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JUST THE (UNWIELDY, HARD TO GATHER, BUT NONETHELESS ESSENTIAL) FACTS, MA'AM: WHAT WE KNOW AND DON'T KNOW ABOUT PROBLEM-SOLVING COURTS

Greg Berman*
and Anne Gulick**

Policymakers often think, incorrectly, that an evaluation is like an “audit” or trial in which the results are usually clear cut and definitive. Either the funds were spent or they weren’t; either the program served its intended beneficiaries at a reasonable cost per client or it didn’t. Such “audit” questions are much easier to answer than the “evaluation” questions of cause and effect, often stretching out over a lifetime of the targets of crime prevention efforts.¹

The expected value of any net impact assessment of any large scale social program is zero.²

INTRODUCTION

Robert Martinson’s seminal 1974 *Public Interest* article, *What Works? Questions and Answers About Prison Reform* offered a

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1. Lawrence W. Sherman, *Thinking About Crime Prevention*, in NAT’L INST. OF JUSTICE, *PREVENTING CRIME WHAT WORKS, WHAT DOESN’T, WHAT’S PROMISING* 2-1, 2-15 (Lawrence W. Sherman et al. eds., 1996) [hereinafter *WHAT WORKS*].

2. Peter H. Rossi, *The Iron Law of Evaluation and Other Metallic Rules*, 4 RES. SOC. PROBS. & PUB. POL’Y 3, 4 (1987).

bleak assessment of rehabilitative initiatives aimed at criminal offenders.³ This literary review of prison-based treatment programs—from vocational training to psychotherapy—concluded that, “[w]ith few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.”⁴ Martinson determined the failure of treatment programs by demonstrating a failure of research because the more than 200 studies he reviewed gave little evidence that the programs studied were linked to a reduction in crime.⁵ Yet, what seems to have most frustrated the author were the studies themselves, many of which left unclear whether the programs had not worked, or whether the system under which they were administered prevented successful implementation.⁶

Martinson’s hugely influential article cast a pall over rehabilitative criminal justice programs for years. To this day, reformers in the field find themselves grappling with the suspicion—held by many academics, policymakers, and citizens—that “nothing works.” The 1996 report, *Preventing Crime: What Works, What Doesn’t, What’s Promising* confronted this mindset head on:

Merely because a program has not been evaluated properly does not mean that it is failing to achieve its goals. Previous reviews of crime prevention programs, especially in prison rehabilitation, have made that error, with devastating consequences for further funding for those efforts. In addressing the unevaluated programs, we must blame the lack of documented effectiveness squarely on the evaluation process, and not on the programs themselves.⁷

Sherman attempted to infuse hope into the field by throwing out the “nothing works” conclusion.⁸ But the more accurate conclusion he offered in its place—that very little is known about what works⁹—comes with its own set of frustrations.

Problem-solving court research,¹⁰ most of it conducted post-Sherman, faces a political climate that prefers definitive answers

3. See Robert Martinson, *What Works? Questions and Answers about Prison Reform*, 35 PUB. INT. 22 (1974).

4. *Id.* at 25.

5. *Id.*

6. *Id.* at 24.

7. Sherman, *supra* note 1, at 2-21 to 2-22.

8. *Id.* at 2-21.

9. *Id.* (discussing what is unknown about crime prevention programs).

10. For the purposes of this Essay, “problem-solving courts” refers to drug courts, community courts, domestic violence courts, mental health courts, juvenile intervention courts, and family treatment courts. Specialized court initiatives seek to focus the

over cautious preliminary findings, and is still likely to mistake uncertainty for proof of failure. Yet, at present, cautious preliminary findings are the best tools. The research to date on these new judicial experiments does not offer many definitive conclusions. Projects that fall under the “problem-solving” umbrella have been around for a relatively short time—anywhere from a decade to a few months. It takes time and money to track recidivism over the long term, to meaningfully weigh program costs and benefits, and to compare new practices to one another, as well as to business as usual.

The best research designs use a random assignment model, splitting a single pool of defendants between an experimental track and normal case processing, but in most cases this “gold standard” is not feasible for studies of problem-solving courts. Quasi-experimental comparison groups range from the good (defendants in traditional court with carefully matched characteristics to drug court participants), to the not so good (less rigorously selected groups of defendants undergoing normal prosecution), to the bad (defendants who refused to participate in the problem-solving court).

In truth, many programs are not subject to even a bad quasi-experimental evaluation. While the demand for criminal justice research is high, both among policymakers and practitioners, the financial support lags.¹¹ Outside of the National Institute of Justice, there are few sources of funding for criminal justice research.¹²

Nevertheless, problem-solving courts have begun to leave a paper trail. Many problem-solving courts have produced, are producing, or plan to produce process evaluations with detailed information about how the programs have been implemented. Sherman noted that newer programs have the advantage of more rigorous standards for evaluation,¹³ and in the long history of criminal justice innovation, it is indeed difficult to locate many new ideas that have been better documented or more well-researched than problem-solving courts.

What is known about problem-solving courts? After more than a decade of practice, what conclusions, if any, can be drawn about

energies of judges, lawyers, and administrators on solving difficult social, human, and legal problems.

11. Lawrence W. Sherman, *Conclusions: The Effectiveness of Local Crime Prevention Funding*, in *WHAT WORKS*, *supra* note 1, at 10-1, 10-15 to 10-18.

12. *See id.* at 10-16 to 10-18 (noting that neither Congress nor state legislatures have funded evaluations of research programs).

13. *Id.* at 10-20 to 10-21.

these judicial experiments? Where are the gaps in the current knowledge and which areas are ripe for further study? This Essay attempts to answer these questions. It is not a piece of original research, but rather an effort to map the territory of this new field, offering for the first time both a review of current problem-solving research and a sketch of a future agenda.

I. DRUG COURTS

Any review of problem-solving court research must begin with drug treatment courts, the first projects to fall under the problem-solving court umbrella, and the most extensively studied. Since 1989, when the first drug court opened, the model has been replicated widely.¹⁴ There are now hundreds of drug courts in operation or in planning.¹⁵ Moreover, these courts have generated a sizeable body of research on their operations and outcomes. Drug courts now have enough of a track record to promote an informed discussion of how they work, how well they work, and why they work.

A. What We Know

Steven Belenko's reviews of drug court evaluations are the most authoritative source of information on the what, where, and how of drug court research to date.¹⁶ His *Research on Drug Courts: A Critical Review 2001 Update* reviewed thirty-seven evaluations from thirty-six different drug courts and only included studies conducted by outside evaluators.¹⁷ Most of the studies included were process evaluations, but some included limited outcome measures and cost analyses as well.¹⁸ Based on Belenko's review and other drug court studies, the following can be stated about drug court programs:

14. See, e.g., Ctr. for Court Innovation, *Problem-Solving Courts*, at <http://www.problem-solvingcourts.org> (last visited Mar. 15, 2003) (noting that "over the past decade, hundreds of experimental courts have sprung up across the country.").

