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## What the Data Shows

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**THURSDAY, FEBRUARY 28, 2002**

**AFTERNOON SESSION**

**WHAT THE DATA SHOWS**

**PANELISTS**

**Carl Baar**

*Brock University*

**Steven Belenko**

*The National Center on Addiction and Substance Abuse*

**Aubrey Fox**

*Center for Court Innovation*

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*Vera Institute for Justice*

**Carl Baar***Brock University*

It is appropriate that I lead off the panel on what data shows by giving a speech that has no data in it.

I would stand up, except that my colleague here has his PowerPoint all set up there, so I think I will stay and speak to you from here.

What I am actually speaking to, or elaborating on, is a paper that is on the supplementary tables out there, called "The Role of Courts: The Two Faces of Justice," which I have written with Dr. Frieda Solomon, who is here in the room and who is a New York City Criminal Justice Agency person and a political science colleague.

What we wanted to do in this paper was raise some issues about problem-solving courts, actually even before they had the name. By the time the article was published, they were officially christened by the Conference of Chief Justices.

I guess, after listening to Judge Hoffman this morning, I think that we are probably in the agnostic category, and it is probably just as difficult being an agnostic at one of these sessions as being an atheist.

I think one of the problems is that I would actually argue that Judge Hoffman got the order of his criticisms wrong, because the first thing he said is, "We don't have any data. We don't know whether these programs are working or not."

One of the questions that I would raise is: If you knew they were working, would they still be good programs? And whether they are good programs or not depends upon what they are doing, not just in terms of whether crime is being reduced, recidivism is being reduced, people are being helped, but what are they doing in the context of the jurisdiction and the political and social system in which they occur, and how well are they doing? And what social, political, and economic functions are they performing? It is hard to get data on these things. I am going to use my few minutes with you to raise some of these broader questions.

I was reminded of this the other day because when I saw the earlier draft of the program, it indicated that one of the speakers on the first panel was the Judge of the Community Court in Austin, Texas. I heard some critical things about the debate at the time that court was organized, and I had a critical paragraph in the paper. I thought, "Oh my God, somebody is going to be here from

there. I better try to update myself.” And I contacted someone who was in court administration in that community and heard back. He said, “Oh, the court is really doing well in Austin. This judge is really providing important leadership. They have consulted with the community much more. They really improved their operations.”

Then he paused and he said, “Oh course, they are still basically serving the interests of the downtown business community, and the homeless people who are no longer on the street in the central business district are now out on the streets in outlying districts just outside the jurisdiction of the Community Court.”

And so I began thinking: Well, that sounds a lot like the same kinds of issues that have been raised both in New York City and elsewhere. They raise the question that even if you have a successful court, what functions is that court performing?

When I started thinking about Denver versus New York City, I thought: Well, we’ve really got to look at what is going on there, and we have to consider the fact not that Denver suggests there is a failure of the drug court model, but that that drug court model probably was not implemented as effectively as the one in New York.

I am finding myself in the same position, because my most recent work has been implementing delay reduction programs in a relatively hostile environment. It has worked out fairly well. We have an incredibly well-running delay-reduction program in the lower criminal and civil courts in Karachi, Pakistan, where I spent a few days about a week before Daniel Pearl was kidnapped, and it has not been working well at all in Lahore, Pakistan, where all the judges are convinced they have no delay at all.

I finally turned to a friend of mine and said, “This is worse than when I used to go to New York State in the 1980s”—you know, the Judge, “We don’t have any problems with delay reduction. We are up to our 1996 cases. Why are you sending some consultant in to bother us?”

So there are lots of local conditions that alter the effectiveness of these programs. The question is: What interests do they serve? I feel fairly comfortable about the interests I am serving in Pakistan, in part, because if we do not get the criminal courts running well, we are going to be left with either military courts trying terrorists or religious courts trying people for criminal offenses when they argue the criminal courts are not doing their job.

The question is: What social functions are being performed by a variety of these problem-solving courts? To what extent are these courts contributing to the purposes for which courts are organized?

