

Chapter 12

Problem Solving Courts: Therapeutic Jurisprudence in Practice

Bruce J. Winick

Problem-Solving Courts: A Judicial Revolution

A remarkable transformation in the judiciary has occurred over the past 20 years (Winick and Wexler 2003). The traditional role of the courts has been to adjudicate disputed issues of fact in civil and criminal cases. Traditionally, judges were neutral arbiters considering conflicting evidence and rendering a decision based on the law and the facts. Recently, however, the kinds of cases that come to court have changed. We still have civil and criminal disputes, for which the traditional judicial role is appropriate, but many new types of cases do not involve factual disputes. A variety of social and psychological problems have found their way to the courts, and as a result, a metamorphosis has occurred in the judicial role. Indeed, these courts, collectively often referred to as “problem-solving courts,” have different jurisdiction than traditional courts and separate judges who preside in them (Conference of Chief Justices and Conference of State Courts Administrators 2000; Winick and Wexler 2003; Winick 2003). Problems such as drug addiction, alcoholism, domestic violence, untreated mental illness, and prisoner reentry into society have taken up more and more judicial time, and the judiciary has responded by establishing a variety of specialty courts to deal with these problems.

Although traditional courts focus exclusively on the narrow dispute in controversy, problem-solving courts attempt to understand and address the underlying problem that is responsible for the immediate dispute, and to help the individuals before the

This chapter was prepared for a conference at the University of Nebraska Lincoln in January of 2010. Professor Winick participated in this conference with a video link. He was ill at the time of the conference. At the time near the end of his life, Professor Winick was engaged in some empirical work with Richard Wiener, the editor of this book. Bruce nearly completed this chapter before his untimely passing. Margot Winick, daughter of Professor Winick gave permission for us to include this chapter in the current book. Dr. Wiener completed some sections and did some light editing of the manuscript. As was always the case, little work was required to prepare Professor Winick’s paper for publication.

B. J. Winick (✉)
University of Miami, Coral Gables, FL, USA

court to effectively deal with the problem in ways that will prevent recurring court involvement. These courts are voluntary (Winick 2003). The individuals who choose to go to them have social, mental health, or substance abuse problems. These newer courts also include criminal cases involving individuals with drug or alcoholism problems, mental health problems, or problems of family and domestic violence. The juvenile court, pioneered in Chicago in 1899, is the forerunner of these specialized courts. It represented an attempt to provide a rehabilitative approach to the problem of juvenile delinquency, rather than the punitive approach of the adult criminal court. The modern antecedent of these courts is the drug treatment court, founded in Miami in 1989 (Hora 2002).

In many ways, the problem-solving court judge functions as a social worker. Judges may not be the best professionals to play this role as they will not have received clinical training in psychology or social work. However, these problems confront the judge because our society often fails to adequately deal with the problem of substance abuse and other psychosocial problems, with the result that the individual often winds up in jail and the court.

Drug Treatment Court

This court was a response to the recognition by Miami judges and prosecutors that the drug problem had overrun the courts with more cases than could be handled, and that a new model was needed. The Miami drug treatment court soon adopted a treatment orientation. Processing nonviolent drug possession charges in the criminal courts and sentencing the offenders to prison had not succeeded in changing their addictive behavior. Instead of the traditional criminal court's retributivist intervention, which did little to avoid repetition of the underlying problem, the drug court sought to provide a judicially supervised treatment experience. The aim was to help the addicts and end the revolving door problem. Rehabilitation was the hallmark, and the drug court judge was cast as a member of the treatment team.

Drug offenders who chose not to contest their charges were given a new option. A pretrial diversion program existed in Miami and included drug treatment, but prosecutors did not agree to divert all drug possession offenses, and there existed uncertainty about the efficacy of traditional community drug treatment. The new option created by drug treatment court was designed for drug offenders who wished to deal seriously with their substance abuse problem. They could voluntarily elect to enter drug court and accept several conditions. They would agree to remain drug-free, to participate in a court-approved drug treatment program, to submit to periodic urine analysis drug testing in order to monitor their compliance with the treatment plan, and to report periodically to court for judicial supervision of their progress (Winick 2000). The drug courts and the other problem-solving courts that evolved from them, although often differing substantially, seem to have the following common elements: (1) immediate intervention, (2) a nonadversarial process, (3) intensive judge-offender interaction, (4) an interdisciplinary team approach, and (5) clearly

defined rules and goals, often specified in a behavioral contract (Watson et al. 2001; Winick 2000).

A defendant choosing to participate in drug treatment court enters into a behavioral contract with a court in which he agrees to remain drug-free, to attend a community treatment program, to submit to periodic drug testing, and to report to court every 10–14 days. At each report date, the defendant's progress is monitored. The defendant appears at court along with all other defendants in a proceeding that may last several hours. The treatment staff discusses each defendant in open court. The court learns immediately whether the defendant is complying with the condition that he or she remains drug-free.

If the results of a drug test are negative, the judge publicly praises the individual and the other participants and their lawyers, including the state prosecutor, join in a round of applause. This praise can be a significant positive reinforcement for the individual who has accepted treatment, helping to build self-esteem and ensure continued compliance. If the drug test is positive, however, the judge will apply a sanction that has been previously agreed to. The sanctions range from judicial scolding to requiring the defendant to spend several hours in the jury box, to a night in the county jail. Subsequent failures result in increasingly more severe sanctions designed to increase compliance. If the individual remains drug-free for a specified period of time, the judge will dismiss his charges and give him a “graduation” ceremony. This ceremony celebrates the defendant's accomplishments and is attended by other successful graduates and their friends and families. The judge gives a speech and calls individuals up to the microphone to give their reactions. The officer presents a diploma, and everyone claps and congratulates the defendant (Belenko 2001). These positive rituals help not only the targeted defendants, but also the other program participants who witness them (Bandura 1986). There are now 2,300 such courts across the country (National Drug Court Institute 2009).

Domestic Violence Court

Based on the drug treatment court model, domestic violence court is designed to deal with the specialized problems of domestic violence. Its aim is to protect the victims of domestic violence, to motivate perpetrators of domestic violence to attend batterers' intervention programs, and to monitor compliance with court orders and treatment progress. Currently, there are over 300 domestic violence courts (Littel 2003). Domestic violence is between intimates rather than strangers, and the violence is typically progressive (Conference of Chief Justices and Conference of State Courts Administrators 2000; Littel 2003; Winick 2000).

Domestic violence was once considered a private issue, and the police and the courts intervened only in cases of serious harm (Mazur and Aldrich 2003). Most victims chose not to prosecute or to cooperate with the prosecution when the police filed criminal charges. The police, probably based on sexist traditions, failed to take domestic violence seriously, and would rarely intervene. Awareness of the

extent and seriousness of domestic violence increased in the 1990s. More than 1 million women are battered by an intimate partner annually (Kaye and Knipps 2000). Domestic violence is responsible for almost one-third of all female homicide victims (Catalano 2007; Winick 2003; Winick et al. 2010).