15. *Id.*

16. STEVEN BELENKO, NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., *RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE 1* (2001), available at http://www.casacolumbia.org/usr_doc/researchondrug.pdf (last visited Mar. 15, 2003).

17. *Id.*

18. *Id.* at 9.

1. *Drug Courts are Popular and Serve a Needy Population*

According to Belenko, “[d]rug courts have achieved considerable local support and have provided intensive, long-term treatment services to offenders with long histories of drug use and criminal justice contacts, previous treatment failures, and high rates of health and social problems.”¹⁹

2. *Court-Mandated Treatment Programs Result in Higher Retention Rates*

The estimated national average one-year retention rate for mandatory treatment is sixty percent.²⁰ By way of contrast, reported retention rates for voluntary treatment programs range from thirty to sixty percent over a three-month period (one-year rates not available).²¹

3. *The Longer Participants Stay in Treatment, the Better the Outcomes*

A 1978 study of an Oregon program demonstrated that people who dropped out of treatment were less likely to be rearrested if they had stayed in treatment for at least ninety days.²² This finding pointed to the importance of looking beyond what happens to graduates of drug courts. Outcomes for other participants (even those who “fail” in treatment) can be substantial and are worth studying.

4. *Drug Court Participants had Lower Rates of Recidivism and Drug Use While Still in the Program, than did Comparison Groups Undergoing Normal Prosecution*²³

Lower in-program recidivism rates demonstrated that offenders in drug court pose a reduced risk to public safety, at least during

19. *Id.* at 1.

20. Steven Belenko, *Research on Drug Courts: A Critical Review*, 2 NAT'L DRUG CT. INST. REV. 2, 26-27 (1999), available at <http://www.npcresearch.com> (last visited Mar. 15, 2003).

21. Ward S. Condelli & George DeLeon, *Fixed and Dynamic Predictors of Client Retention in Therapeutic Communities*, 10 J. SUBSTANCE ABUSE TREATMENT 1, 11-16 (1993).

22. Sherry Holland, *Gateway Houses: Effectiveness of Treatment on Criminal Behavior*, 13 INT'L J. ADDICTIONS 369, 371-72, 374 (1978).

23. Belenko, *supra* note 20, at 26-37.

the multi-year period when they are under drug court supervision.²⁴

5. *Even Absent Treatment, Graduated Sanctions Can Have a Statistically Significant Impact on Offenders' Behavior*

An Urban Institute study of the District of Columbia Superior Court suggested that ongoing monitoring and graduated sanctions and rewards could help drug offenders avoid rearrest in the year after sentencing, even if offenders were not linked to treatment.²⁵ The results point to the value of intensive judicial monitoring.²⁶

6. *The Certainty and Severity of Drug Court Sanctions Are Crucial to the Model's Effectiveness*

Criminal justice researchers looked at the effects of punishment in terms of certainty (whether the sanction will be enforced), severity (how harsh the sanction will be), and celerity (how quickly the sanction will be imposed).²⁷ One recent study surveyed college students about the likelihood that they would drive home from a party drunk, given the possibility of being caught and punished for the crime.²⁸ Respondents showed less concern for how quickly the punishment would come, and more concern with its certainty and severity in deciding whether to commit the crime.²⁹ Extralegal consequences were also important factors, but the study's most prominent conclusion was the weakness of a punishment's celerity as a deterrent.³⁰ Another study by Adele Harrell of the Urban Institute compared the graduated sanctions programs in three drug

24. *See id.* at 37 (noting that criminal activity is reduced in the drug court programs).

25. ADELE HARRELL ET AL., URBAN INST., FINDINGS FROM THE EVALUATION OF THE D.C. SUPERIOR COURT DRUG INTERVENTION PROGRAM 53-62 (1998), available at http://www.urban.org/uploadedPDF/409041_findings.pdf (last visited Mar. 15, 2003).

26. *See id.* at 47-67.

27. *See* Daniel S. Nagin & Greg Pogarsky, *Integrating Celerity Impulsivity and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence*, 39 CRIMINOLOGY 1, 3 (2000), available at <http://www.ssc.wisc.edu/econ/Durlauf/networkweb1/London/Criminology1-15-01.pdf> (last visited Mar. 15, 2003).

28. *Id.*

29. *Id.* at 24 (reporting that coefficients for probability and severity are negative and statistically significant).

30. *Id.* at 25 (stating that the deterrent impact of extra legal consequences is at least as great as that for legal consequences).

treatment court settings, and found that the severity of the sanctions had the greatest effect across the board.³¹

7. *Well-Designed Post-Program Studies About the Recidivism of Drug Court Clients are Relatively Sparse*

Of the more than three-dozen evaluations included in Belenko's latest review, only six looked at post-program recidivism rates.³² Of these, two showed a statistically significant reduction in recidivism.³³ Clearly, there is a need for more information in this area.

8. *Cost Analyses Revealed Cost Savings for Drug Courts Compared to Traditional Adjudication*

Nearly all studies showed significant savings to the criminal justice system when drug courts were implemented. For example, a Multnomah County, Oregon study reported that for every dollar spent on drug court treatment and program administration, the system saved two dollars and fifty cents in avoiding the costs of conventional adjudication.³⁴ This figure excluded costs related to victimization, theft reduction, public assistance, and medical claims.³⁵ When those costs were added in, the savings were ten dollars for every one dollar spent.³⁶

9. *Cost Savings for Jail and Prison Beds are Less Clear*

A 2000 Vera Institute of Justice report cited the need to look at multiple factors in evaluating a drug court's impacts on jail and prison costs.³⁷ While faster case processing and reduced recidivism among program graduates may lower these costs, other factors may offset these savings.³⁸ For example, costs accrue when judges use jail time as a sanction for participants who slip up. The authors also questioned whether some drug court participants would have

31. Adele Harrell & John Roman, *Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions*, 31 J. DRUG ISSUES 1 (2001).

32. BELENKO, *supra* note 16, at 33.

33. *Id.*

34. MICHAEL W. FINIGAN, N.W. PROF'L CONSORTIUM, AN OUTCOME PROGRAM EVALUATION OF THE MULTNOMAH COUNTY S.T.O.P. DRUG DIVERSION PROGRAM 36 (1998).

35. *Id.*

36. *Id.*

37. REGINALD FLUELLEN & JENNIFER TRONE, VERA INST. OF JUSTICE, DO DRUG COURTS SAVE JAIL AND PRISON BEDS? 1-2 (2000), *available at* http://www.vera.org/publication_pdf/drugcourts.pdf (last visited Mar. 15, 2003).