So that is part of what we drilled back in looking at the paper that we had written. We really said that there are two basic roles that courts have: the preservation and the maintenance of order; and the preservation of rights.

When you get into countries in Asia, in the third world, very often protection of rights is secondary; preservation of order is primary. One of the things that characterizes courts in democratic societies is their emphasis on the protection of rights. Very often, my fellow political scientists assume that is the only purpose of courts, and we have to point out that no matter what society you are in, courts may protect rights, but they are always preserving order.

When you look at a criminal court, most of what criminal trial courts do is put people in jail, or they at least convict them of crimes. Most people are found guilty; they are not acquitted.

In civil courts, most civil court business, or a great part of it, is the enforcement of debts. The research we have done in Canada, which may be different from what you have in the United States, shows that businesses use courts to sue individuals much more than individuals use courts to sue businesses.

Whenever I hear tort reform advocates in the United States, I often want to say, "Well, we should establish the principle of caveat creditor as well. If businesses do not want the members of the public harassing them with product liability suits, let's just say that the business community cannot harass members of the public by suing them to collect their bad debts. We'll just call it a day and we will have lots of judges to take out of civil parts and put into criminal and family."

Well, the argument here is that the preservation of order is one of the primary functions of court. The argument that we made in this paper is that no matter how innovative problem-solving courts are, they are reinforcing that order-preserving function and not that rights-protection function. That is what they are in business to do.

The difference is that problem-solving courts are trying deliberately to use means that are seen as more humanitarian and less coercive. We can get into a debate about whether they are coercive or not, and a lot of that depends precisely on how coercive the existing criminal justice system is.

And so I am very concerned about the drug courts in New York State because the drug laws are so draconian and the political ability to implement drug courts is directly related to the unwillingness to campaign to modify those laws, which means, in effect, that drug courts can be in a position to do net widening, to actually be more coercive, because they are not reducing the existing coercive criminal penalties.

So we really are in a position—I think that what is going on is this is why you get a split on these issues that is not a liberal/conservative split. I am looking at this saying I am trying to make a sort of left-wing critique of problem-solving courts, and the first place I was asked to address after somebody read this was some judge in Massachusetts who was railing against a whole variety of reforms that have occurred in the last fifty years in the courts, and I was not too comfortable going up and adding any fuel to his fire.

But I think what is happening is, at the same time—a judge this morning said, “Well, our model—here is this progressive, new thing we are doing and it has been adopted by all these conservative states.” Well, not a surprise to me, because it is contributing to the emphasis on the preserving of order.

Part of what we argue in the paper is that this is something that no longer is a liberal or a conservative issue. There are just as many people asserting their individual rights on the right, many of whom consider that their most important right is to go and take their guns and live out somewhere in the mountains and start an alternative political system. You know, it is what we used to do when I was in graduate school in the 1960s. You know, now the guys who are doing it are not people like me anymore. It was reminiscent.

I taught at Cornell University. The year I arrived there was right at the time of the Attica Prison rebellion. I can remember at the time some students wanted to organized in support of the prisoners there. They said, “You know, they read all the stuff that we wrote in the 1960s and they think they are political prisoners, and maybe we are in a position where we need to give them some support.”

So we have a split politically that does not apply to this anymore. But the main thing is that all these problem-solving courts are there not to protect rights, but to preserve order, to do it in a way that reflects the needs of order in a liberal state, but that have all the limitations on those.

Here is where Frieda Solomon’s work was so important, because before anybody thought about having a drug court, about 1987, she

wrote a paper on a phenomenon called the New York City Women's Court, which operated from 1910 until about 1967. It was designed to help women. By the time this court had been operating for twenty years, it actually punished women more severely than if they had not had their own court out there to be helpful to them—not because it was paternalistic, but, even worse.

It was supposed to deal with women as victims, as plaintiffs, as well as defendants. But by the time the court was set up, it only dealt with women defendants, mainly prostitutes, and you had women actually helping in the court, you know, to help these poor women. But all the middle-class women from other areas of Manhattan who were helping were mainly concerned about the problem of prostitution because it might bring venereal disease into their homes carried either by their husbands or their sons.

