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# THE FUTURE OF PROBLEM-SOLVING JUSTICE: AN INTERNATIONAL PERSPECTIVE

GREG BERMAN\*

AND

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## I. INTRODUCTION

*From their origins in local government in the United States (the “U.S.”), problem-solving courts have become a global phenomenon in recent years. No country has made a deeper investment in problem-solving judicial reform than England. In recent years, reformers in England and Wales have attempted to re-shape the criminal justice system, launching an array of new initiatives designed to reduce crime and bolster public confidence in justice, including a pilot community justice center in Liverpool, experimental domestic violence courts and mental health courts, and more visible community payback schemes. In the summer of 2009, Policy Exchange—a think tank based in London—asked the Center for Court Innovation, an American non-profit, to study the development of problem-solving justice in England.<sup>1</sup> This Article grows out of dozens of interviews, a roundtable with prominent criminal justice officials, site visits to*

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1. This Article is adapted from “Passing Fad or Lasting Change: Problem-Solving Justice in England and Wales” (Ben Ullmann ed., Policy Exchange) (2009). The authors would like to thank Ben Ullmann for his help in shepherding this project at Policy Exchange, along with Neil O’Brien, Natalie Evans, Gavin Lockhart, Max Chambers, and Phil Hulme.

*problem-solving experiments in England, and a review of the literature about problem-solving justice in the United Kingdom.*

The past decade was a time of growing public concern about crime and a troubling lack of faith in the justice system in England and Wales. In a 2007 survey, more than fifty percent of British citizens listed crime and violence as major societal problems, twenty percentage points higher than the next most important issue.<sup>2</sup> Only twenty-five percent reported confidence in the government's ability to respond to crime and violence, a far lower percentage than in other Western countries.<sup>3</sup> Notably, these views persist even in the face of reductions in crime. As measured by citizen surveys, crime has dropped by thirty-two percent 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.<sup>4</sup> 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.<sup>5</sup>

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 U.S., a country that has received international criticism for its high rates of violent crime and over-reliance on incarceration. Yet, the U.S. offers innovative crime-fighting strategies. Among these strategies is problem-solving justice. The underlying notion of problem-solving justice is the idea that the justice system should do more than simply process cases. Instead, it should actively seek to aid victims, change the behavior of offenders, and improve public safety in our neighborhoods.<sup>6</sup> In other words, 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 administrators, and other justice-system players to respond more creatively and effectively to local crime problems (e.g. domestic violence, drug dealing, and quality-of-life offending) as well

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2. BOBBY DUFFY ET AL., IPSOS MORI SOCIAL RESEARCH INST., CLOSING THE GAPS: CRIME & PUBLIC PERCEPTIONS 13–14 (2008), [http://www.ipsos-mori.com/DownloadPublication/11\\_sri\\_crime\\_closing\\_the\\_gaps\\_012008.pdf](http://www.ipsos-mori.com/DownloadPublication/11_sri_crime_closing_the_gaps_012008.pdf).

3. *Id.* at 20–21.

4. *Id.* at 17 (2008).

5. *The British Crime Survey? It's all lies, damned lies and crime figures*, THE DAILY MAIL (London), July 20, 2008, <http://www.dailymail.co.uk/news/article-1036722/The-British-Crime-Survey-Its-lies-damned-lies-crime-figures.html>.

6. GREG BERMAN & JOHN FEINBLATT, GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE 32 (2005).

as the kinds of individual problems that often fuel crime (e.g., drug addiction and mental illness).<sup>7</sup>

Problem-solving initiatives are in existence across the U.S. in both big cities and small towns, but the scope of these initiatives varies. Some address low-level offending, while others tackle more serious crimes. Some emphasize prevention, seeking to deter crime before it happens, and some 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.<sup>8</sup> Despite this diversity, it is possible to identify some common underlying principles of problem-solving justice<sup>9</sup>:

- *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.”<sup>10</sup> Staff members “present the assessment results to the judge, who uses this information to develop” more nuanced sentencing mandates.<sup>11</sup>
- *Community Engagement* - By actively engaging citizens in identifying, prioritizing, and solving local problems, problem-solving justice aims to improve public trust in justice, help people feel safer, foster law-abiding behavior, and “make members of the public more willing to cooperate in the pursuit of justice.”<sup>12</sup> 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 neighborhood quality of life.”<sup>13</sup>

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7. See *id.* at 4–5.

8. Greg Berman & John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 LAW & POL’Y, 125, 127 (2001).

9. 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).

10. *Id.* at 1–2.

11. *Id.* at 2.

