars flow primarily from three separate state departments—adult corrections, children and family services, and juvenile justice. Those funds in recent years have been cut back, representing the biggest current threat to drug court viability. On the other hand, county officials, encouraged by trial court leaders, have held steady their local budget for court evaluators, case managers, and a portion of the treatment expenses. Admittedly, the size of the county’s contribution is much smaller than the state’s portion in Florida’s new, state-funded court system. However, it is telling that county government is not required to contribute to drug courts, but their policymakers see the benefits in reduced jail overcrowding and less drug-induced crime.

Sparks Municipal Court (Nevada) and the Fifth Judicial District Court in Polk County, Iowa (Greater Des Moines) are examples of subtle budget pressures within

“How can I use half of the money when I’ve got double or triple the need for it? Should I say only second DWI offenders are eligible? Do I say only 18 to 25 year olds will be eligible? Or, do I just close the program down and give the money back to the Supreme Court?”

- Presiding Judge Barbara McCarthy, Sparks Municipal Court, Nevada

the judicial branch that are eroding problem-solving courts. Court leaders in both jurisdictions support specialty-court philosophies and their positive impacts, but each faces the realities of reduced internal-branch funding and limited choices that have resulted in cutbacks.

Municipal courts in Nevada are funded primarily by cities. The state judicial branch, however, provides money for specific court programs that branch policymakers conclude are important. The Sparks Alcohol Abuse Court is one of those programs. Money for the program comes from a legislatively authorized state assessment (\$7.00) on every misdemeanor conviction, including traffic charges. That assessment is distributed by the administrative office of the courts as reoccurring grants to trial courts. As case filings have dropped in Nevada and nationwide (a phenomenon frequently linked to the recession), assessments have diminished. With no state-level supplementary funds available, municipal court presiding judges must determine how to cut their programs and still comply with the “Ten Key Components” of a drug court—a prerequisite for receiving state drug court monies (Bureau of Justice Assistance, 2004). Sparks Municipal Court officials, like many others, are questioning the efficacy of continuing their alcohol-abuse court with 50 percent less money.

It should be noted that the Sparks program is quite limited even when fully funded. Municipal courts in Nevada do not have social service or probation officers to staff the cases. In Sparks, only the alcohol-and-abuse-court judge, an assistant city

attorney, a contract public defender, a court marshal, and the judge’s executive assistant work the cases.

The Iowa courts are state funded. Polk County is the state’s busiest trial court and operates separate drug courts for adults, teens, and families. Social services for these specialty courts are supported through executive-branch budgets for community corrections (adult) and human services (juvenile) and a reoccurring federal grant for family drug court. Polk County court leaders also support special-purpose courts. They understand their benefits in improving lives and curtailing addictive behavior, but the court itself realizes no direct financial assistance or workload support from the county, state, or federal government for these programs. Here again, the recession and likelihood of more budget cuts further complicates a well-intended court strapped with too few court staff and not enough judges to deal with conventional adjudication demands. To that end, court leaders recently were forced to say “no” to a federal grant to fund treatment staff for a special juvenile mental health court.

Can Business Process Reengineering Help Save Specialty Courts?

As courts nationwide come face-to-face with the realities of long-term budget reductions, many have begun to reengineer their operations in pivotal ways. Could those processes slow the attrition of specialty courts?

The National Association of Drug Court Professionals’ chief of science and policy, Douglas B. Marlowe (2010), addresses that very question in a comprehensive report when he cautions that to drop or reduce the makeup or intensity of key drug court protocols will curb the overall success of programs. Such is likely the case with other problem-solving tribunals that embrace intensive treatment regimens.

So, it appears there is little room for reengineering without reducing program efficacy along with proven cost-effective benefits. To do so damages the very reasons problem-solving courts were initially instituted. Unfortunately, many courts have no choice as they confront leaner funding and more demand for judges to refocus their time and energies on traditional adjudication.