In response to the emerging awareness of the seriousness of domestic violence, jurisdiction over these cases was placed in a specialized court—the domestic violence court. These courts combine criminal and civil jurisdiction, allowing both adjudication and punishment of offenders and the issuance of civil restraining orders designed to prevent future violence. They also provide services to victims and their families. They seek to both, punish the batterer and to encourage behavior change through batterers' intervention programs that offenders are mandated or encouraged to participate in as a result of conditions of bail, pretrial diversion, or probation (Winick 2000). The domestic violence court seeks to increase coordination and continuity of case processing (Sack 2002). It increases the consistency of judicial monitoring of perpetrators. Like drug treatment court, these courts represent a new judicial model distinct from the traditional criminal court. The judges, court officers, and prosecutors develop a special expertise in issues raised by domestic violence. As with the drug court, these courts involve extensive judicial collaboration with governmental agencies and community-based organizations. Domestic violence courts combine criminal and civil jurisdiction, allowing both punishment of offenders and civil protection orders mandating that the batterer does not contact the victim. The civil orders are enforced through the court's contempt powers, and violation of such an order is often itself a separate offense.

Although in some states, domestic violence courts possess only criminal jurisdiction over the offender, an integrated criminal/civil model is increasingly used. In some courts, the judge can also deal with child support and divorce issues arising in the case. A variation is the Unified Family Court, where the judge can handle all legal issues relating to the same family, including domestic violence, divorce and child support, delinquency, and dependency issues (Babb 1998; Littell 2003; Winick and Wexler 2003).

Domestic violence court, like other problem-solving courts, uses an interdisciplinary team effort in which judges, attorneys, resource coordination staff, and treatment staff work together. Like other problem-solving judicial models, they seek to motivate offenders to accept rehabilitation, participate in treatment programs, and monitor their compliance. They differ from other problem-solving courts, however, because domestic violence courts exist to prevent serious violence by the perpetrator. As avoiding recidivism is an important mission of the domestic violence court, these courts are considerably more adversarial in nature than other problem-solving courts.

Mental Health Court

A recently emerging problem-solving court model is mental health court, which began in 1997 in Broward County, Florida (Erickson et al. 2006; Petrila et al. 2001;

Stefan and Winick 2005). More than 110 such courts now exist in the USA (Erickson et al. 2006; Stefan and Winick 2005). The mental health court started off as a misdemeanor criminal court designed to deal with people arrested for minor offenses whose major problem is mental illness rather than criminality (Petrila et al. 2001). Some jurisdictions have extended the model to include felony cases (Fisler 2005). Like drug offenders and domestic violence perpetrators, mental health court deals with a recurring criminal offender pattern. The individuals opting to participate in mental health court are a revolving door category of patients who are periodically committed to mental hospitals, where they are treated with psychotropic medication (Goldkamp and Irons-Guynn 2000; Winick 2003). When functioning is restored, they are discharged to the community where many exercise their right to refuse to continue to take psychotropic medication (Winick 2003). As a result, they frequently decompensate, sometimes committing minor offenses that result in their arrest. Mental health courts seek to divert these patients from the criminal justice system and to motivate them to voluntarily accept treatment while in the community. In addition, they link them with treatment resources, and provide social service support and judicial monitoring to ensure treatment compliance (Winick 2003).

The aim of these courts is to stabilize their mental conditions by persuading offenders to take medication and by monitoring their compliance with treatment. Diversion from their criminal charges provides an incentive for offenders to participate in mental health court. As with drug court, if they succeed in the treatment program, the court drops their criminal charges. Similar to other problem-solving courts, they are generally informal and nonadversarial in nature. Like other problem-solving courts, participation is voluntary and treatment compliance is judicially monitored. The criminal justice system has replaced the mental hospital as the principal way of dealing with mentally ill individuals. Increasing numbers of offenders suffer from mental illness even though the jails and prisons have few resources to address their clinical needs (Erickson et al. 2006). This phenomenon is due to the tightening of civil commitment criteria, the declining public hospital census, limited access to community services, and the increased likelihood of arrest for minor nuisance offenses by those with mental illness (Watson et al. 2001; Stefan and Winick 2005).

Police are increasingly taught to apply the Memphis model in which these mentally ill offenders are diverted from the criminal justice system directly into treatment (Steadman et al. 2000). However, not all jurisdictions have adopted this model, with the result that many of these defendants still wind up in the criminal justice system. As their offenses are often more of a product of their untreated mental illness than criminality, the mental health court model can be a helpful way of diverting them from the jails that are highly antitherapeutic, motivating them to accept needed treatment, and facilitating their receiving it in the community (Winick et al. 2010).

Other Problem-Solving Court Models

In addition to the problem-solving courts discussed above, several other models have emerged in recent years. These include reentry court, dependency court, teen court, veteran court, and various hybrid models.

Reentry courts help offenders who are on judicially supervised parole after they have been released from prison. Their goal is to ensure a successful transition for the offender back into the community. Some might view this model as a “rear door” treatment court facilitating a successful reintegration of ex-offenders into the community. In this sense, the drug treatment court is a “front door” model, diverting drug offenders from the judicial and correctional process. Many offenders at the end of their prison terms will still need help with their addiction problems, and this type of court can offer judicially supervised treatment to discharged prisoners who choose to participate. In addition, a reentry court for sex offenders has been proposed. This model would attempt to monitor the risk of reoffending through close supervision and polygraph examinations.

Dependency court is a branch of family court that handles allegations of child abuse and neglect. It is a civil, rather than criminal court that determines whether child abuse or neglect has occurred and provides services in order to stabilize the families involved. The court also has the power to terminate parental rights and place children in foster care if parental abuse continues. As much of child abuse and neglect co-occurs with substance abuse, the dependency court has adapted the drug court model in an effort to assist interested parents to end their addictions.

Another type of problem-solving court is the teen court, also known as youth court. This court deals with juveniles who the state has charged with minor offenses. It utilizes juveniles who have been through the teen court process and have received training to play the role of members of the court—prosecutor, defense attorney, and jury. This model provides the young people involved, with a measure of empathy training and gives them the opportunity to view their behavior through the eyes of other parties involved.

Most recently, we have witnessed the development of veterans’ courts charged with the responsibility of assisting soldiers returning to the community after serving in the military. Veteran participants are primarily those the state has charged with nonviolent misdemeanor offenses (Hawkins 2010). Typically, the court negotiates a treatment plan for the defendant, which can include drug, alcohol, and mental health services. After the parties agree to the treatment plan, the court officers arrange a plea agreement in which the defendants agree to comply in exchange for reduction or dismissal of charges at the end of the process. As with the case of mental health courts and drug courts, the judge carefully monitors the veterans’ progress through a series of appearances and hearings (Hawkins 2010). Veterans’ courts sometimes also order financial education, parental training, and other social services to assist the returning soldiers to readjust to community life.