12. *Id.*

13. *Id.*

- *Collaboration* - Reaching out to potential partners beyond the courthouse, problem-solving justice seeks to “improve inter-agency communication, encourage greater trust between citizens and government, and foster new responses to problems.”<sup>14</sup> The Seattle Community Court has a community advisory board that brings government and non-profit partners together to offer feedback and share ideas.<sup>15</sup>
- *Accountability* - By insisting on rigorous compliance monitoring, problem-solving justice aims to improve the accountability of offenders.<sup>16</sup> Problem-solving justice also seeks to enhance “the accountability of service providers by requiring regular reports on their work with participants.”<sup>17</sup> 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 neighborhood where they offended.<sup>18</sup> 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.”<sup>19</sup> The researcher found that “approximately 15 percent of individuals sentenced to perform a community-based sanction never made it from the courtroom to the intake office to be processed.”<sup>20</sup> They were simply leaving the courthouse after sentencing.<sup>21</sup> Based on this information, program administrators instituted a service in which volunteers escort defendants to the intake office immediately after sentencing.<sup>22</sup>

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14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 2–3.

19. *Id.* at 3.

20. *Id.*

21. *Id.*

22. *Id.*

- *Individualized Justice* - Using risk and needs assessment instruments, problem-solving justice seeks to help the justice system make more nuanced decisions in individual cases.<sup>23</sup> In a special Ohio court 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.”<sup>24</sup>

The problem-solving initiatives in England and Wales that have adapted these principles share with their American counterparts an underlying desire to move the justice system from a standardized, mechanistic focus on processing cases to an emphasis on solving local public safety problems, changing the behavior of offenders, and giving local communities a greater voice in “doing justice.” Examples of this new approach to justice in England and Wales include the North Liverpool Community Justice Centre, the West London Drug Court, specialized domestic violence courts, mental health courts and a range of efforts designed to increase the visibility and impact of community service projects. 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.<sup>25</sup>

This Article seeks to analyze the movement toward problem-solving justice in England and Wales. It evaluates what has been accomplished to date and addresses some of the challenges faced by the 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? 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 Article argues that over the past decade, reformers in England and Wales planted the seeds for substantial change within the justice system. Planting seeds is not enough, of course. As with any garden, reform efforts need to be nurtured 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

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23. *Id.* at 2.

24. *Id.*

25. *Engaging Communities in Criminal Justice*, GREEN PAPER (Criminal Justice System, London, United Kingdom) 6–7 (2009), <http://www.official-documents.gov.uk/document/cm75/7583/7583.pdf>. [hereinafter CRIMINAL JUSTICE SYSTEM].

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?

We begin by taking a closer look at the development of problem-solving justice in the U.S., with a particular eye to the obstacles that reformers in the U.S. have had to overcome that may be relevant to the English and Welsh experience.<sup>26</sup> We then examine the current scene in England and Wales and the developments of various problem-solving initiatives since 1998.<sup>27</sup> Finally, we close by defining the key challenges that problem-solving justice must face if it is to succeed in England and Wales.<sup>28</sup>

## II. PROBLEM-SOLVING JUSTICE IN THE UNITED STATES

The U.S.'s first problem-solving court was a drug court located in Miami, Florida. The court, which matches drug-addicted defendants to judicially-monitored treatment instead of incarceration, was launched in 1989 by local officials struggling to cope with a crack cocaine epidemic that threatened to engulf the city.<sup>29</sup> Similarly, the nation's first community court was developed by local officials in New York City in response to the rising tide of crime and disorder in and around the theater district in Manhattan.<sup>30</sup> The Midtown Community Court attempts to re-engineer the justice system's response to quality-of-life offenses such as prostitution, illegal vending, graffiti, shoplifting, and vandalism.<sup>31</sup>

These two experiments in Miami and Manhattan emerged in response to the unique nature of crime in each community. In the early 1990s, as part of the planning process for the Midtown Community Court, researchers observed how misdemeanor offences were typically

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26. *See infra* Part II.

27. *See infra* Part III.

28. *See infra* Part IV.

29. Ronald Smothers, *Miami Tries Treatment, Not Jail, in Drug Cases*, N.Y. TIMES, Feb. 19, 1993, at A10.

30. Michele Sviridoff, et al., *Dispensing Justice Locally: The Implementation and Effects of the Midtown Community Court* (Center for Court Innovation, New York, N.Y.) (2001), [http://www.courtinnovation.org/\\_uploads/documents/dispensing%20justice%20locallyI.pdf](http://www.courtinnovation.org/_uploads/documents/dispensing%20justice%20locallyI.pdf).

31. *See* CTR. FOR COURT INNOVATION, WHITE PAPER, A DECADE OF CHANGE: THE FIRST 10 YEARS OF THE CENTER FOR COURT INNOVATION (2007), *available at* [http://www.courtinnovation.org/\\_uploads/documents/10th\\_Anniversary.pdf](http://www.courtinnovation.org/_uploads/documents/10th_Anniversary.pdf).

handled in Manhattan's centralized criminal court.<sup>32</sup> The researchers found that the majority of misdemeanor cases were disposed of by plea bargain at the defendant's first appearance in court. According to court personnel interviewed by the research team, these cases received only the minimal legal attention and judicial scrutiny.<sup>33</sup> The research team found that judges had basically two options in these cases: jail or nothing.<sup>34</sup> Neither felt like a satisfactory response to minor offenses. Allowing offenders to walk out of court without any sanction for their misbehavior failed to demonstrate that the system understood the impacts of crime on victims and neighborhoods. It also offered nothing in the way of rehabilitative services for defendants. Short-term jail sentences (typically less than thirty days) arguably posed 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 seemed ineffective. Similar stories could be told about cases involving domestic violence or defendants with mental illness. Given this landscape, many American jurists concluded that the current legal system was broken.<sup>35</sup> 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.<sup>36</sup>

The Miami-Dade County 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 initiatives achieved well-documented results, including reductions in substance abuse, reductions in local crime and improvements in public attitudes

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32. Sviridoff, *supra* note 30.