38. *See id.* at 2.

been incarcerated had they undergone traditional adjudication.³⁹ The report concluded that “[w]e simply do not know enough about the interaction of these elements to accurately predict overall bed savings.”⁴⁰

B. Unanswered Questions

Even with the relatively extensive body of drug court research, there are a lot of unanswered questions. Variations in research quality and program design make it difficult to draw general conclusions about the drug court model. Recidivism rates among program participants as compared with those undergoing normal prosecution, arguably the most important measure of a drug treatment court’s success, are still mostly unknown. Post-program studies are few and far between, and relatively little funding is in place for this kind of research. Many of the studies that do exist fail to distinguish between recidivism during and after program participation.

Post-program effects, other than recidivism, have received even less attention. Belenko cited the need for information on participants’ future drug use, employment, family stability, and use of social services, pointing to the benefits of tracking the work of drug courts and the progress of their participants over a substantial period of time.⁴¹ One-shot evaluations, Belenko noted, were far less useful than multi-year analyses, since impacts may fluctuate, particularly in a program’s first years of operation.⁴²

Studies also frequently fail to track the progress and failure of defendants who do not graduate from drug court programs, but instead drop out early. Drug court graduates will almost always have lower recidivism than drug court failures and comparison group defendants.⁴³ The proper comparison, however, is of all drug court participants with comparison group defendants. Tracking drug court failures is important not simply for the sake of a thorough comparison, because we know that treatment can benefit even those participants who do not complete their entire regimen. The fate of less successful defendants, however, might shed light on the effectiveness of some of the program’s components.

39. *Id.* at 4.

40. *Id.* at 6.

41. BELENKO, *supra* note 16, at 54-55.

42. *Id.* at 55.

43. *See id.* at 56.

C. New Types of Drug Courts

More research is also needed to assess the efficacy of adaptations of the drug court model. The two most prominent adaptations are family treatment courts and mental health courts, which apply drug court principles to cases involving addicted parents charged with child neglect, and cases involving defendants with chronic persistent mental illness.

A 1999 Urban Institute evaluation of the implementation of three family treatment courts cited many of the challenges particular to this emerging model (client confidentiality, juggling the rights of the parent and the welfare of the child, the use of sanctions, and extensive service needs).⁴⁴ A future research agenda for family treatment courts emerges out of the lessons learned from implementation. These authors felt that the focus should be on detailed process evaluations that document parents' and children's service needs, outcomes, both immediate and long-term, for parents and children,⁴⁵ system impacts for courts and other agencies,⁴⁶ and the direct expenditures and the value of contributions required to operate these model projects.⁴⁷ Any effort to seriously evaluate

44. ADELE HARRELL & ALICE GOODMAN, URBAN INST., REVIEW OF SPECIALIZED FAMILY DRUG COURTS: KEY ISSUES IN HANDLING CHILD ABUSE AND NEGLECT CASES 2 (1999), available at <http://www.urban.org/uploadedPDF/specilzd.pdf> (last visited Mar. 15, 2003).

45. *Id.* at 36.

Immediate outcomes [for children] include the duration and number of foster care episodes while the case is before the court and the final placement (parents, in kinship foster care, and in foster care). Longer-term outcomes for those placed with their parents include the percentage named in subsequent abuse or neglect petitions, and, for those in which parental rights were terminated, the percentage adopted. Immediate outcomes [for parents] include treatment graduation/failure, substance abuse and participation in aftercare following case termination, perceptions of fairness of court process, effects of process on treatment motivation and retention, and assessment of the relationship between FDC services and reductions in problems faced by parents.

Id.

46. *Id.* at 36-37.

System impacts. For courts, these include; the duration of cases, the number of hearings; the demands for staff, courtroom space, and other resources; the net widening effects of encouraging early intervention; the potential efficiencies of combining multiple petitions for multiple children in a family in a single case; and the potential for linking of cases active in different courts or dockets. For other agencies, these include the impact on demand for staff and services, the requirements to change procedures, and the barriers to participation based on agency mandates or funders.

Id.

47. *Id.* at 37.

family treatment courts will run up against a number of obstacles, including the need to track multiple parties (parents and children) and serious confidentiality restrictions.⁴⁸

Mental health courts pose a somewhat different set of challenges. They require an individualized approach to defining success for participants, each of whom must receive a treatment regimen, and graduation requirements based on her unique affliction.⁴⁹ For this reason, outcome measures are difficult to standardize even within a single court. As John S. Goldkamp and Cheryl Irons-Guyun of the Crime and Justice Research Institute wrote in their 2000 review, “[c]ourts cannot say, ‘be cured within 12 months.’”⁵⁰ Research must take this reality into account.

It is too soon to examine recidivism rates for mental health courts, but self-reported data on retention and jail savings has begun to surface. For example, the Seattle Municipal Court’s Mental Health Court reported that more than two-thirds of all participants continued to be successfully engaged in treatment at the end of their first year.⁵¹ The Santa Clara County (CA) Mental Health Court Progress Report assessed the total cost savings to the county in unserved jail days of moving fifty-six clients from jail custody to community treatment at sixty-five dollars and eighty cents per client, per day.⁵² Moreover, advocates marshaled significant anecdotal evidence to support the notion that mental health courts offered more resources and a more sensitive approach to the needs of mentally ill defendants than did conventional case processing.⁵³

While these findings are interesting, this question remains—how do you define success in a mental health court? As the programs develop, there will be significant pressure to demonstrate reduced recidivism, a goal that may not be realistic for many participants. What other measures are there? Improved functionality and qual-

48. *Id.*

49. JOHN S. GOLDKAMP & CHERYL IRON-GUYN, CRIMINAL & JUSTICE RESEARCH INST., EMERGING JUDICIAL STRATEGIES FOR THE MENTALLY ILL IN THE CRIMINAL CASELOAD: MENTAL HEALTH COURTS IN FORT LAUDERDALE, SEATTLE, SAN BERNARDINO, AND ANCHORAGE 74 (2000), *available at* <http://www.ncjrs.org/pdffiles1/bja/182504.pdf> (last visited Mar. 15, 2003).

50. *Id.*

51. See Eric Trupin et al., City of Seattle, Mental Health Court: Evaluation Report 48 (2001), *available at* <http://www.cityofseattle.net/courts/pdf/mhreport.pdf> (last visited Mar. 15, 2003).

52. SUPERIOR COURT OF CAL., SANTA CLARA COUNTY, MENTAL HEALTH COURT PROGRESS REPORT 7 (2001).

53. See generally GOLDKAMP & IRON-GUYN, *supra* note 49, at 9-57 (discussing mental health courts in Fort Lauderdale, Seattle, San Bernardino, and Anchorage).

ity of life? Cost savings? A reduction in the frequency of arrests? Given the difficult population the courts work with, mental health courts may want to make a deeper investment in qualitative research by conducting interviews with participants and their family members to assess both their functionality and their satisfaction with the process.