In addition to the problem-solving court models discussed previously, some jurisdictions have created hybrid models to deal with more specific, overlapping problems. These courts combine the techniques of drug, domestic violence, and mental health court. For instance, dependency drug treatment courts deal with the substance abuse problems of parents whose children are in the abuse and neglect systems (Winick and Wexler 2003; Wyatt 2001; Winick et al. 2010). Juvenile drug treatment court deals with juveniles in the delinquency system that have addiction problems. Miami has

pioneered a domestic violence mental health court that seeks to deal with individuals with untreated mental illness who engage in domestic violence (Winick et al. 2010).

The Value of Problem-Solving Courts

All the problem-solving courts were created as a result of the realization that traditional court interventions had failed in certain areas, including substance abuse, domestic violence, certain kinds of criminality, child abuse and neglect, and mental illness. These problems are all repetitive in nature and were not being solved by traditional courts, which treated the symptoms rather than the underlying problem. Instead, such traditional approaches led to a continued need for judicial intervention when the underlying problem produced additional criminal behavior. Moreover, courts of general jurisdiction generally lack both expertise in specialized problems of this nature, as well as the tools, such as treatment and social services, to effectively deal with these problems.

As a response to these failures, courts created new approaches that were collaborative and interdisciplinary and involved an active, leading role for the judge. In these new courts, the judge coordinates many of the parties involved, motivates the offender, and monitors compliance and progress. In addition, the judge's role extends beyond the courtroom. These judges are tasked not only with resolving the court case, but also with educating the public and preventing the antisocial behavior in question. As a result of this expanded role, problem-solving courts have begun generating information on the problems dealt with in these courts that is better in both quality and quantity than before. They help to raise awareness in the community about the problems they deal with, including causes, resources, and potential solutions. Moreover, their expertise advocates for increased funding for community resources. In addition, they can help to monitor and improve the effectiveness of treatment providers and other community agencies (Winick 2003).

Problem-solving courts represent a new role for the judge. Judges in these courts take a holistic approach to the offender and help to solve his underlying problem by providing motivation, compliance monitoring, and connection to appropriate services. These courts intervene in social and behavioral problems that are caused by chronic, underlying issues that can seriously impair both the individual's and the community's quality of life. As such, the judge plays an important public health function. The techniques and approaches of the problem-solving courts have also begun to appear in some courts of general jurisdiction (Schma 2003).

Are these courts successful? Many program studies and anecdotal evidence of drug treatment court suggest yes. They seem to reduce recidivism and drug use and other criminal behavior during and well after participation in the court program (Belenko 1998; United States Government Accountability Office 2005). They also serve as a highly cost effective alternative to criminal court because they decrease crime rates, criminal justice costs, and costs to victims (Quinn 2009 -citing West Huddleston). However, the lack of control groups and other methodological problems suggests that

we may not yet know how successful these programs are on a scientific basis (Belenko 1998; King et al. 2009; Wiener et al. 2010). Similarly, although the effectiveness of mental health courts have not received empirical verification, preliminary outcome data and anecdotal reports indicate that they are somewhat successful in engaging participants in treatment and reducing recidivism (Boothroyd et al. 2003; Cosden et al. 2003; Redlich 2005; Trupin and Richards 2003). One multisite study (Steadman et al. 2010) did report better public safety outcomes for mental health courts.

Considerably more research is needed on the functioning of problem-solving courts and their effectiveness in rehabilitating offenders and avoiding recidivism. To the extent that these courts are successful, as the preliminary research and many anecdotal reports suggest, there is considerable need to understand why they work and more research is needed on this question. The interaction between the problem-solving court judge and the individual seems to be an important ingredient in program success, and more empirical work should probe how this occurs (Petrucci 2002; Wiener et al. 2010).

This chapter suggests how judges in problem-solving courts should act to increase their effectiveness. These suggestions come from psychological literature in other contexts. Therefore, there is a great need for further analytical analysis and empirical research concerning the application of these principles in the problem-solving court arena.

The problem-solving court model presents some potential risks that are worthy of comment. Problem-solving courts constitute an effective means of treating those with psychosocial problems who resist treatment in the community. If applied to those who otherwise would not have been involved in the criminal justice system, this would constitute an abuse of the model. The risk is that the police, in order to get them into treatment may arrest people with these problems for offenses for which they may not have otherwise arrested them. Such a widening of the social net would be inappropriate. There is no evidence that these courts have been used in this way, however. There are much better ways of getting needed treatment to those suffering from these problems than through the stigmatizing and unpleasant means of arrest. The police should be taught methods of diverting minor offenders by bringing them to appropriate community treatment facilities. Police arrest practices should not change in response to problem-solving courts.

An additional concern is the risk that these courts could lead to a fragmentation in the service delivery system. All who voluntarily seek these treatment services should have easy access to them in the community. Given the serious social problems like untreated substance abuse, domestic violence, and mental health problems, treatment services should be available on demand for all who desire them and outreach services should be increased to reach out to all who are in need. We should have more of a preventative approach designed to avoid the problem of arrest. If these needed services are provided, problem-solving courts will not result in affording those in the criminal justice system a superior access to needed services.

Therapeutic Jurisprudence as the Foundation for Problem-Solving Courts

Therapeutic jurisprudence can be regarded as the “philosophic foundation” for the hundreds of problem-solving courts that have emerged since the early 1990s (King et al. 2009; Petrila 2007; Redlich et al. 2005; Winick and Wexler 2003; Winick 2003). The problem-solving courts’ revolution can be best understood by situating it within the scholarly and law reform approach known as therapeutic jurisprudence (Wexler and Winick 1991; Winick 2005). Therapeutic jurisprudence is an interdisciplinary perspective that can provide grounding for the new judicial movement, because therapeutic jurisprudence specifically asks what legal arrangements work and why. The field began in the late 1980’s as an interdisciplinary scholarly approach in the area of mental health law. It criticized various aspects of mental health law for producing antitherapeutic consequences for the people that the law was designed to help. Although it originated in the area of mental health law, therapeutic jurisprudence soon found easy application to other areas of the law—criminal law, juvenile law, family law, personal injury law—and has now emerged as a therapeutic approach to the law generally (Wexler and Winick 2003).

Legal rules and the way they are applied are social forces. Sometimes they impose negative consequences. Therapeutic jurisprudence’s basic insight is that scholars should study those consequences, reshape, and then redesign law in order to accomplish the goal of minimizing antitherapeutic effects. When it is consistent with other legal goals, therapeutic jurisprudence aims to increase law’s therapeutic potential. Therapeutic jurisprudence is an interdisciplinary approach to legal scholarship that has a law reform agenda.