33. *Id.* at 167.

34. *Id.* at 10.

35. BERMAN & FEINBLATT, *supra* note 6, at 23.

36. Judith S. Kaye, *Making the Case for Hands-On Courts*, NEWSWEEK, Oct. 11, 1993, at 13.



toward courts.<sup>37</sup> This, in turn, led to calls for broad replication of these models.<sup>38</sup>

One of the most striking aspects of the development of problem-solving justice in the U.S. is that it began without any central direction. Although the federal government has played an important role over the years, by and large problem-solving justice in the U.S. represents a “bottom up” rather than “top down” phenomenon.<sup>39</sup> Much of the momentum for problem-solving justice has come from leaders at the state and local level.<sup>40</sup> 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 U.S.<sup>41</sup> While the trajectory of problem-solving justice in the U.S. is one of growing accomplishment and expansion, this progress has not come without hurdles. Indeed, a great deal of time and effort has been spent inoculating problem-solving justice from three persistent concerns: a) Is problem-solving justice soft on crime? b) Is problem-solving justice at odds with core American legal values? and c) Is problem-solving justice cost-effective?

### *A. 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

37. See DANA KRALSTEIN, CTR. FOR COURT INNOVATION, COMMUNITY COURT RESEARCH: A LITERATURE REVIEW, 2–3 (2005), [http://www.courtinnovation.org/\\_uploads/documents/ccresearch.pdf](http://www.courtinnovation.org/_uploads/documents/ccresearch.pdf). See also CTR. FOR COURT INNOVATION, DOCUMENTING RESULTS: RESEARCH ON PROBLEM-SOLVING COURTS (2007).

38. John S. Goldkamp, *The Impact of Drug Courts*, 2 CRIMINOLOGY & PUB. POL’Y 197, 202 (2003). The Miami drug court is widely credited for sparking the drug court movement in the U.S. *Id.* at 201.

39. The U.S. Department of Justice 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, including appropriations for a new initiative that combines funding for drug, mental health, and problem-solving courts. DEP’T. OF JUSTICE, THE BUDGET FOR FISCAL YEAR 2010 754 (2010), *available at* <http://www.gpoaccess.gov/usbudget/fy10/pdf/appendix/jus.pdf>.

40. Greg Berman & Aubrey Fox, *Passing Fad or Lasting Change: Problem-Solving Justice in England and Wales* 17 (Ben Ullmann ed., Policy Exchange) (2009), *available at* [http://www.policyexchange.org.uk/images/publications/pdfs/PX\\_lasting\\_change\\_A5\\_WEB.pdf](http://www.policyexchange.org.uk/images/publications/pdfs/PX_lasting_change_A5_WEB.pdf).

41. *Id.*

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.<sup>42</sup> 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 that resulted. In this environment, many alternative-to-incarceration programs were looked at with suspicion if not outright scorn.<sup>43</sup>

Recognizing this, advocates of drug courts, mental health courts, and community courts pointed out that their projects were different. In particular, they emphasized the active involvement of judges and the importance of judicial monitoring as a tool for promoting compliance with treatment and community orders.<sup>44</sup> The early research demonstrated that this approach was effective. For instance, compliance rates for court orders at the Midtown Community Court were fifty percent higher than compliance rates at comparable urban criminal courts.<sup>45</sup> 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.

### *B. 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 U.S. was a fundamental one: In their efforts to achieve better outcomes, were problem-solving courts guilty of trampling the rights of individual defendants?<sup>46</sup> Put another way,

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42. FRANK ZIMRING ET AL., PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA 164 (2001).

43. *Id.* at 164–65.

44. See BUREAU OF JUSTICE ASSISTANCE, DEP'T. OF JUSTICE, DEFINING DRUG COURTS: THE KEY COMPONENTS (1997), <http://www.ojp.usdoj.gov/BJA/grant/DrugCourts/DefiningDC.pdf>.

45. CTR. FOR COURT INNOVATION, DISPENSING JUSTICE LOCALLY (PART I): THE IMPLEMENTATION AND EFFECTS OF THE MIDTOWN COMMUNITY COURT 1 (1997), [http://www.courtinnovation.org/\\_uploads/documents/dispensing%20justice%20locallyI.pdf](http://www.courtinnovation.org/_uploads/documents/dispensing%20justice%20locallyI.pdf).