II. COMMUNITY COURTS

Each community court is more or less a model unto itself, designed to address quality-of-life problems within a specific neighborhood or group of neighborhoods.⁵⁴ Among the nearly two dozen community courts currently in operation there is wide variety in the types of cases each court tackles—prostitution, landlord-tenant disputes, truancy, public urination, and unlicensed street vending, to name a few.⁵⁵ Community courts seek to have an effect on both individual litigants and on the community as a whole.⁵⁶ A community's quality of life, however, is a much more complicated outcome to measure than, for instance, drug treatment retention rates. Benefits to neighborhood residents range from the concrete (less graffiti), to the intangible (how safe people feel, and how people relate to each other and their physical space).⁵⁷ Therefore, factors to take into account when evaluating the effectiveness of a community court project might include the neighborhood's perception of the court, its staff, and its mission, the impact on local hot spots and eyesores, and the way government and citizens relate to one another.⁵⁸ Community courts thus call for a research agenda that goes beyond counting cases and tracking dispositions. Surveys, ethnographies, interviews, and other narrative records are essential to a critical examination of whether these programs work.

54. See MICHELE SVIRIDOFF ET AL., CTR. FOR COURT INNOVATION, DISPENSING JUSTICE LOCALLY: THE IMPLEMENTATION AND EFFECTS OF THE MIDTOWN COMMUNITY COURT 3 (2000), available at http://www.courtinnovation.org/pdf/disp_just_loc.pdf (last visited Mar. 15, 2003).

55. MICHELE SVIRIDOFF ET AL., DISPENSING JUSTICE LOCALLY: THE IMPACTS, COST AND BENEFITS OF THE MIDTOWN COMMUNITY COURT 5 (2001), available at http://www.ncsconline.org/WC/Publications/Res_CtComm_MidtownExecSumPub.pdf (last visited Mar. 15, 2003).

56. SVIRIDOFF ET AL., *supra* note 54, at 2.

57. *See id.* at 7.

58. *See SVIRIDOFF ET AL.*, *supra* note 55, at 5 (noting that these factors were considered when evaluating the Midtown Community Court).

A. Midtown Community Court

The most thorough community court study to date is the National Center for State Courts' evaluation of the Midtown Community Court in Manhattan, which was conducted in two stages. The first, completed in 1997, included a process analysis and preliminary impact measures.⁵⁹ The second, in 2001, evaluated the long-term impacts of the court over three years and included a cost-benefit analysis.⁶⁰

The first stage of research documented the following:

1. *Case Outcomes*

One of the threshold questions for the Midtown Community Court was whether the court could change outcomes in cases involving misdemeanor and quality-of-life crimes (prostitution, shoplifting, illegal street vending, low-level drugs). During the period studied, quality-of-life offenders who went through conventional case processing in Manhattan tended to receive either jail or no sanctions at all from the criminal justice system.⁶¹ Offenders received a larger amount of intermediate sanctions, like community service or a social service referral, in Midtown than in the downtown court.⁶²

2. *Community Service Compliance Rates*

Midtown achieved a seventy-five percent compliance rate in contrast with fifty percent in the downtown sample.⁶³ Midtown also tracked defendant characteristics in tandem with compliance rates and found that the faster offenders were assigned their service, the more likely they were to comply.⁶⁴

3. *Reduced Crime*

The first evaluation of Midtown included an ethnography designed to provide insight into the daily lives of street offenders, to elicit their opinion about the court, and to examine how the street scene had changed in the neighborhood since the court's opening.⁶⁵ Prostitution arrests dropped fifty-six percent in Midtown during

59. SVIRIDOFF ET AL., *supra* note 54, at 1.

60. SVIRIDOFF ET AL., *supra* note 55, at 2.

61. SVIRIDOFF ET AL., *supra* note 54, at 6.

62. *Id.*

63. *Id.* at 7.

64. *Id.*

65. *Id.*

the court's first eighteen months of operation.⁶⁶ Unlicensed vending arrests dropped twenty-four percent.⁶⁷ Ethnographic data suggested that the court was responsible for increased pressure, and a subsequent drop in local activity.⁶⁸ In both industries, sex workers and vendors complained about the inconvenience of frequent court appearances and community service sanctions, and some reported exploring other ways to make a living as a result.⁶⁹

4. *Community Attitudes*

Focus group research revealed that in the months following the court's opening, the police department moved from skepticism to support for Midtown.⁷⁰ Community members expressed positive, but less dramatic, feedback in the first phase of the evaluation.⁷¹

The second stage of the National Center for State Courts' evaluation of Midtown unearthed some of the complexities of measuring long-term success of a community court. The court opened during a period of dramatic neighborhood turnaround for midtown Manhattan. Many factors contributed to the positive changes, including the improved local economy and the Giuliani administration's concerted effort to clean up the Times Square area. The Midtown Community Court undoubtedly played a role in the transformation, but it is not possible to accurately apportion the credit.⁷²

The second stage of the evaluation also demonstrated that fewer Midtown offenders were initially sentenced to jail.⁷³ Unlike conventional criminal courts, Midtown has rigorously monitored the compliance of offenders with community and social service sentences.⁷⁴ Offenders who did not comply were often sentenced to jail when they reappeared in court.⁷⁵ In other words, Midtown used jail less frequently than other Manhattan courts hearing comparable cases, but when offenders were sentenced to jail, it was for longer periods because they had already been given a chance to

66. *Id.*

67. *Id.*

68. *Id.* at 7-8.

69. *Id.*

70. *Id.* at 8.

71. *Id.*

72. *See id.*

73. *Id.* at 6.

74. *Id.* at 9.

75. *Id.* at 6.

fulfill intermediate sanctions.⁷⁶ This use of jail as a “secondary” sanction in response to non-compliance led to a reduction in the net jail savings generated by Midtown.⁷⁷ The evaluators concluded: “[a]fter accounting for the greater use of secondary jail at the Midtown Court, the net jail saving of the project over three years was reduced to roughly 12,600 jail days—or approximately thirty-five jail years.”⁷⁸

Finally, as part of a cost-benefit analysis, researchers made use of a neighborhood survey, which revealed that two-thirds of residents would be willing to pay more taxes to keep the court in operation.⁷⁹ “Overall, the survey demonstrated that local respondents saw the benefits of the Midtown Court as equal to or greater than its costs and supported public funding for comparable projects.”⁸⁰

B. Future Research

Needless to say, it is impossible to draw any firm conclusions about community courts based on the results of a single study, no matter how encouraging. In the days ahead, society’s understanding of community courts will undoubtedly become much richer. Each community court in operation is documenting its own impacts. Two research projects are particularly worth watching. Taken together, they demonstrate the multifaceted approaches that research in this field must take in order to capture a full picture of a community court’s outcomes. The first is the Columbia University Center for Violence Research and Prevention’s study of the Red Hook Community Justice Center in Brooklyn. Red Hook departs significantly from the Midtown model. The court is multi-jurisdictional and serves a diverse set of neighborhoods.⁸¹ Offenders tend to live within the community, as opposed to Midtown, where most serious offenders do not.⁸² The primary neighborhood demonstrates less social organization, and its demographics are entirely different (public housing tenants, as opposed to a mixture of

76. *See id.*

77. *Id.*

78. SVIRIDOFF ET AL., *supra* note 55, at 6-7.

79. *Id.* at 10.