Therapeutic jurisprudence is not only concerned with measuring the therapeutic impact of legal rules and procedures, but also about the way they are applied by various legal actors—judges, lawyers, police officers, and expert witnesses testifying in court, among others (Winick 1999, 2000, 2003, 2005). Whether they are conscious of this aspect of the consequences of their behavior, these legal actors are therapeutic agents, affecting the mental health and psychological well-being of the people they encounter in the legal setting. For example, how lawyers deal with their clients in the law office and the courtroom can have a significant impact on a client’s emotional well-being, and therapeutic jurisprudence has spawned a growing literature concerning how attorneys should act in this regard (Stolle et al. 2000).

Similarly, in the way they function on the bench, judges are therapeutic agents. The explicit purpose of problem-solving courts is the rehabilitation of offenders through a team approach that casts the judge in a leading role. The essential function of a problem-solving court judge is therefore as a behavior change agent. Therapeutic jurisprudence has much to offer judges concerning how they should deal with the people appearing before them. It also provides suggestions as to how these courts can be structured and administered to maximize their therapeutic potential.

Therapeutic jurisprudence is one of the major “vectors” of a growing movement in the law toward a common goal of a more comprehensive, humane, and psychologically optimal way of handling legal matters (Daicoff 2000). Problem-solving

courts are also one of these “vectors,” and thus, share many common aims with therapeutic jurisprudence (Casey and Rottman 2000; Rottman and Casey 1999). Problem-solving courts are thus related to therapeutic jurisprudence, but are not identical with the concept. Problem-solving courts often use principles of therapeutic jurisprudence to enhance their functioning. Indeed, the Conference of Chief Justices and the Conference of State Court Administrators, following a joint task force analysis, approved a resolution of the growing movement in the direction of problem-solving courts, and their use of principles of therapeutic jurisprudence in performing their functions (Conference of Chief Justices and Conference of State Courts Administrators 2000; Winick et al. 2010). These principles include “integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of an immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and governmental organizations” (Conference of Chief Justices and Conference of State Courts Administrators 2000). Therapeutic jurisprudence can thus provide principles or what Professor Robert Schopp has called “instrumental prescriptions” for how courts might perform their problem-solving functions (Schopp 1999; Winick and Wexler 2003).

Although problem-solving courts developed separately from therapeutic jurisprudence, their development occurred at the same time, and they share similar aims. Drug treatment courts, domestic violence courts, and mental health courts, for example, can be seen as taking a therapeutic jurisprudence approach to the processing of cases, inasmuch as their goal is the rehabilitation of the offender and their use of the legal process, in particular, the role of the judge, to accomplish this goal (Winick 2003). All of these courts seek to deal with the offender’s underlying problem, and emphasize on its resolution through the provision of treatment and rehabilitative services where the judge is an important member of the treatment team. Judges in these specialized courts receive special training in the nature and treatment of drug addiction, domestic violence, and mental illness, and themselves function as therapeutic agents through their supervision and monitoring of the offender’s treatment progress (Hora et al. 1999; Winick 2000, 2003). Unlike traditional judges functioning in traditional courts, judges in problem-solving courts consciously view themselves as therapeutic agents, and, therefore, one can see them as playing a therapeutic jurisprudence function in their dealings with the individuals who appear before them.

Moreover, principles of therapeutic jurisprudence can help problem-solving court judges play this function well. Therapeutic jurisprudence has already produced a large body of interdisciplinary scholarship analyzing principles of psychology and the behavioral sciences, and probing the ways in which they can be used in legal contexts to improve mental health and emotional well-being (Winick and Wexler 2003; Winick 2003). A growing body of therapeutic jurisprudence scholarship has also addressed how judges in specialized problem-solving courts can apply principles of therapeutic jurisprudence in their work (Casey and Rottman 2000; Fritzler and Simon 2000; Hora 2002; Hora et al. 1999; Petrucci 2002; Shiff and Wexler 1996; Winick 2003). For instance, an edited book by Winick and Wexler and a symposium issue of *Court Review*, the official publication of the American Judges Association, were devoted entirely to therapeutic jurisprudence and its application to judging

(Winick 2000). An understanding of therapeutic jurisprudence's approach and of the psychological and social work principles it uses can thus provide considerable help in the structuring of problem-solving courts and in defining the role played by judges functioning within them.

Just as judges dealing with antitrust cases need to understand basic principles of economics, and judges dealing with patent cases need to understand basic principles of engineering, judges performing in a problem-solving capacity, dealing as they do with human problems, need to understand some principles of psychology, the science of human behavior. They must be aware that they are functioning as therapeutic agents, and that how they interact with the individuals appearing before them will have inevitable consequences for the ability of those individuals to achieve rehabilitation or otherwise to deal with their underlying problems.

The people appearing in problem-solving courts—and often in general criminal, civil, and family courts—are there because they have problems that they have not recognized or had the ability to deal with, effectively. They may suffer from alcoholism or substance abuse problems, and these may contribute to repetitive criminality, domestic violence, or child abuse and neglect. They may be repetitive perpetrators of domestic violence or child abuse because of cognitive distortions concerning their relationships with their spouses or children or because they lack the social skills to manage their anger or to resolve problems other than through violence. Some will suffer from mental illness that impairs their judgment about the desirability of their continuing to take needed medication. Various psychological defense mechanisms may make it hard for them to recognize and deal with their problems. They are in denial about the wrongfulness of their conduct, or they may rationalize it and minimize its impact on themselves and others. Effective treatment exists for many, if not all of these problems, but only if the individual recognizes the existence of a problem and is motivated to deal with it.

Instrumental Prescriptions for Problems Solving Court Judges

Judges in problem-solving courts need to understand how to deal with the psychological defense mechanisms. Therapeutic jurisprudence is a law and psychology based field of study that incorporates insights and approaches from psychology in analyzing how the law functions and how we can improve it. For example, an existing body of therapeutic jurisprudence scholarship deals with these defense mechanisms (Winick 1998, 2000; Winick and Perez 2010). Emerging principles of therapeutic jurisprudence shed light on how court structures and the conduct of individual judges can help people recognize and solve crucial life problems.