46. See Transcript of Prosecutors, Defenders and Problem-Solving Courts, 84 JUDICATURE 207, 207 (John Feinblatt & Derek Denckla eds., 2001).

were problem-solving courts an example of government overreach, 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.<sup>47</sup> 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.<sup>48</sup> 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 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.<sup>49</sup>

Recent research at the Red Hook Community Justice Center—the nation’s first multi-jurisdictional community court, launched in a low-income Brooklyn neighborhood—confirms that problem-solving courts improve perceptions of procedural fairness.<sup>50</sup> According to the research, eighty-six percent of defendants reported that his or her case was handled fairly, a result that was consistent regardless of the race and socio-economic status of defendant.<sup>51</sup> While this by no means

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47. *Id.* at 210.

48. M. Somjen Frazer, *Examining Defendant Perceptions of Fairness in the Courtroom*, 91 JUDICATURE 36, 36–37 (2007).

49. MALCOLM FEELEY, *THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT*, 3–4 (1992)

50. Frazer, *supra* note 48, at 37.

51. *Id.*

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.

### *C. Is Problem-Solving Justice Cost-Effective?*

One potential objection to problem-solving courts is that they only achieve better outcomes because they expend more resources. Problem-solving advocates offer two principal responses to this concern. First, they argue that the up-front expenditure of resources on problem-solving courts results in long-term savings to the criminal justice system.<sup>52</sup> A broad range of cost-benefit studies have been conducted with regard to American drug courts.<sup>53</sup> These studies have consistently shown significant cost savings, primarily in the form of reduced incarceration due to reduced recidivism.<sup>54</sup> In a recent California report, eight of nine drug courts studied produced cost savings—an average of \$3.50 in savings for every dollar invested.<sup>55</sup> By and large, drug court evaluations have confined themselves to criminal-justice costs—if they broadened their lens to look at reduced victimization (e.g. property damage, lost wages, medical costs), the savings would be exponentially greater.<sup>56</sup>

The other response to concerns about costs has been programmatic. Some reformers have attempted to move beyond resource-intensive, specialized courtrooms to test the effectiveness of “going to scale” with problem-solving principles. For example, Bronx Community Solutions in New York is an effort to bring the approach to misdemeanor crime pioneered at the Midtown Community Court and Red Hook Community Justice Center to the Bronx—a borough of nearly two million residents. Instead of working in just one neighborhood or with a single judge, Bronx Community Solutions seeks to work with defendants from all Bronx communities and with

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52. AVI BHATI, ET AL., THE URBAN INSTITUTE, *TO TREAT OR NOT TO TREAT: EVIDENCE ON THE PROSPECTS OF EXPANDING TREATMENT TO DRUG-INVOLVED OFFENDERS* (2008), <http://www.urban.org/publications/411645.html>.

53. STEVEN BELENKO, THE NATIONAL CENTER ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIVERSITY, *RESEARCH ON DRUG COURTS: A CRITICAL REVIEW* 41–44 (2001), available at <http://www.drugpolicy.org/docUploads/2001drugcourts.pdf>.

54. *Id.*

55. Shannon M. Carey et al., *California Drug Courts: Outcomes, Costs and Promising Practices: An Overview of Phase II in a Statewide Study*, *J. PSYCHOACTIVE DRUGS* 345, 352 (2006).

56. SHANNON M. CAREY ET AL., NPC RESEARCH, *CALIFORNIA DRUG COURTS: A METHODOLOGY FOR DETERMINING COST AND BENEFITS PHASE II: TESTING THE METHODOLOGY* 8-9 (2005), [http://www.courtinfo.ca.gov/programs/collab/documents/drug\\_court\\_phase\\_II.pdf](http://www.courtinfo.ca.gov/programs/collab/documents/drug_court_phase_II.pdf).

four dozen judges.<sup>57</sup> 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.<sup>58</sup> In 2008, Bronx Community 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.<sup>59</sup> 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 utilization of community-based sentences.<sup>60</sup>

### III. 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 U.S. Beginning with the passage of the 1998 Crime and Disorder Act,<sup>61</sup> 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 centers like Red Hook in Liverpool and Salford in 2004, with expansion to an additional eleven jurisdictions in 2006;<sup>62</sup> more than one-hundred specialized domestic violence courts;<sup>63</sup> an expansion of pilot drug courts to two sites;<sup>64</sup> the introduction of a host of new sentencing options and tools;<sup>65</sup> and the recent creation of specialized mental health courts.<sup>66</sup>

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57. SHANI KATZ, CTR. FOR COURT INNOVATION, EXPANDING THE COMMUNITY COURT MODEL: TESTING COMMUNITY COURT PRINCIPLES IN THE BRONX CENTRALIZED COURTHOUSE, (2009), [http://www.courtinnovation.org/\\_uploads/documents/BCS\\_Impact.pdf](http://www.courtinnovation.org/_uploads/documents/BCS_Impact.pdf).

58. Internal communication (on file with authors).

59. *Id.*

60. *Id.*

61. Crime and Disorder Act, 1998, c. 37 (Eng.).

62. See Community Justice Homepage, <http://www.communityjustice.gov.uk/index.htm> (last visited Feb. 12, 2010).

63. See Press Release, Ministry of Justice, Domestic Violence: 18 New Special Courts Announced (March 26, 2009), available at <http://www.justice.gov.uk/news/newsrelease260309a.htm>.