So what was happening? Women prostitutes were being sentenced much more severely than they would have if nobody had treated this as a social problem. That court finally became more and more corrupt and was finally abolished.

But it raises a lot of the same questions that were raised in the literature on juvenile courts. It's ironic. One of my old friends, Barry Mahoney, who has been a major supporter and worker with drug courts, kept telling me that I should try to get a better understanding of drug courts. I finally went and listened to some of this, and I said, "Well, Barry, they seem to me to be kind of like juvenile courts for adults." He said, "Well, yeah, that's right." I said, "Barry, that's why I don't like them, because what we know about juvenile courts is they started with very good and humane objectives, but they wound up suffering from what social scientists for generations have referred to as 'goal displacement.' They no longer serve the purposes for which they were founded."

I am not criticizing any of you for what you have done in the courts in your communities, but I am saying to you be sure that they serve some goals, be sure that they are as non-coercive as you can make them, that they really do solve problems that people in the community want to solve, and make sure that when you solve some of those problems you don't find problems in the community that should not be solved through the justice system.

If the Midtown Community Court runs out of business, I hope they will not go to the community and find that if people don't like having homeless people on the streets, that you are going to wind up treating homeless people as criminals, and that is the sort of thing that can happen.

In our supposedly progressive province in which I live, there is a guy running for the leadership of the Conservative Party who has advocated making homelessness a crime. Well, vagrancy used to be a crime, and not that long ago.

So please look at these with the proper skepticism and questions. Be an agnostic about your own work.

I knew a Presbyterian minister when I was in college. He used to say that he was an agnostic because you have to be an agnostic to be around a university. At that point, I went home and my father said, "I'm going to have to go back to calling myself an atheist if the Presbyterian ministers are calling themselves agnostics."

A quote from toward the end. We developed this. There is a table on page twenty-five of the article, titled "The Degradation of Innovation in the Courts." It is basically saying: Here is what you start with. If you start with sensitivity, you may wind up with paternalism. If you start with flexibility, you may wind up with escalation of penalties. If you start with individual attention, you may find yourself simply with new patterns and new routines.

We concluded: "It is not among the purposes of courts to serve as a recruiting office for treatment programs. When moral fervor overtakes justice and the effort to be responsive is overwhelmed by the politics of punishment, the appropriate use of therapeutic and restorative alternatives in the work of the courts is serious undermined."

Thank you.



**Steven Belenko***The National Center on Addiction and Substance Abuse*

It is always a challenge to come on after lunch. I hope to be somewhat provocative and provide a lot of information.

It is always a challenge also, as a social scientist, to present data to a group of lawyers, or mainly lawyers—I know some of you are not—so this will be less of a kind of scientific presentation with lots of hard data than my overview in ten or twelve years of work and looking at drug courts and similar kinds of substance abuse treatment-related interventions for offenders, and what I see we can conclude about the operations and impacts of drug courts in this country. And, secondly, what we do not know about drug courts, and I think you will see that there is a lot more that we do not know about their operations and impacts than we do.

My interest in drug courts really came out of other work I had done in the late-1980s on the impact of substance abuse and the newly punitive laws that came out, mandatory sentencing laws that came out of the crack epidemic in the late-1980s, which were flooding courts with lots of drug-related cases, mostly drug possession and drug sale, but also drug-related property crimes as well as violent crimes.

That led to a number of interventions, which one of the panelists this morning talked a little bit about, kind of fast-track dockets to clear drug caseloads and clear dockets for judges who had very high numbers of drug cases.

One of the lessons learned from that experience in the late-1980s was that many of these cases, even if you can get them off the calendar, were either not serious enough to get heavy prison time or getting short jail time or probation because they were first offenders, and they were coming back very frequently. The data on recidivism suggests that untreated offenders tend to recidivate at very high rates, and that makes sense certainly, especially substance abusers who come from poor underclass who do not have the means to support their drug habit other than committing crimes.