Motivation for change is an essential ingredient in treatment success. The individual himself is approaching the realization that he should change his course of behavior, but has not yet undertaken change. The judge in the court process can help to provide motivation for the individual to reach that conclusion. The arrest and court involvement can function as a real catalyst for change, as a therapeutic opportunity

for the individual. The individual can plead guilty or not guilty, but the problem-solving court gives him an additional option of choosing to deal with his problem. If he does so successfully, the judge may dismiss or modify the charges. The judge discusses these issues with the individual using a form of motivational interviewing (Winick 2003; Winick and Perez 2010). The judge can, through dialogue, allow the individual to see that his substance abuse or behavioral problem is responsible for his failure to attain a variety of short- and long-term goals. Once the individual sees this connection, he may be ready to deal with his problems. Although we call them problem-solving courts, the court cannot solve the individual's problems. Only the individual can do so. However, the court can provide substantial assistance through structured treatment, periodic reporting, and compliance monitoring. The individual will not undertake change, however, if he believes that real change is outside his ability. The judge uses strength-based approaches to bolster the individual's sense of self-esteem and self-efficacy. Therapeutic jurisprudence adapts these techniques for judicial use. These techniques, combining motivational interviewing with the literature on stages of change were originally developed in the context of substance abuse treatment, where the treatment professional tries to motivate the patient (Miller and Rollnick 2002; Birgden 2002). These techniques can be adapted for use by problem-solving court judges to encourage offenders to confront and face their problems and begin to deal with them through a structured treatment program that, as an essential feature, includes judicial monitoring and compliance checking.

Interpersonal Skills

Judges functioning in these ways need to develop enhanced interpersonal skills, to understand the psychology of procedural justice, to acquire the ability to serve as effective risk managers, and to learn about the other approaches that therapeutic jurisprudence has to offer. To succeed, a genuine treatment alliance needs to be forged.

The judge needs to develop refined interviewing, counseling, and interpersonal skills. The individual may have engaged in wrongdoing, but a special sensitivity to his pain and shame is called for. Judges may strongly disapprove of the individual's conduct, but must strive in the judge-offender dialogue to be supportive, empathic, warm, and good listeners. They should shame and criticize not the individual, but his conduct (Braithwaite 1989). If the individual perceives the judge to be cold, insensitive, or judgmental, the creation of a treatment alliance will be frustrated. Once the individual enters the program, thereby recognizing that his prior behavior has been inappropriate, the judge and treatment staff should shift to a future-focused orientation that concentrates on the steps needed to solve the problem. Focusing upon past failures produces demoralization and resignation. To be an effective change-agent, the judge should display empathy to the individual, even if not to his act.

Empathy involves the ability to experience another person's feelings and to see the world through that person's eyes (Winick 1998). Empathy has both cognitive

and affective components. The judge should convey both an intellectual response to the individual, communicating that she understands the individual's predicament, and an emotional response, communicating that she shares the individual's feelings. The judge must remember that the individual is a fellow human being whom she is helping. The judge should communicate a sense of caring, sympathy, genuineness, and understanding (Goleman 1995; Shuman 1993). Just as physicians need to develop their "bedside manner," judges need to develop what can be termed their "benchside manner". The objective is to create a comfortable space in which offenders can feel free to express their emotions about their problems and deal effectively, with them.

In helping offenders in their courts to deal with their problems, problem-solving court judges need to be good listeners. The judge should seek to promote dialogue rather than giving the offender a speech. The judges must communicate to the offenders that he really wishes to hear them and is interested in their problems, and in helping to solve them. Active listening and passive listening techniques may be helpful in this connection (Binder et al. 1991; Winick 1998). Problem-solving court judges need to be alert to the individual's nonverbal forms of communication. Non-verbal forms of communication, such as facial expression, body language, and tone of voice, can be extremely helpful in understanding the individual's emotions and how the judge should respond to them.

Problem-solving courts are animated by the therapeutic jurisprudence vision that the law is an instrument for helping people, particularly those with a variety of psychological and emotional problems. Society neglects many of our serious social problems. Treatment resources are scarce and preventive services almost nonexistent. Courts that take on the task of dealing with the difficult problems of drug addiction, alcoholism, domestic violence, mental illness, child abuse and neglect, and juvenile delinquency function, in part, act as psychosocial agencies. To succeed in this role, the judges in these courts need to be aware of some basic principles of psychology and social work. Thus, therapeutic jurisprudence can provide a theoretical foundation for much of the problem-solving court movement, and a variety of principles that can help judges play this new and exciting role.

Autonomy Versus Paternalism

Too often, problem-solving court judges are paternalistic in their approach. Indeed, some regard what they do as a form of benign paternalism. This is inappropriate. No one likes to be treated paternalistically, and program participants will find a paternalistic attitude to be offensive. Paternalism may create resentment and possibly backfire by producing a psychological reactance to the advice offered that might be counterproductive (Brehm and Brehm 1981). Many offenders will be in denial about their underlying problems, and paternalism is unlikely to succeed in allowing them to deal with such denial (Winick 1998). Instead, it may produce anxiety and other psychological distress that will make it harder for them to do so.

People respond better when others respect their autonomy and they are free to make choices for themselves. The judge should avoid pressuring the individual to elect to participate in a problem-solving court program. The judge should remind an individual charged with a drug offense that he is free to deal with the charges in criminal court and accept a sentence to prison if found guilty. Drug treatment court is not required, but is only an alternative option. Hence, the judge should remind the offender that the choice is theirs, and that they should not elect the drug treatment court unless they are prepared to admit the existence of a problem and express a willingness to deal with it. This approach can be empowering to such individuals who often feel powerless and helpless.

Judge as Motivator

Individuals should see the role of the problem-solving court judge in discussing rehabilitation with the offender as one of persuasion rather than of coercion. Judges should be aware of the psychological value of choice (Winick 1992, 2005). Self-determination is an essential aspect of psychological health. Moreover, if individuals who make their own choices perceive them as noncoerced, they will function more effectively and with greater satisfaction. People who feel coerced, by contrast, may respond with a negative psychological reaction (Brehm and Brehm 1981), and may experience various other psychological difficulties (Winick 1995). In appropriate circumstances, judges should communicate their own views concerning the individual's best interests to the individual, but should ultimately cede the choice to the individual. To succeed, treatment or rehabilitation will require a degree of intrinsic motivation on the part of the individual (Bandura 1986; Winick 1991; Deci 1975). If offenders participate in the program only because of extrinsic motivation, then it will be less likely that they will internalize the program goals and genuinely change their attitudes and behaviors.

The individual should be afforded a choice not only in deciding whether to elect to participate in a problem-solving court, but also in the design of the rehabilitative plan, when feasible. Typically, there may be many options available in fashioning such a plan, including variations in rehabilitative techniques and service providers (Babb and Moran 1999; Brown 2001). The problem-solving court judge can lay the options out for the individual, who can then exercise choice. The individual's choice concerning the various issues that arise in the design of the treatment plan can be empowering, and can influence the likelihood of success.