64. UNITED KINGDOM MINISTRY OF JUSTICE, DEDICATED DRUG COURTS: A PROCESS REPORT 2 (2008), <http://www.justice.gov.uk/publications/docs/dedicated-drug-courts.pdf>.

65. KINGS COLLEGE CENTRE FOR CRIME AND JUSTICE STUDIES, THE COMMUNITY ORDER AND THE SUSPENDED SENTENCE ORDER THREE YEARS ON: THE VIEWS AND EXPERIENCES OF PROBATION OFFICERS AND OFFENDERS (2009).

66. See Press Release, Ministry of Justice, Jack Straw Launches First Mental Health Courts (July 2, 2009), available at <http://www.justice.gov.uk/news/newsrelease020709a.htm>.

### *A. Drug Courts and Court-Ordered Drug Treatment*

In 1997, two drug courts were launched in the West Yorkshire cities of Wakefield and Pontefract.<sup>67</sup> 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).<sup>68</sup> 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 and then later expanded to all forty-two of Britain's probation services.<sup>69</sup> By December 2003, over 18,000 drug treatment orders had been made.<sup>70</sup>

With the passage of the 2003 Criminal Justice Act,<sup>71</sup> 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 specialized drug courts. In 2005, dedicated drug courts were launched in two adult magistrates' courts in Leeds and West London, and expansion was expected.<sup>72</sup>

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

- *Focus*: Within the existing magistrates' structure, drug courts exclusively handle drug-abusing offenders from conviction through sentencing 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 specialized 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

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67. UNITED KINGDOM MINISTRY OF JUSTICE, *supra* note 64.

68. THE COMPTROLLER AND AUDITOR GENERAL, "THE DRUG TREATMENT AND TESTING ORDER: EARLY LESSONS" (2004).

69. *Id.*

70. *Id.*

71. Criminal Justice Act, 2003, c. 44, §279, sched. 24 (U.K.), available at [http://www.opsi.gov.uk/acts/acts2003/ukpga\\_20030044\\_en\\_1](http://www.opsi.gov.uk/acts/acts2003/ukpga_20030044_en_1).

72. UNITED KINGDOM MINISTRY OF JUSTICE, *supra* note 64, at 4.

- *Partnership*: The drug courts seek to establish effective multidisciplinary working groups with other criminal justice agencies.<sup>73</sup>

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 DTTO) as part of their community orders or suspended sentences.<sup>74</sup> Under a DRR, offenders are required to attend treatment, are tested regularly for drug use and are required to attend court reviews.<sup>75</sup> 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.<sup>76</sup> In 2009, the Ministry of Justice announced the creation of four more dedicated drug courts in Cardiff, Barnsley, Salford, and Bristol.<sup>77</sup>

### *B. Community Justice Courts*

Another development in problem-solving justice in England and Wales, community justice courts, can be traced back to 2002 when the Lord Chief Justice of England and Wales visited the Red Hook Community Justice Center in New York and was impressed with the problem-solving approach used there.<sup>78</sup> Home Secretary David Blunkett also visited Red Hook and decided to test some of the community justice<sup>79</sup> concepts in a pilot based in North Liverpool.

Launched in 2005 and the first of its kind in the country, the North Liverpool Justice Centre aims to be a community resource—a one-stop shop for tackling crime, addressing the underlying behavior of offenders, and delivering a wide range of social services to

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73. *Id.* at 5.

74. UNITED KINGDOM MINISTRY OF JUSTICE, *supra* note 64, at 5.

75. *Id.*

76. *Id.*

77. News Release, Ministry of Justice, Wales's First Dedicated Drug Court Launched by Straw (Apr. 8, 2009), available at <http://www.justice.gov.uk/news/newsrelease080409a.htm>.

78. Adam Mansky, *Straight out of Red Hook: A Community Justice Centre Grows in Liverpool*, 87 JUDICATURE 254, 254 (2004).

79. "Community justice is about improving local quality of life with all the criminal justice agencies joining with the community to combat the anti social behavior and quality of life crime that makes lives miserable." See Community Justice Center, <http://www.communityjustice.gov.uk/whatis.htm> (last visited on Apr. 6, 2010).

offenders, victims, and the general public.<sup>80</sup> The Justice Centre is located in a refurbished former school building in the heart of a working class neighborhood with high crime rates and troubled relations with the criminal justice system.<sup>81</sup> 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.<sup>82</sup> The objectives of the North Liverpool Community Justice Centre are to:

- Reduce low-level offending and anti-social behavior;
- 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.<sup>83</sup>

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 over \$400,000 at minimum wage rates.<sup>84</sup> The Centre engaged with 1,447 people at eighteen different community events during December 2008, bringing the total for the year to 12,519 via 165 events.<sup>85</sup>

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80. The Liverpool Community Justice Centre is a "unique initiative, which brings justice into the heart of the community, tackling crimes and anti-social behaviour that affect the quality of life for people living in the local authority wards of Anfield, County, Everton and Kirkdale, in North Liverpool. The first of its kind in England and Wales, the center aims to work closely with local people to understand and tackle the causes of anti-social behavior and crime as well as crime itself. It combines the powers of a courtroom, run by Judge David Fletcher, with a range of community resources, available to residents, victims and witnesses, as well as offenders." See Community Justice Centre, <http://www.communityjustice.gov.uk/northliverpool/index.htm>.