One point I want to make in this discussion about problem-solving courts and drug courts is the notion that this is a brand-new phenomenon. It is not. I mean, we heard Dr. Baar talk about juvenile courts and their long history and Freda Solomon's work with women's courts.

There is also a history in this country of drug courts that goes back at least fifty years. In his seminal work, *The Addict and the*

*Law*, Alfred Lindesmith talked about a drug court in Chicago in around 1950, more than fifty years ago. That was a court that processed literally thousands of drug cases, addicts, mainly heroin, who were coming through the criminal justice system, and they were trying to do something different in Chicago. There was also a court in New York at that time.

The problem is there was not much science-based treatment, not much effective clinical interventions that the court could bring to bear in these cases, so there was a lot of frustration, and these courts kind of went away from their own weight and their own inability to really solve the problem of substance abuse and addiction.

There was also an article in 1923 by a New York City magistrate, named William McAdoo, who talked about his high addict caseload and how frustrated he was, but he couldn't do anything about it. He would send them off to treatment instead of jail, they would go up to—there was a treatment—they called them farms in those days—but there was a farm in upstate New York. He would send the addicts there to dry out or try to get some kind of intervention. They would come back into his courtroom, or even his office. He talks about them showing up and saying, "I'm back, still using drugs" or "I'm drinking."

So this is not a new problem. What is new now is certainly the effort to bring some science-based treatment interventions into the drug court process and other problem-solving courts, such as mental health courts. Certainly the field of substance abuse and mental health treatment has evolved and grown tremendously over the last thirty years, so there are interventions that seem to be effective with this population, and that kind of changes things in a way that is different from what went on before.

When I first started to look at drug courts in the early-1990s for the Department of Justice, there were only about ten or twelve of them. My task then was just kind of to go around and see what they were doing, try to understand what the structure was, what kind of impacts they were having, what kind of populations they were serving.

Since then, I have kind of kept—because I think it is a very interesting intervention, for a number of reasons—but my task basically over the last four or five years, with the support and interest of the Department of Justice and the Drug Courts Program Office, the National Association of Drug Court Professionals, National Drug

Court Institute, was to try to summarize what is out there in terms of research and evaluation work on drug courts.

Anyway, one of the things that has epitomized the drug court field is I think more support and interest in evaluation and research than other criminal justice-based interventions that we have seen in the past. That is kind of a welcoming of some outside scrutiny and some interest on the parts of judges and other drug court practitioners to learn more about what they are doing, because it was certainly something new in 1989 in many ways, even though there had been some models before then.

There had been a fair number of studies, most of them small-scale process evaluations, which means looking at the basic operations of drug courts, what kinds of clients they are serving, what happens to them when they get in, what kinds of services do they receive, what kind of retention rates are there.

In addition, there had been some outcome studies which have attempted to look at what we call impacts—that is, what is different about the experience of someone who goes into drug court and what happens to them afterwards.

The assumption is that drug treatment will do three major things:

One is reduce drug use—we hope it does that;

Secondly, as a corollary to that, it will reduce criminal behavior—in a criminal court setting, obviously that is a prime concern, increase public safety and decrease criminality.

Third, it is thought that treatment will improve social functioning—reunite families, improve employment prospects and legal earnings, improve physical and mental health, for example, all through the mechanism of reducing substance abuse.

I have done a series of review articles over the past few years. In all, I have looked at probably sixty or seventy now evaluations of drug courts. What I want to do today is just summarize what I have learned from reading that literature about what we know about drug courts. Primarily I am talking about adult drug courts, because that is where the research has been. And I will also talk about some of the challenges for the future.

So what can generally be concluded about drug courts from the existing evaluations? These are the kind of content areas that I think we can be fairly confident that drug courts have been able to achieve.

What they mean is another question. I think that is open for debate, in terms of what they mean in terms of the legal and politi-

cal, social consequences of drug courts, the unanticipated impacts of drug courts.