Some problem-solving court judges describe what they do as "benevolent coercion," and extol the virtues of judicial coercion as an essential ingredient in the rehabilitative enterprise (Tauber 2002). Although many of the individuals in drug treatment or other problem-solving courts who agree to participate in a course of treatment or rehabilitation will benefit from the structure, supervision, and compliance monitoring that they provide, it is neither appropriate nor desirable to regard this as coercion (Winick and Wexler 2003; Winick 2003). Individuals who decide to

accept diversion to a drug treatment or other problem-solving court, or to plead guilty and accept treatment in a problem-solving court program as a condition of probation, are making legally voluntary choices as long as they are not subjected to duress, force, fraud, or a form of improper inducement (Wertheimer 1987). Individuals making such choices may be functioning within a coercive context. Although they may face hard choices, none of which may be agreeable, they are in these difficult situations because of their own actions. For example, the arrest was not a vehicle forcing them into treatment, instead they possessed drugs or committed some other crime for which they could benefit from treatment. Moreover, they are free to either plead not guilty and face trial, or plead guilty and receive an appropriate sentence. Therefore, extending to them the additional option of accepting a rehabilitative alternative does not make the choice that they will then face, a coercive one.

An analogy to plea-bargaining is appropriate. Although offenders who have been offered plea deals may feel that the choice they are required to make is coercive, as long as the prosecutor's offer was not illegal, unauthorized, unethical, or otherwise inappropriate, the courts have held that it does not constitute legal coercion (Wertheimer 1987; Winick 1991, 2005). Accordingly, if an individual's decision about whether to accept a guilty plea is not coerced, then his or her decision as to whether to accept diversion to a problem-solving court, or to plead guilty and accept treatment through the auspices of such a court as a condition for probation also would not constitute coercion in a legal sense. Plea-bargaining is an example in which individuals face hard choices, but where, an offer that is improper, illegal, or unethical is absent, the courts will not consider the choice coercive.

Parole from prison presents another example. The criminal justice system may release an individual on parole before the expiration of his prison term, if he accepts certain conditions of parole. These conditions may include, for example, an undertaking that the individual not use alcoholic beverages or associate with other individuals who have a criminal record. Unless the conditions of parole are improper or illegal, we would consider the individual's choice to accept these conditions as voluntary, rather than coerced (Wertheimer 1987). Even though the individual's desire to be released from prison might be so powerful that he may feel that he has no real choice other than to accept the conditions of parole, it would be absurd for the law to invalidate his choice on grounds of coercion. As long as the conditions of parole are not unlawful, improper, or unreasonable, parole accords the individual an opportunity that he may find more desirable than serving the remainder of his sentence in prison.

Opportunities for diversion from the criminal process are essentially similar. An individual charged with a crime that must decide between facing his charges or accepting diversion into a rehabilitative program may be facing a hard choice. It is a fair and reasonable choice, however, and is not one that the law will invalidate on grounds of coercion (McKune v. Lile 2002; Winick 2005).

The sanctions concerning whether to enter the program do not constitute coercion in a legal sense. Indeed, if properly applied, the individual may not even experience it as psychologically coercive. Therapeutic jurisprudence scholarship has examined what makes people feel coerced and feel that they have acted voluntarily and refers

to this issue as the psychological perception of coercion. It builds on the work by MacArthur Research Network on mental health and the law. The foundation conducted research to explore the causes and correlates of what makes people feel coerced. Researchers examined the context of mental patients facing involuntary hospitalization. They concluded that even though patients were subjected to legal compulsion through involuntary civil commitment, they did not feel coerced when treated with dignity and respect by people who they perceived as acting with genuine benevolence, and as providing them with a sense of “voice” (the ability to have their say), and with “validation” (the impression that what they said was taken seriously) (Monahan et al. 1995). The degree of perceived coercion correlated with and the kinds of pressures that doctors, families, and friends placed upon the patient (Monahan et al. 1995). Negative pressures, such as threats and force, tend to make individuals feel coerced, whereas positive pressures, such as persuasion and inducement, do not (Monahan et al. 1995). Even though courts subject these individuals to the legal compulsion of civil commitment, if treated in these ways, they tend to not feel coerced.

Problem-solving court judges should apply the lessons of the MacArthur research on coercion, treating all individuals with respect, and according them with voice and validation (Winick 2005). They should avoid negative pressures and threats, relying instead on positive pressures like persuasion and inducement. This is more likely to result in the individual experiencing the problem-solving court as voluntary, rather than coerced. If experienced as voluntary, the psychological benefits of choice will be achieved and the negative psychological effects of coercion can be avoided (Winick 1999, 2003, 2005). As long as individuals experience their decisions to participate in problem-solving court treatment or rehabilitative program as voluntary, those perceptions can have significant positive effects on treatment outcomes (Cascardi et al. 2000; Winick 2000). They can engage individuals’ intrinsic motivation, whereas coercion is more likely to produce the feeling that they will perform in the program only as a result of extrinsic motivation. Real and lasting behavior change will occur only if the individuals see for themselves the point of participating in the program and exercise autonomy in making their decisions. Judges, therefore, should use techniques of persuasion, motivation, and inducement, but avoid a heavy-handed approach, strong negative pressure, and coercion.

Treating individuals with dignity and respect and respecting their autonomy can also have the added dividend of increasing self-esteem and self-efficacy. People may otherwise feel that they cannot succeed, and either will reject the program as a result or will succumb to the pressures, reinforced by their environment to return to substance abuse or antisocial patterns. Feeling that they have made a voluntary choice in favor of treatment can increase commitment to achieving the treatment goal, and set in motion a variety of psychological mechanisms that can help to bring it about.

In a dialogue that treats the individual with dignity and respect, problem-solving court judges should present to those considering whether to enter the program, information concerning the rehabilitative alternatives to criminal court that they present. They should also mention the positive consequences for successfully completing the program, including the dismissal of charges. Then, judges should leave offenders

free to engage in instrumental thinking concerning the value of electing these rehabilitative alternatives. Judges should also give these individuals the opportunity to ask questions about their options, the freedom to engage in their own processing of the information, and the freedom to reach their own decisions. The judge should avoid pressuring the individual to make a decision.

The line between coercion and choice can be a narrow one. Moreover, the concept of legal coercion does not necessarily coincide with the psychological perception of coercion. When judges, attorneys, and other court personnel help individuals to consider whether to opt for a problem-solving court rehabilitative alternative instead of criminal court, they should rely on persuasion or inducement, and avoid coercion and negative forms of pressure. Of course, once the individual chooses the treatment option, his future actions are constrained by the choice the client has voluntarily entered into. Thus, the individual, as a condition for accepting the drug treatment court, may agree to attend a drug treatment program, to remain drug-free, and to submit to periodic drug testing. The individual knows that if he or she fails to comply, the court can apply sanctions (typically graduated sanctions) agreed to, in advance by the individual (Hora 2002; Hora et al. 1999). Moreover, the individual knows that repeated noncompliance can result in expulsion from the program and return to criminal court, or a violation of probation if the individual had pled guilty (Hora 2002; Hora et al. 1999).