81. *Id.*

82. *Id.*

83. KATHERINE MCKENNA, MINISTRY OF JUSTICE, EVALUATION OF THE NORTH LIVERPOOL COMMUNITY JUSTICE CENTER 11 (2007), [http://www.communityjustice.gov.uk/docs/Liverpool\\_Ecotech\\_NL\\_evaluation\\_report\\_FINAL\\_publication.pdf](http://www.communityjustice.gov.uk/docs/Liverpool_Ecotech_NL_evaluation_report_FINAL_publication.pdf).

84. Community Payback refers to community service projects, such as painting over graffiti or cleaning up local parks. Internal communication (on file with authors).

85. *Id.*



Also in 2005, the Ministry of Justice created the Salford Community Justice Initiative<sup>86</sup> 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.<sup>87</sup> In Salford, cases from three local areas are heard one day a week.<sup>88</sup> 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 Liverpool have been launched across England and Wales.<sup>89</sup> 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.<sup>90</sup>

### *C. Domestic Violence Courts*

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.<sup>91</sup> The centerpiece 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.<sup>92</sup>

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86. The Salford Community Justice Initiative is the "second community justice initiative in England and Wales and builds upon the development of the North Liverpool Community Justice Center." See Community Justice Center, <http://www.communityjustice.gov.uk/salford/index.htm> (last visited on Apr. 6, 2010).

87. *Id.*

88. *Id.*

89. The thirteen 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). See Community Justice Center, <http://www.communityjustice.gov.uk/> (last visited Feb. 12, 2010).

90. CRIMINAL JUSTICE SYSTEM, *supra* note 25, at 28.

91. Press Release, Ministry of Justice, Domestic Violence: 18 New Special Courts Announced, Mar. 26, 2009, available at <http://www.justice.gov.uk/news/newsrelease260309a.htm>.

92. *Id.*

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.<sup>93</sup> The court is designed to consolidate domestic violence cases with overlapping jurisdiction (criminal, civil, family) into a single courtroom, and in the process encourage a more unified approach to the issues faced by a single family.<sup>94</sup>

#### *D. New Problem-Solving Initiatives*

Two reports issued in the last two years, the *Casey Review*<sup>95</sup> and *Engaging Communities Green Paper*,<sup>96</sup> 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.<sup>97</sup> More recently, the Ministry of Justice's *Engaging Communities Green Paper* proposed hiring thirty 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 community orders.<sup>98</sup> One example of this new approach can be found in the London neighborhood of Lambeth, which announced the appointment of a new community prosecution coordinator dedicated to making links to citizens and community groups.<sup>99</sup>

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93. See generally MARIANNE HESTER, ET AL., MINISTRY OF JUSTICE, EARLY EVALUATION OF THE INTEGRATED DOMESTIC VIOLENCE COURT, CROYDON (2008), <http://www.justice.gov.uk/publications/docs/evaluation-court-croydon.pdf>.

94. *Id.* at 1. According to a Ministry of Justice evaluation in 2008, 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." *Id.* at 39.

95. See generally LOUISE CASEY, CABINET OFFICE, CRIME & COMMUNITIES REVIEW: ENGAGING COMMUNITIES IN FIGHTING CRIME (2008), [http://www.cabinetoffice.gov.uk/media/cabinetoffice/corp/assets/publications/crime/cc\\_full\\_report.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/corp/assets/publications/crime/cc_full_report.pdf) [hereinafter CASEY REVIEW].

96. CRIMINAL JUSTICE SYSTEM, *supra* note 25.

97. CASEY REVIEW, *supra* note 95, at 18, 56, 110.

98. THE LORD CHANCELLOR AND SECRETARY OF STATE FOR JUSTICE, ENGAGING COMMUNITIES IN CRIMINAL JUSTICE, CRIMINAL JUSTICE SYSTEM (2009), <http://www.official-documents.gov.uk/document/cm75/7583/7583.pdf>.

99. Matt Watts, *Crown Prosecution Service to Examine How Crimes Hurt Lambeth Community*, STREATHAM GUARDIAN, Jun. 23, 2009, available at

Finally, following a report by Policy Exchange,<sup>100</sup> 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.<sup>101</sup>

#### IV. CHALLENGES

Problem-solving reforms face a number of significant challenges that must be addressed 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.

##### *A. The Balance between Local and Central Government*

The manner in which a country implements reforms is often as important as the substance of the reforms. England and Wales do not have the same government structure and tradition of local control that the U.S. does. There are decided advantages to the English system. For example, central government can push national-level policy change much faster than is possible in the U.S. 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 U.S. because each community court required reformers to go individually to a local jurisdiction and win over a local judge, prosecutor, and the defense bar.