In general, I think it is important to point out— because there is still, I think, especially in the political arena, a lot of misunderstanding about what drug courts and what drug treatment can do—I think it is important to understand that if one accepts the concept of addiction as a disease, that drug treatment interventions have similar success rates and adherence to protocol rates that other medical interventions for chronic diseases do, such as heart disease, diabetes, et cetera. We do not expect treatment for hypertension to cure everybody. We do not expect treatment for diabetes to cure everyone. Many diabetes patients do not adhere to their medications. Many victims of infectious or chronic diseases do not adhere to medications.

Similarly, in drug treatment, many of those who go into drug treatment, whether it is in the community or under criminal justice supervision, do not complete drug treatment. They do not do what they are supposed to do. They drop out for whatever reason.

But that is kind of as a background, I think, one important point that should be kept in mind.

The conclusion is that it is very unrealistic to think that drug courts are going to achieve success with all their clients, or even 80 percent of their clients. That is just not realistic. That is true of any drug treatment intervention, no matter what the setting.

One of the potential strengths of drug courts, I think, is that they generally involve a long planning process, involvement of many different stakeholders both in and out of the criminal justice system, the building of a team to implement this model and achieve the goals.

In the research that has looked at this process by interviewing participants and the like, I found that generally drug courts do adhere pretty well to this planning process.

We also know that local conditions, the types of populations that are targeted, vary across drug courts. It is very hard to compare outcomes and impacts across drug courts because there are so many different local variables that can affect how the drug court operates and its impacts.

Adult drug court clients have many problems that they bring to the court—very high rates of mental health problems, physical health problems, histories of underemployment, and the like—and these make interventions very difficult for offenders.

Treatment and retention—and this is important. Treatment and retention rates and graduation rates are relatively high in drug courts. When I say “relatively high,” I mean compared with other community-based treatment, whether it is a criminal justice population or non-criminal-justice population. On average, close to half of drug court clients from the research that has looked at retention properly, about half stay in about a year. Graduation rates are probably around 40 percent, on average.

I am going to move pretty quickly.

Some specific findings on retention. I gave you the retention.

Some studies have looked at some of the factors that affect retention. That is interesting, but there have only been a few studies. We still do not know a lot about that.

Drug courts are able to provide more supervision. One can argue whether that is good or bad. But relative to other types of community-based, in criminal justice supervision, there are more contacts with the judge and court staff, there is more drug testing, there are home visits. There is more supervision basically.

Several studies have looked at within-program recidivism. Generally, those tend to be lower than in comparison groups. Others this morning talked about that. But it has generally been found in studies that have looked at re-arrest and drug use while in the program that those are relatively low compared with other types of criminal justice supervision in the community.

The strongest research design you can use in the sciences is an experimental design in which eligible clients are randomly assigned to an intervention or not an intervention. There have been at least three recent studies. There have been several others.

Most of the studies that have used this design have found a reduction in recidivism for drug court clients.

It should also be pointed out that these effect sizes are not always very large, as you see from some of the data. They are statistically significant. Whether they are meaningful in the context of the cost of a drug court and the other impacts drug courts might have, unanticipated or not, is again open for debate. But generally, the recidivism research, at least in the short term—that is a year after admission or after completion of the drug court—generally these studies—these are the random assignment, three of them—but in other studies, most of the evaluations that have looked at post-program recidivism do find a reduction.

Some do not. Denver is one court that did not find a significant reduction, and there are a couple others that have not. But most of the studies, the majority, have found reductions.

We do not know much about the long-term impacts, however, and we do not know much about the long-term impacts on drug use, employment, family functioning, and other social indicators.

Some cost studies. These were done by Adele Harrell, who you will hear from tomorrow, I think, from the Urban Institute, which did extensive cost/benefit analysis of the Washington, D.C., Drug Court. These studies—there have been several fairly detailed ones—generally suggest that there are economic benefits to implementing drug courts. Generally, these are due to reduced incarceration, which obviously is very expensive.