These approaches fit well with the technique of motivational interviewing mentioned above. Five basic principles underlie this technique (Miller and Rollnick 2002). First, the interviewer needs to express empathy (Clark 2001). This involves understanding the individual's feelings and perspectives without judging, criticizing, or blaming (Birgden 2002). Second, the interviewer, in a nonconfrontational way, should seek to develop discrepancies between the individual's present behavior and important personal goals (Miller and Rollnick 2002). Applying this approach, the judge should attempt to elicit the individual's underlying goals and objectives (Miller and Rollnick 2002). In addition, the judge should attempt to get the individual to recognize the existence of a problem through the use of interviewing techniques, such as open-ended questioning, reflective listening, providing frequent statements of affirmation and support, and eliciting self-motivational statements (Miller and Rollnick 2002). For example, if the individual wishes to obtain or keep a particular job, the judge can ask questions designed to probe the relationship between drinking or substance abuse and poor performance in previous employment that may have resulted in dismissal. An interviewer will create motivation for change only when individuals perceive the discrepancy between how they are behaving achieving their personal goals.

Third, the interviewer should avoid arguing with the individual, which can be counterproductive and create defensiveness (Miller and Rollnick 2002). Fourth, when interviewers encounter resistance, they should attempt to roll with the resistance, rather than becoming confrontational (Miller and Rollnick 2002). This requires listening with empathy and providing feedback to what the individual is saying by introducing new information, which also allows the individual to remain in control, to make his or her own decisions, and to create solutions to his or her own problems.

Fifth, it is important for the interviewer to foster self-efficacy in the individual. The individual will not attempt change unless he feels that he can reach the goal, overcome barriers and obstacles to its achievement, and succeed in effectuating change (Miller and Rollnick 2002).

Motivational interviewing can be particularly effective when people find themselves at the point in which they are contemplating change (Birgden 2002). The individuals' arrest and court involvement may function as a wake-up call, giving them the message that it is time to confront their behavior patterns and consider making a genuine commitment to rehabilitation. The problem-solving court provides the client with such an opportunity, and through judicial monitoring, compliance checking, and treatment, offers a feasible way of undertaking and achieving behavior change.

Compliance

Insuring compliance with requirements of the treatment program is an essential component of all problem-solving courts. The unique feature of these courts is the role the judge plays by monitoring and assuring compliance. Therapeutic jurisprudence scholarship has addressed the problem of increasing compliance in a variety of legal contexts (Wexler and Winick 1991). It analyzes how health care compliance principles and methods of behavioral or contingency contracting can be adapted in the legal context. Therapeutic jurisprudence work has also explored the implications of the psychology of procedural justice for improving compliance with judicial orders. This work provides instrumental prescriptions for how problem-solving court judges can function.

Health Care Compliance Principles

Compliance is a significant issue in the context of medical practice as many patients fail to heed the doctor's treatment recommendations (Meichenbaum and Turk 1987). How can physicians and other healers convince their patients to comply with their medical advice? Patient noncompliance is a significant problem that the medical literature has addressed extensively. The behavioral medicine literature, which uses principles of behavioral psychology, deals with compliance with medical treatment. For example, the work of psychologists Donald Meichenbaum and Donald Turk sets forth a number of health care compliance principles, and shows how health care professionals can apply them to increase the likelihood that their patients will follow their treatment recommendations.

Several factors increase patient noncompliance. Sometimes the physician fails to instruct the patient adequately. The interaction between physician and patient during the time when the physician recommends the treatment can be most significant. Compliance will be less likely if the physician appears to be distant, distracted, reads case notes, uses professional jargon, asks questions calling for brief "yes" or "no"

answers, fails to allow the patient the opportunity to tell her story in her own words, describes the treatment plan imprecisely or in technical terms, acts paternalistically, or is abrupt with the patient.

Meichenbaum and Turk recommend that health care providers can increase compliance when they introduce themselves to the patient, avoid jargon, and elicit the patient's views, preferences, and active involvement in designing the treatment plan. Providing choice, even over minor details of treatment, can be significant. Compliance is furthered when the physician is perceived as prestigious, competent, caring, and motivated by the patient's best interests. Involvement of family members can also increase compliance. Family members and friends can provide encouragement and reminders to the patient and can help the physician access information about compliance. A public commitment to the family and significant others also enhances compliance. Patient compliance is augmented when the patient anticipates disapproval of the physician and of the patient's family members. Furthermore, the individual patient can be significant in increasing compliance with the treatment program.

Judges in problem-solving courts should understand and apply the insights of this literature. Judges, court personnel, treatment providers, and defense attorneys, should carefully and understandably instruct the problem-solving court participant concerning his obligations to participate in the treatment program and to report periodically to the court. The judge should have a dialogue with the participant in which he is encouraged to express concerns. The judge should listen carefully and act concerned rather than distant, provide the individual with her undivided attention during conversations, avoid jargon and paternalism, and generally treat the individual with dignity and respect. The judge should encourage the individual's active involvement in both the negotiation and design of the rehabilitative plan, providing as great a degree of choice concerning the details as circumstances permit. Judges should always give the impression that the individual's best interests motivated them. The judge should encourage the involvement of family members and make a commitment to them in a formal and relatively public way.

Behavioral Contracting

These compliance principles are captured by a behavioral psychology technique known as "behavioral contracting" or "contingency management". This technique involves an explicit, formal contract that the individual enters into with the court setting forth specific goals and procedures (Winick 1991). The technique involves both agreed-upon rewards and positive reinforcement for success and aversive conditioners for failure. Behavioral contracting is frequently used in clinical practice, and the combination of positive reinforcement to encourage compliance and aversive conditioning to decrease or extinguish noncompliant behavior can be quite effective. The contract provides rewards and penalties for the achievement and failure to reach intermediate and long-term goals. The contract specifies partial rewards or sanctions that can be provided periodically upon the attainment or nonattainment of interme-

diate goals, thereby facilitating the progressive shaping of the individual's behavior. Tailoring the rewards and punishments to the individual's incentive preferences, and involving the individual in the process of selecting the goals and reinforcers, when practicable, can significantly increase motivation to comply. Including subgoals will best maintain self-motivation, provide inducements to action, provide guideposts for performance, and, if attained, self-satisfaction needed to sustain effort.

The behavioral contract explicitly records the expectations of the parties making target behaviors objectified, measurable, and well understood by all parties. This is an application of the goal-setting effect, under which the mere setting of a goal produces positive expectancies for its achievement that themselves help to bring about success. Goals serve to structure and guide the individual's performance, providing direction and focusing interest, attention, and personal involvement. The principles of intrinsic motivation, anticipated emotions, cognitive dissonance, and the psychological value of choice explain success.