However, 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

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[http://www.streathamguardian.co.uk/news/4452979.CPS\\_to\\_examine\\_how\\_crimes\\_hurt\\_community](http://www.streathamguardian.co.uk/news/4452979.CPS_to_examine_how_crimes_hurt_community).

100. CHARLIE BROOKER & BEN ULLMANN, POLICY EXCHANGE, *INSIDE OUT: THE CASE FOR IMPROVING MENTAL HEALTHCARE ACROSS THE CRIMINAL JUSTICE SYSTEM* 47 (Gavin Lockhart ed., 2009), available at [http://www.policyexchange.org.uk/images/publications/pdfs/Inside\\_Out.pdf](http://www.policyexchange.org.uk/images/publications/pdfs/Inside_Out.pdf).

101. Press Release, Ministry of Justice, Jack Straw Launches First Mental Health Courts (July 2, 2009), available at <http://www.justice.gov.uk/news/newsrelease020709a.htm>.

at the ground level, amongst front-line police officers, magistrates, attorneys, 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.”<sup>102</sup>

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 ‘flavor-of-the-month’ being forced upon them from above.<sup>103</sup> 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, when central government imposes formal targets on local criminal justice agencies,<sup>104</sup> the unfortunate result is deterrence of 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 the localized entrepreneurial energy that has powered the problem-solving reform movement in the U.S.

### *B. 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.<sup>105</sup> Indeed, on a visit to North Liverpool Community Justice Centre in July 2009, the Attorney General ruled out the

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102. Confidential interview with a judge who wishes to remain anonymous (Apr. 2009) [hereinafter Confidential Interview].

103. *Id.*

104. See generally OFFICE OF CRIMINAL JUSTICE REFORM, WORKING TOGETHER TO CUT CRIME AND DELIVER JUSTICE: A STRATEGIC PLAN FOR 2008-2011 (2007), [http://www.cjsonline.gov.uk/downloads/application/pdf/1\\_Strategic\\_Plan\\_ALL.pdf](http://www.cjsonline.gov.uk/downloads/application/pdf/1_Strategic_Plan_ALL.pdf).

105. Ben Rogers & Lucy Stone, *The Personal Touch*, SAFER SOCIETY: J. CRIME REDUCTION AND COMMUNITY SAFETY (2005), available at <http://www.ippr.org.uk/articles/?id=1549>.

possibility of replicating similar centers but said that “lessons that have been learned from it can be used elsewhere.”<sup>106</sup>

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 high price tag of North Liverpool.<sup>107</sup> 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.”<sup>108</sup> 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.<sup>109</sup> The point here is that the government should attempt to “mainstream” problem-solving principles into existing courts. However, it is also important to acknowledge that this is an ambitious goal and must be pursued thoughtfully, with appropriate strategic planning and a commitment to broad-scale training.

### C. Magistrates

Unlike in the U.S., where criminal cases are adjudicated by professional judges, ninety-five percent of criminal cases in England & Wales are handled by magistrates—either single, paid district judges (stipendiary magistrates)<sup>110</sup> or a panel of three part-time, volunteer, lay magistrates who are chosen on the basis that they are active members

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106. See News Release, Attorney General’s Office, Attorney General Salutes Merseyside as a Justice Pioneer (July 10, 2009), available at <http://www.attorneygeneral.gov.uk/NewsCentre/Pages/AttorneyGeneralSalutesMerseysideAsAJusticePioneer.aspx>.

107. RICK BROWN, ET AL., MINISTRY OF JUSTICE, PROCESS EVALUATION OF THE SALFORD COMMUNITY JUSTICE INITIATIVE 2 (2007), <http://www.justice.gov.uk/publications/docs/salford-full-report.pdf>.

108. *Id.* at 7.

109. MCKENNA, *supra* note 83.

110. Judiciary of England and Wales, About the Judiciary, Judicial Profiles-District Judges (Magistrates’ Courts), [http://www.judiciary.gov.uk/about\\_judiciary/roles\\_types\\_jurisdiction/judicial\\_profiles/salaried/district\\_judges\\_mags.htm](http://www.judiciary.gov.uk/about_judiciary/roles_types_jurisdiction/judicial_profiles/salaried/district_judges_mags.htm) (last visited Apr. 7, 2010).

of the local community.<sup>111</sup> This framework presents a number of challenges for problem-solving justice.

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.<sup>112</sup> While the majority of cases are heard in magistrates' courts, as yet there are few champions of problem-solving justice at the magistrate's level. This is partly understandable; magistrates are, after all, part-time volunteers. Figuring out a way to strengthen the commitment of magistrates to problem-solving justice is crucial to the future health of the movement.

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.<sup>113</sup> 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 stipendiary magistrate (district judge) who will be present at all the 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.<sup>114</sup> 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.