80. *Id.*

81. GREG BERMAN, CTR. FOR COURT INNOVATION, RED HOOK DIARY: PLANNING A COMMUNITY COURT 3 (2001), available at http://www.courtinnovation.org/pdf/redhook_diary.pdf (last visited Mar. 15, 2003).

82. *See id.* (noting the residents’ need for judicial services); *see also* DAVID C. ANDERSON, IN NEW YORK CITY, A “COMMUNITY COURT” AND A NEW LEGAL CULTURE 5 (1996), available at <http://www.ncjrs.org/pdffiles/commcrt.pdf> (last visited Mar. 15, 2003).

middle-class residents and businesses).⁸³ The current evaluation will focus on qualitative measurements of community improvements and perceptions of procedural justice, and look for results in the form of enhanced community involvement and support.⁸⁴ Key research questions include the following: To what extent does the Justice Center bring a new approach to case processing, the roles of court personnel, and the disposition of cases? How does local knowledge and information sharing affect the business of the court? How are community members involved in the Justice Center, and how does the Justice Center get involved with the community?

A second study of note is underway in Hartford, Connecticut. Since opening in 1998, the Hartford Community Court differs from Midtown most sharply in terms of its target population. The court serves all of Hartford's seventeen downtown neighborhoods (though the total number of residents is still smaller than the number in Midtown's jurisdiction).⁸⁵ Hartford has developed a process evaluation to document nine key elements of the court: target problems, target locations, target populations, court processing focus and adaptations, identifying, screening, and enrolling participants, dispositional options and the structure and content of services, community involvement, productivity (services delivered and impact per resource), and extent of systemwide support and participation.⁸⁶ The evaluation strategy, similar to Midtown's, is a two-tiered initial study of implementation and immediate outcomes.⁸⁷

III. DOMESTIC VIOLENCE COURTS

The primary stated objective of most domestic violence courts is the enhancement of victim safety.⁸⁸ Other outcome measures include reduced recidivism, improved monitoring and accountability for defendants, improved case processing speed and systemization,

83. ANDERSON, *supra* note 82, at 5; BERMAN, *supra* note 81, at 2.

84. COMM. JUSTICE EXCH., COMMUNITY SURVEY: BROOKLYN, NEW YORK, at <http://www.communityjustice.org/frameset.asp?heading=best%5Fpractices%5F1> (last visited Mar. 15, 2003).

85. JOHN S. GOLDKAMP ET AL., CRIME & JUSTICE RESEARCH INST., DEVELOPING AN EVALUATION PLAN FOR COMMUNITY COURTS: ASSESSING THE HARTFORD COMMUNITY COURT MODEL 11 (2001).

86. *Id.* at 9.

87. *Id.* at 42.

88. See Kerry Healey et al., *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, ISSUES & PRACS. CRIM. JUST., Feb. 1998, at xii, available at <http://www.ncjrs.org/pdffiles/168638.pdf> (last visited Mar. 15, 2003).

and better coordination among all the players in domestic violence cases.

As domestic violence courts have only begun to yield published evaluations, most of what we know about the model's outcomes derives from studies of its core components, particularly batterer intervention programs, judicial monitoring and orders of protection, within the context of regular criminal court.

A. Batterers Intervention Programs ("BIP")

Intervention programs, usually "re-education" programs that give an overview of the history and context of domestic violence, are widely used in conventional criminal courts as a sanction for batterers. Recent research estimates that nearly eighty percent of individuals in batterer programs were sent by probation officers or the courts.⁸⁹ In some cases, as in Florida, state law requires program participation of all domestic violence defendants. Batterer intervention is popular, but how well does it work? An August 2001 literature review conducted by Larry W. Bennett and Oliver J. Williams cited three measures for a program's success: "(1) Are batterers held accountable for their crime (or, has justice been served?) (2) Are victims safe? And, (3) Has the batterer changed his attitudes and behavior?"⁹⁰ The authors reached two conclusions: "(1) Batterers [sic] programs as currently configured have modest but positive effects on violence prevention, and (2) there is little evidence at present supporting the effectiveness of one BIP approach over another."⁹¹

To date, few studies address the relative effectiveness of different types of batterer programs (the Deluth "re-education" model has dominated the field in the past, but now faces competition from other emerging models). Thankfully, there is significant interest within the research community in this area. As a result, the next few years may yield much more information on how different program models compare with one another. Bennett and Williams cited a number of questions for comparative study, including the following: What roles do program structure and length play in ef-

89. *Id.* at 1.

90. LARRY W. BENNETT & OLIVER J. WILLIAMS, CONTROVERSIES AND RECENT STUDIES OF BATTERER INTERVENTION PROGRAM EFFECTIVENESS (2001), at http://www.vawnet.org/VNL/library/general/AR_bip.html (last visited Mar. 15, 2003).

91. *Id.* These findings concur with a 1999 BIP literature review authored by Robert C. Davis & Bruce G. Taylor, *Does Batter Treatment Reduce Violence? A Synthesis of the Literature*, in *WOMEN AND DOMESTIC VIOLENCE: AN INTERDISCIPLINARY APPROACH* 69, 72, 82-83 (Lynette Feder ed., 1999).

fectiveness? How do programs that adopt an integrated approach to other issues—such as drug abuse and mental health—fare in comparison to more narrowly defined programs? And what about cultural specificity?⁹² Three studies suggested that African-American men who participated in batterers intervention programs experienced higher rearrest and reoffending rates, lower rates of program completion, and lower levels of “trust, comfort, willingness to discuss critical subjects, and participation in treatment.”⁹³

B. Judicial Monitoring

Evidence suggests that rigorous court monitoring may have more of an effect on recidivism than do batterer reeducation programs. Most telling in this regard is a recent random assignment experiment in Brooklyn, which compared offenders assigned to community service to those linked to batterers’ intervention.⁹⁴ There were three experimental groups: one community service track, one twenty-six week batterers’ intervention program track, and one eight week program track (while the length of the programs was considerably different, the total number of hours was the same).⁹⁵ Perhaps predictably, more participants successfully completed the eight week program than the twenty-six week program.⁹⁶ Only participants in the twenty-six week program exhibited lower violence rates than those of the community service group.⁹⁷ Neither program track group provided evidence that participants had learned anything as a result of their treatment, but the ones least likely to reabuse were those who were under court supervision for the longest period of time.⁹⁸ In other words, judicial monitoring, not batterers’ intervention, seems to have made the difference in victim safety.