Many drug court treatment programs explicitly use such behavioral contracts (Burdon et al. 2001). Whether or not formally negotiated and executed, individuals agreeing to participate in treatment or rehabilitation in a variety of problem-solving court contexts are, in effect, engaging in behavioral contracting (Winick 2003). Domestic violence perpetrators who agree to enter a batterer's intervention program as a condition of bail, diversion, or probation are, in effect, engaging in behavioral contracting with the domestic violence court (Winick 2000). Those with mental illness who elect to participate in mental health court similarly engage in behavioral contracting with the mental health court (Winick 2003). Offenders that agree to participate in reentry courts and to submit to the reentry court judge's supervision are also engaging in behavioral contracting (LaFond and Winick 2003). Although some clients do not explicitly enter into these contracts, the parties should negotiate, write, and formally execute them in a formal and public way.

Problem-solving courts judges should understand the psychology of behavioral contracting, and use it to increase motivation, commitment, compliance, and effective performance. The process through which the behavioral contract is negotiated and entered into can itself provide an important opportunity for minimizing feelings of coercion that might undermine compliance and successful performance. The judge should make it clear that whether or not individuals enter into the behavioral contract is up to them, and should stress that it is a voluntary choice. If individuals feel coerced, they may enter the program because of extrinsic motivation only, and may not achieve lasting behavior change. On the other hand, experiencing choice as voluntary will spark intrinsic motivation and succeed in internalizing treatment goals.

As the MacArthur Research Network on Mental Health and the Law research shows, according individuals with a sense of voice and validation, treating them with dignity and respect, and conveying to them that the court is acting in good faith and in their best interest will diminish the perception of coercion and increase the perception of voluntary choice (Monahan et al. 1995; Winick 2005). The judge should remind individuals opting for a problem-solving court rehabilitative program that the choice is entirely up to them. In addition, they should be given the opportunity, when practicable, to participate in the negotiation of the behavioral contract and the

selection of the reinforcers, sanctions, and conditions that will be used and applied. This participation and involvement should occur in ways that respect their need for voice and validation. If handled properly, the negotiation and entry into the behavioral contract can constitute an important opportunity to engage intrinsic motivation and commitment and to establish a mechanism that will help to assure compliance in ways that the individual will regard as fair.

By requiring an individual accepting drug treatment court to agree to periodic drug testing and reporting to court, the drug treatment court is monitoring compliance with the behavioral contract. When the drug test shows the individual to be drug-free, the judge praises the individual, often in the presence of a room full of attorneys, court personnel, and other drug treatment court participants. Such praise is an important form of positive reinforcement that rewards the individual for compliant behavior, helps to shape future behavior, and builds much needed self-esteem and self-efficacy. At the successful completion of the drug treatment court program, the individual is given a graduation ceremony in court where the arresting officer usually presents a “diploma,” the judge offers praise, and there is general applause (Belenko et al. 2003). When other program participants observe this “graduation” ritual, they themselves receive a form of vicarious reinforcement (Bandura 1962).

When the individual’s drug test is positive, the judge applies an agreed-upon sanction or aversive conditioner, which should deter future noncompliant behavior (Hora 2002). Future incidents of noncompliance are then subjected to graduated sanctions that were agreed to in advance by the individual, as well as verbal disapproval, occurring in the presence of others (Hora 2002). The court maintains close monitoring and supervision of the treatment process by having the individual report to the court every 10–14 days, so that the judge may receive frequent feedback from the treatment team and information concerning whether the individual has remained drug-free (Hora 2002).

The periodic delivery of positive reinforcement or sanctions contingent upon whether the individual has met intermediate goals helps to maintain the individual’s commitment and motivation during the one and one-half to two years that drug treatment court typically requires. In this way, what the drug treatment court applies is behavioral contracting or contingency management, a technique, which, if properly applied, can substantially increase the likelihood of treatment success (Burdon et al. 2001). Other problem-solving courts should adapt this approach and all judges in these courts should receive training in its application.

The Psychology of Procedural Justice

Therapeutic jurisprudence scholarship has frequently pointed to the literature on the psychology of procedural justice, suggesting that its application in a variety of contexts can achieve therapeutic benefits for the individuals involved (Lind and Tyler 1988; Tyler 1990). In all of their interactions with the individual, problem-solving court judges should be careful to apply procedures that fully respect the individual’s

participatory and dignitary interests (Winick 2005). This literature, based on empirical work in a variety of litigation and arbitration contexts, shows that the way in which people are treated at hearings relate closely to whether they experience greater satisfaction and comply more willingly with the ultimate outcome of the proceedings, even if it is adverse to them. These positive results are produced when the individual is given a sense of “voice,” (the ability to tell their story) and “validation” (the feeling that what they have said has been taken seriously by the judge or hearing officer), and generally treated in ways that they consider to be fair.

Thus, according individuals in problem-solving court contexts a full measure of procedural justice can help to increase compliance with, and successful participation in a treatment or rehabilitative program (Tyler 1990). For reasons developed earlier, according individuals procedural justice will also diminish their perception of coercion in the judicial process and increase the chances that they will experience the decision to enter into a treatment or rehabilitative program as voluntary. This perception can itself help to increase the likelihood of genuine participation on the part of the individual, intrinsic motivation, program compliance, and treatment success (Winick 2005). These utilitarian reasons for respecting the procedural rights of individuals in problem-solving court contexts coalesce with the historic commitment to fairness embodied in the concept of due process of law (Reisig 2002). Even when functioning as psychosocial agencies, problem-solving courts should accord the individual a full measure of due process.

Conclusion

Problem-solving courts represent a newly broadened conception of the role of the courts, one that is fully consistent with the basic concept of therapeutic jurisprudence. They are a noble undertaking to close the revolving door to certain kinds of repetitive offenses by providing the judicially supervised and monitored treatment to those motivated to undertake it. To perform this new judicial role, judges need to develop and improve their interpersonal, psychological, and social work skills. Therapeutic jurisprudence can help judges in this effort.

Problem-solving courts can become natural laboratories for the development and application of therapeutic jurisprudence principles and for research on what works best in the court-involved treatment and rehabilitative process. Problem-solving courts, applying principles of therapeutic jurisprudence, can become an important force for dealing with a number of the most vexing social and psychological problems that affect our communities. Therapeutic jurisprudence and problem-solving courts share a common mission—how legal rules, judicial practices, and court structures and administration can be redesigned to facilitate the rehabilitative process. Although problem-solving courts are not identical with therapeutic jurisprudence, these two approaches can be seen as having a symbiotic relationship (Winick and Wexler 2003). Together they can do much to transform law into an instrument of healing for both the individual and the community.

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