Key Drug Court Protocols

Multidisciplinary Teams involving the judge and other justice system players;

Judicial Status Hearings repeatedly with the offender present during the first few months and less frequently as participants achieve sobriety;

Drug Testing on a frequent, random basis during the first several months and less frequently later in the program;

Graduated Sanctions and Rewards with swift punishment for infractions (brief jail detention) coupled with incentives for good performance; and

Substance Abuse Treatment conforming to standardized, evidence-based regimens.

At the End of the Day, Politics Wins

We are back where we started. There is no denying public budgets are intrinsically political, reflecting what government will or will not do. They set priorities and display the relative power of decision makers and special-interest advocates. And those choices in the world of courts are seldom based on substantiated research, potential cost savings, or soft-dollar crime-reduction benefits.

The future for problem-solving courts may be rockier than in the past. The realities of the recession will likely shrink the presence of diagnostic adjudication approaches. Where specialty courts remain, some will become much less effective. Where they disappear, they will be hard to restart until budget times are better. Where court leaders are able to maintain and strengthen problem-solving courts, much will depend on their political influence with funders.

Some helpful techniques to garner support include:

- **Maintain continuous and strong stakeholder support** (e.g., justice system agencies, treatment advocates, and participants). Political capital

is hard to come by for court leaders even in good times. The problem, all too frequently, is that courts are not “sexy” in the eyes of the public. They have few allies and fewer advocates in budgeting. Elected officials do not get much credit for funding courts. Specialized courts connect the judiciary to a host of allies, some with important political constituencies that can be helpful. Losing these networks may make courts more of an afterthought in the budget process.

- **Leverage community and business backing to champion positive outcomes** (e.g., reduction in crime and safer neighborhoods). Business and community leaders are powerful influences on politicians. Problem-solving court advocates who establish clear linkages between crime reduction, business district improvements, and increased private-sector revenues can garner powerful advocates when the going gets tough at budget time. The first quality-of-life court in the United States—the Midtown Community Court in New York City—is a prime example of how public/private collaboration can revitalize a business district (Times Square) by diminishing prostitution, illegal vending, graffiti, shoplifting, fare-beating, and vandalism.
- **Develop an economic triage approach balancing different intervention models and their costs against evidence-based outcome data** (e.g., judicial-centered versus probation-centered programs). Here we are talking about allocating limited resources among problem-solving courts and EBP to maximize the efficiency of both and decrease the overall cost-per-case. Although this article discusses problem-solving courts and evidence-based probation/sentencing as separate topics, both have similar goals and can be blended to elevate their effectiveness and economy.
- **Advocate in compelling ways from a macroeconomics perspective** (e.g., reduced recidivism, cost avoidances, and rehabilitation results). Some problem-solving courts may not be well anchored in a court’s culture or budget. In these situations, such specialty courts are frequently described as pilot projects that are not central to the administration of justice. However, other states and localities have incorporated them into the mainstream. In states like Missouri and New York, there are legislative line items for specialized courts or statutes that mandate them. The majority of state and local governments, unfortunately, have not reached that level.

For them, the current budget-cutting frenzy likely means a steeper uphill slog for diagnostic/therapeutic adjudication advocates in persuading budget policymakers to cut elsewhere.

In the final assessment, courts have a good story to tell. But they bear the burden of getting the message out in tough economic times, especially to program funders predisposed to cut budgets. This poses a real leadership challenge for judges, administrators, and specialty court advocates—one which the pioneers of the drug court movement embraced and moved forward against many odds. Arguably, the real question is whether today's court leaders can carry this message and provide the necessary persuasive rationale and political skill to stir cost-conscious funders to support and sustain problem-solving courts.

ENDNOTES

¹ Although many problem-solving courts, especially drug courts, have their genesis through federal grants, those monies are commonly structured as start-up costs to be eventually replaced by state and local funding after a few years.

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