Two other studies are worthy of note here. In 2000, San Diego court administrators conducted an internal study that underlined the importance of judicial monitoring by showing that highest rates

92. BENNETT & WILLIAMS, *supra* note 90.

93. *Id.*; see Rhea Almeida & Ken Dolan-Delvecchio, *Addressing Culture in Batterers Intervention: The Asian Indian Community as an Illustrative Example*, 5 VIOLENCE AGAINST WOMEN 654, 654 (1999) (discussing Somerset, New Jersey’s Cultural Context Model for a batterers’ intervention program).

94. ROBERT C. DAVIS ET AL., DOES BATTERER TREATMENT REDUCE VIOLENCE? A RANDOMIZED EXPERIMENT IN BROOKLYN—EXECUTIVE SUMMARY INCLUDED (2000).

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

of recidivism in domestic violence cases took place between the time of arrest and the time of a case's disposition.⁹⁹ In the first year, with only a batterers' program in place, recidivism was at twenty-one percent.¹⁰⁰ The next year, when the court added a judicial monitoring component, recidivism dropped to fourteen percent.¹⁰¹

A 1997 study of two projects in Milwaukee examined the effects of two changes in the court system with respect to domestic violence cases—the establishment of a specialized court, and a change in the district attorney's screening policy that increased the pool of cases to include uncooperative victims.¹⁰² The creation of the specialized court resulted in a fifty percent reduction in case processing time, a twenty-five percent increase in convictions, and a decline in pretrial crime.¹⁰³ The change in prosecutorial policy detracted from some of these positive effects, causing a case backlog, a decline in convictions, an increase in pretrial crime, and lower levels of victim satisfaction.¹⁰⁴ Researchers found that shortening court processing time in domestic violence cases was a good idea, introducing domestic violence cases with reluctant victims into the criminal justice system should be carefully considered and undertaken only with sufficient resources for prosecution and adjudication, and in deciding whether or not to prosecute, the victim's voice should be taken into account.¹⁰⁵

C. Orders of Protection

Do orders of protection keep victims safer? Research suggests that the answer is no. A 1996 study by Adele Harrell and Barbara E. Smith pointed to some of the limitations of restraining orders.¹⁰⁶ Findings were based on interviews of female complainants and the

99. WAYNE L. PETERSON & STEPHEN THUMBERG, STATE JUSTICE INST., EVALUATION REPORT FOR THE SAN DIEGO COUNTY DOMESTIC VIOLENCE COURTS 26 (2000).

100. *Id.* at 27.

101. *Id.*

102. Robert C. Davis et al., *Prosecuting Domestic Violence Cases with Reluctant Victims: Assessing Two Novel Approaches in Milwaukee*, in LEGAL INTERVENTIONS IN FAMILY VIOLENCE: RESEARCH FINDINGS AND POLICY IMPLICATIONS 71, 71 (Am. Bar Ass'n ed., 1998) [hereinafter LEGAL IMPLICATIONS], available at <http://www.ncjrs.org/pdffiles/171666.pdf> (last visited Mar. 15, 2003).

103. *Id.*

104. *Id.*

105. *Id.* at 71-72.

106. Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 214, 238-41 (Eve S. Buzawa & Carl G. Buzawa eds., 1996).

men named in their orders, as well as court and police records.¹⁰⁷ The researchers found that women who sought orders of protection reported serious incidents of abuse (severe violence, including punching, choking, forced sex, and threats on their lives).¹⁰⁸ Harrell and Smith concluded that the orders were generally not sought “as a form of early intervention, but rather as a signal of desperation following extensive problems.”¹⁰⁹

Unfortunately, permanent orders of protection made no difference in the likelihood that victims would experience physical abuse in the future, nor did they reduce the probability of contact between the victim and the abuser.¹¹⁰ Permanent orders of protection were effective in significantly reducing psychological abuse, and victims generally agreed that it was worthwhile to file the order—even if they still had concerns about their safety.¹¹¹ Harrell and Smith concluded their report by recommending that courts tailor orders of protection to the needs of individual victims, coordinate with other criminal justice agencies to improve enforcement, help victims develop a safety plan, and encourage women to return to court to report future violations.¹¹²

Harrell and Smith’s findings were echoed by a 1997 study by Susan Keilitz, Paula Hannaford, and Hillery S. Efkenman that reviewed the effectiveness of civil protection orders.¹¹³ This report also highlighted the need for courts to link victims to additional services, specifically citing the need for victim counseling and safety planning, the need for the court to address petitioners’ specific concerns, and the need for more detailed knowledge of alleged abusers’ histories of crime and substance abuse.¹¹⁴

D. The Role of Victims

A recent study of a specialized domestic violence court in Toronto revealed that a case was seven times more likely to be prosecuted if the victim was perceived as cooperative, even in a court

107. *Id.* at 214-15.

108. *Id.* at 216.

109. *Id.* at 231.

110. *Id.* at 232-33.

111. *Id.* at 240.

112. *Id.* at 241.

113. SUSAN KEILITZ ET AL., NAT’L CTR. FOR STATE COURTS, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE 3 (1997).

114. *Id.*

specifically designed to minimize reliance on victim cooperation.¹¹⁵ How do the roles that victims play in their own cases influence the ways in which domestic violence courts work to ensure victim security? What effects do victim advocacy, prosecutorial policies, and other court procedures have on outcomes for victims?

The role of victims in case processing is a topic that has generated significant interest among domestic violence researchers. For example, a 1993 Indianapolis Domestic Violence Prosecution Experiment examined a number of different prosecutorial policies designed to reduce repeat incidents abuse among misdemeanor domestic violence defendants.¹¹⁶ In the six months following case settlement, regardless of prosecutorial policy, researchers found significant rates of battery.¹¹⁷ The victims in the greatest jeopardy of renewed violence were those who dropped charges after the batterer was summoned to court.¹¹⁸ The researchers concluded that “[p]rosecutors can help victims minimize the chance of violence by affirming the legitimacy of their criminal complaints and by respecting their decisions about what is best under their unique circumstances, even if contrary to the prosecutor’s administrative concerns.”¹¹⁹

Other research qualified the above findings by indicating that mandatory arrest policies result in a net reduction in domestic violence offenses, regardless of how the victim participates in the process.¹²⁰ Victim cooperation is not the only variable in domestic violence case outcomes, but its importance should not be overlooked.

Taking the needs of victims into account and studying impacts on victim safety presents some distinct challenges for domestic violence court researchers. Police and court records may not indicate how much abuse has actually occurred, and victims—if they are involved in the court process at all—are often reluctant to participate in formal studies.