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111. Judiciary of England and Wales, About the Judiciary, Judicial Profiles-Magistrates, [http://www.judiciary.gov.uk/about\\_judiciary/roles\\_types\\_jurisdiction/judicial\\_profiles/magistrates/index.htm](http://www.judiciary.gov.uk/about_judiciary/roles_types_jurisdiction/judicial_profiles/magistrates/index.htm) (last visited Apr. 7, 2010).

112. See Judiciary of England and Wales, Magistrates in Post, <http://www.judiciary.gov.uk/keyfacts/statistics/mags.htm> (last visited Feb. 12, 2010).

113. MCKENNA, *supra* note 83, at 14–18.

114. Confidential Interview, *supra* note 102. See also UNITED KINGDOM MINISTRY OF JUSTICE, DEDICATED DRUG COURT PILOTS: A PROGRESS REPORT (2008), <http://www.justice.gov.uk/publications/docs/dedicated-drug-courts.pdf> (emphasizing the importance of continuity to effectiveness of drug court interventions).

### *D. 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.

The role that research plays in helping problem-solving courts recognize their success and failure, and react accordingly, is equally important. 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. Put another way, asking “how” and “under what circumstances” problem-solving courts work is as important as asking “whether” these courts work. The key is creating a different research model that gives local courts an integral role in defining questions to be answered and provides immediate and useful feedback about everyday program operations and performance.<sup>115</sup>

### *E. 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.”<sup>116</sup> 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.”<sup>117</sup> 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

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115. CTR. FOR COURT INNOVATION, THE STATE OF DRUG COURT RESEARCH: MOVING BEYOND ‘DO THEY WORK?’ 2 (2005), [http://www.courtinnovation.org/\\_uploads/documents/state%20of%20dc%20research.pdf](http://www.courtinnovation.org/_uploads/documents/state%20of%20dc%20research.pdf).

116. See National Programme Team, Home Office, Community Justice, <http://www.asb.homeoffice.gov.uk/members/article.aspx?id=8172> (last visited Feb. 12, 2009).

117. DEP’T. FOR CONSTITUTIONAL AFFAIRS, HOME OFFICE, DELIVERING SIMPLE, SPEEDY, SUMMARY JUSTICE 36 (2006), [http://www.dca.gov.uk/publications/reports\\_reviews/delivery-simple-speedy.pdf](http://www.dca.gov.uk/publications/reports_reviews/delivery-simple-speedy.pdf).

the experience of the Red Hook Community Justice Center in New York, which conducts an annual, door-to-door survey of local residents.<sup>118</sup>

### *F. Support Services*

Problem-solving justice strives to bring new players on board and to integrate 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.<sup>119</sup> These partner agencies 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 Liverpool Community Justice Centre. Most have to make do with the services available in their local area. In some places, the services are simply a 'help desk' with a single staff member who has access to the internet and a phone. While the desire to spread problem-solving justice in a 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.

### *G. Creating a Culture of Innovation and Risk-Taking*

To achieve meaningful change, reformers need the time and space to calculate what works, what does not, 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."<sup>120</sup> In the world of criminal justice, however, the media

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118. These surveys show that seventy-one percent of Red Hook residents report confidence in the community court, up from twelve percent before the Justice Center began operations in 2000. See BUREAU OF JUSTICE ASSISTANCE, RED HOOK SURVEY, SURVEYING COMMUNITIES: A RESOURCE FOR COMMUNITY JUSTICE (2003), <http://www.ncjrs.gov/html/bja/197109/pg4.html>; See also Bureau of Justice Assistance, <http://www.ncjrs.gov/html/bja/197109/pg4.html> for a description of survey methodology.

119. MCKENNA, *supra* note 83, at 19.

120. DARRICK, ET AL., MINISTRY OF JUSTICE, INITIAL EVALUATION OF RECONVICTION RATES IN COMMUNITY JUSTICE INITIATIVES 3 (2009), <http://www.justice.gov.uk/about/docs/community-justice-evaluation.pdf>.



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.<sup>121</sup> Problem-solving reformers in England and Wales should seek to change this dynamic in order to foster criminal justice innovation over the long haul. The kind of change contemplated in England and Wales generally takes a generation to achieve.

#### V. THE FUTURE

While they have shown some promising early results, the problem-solving reforms launched in England and Wales over the last decade will take many years to bear fruit. For problem-solving justice to take hold in England and Wales, reformers must develop deeper roots in the lay magistracy and launch models that are demonstrably cost-effective while providing magistrates' courts with the social service resources that are essential to effective problem-solving. Just as important, there is a need to re-think the government culture in England and Wales. Reformers should strive to create an atmosphere that encourages local innovation, reflects an understanding that not all experiments are destined to be successful, and is dedicated to continual learning and enhanced knowledge.

This is a crossroads moment for problem-solving justice in England and Wales, and the stakes are high. If the past is any indicator, promising criminal justice reforms have all too often 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 a similar fate—or flourishes.

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121. Greg Berman & Aubrey Fox, *Embracing Failure: Lessons for Court Managers*, 23 CT. MANAGER 20, 27 (2008).