115. Myrna Dawson & Ronit Dinovitzer, *Victim Cooperation and the Prosecution of Domestic Violence in a Specialized Court*, 18 JUST. Q. 593, 593 (2001).

116. David A. Ford & Mary Jean Regoli, *Selected Findings and Implications Drawn From The Indianapolis Domestic Violence Prosecution Experiment*, in LEGAL INTERVENTIONS, *supra* note 102, at 62.

117. *Id.*

118. *Id.* at 63.

119. *Id.*

120. See Christopher D. Maxwell et al., *The Effects of Arrest on Intimate Partner Violence: New Evidence from the Spouse Assault Replication Program*, NAT’L INSTS. JUST. RES. IN BRIEF, July 2001, available at <http://www.ncjrs.org/pdffiles1/nij/188199.pdf> (last visited Mar. 15, 2003).

Most research to date on specialized domestic violence courts takes the form of process evaluations, not experimental designs. Preliminary findings from an Urban Institute study of the Brooklyn Felony Domestic Violence Court, for example, point to some significant outcomes.¹²¹ The study reveals improved coordination among stakeholders both inside and outside the court system. Lawyers, judges, and representatives from victims' services and batterers' programs started meeting together for the first time under the new specialized court structure.¹²² Victim advocates were assigned to one hundred percent of victims who came through the court, up from fifty-five percent under the old system.¹²³ Among defendants released on bail, forty-four percent were sent to batterers' programs (up from zero) and five percent were sent to substance abuse treatment (up from two percent).¹²⁴ An additional four percent were mandated to both batterers' programs and substance abuse treatment.¹²⁵ Before the specialized court opened, seventy-three percent of domestic violence felony defendants entered a guilty plea.¹²⁶ After, eighty-eight percent entered guilty pleas.¹²⁷

A pending experiment in the Bronx, conducted by the Center for Court Innovation with funding from the National Institute of Justice, seeks to explore the relative effectiveness of court monitoring and batterers' intervention as responses to domestic violence.¹²⁸ Convicted batterers in the Bronx will be divided at random into four, 200-person test groups.¹²⁹ One group will participate in a batterers' intervention program and receive monthly monitoring, a second group will participate in a batterers' program and receive court monitoring on a graduated schedule, a third group will not participate in a batterers' program and receive monthly monitor-

121. See LISA NEWMARK ET AL., URBAN INST., SPECIALIZED FELONY DOMESTIC VIOLENCE COURTS: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE (2001), available at http://www.urban.org/uploadedPDF/410381_domviolcourts.pdf (last visited Mar. 15, 2003).

122. *Id.* at 17-19.

123. *Id.* at 19-20.

124. *Id.* at 56, 60.

125. *Id.* at 60.

126. *Id.*

127. *Id.*

128. National Institute of Justice, Current NIJ Grants, Testing the Impact of Court Monitoring and Battering Intervention Programs at the Bronx Misdemeanor Domestic Violence Court (Grantees Fund for the City of New York & Center for Court Innovation), at http://www.ojp.usdoj.gov/nij/vawprog/grnt_2001_09.html (last visited Mar. 15, 2003).

129. *Id.*

ing, and a fourth group will not participate in a batterers' program and receive graduated monitoring.¹³⁰ This study, scheduled to conclude in 2004, presents an opportunity to simultaneously test two components of the specialized court model, both batterers' programs and court monitoring, under experimental conditions and within the context of the specialized court itself.

IV. PERCEPTIONS OF PROBLEM-SOLVING COURTS

While problem-solving courts are designed to improve case processing and court outcomes, they also seek to make an impact in the world of public opinion. How are these courts perceived by relevant stakeholders? Do they have the potential to improve public confidence in justice? How about the job satisfaction levels of judges and attorneys?

Recent surveys conducted by the National Center for State Courts have attempted to document public attitudes toward problem-solving courts.¹³¹ These surveys have demonstrated that the public shares problem-solving court innovators' concerns about court efficiency, fairness, and responsiveness to communities.¹³² The research also indicated high levels of public support for problem-solving methods aimed at improvements in these areas.¹³³ A 2001 survey found strong support, particularly among African-American and Latino respondents, for common problem-solving strategies, including the hiring of treatment staff and social workers, bringing offenders back to court to report on their progress in treatment, coordinating the work of local treatment agencies to help offenders, and bringing in relevant outside experts to help courts make more informed decisions.¹³⁴

What do judges think of problem-solving courts? A recent study of state court judges commissioned by the Center for Court Innovation and conducted by the University of Maryland's Survey Research Center suggested that the judiciary shares the public's

130. *Id.*

131. David B. Rottman, *On-Line Court Reform: Can Technology Boost Public Confidence in the Courts?*, JUDGELINK, at <http://judgeline.org/insights/1999/reform> (last visited Mar. 15, 2003).

132. *Id.*

133. DAVID B. ROTTMAN & RANDALL M. HANSEN, *HOW RECENT COURT USERS VIEW THE STATE COURTS: PERCEPTIONS OF AFRICAN-AMERICANS, LATINOS, AND WHITES* 18 (2001).

134. *Id.* at 13-14.

endorsement of basic problem-solving tools.¹³⁵ More than 500 criminal court judges were surveyed.¹³⁶ Participants supported treatment as an alternative to incarceration for addicted, nonviolent offenders (over seventy percent agreed that treatment was more effective than jail).¹³⁷ They overwhelmingly agreed that the bench should be involved in reducing drug abuse among defendants (ninety-one percent).¹³⁸ They also cited the need for more information about past violence when deciding bail and sentences in domestic violence cases (ninety percent agreed).¹³⁹ Sixty-three percent of criminal court judges and seventy-one percent of problem-solving court judges said they should be more involved with community groups in addressing neighborhood safety and quality-of-life concerns.¹⁴⁰ This runs counter to the popular assumption that judges, concerned with neutrality and independence, are unwilling to engage with the community.

How do defendants perceive problem-solving courts? While no national survey has been undertaken, as part of the National Center for State Courts' evaluation of the Midtown Community Court, researchers conducted individual interviews with defendants, who commented on the court's better facilities and faster case processing time.¹⁴¹ Interestingly, they found the sentences meted out by the court tougher than those issued in conventional courts.¹⁴² When asked which court they preferred, however, they chose Midtown because personnel treated them better.¹⁴³

V. DEVELOPING A FUTURE RESEARCH AGENDA

While problem-solving courts and related innovations have generated a solid and growing body of research to date, there remain more unanswered questions than firm conclusions about these judicial experiments. Further, new models are quickly moving to the forefront and producing their own preliminary research findings and future directions. An Urban Institute study, published in April

135. Center for Court Innovation, State Court Judges Survey, Executive Summary (2001) (unpublished survey, on file with the Center for Court Innovation).

136. *Id.*

137. *Id.*

138. Survey Research Center, University of Maryland, College Park, State Court Judges Project #1409 Crosstab 12 (2001) (unpublished report, on file with the Center for Court Innovation).

139. *Id.* at 16.

140. *Id.* at 8.

141. SVIRIDOFF ET AL., *supra* note 54, at 9.

142. *Id.*

143. *Id.*

2002, evaluates the performance of four teen courts (where low-level juvenile offenders are adjudicated by their peers), and sets parameters for further research in this area. Teen courts and other new models must be integrated into a problem-solving court research agenda, drawing upon the same questions and approaches that have been used so far while also helping to shape what the research of the future will look like.

Going forward, the operative questions for problem-solving court researchers may be both the open-ended “Do they work?” query and some more specific questions: How do these programs work? For what populations and under what circumstances? With that in mind, what follows is an attempt to define an agenda for the future of problem-solving court research. It is intended to spark conversation rather than foreclose it. Inevitably, the most provocative questions will emerge at the local level—the product of a dynamic conversation between researchers and practitioners.

A. Studies of the Components

Recognizing that complex problems call for complex solutions, problem-solving courts employ a vast array of ideas and strategies. Nonetheless, as the current Bronx Domestic Violence Court experiment suggests, it is worth isolating some of their core components, such as treatment, graduated sanctions, or judicial monitoring, to more precisely understand how the pieces within the problem-solving court model affect outcomes. What is the “active ingredient” in these experiments? To answer this question, it may make sense to look across projects, for example, studying the role of the judge in drug courts, community courts, and domestic violence courts.

B. Long-Term and Post-Program Outcomes

Researchers face tremendous challenges when they try to gather data about problem-solving court participants, particularly those who have left the programs, either due to graduation or failure. If program drop-outs or failures end up in jail, “post-program” only begins once they get out, which could be years from the original arrest that diverted them to a problem-solving court in the first place. Many studies do not currently track what happens to participants who do not graduate from a problem-solving court, but instead return to traditional adjudication. Nevertheless, post-program outcomes are vital to understanding the long-term effects of problem-solving courts and how they compare to the effects of conventional practice.

C. Other Outcomes for Program Participants

While recidivism may be the holy grail for problem-solving court outcomes, there are a number of other potential effects that bear investigation, particularly as these courts broaden their scope to include difficult populations with histories of mental illness and violence. Graduation exit interviews can shed light on how participants' lives have changed since their first contact with the court. Offenders who were homeless upon arrest may now have a place to live, women who were pregnant and addicted may have given birth to drug-free babies, and people without high school diplomas may have GEDs. Alternatively, participants in long-term treatment may have lost their jobs or their marriages while getting help for their addiction. There are potentially endless consequences, some intended, others not, that might occur from participating in a problem-solving court. Studies can track these types of changes with relative ease while defendants are under the court's control, but again, post-program effects are harder to assess. If all goes well, a problem-solving court graduate will never again have formal contact with the criminal justice system after program completion. Unfortunately, this best of all outcomes makes it difficult for researchers to track other events in the lives of graduates over a longer period of time. For example, it is nearly impossible to determine whether drug court graduates remain sober over time if they are not rearrested.

D. Speed

With increases in caseloads every year, state court systems are looking for ways to reduce backlog and repeat appearances. In some cases, problem-solving courts may alleviate some of the burden on the traditional system by diverting certain types of offenders, but they also require more face time between defendant and judge, better tracking and record-keeping, and more administrative resources while the case is in the system. It is uncertain whether problem-solving courts speed up or slow down the administration of justice.

E. Coercion and the Protection of Rights

Problem-solving courts exert—or threaten to exert—legal force as part of their efforts to change the behavior of offenders. Some

critics have argued that no one should be coerced into treatment.¹⁴⁴ Others have wondered if problem-solving courts diminish the ability of defenders to engage in zealous advocacy on behalf of their clients.¹⁴⁵ Advocates have argued that problem-solving courts have done little to alter the practice of lawyering or the nature of due process but have simply given attorneys and judges more tools to work with.¹⁴⁶ Future research could investigate whether problem-solving courts do indeed represent a change in the way defendants' rights are protected. This might include both qualitative work (how defendants and their attorneys perceive coercion and representation in a problem-solving court) and quantitative work (for example, comparing the number of objections and plea bargains with those of a conventional court).

F. Net Widening

Critics with concerns about defendants' Fourth Amendment rights and the decline of adversarialism in the problem-solving court model are uneasy about the effect of these courts on the actions of other players in the criminal justice system.¹⁴⁷ Does the existence of a drug court, for example, lead police to make arrests they otherwise would not have made? Does an increase in information sharing lead to more scrutiny of specific groups of offenders? Or, more glibly, is there a "build it and they will come" phenomenon at work here? Having created problem-solving courts, will criminal justice agencies feel compelled to ensure their caseloads by any means necessary? Research can help answer these questions by studying arrest patterns and prosecutorial and judicial decision making.

G. Community Impacts

In recent years, a number of new theories (social capital, bowling alone, community efficacy) have been advanced to explain why some neighborhoods are safe, healthy, and economically viable for problem-solving courts and others are not. One of the key ideas running through these theories is that strong communities promote

144. GREG BERMAN & JOHN FEINBLATT, CTR. FOR COURT INNOVATION, PROBLEM SOLVING COURTS: A BRIEF PRIMER, *available at* http://www.courtinnovation.org/pdf/prob_solv_courts.pdf (last visited Mar. 15, 2003).

145. *Id.* at 136.

146. *Id.*

147. See SVIRIDOFF ET AL., *supra* note 54, at 3 (noting that some were doubtful that the project would have an effect on "business as usual").

information sharing and coordination among civic institutions, whether they are churches, schools, civic associations, or government agencies. Because of their emphasis on inter-agency collaboration and public engagement, problem-solving courts hold out the possibility that they might contribute to the healthy functioning of the neighborhoods in which they reside. This idea is ripe for further exploration. Does the coordination of services within the court lead to new levels of cooperation among community stakeholders beyond the courthouse? Can courts serve as a bridge between government and citizens? How might researchers document and assess this? These are questions that as yet have attracted little attention in the field.

CONCLUSION

It goes without saying that this Essay only touches the surface of the possibilities for problem-solving court research. The rapid proliferation of these experiments have been driven by more than rhetoric or funding. It has been driven by the ability of problem-solving courts to generate demonstrable results, however provisional or inadequately studied. Framing a research agenda for problem-solving courts is much more than an academic exercise—it is of vital importance to the future of the problem-solving movement. If problem-solving courts hope to continue to thrive, and to move from experiments to institutionalization, they must answer the concerns of critics and continue to win over the agnostics. The only way to do this is through rigorous, independent research that focuses on the questions that matter most to practitioners and policymakers.