Just to wrap up—I am not going to go through all of these—there are lots of research gaps. I have summarized very briefly what we know about drug courts. But again, there is a lot more we do not know, and the challenge for researchers over the next few years is to try to answer some of these questions.

We do not know what the most effective treatment models are in drug courts. There are lots of different ways of providing treatment. We do not know which are the best and which work best for which offenders.

We do not know much about the individual staff attitudes and behaviors, the client factors, the organizational characteristics, that achieve particular outcomes. That is, again, what is the best drug court model for what types of clients?

That is one of my messages, I think, when I talk about this, is to challenge people not to just use the simple question “do drug courts work?”, and some people say they do, some people say they do not. I do not think it is a fair question. It is not often asked of our prisons or probation, “do they work or not?”

We ask: How can they work better? What are the impacts on particular types of individuals? What are the unanticipated consequences? What are the relative costs? If you want to achieve certain outcomes, does this cost more than other ways of delivering those outcomes?

Again, we need to know more about what predicts outcomes in drug courts, who does better, and I think from knowing that, we will know a lot more about how drug courts operated.

**Aubrey Fox***Center for Court Innovation*

I wanted to start by saying a few words about how I got interested in the issue of problem-solving courts and the perspective that I bring to this issue, because I think it is instructive—at least I hope it is instructive.

I am not a lawyer. That is kind of a confessional that we have heard a couple of times already today. And if you had asked me four or five years ago would I be interested in working in the criminal justice system, I would have told you a resounding “No.” I do not think I would have expected to find myself working with judges and lawyers.

I think one of the interesting themes that is already emerging from this conference is the extent to which problem-solving courts are tapping into non-lawyers to play roles. That may be a less-than-welcome message to bring to the Fordham Law School, but I think it is an important one.

I work for the Center for Court Innovation. I have spent the last three years working for the organization. As Judge Karopkin noted this morning, we are the independent research-and-development arm of the New York State court system. We run a series of experimental courts that try to give judges and courts new means of addressing the kind of everyday problems that they see, whether it is mental illness, or domestic violence, or child neglect, or drug addiction.

We have a number of projects that we run in New York City, including the Midtown Community Court, which Carl has spent a lot of time taking a look at. It is really a remarkable project. I encourage anyone who lives in this area to take a look at it. It is in the West 50s. Julius Lang, who is the Coordinator of the Court, is in the audience right here and has done really a remarkable job of running this seven- or eight-year-old experiment.

Now, about today's subject, I wanted to talk about a little bit different kind of data, which is public opinion surveys and surveys about what judges think about problem-solving techniques. I think the reason that that is significant is that, because of its relative newness, problem solving has been to date the domain of a small group of entrepreneurial judges and lawyers, and a small group of people in the public are really engaged in problem-solving courts.

I think, as we have heard, drug courts, although there are hundreds and hundreds of them around the country, they are still very much at the margins of the court system.

The traditional courts continue to operate in the same manner. And so, it really makes sense at this point in the early stages of what has been a significant movement, but has a lot of work to go, to take a step back and say: Well, what does the public think about what we are proposing? And what do judges think—do they think it is a terrible idea to change the way that courts work? So that is what I am going to talk about today.

But before I begin, I think it is important to take a step back and ask: Well, why do we care about public opinion? The reason that we ask that question is that—you know, polling is something that we think politicians do, not judges. Justice is blind, after all.

But I think there are at least two reasons to consider public opinion as an important issue, an important area to look to for clues and ideas.

The first is that—you know, Alexander Hamilton is probably the most-quoted person on this subject, and I am not going to change that trend. What Alexander Hamilton said is that “courts are the least dangerous branch of government.” Why is that? Is it because courts do not have an army at their disposal, they do not have power of the gun or the power of the purse?

And courts, in a fundamental way, depend on public support to function. This is not just an abstraction. Courts ask citizens to play particular roles, as jury members, as witnesses, and without their buy-in into the court system, the courts simply cannot function.

The second reason—and this speaks to why care about public opinion related to state courts—is that, increasingly, state courts are having an impact on the day-to-day lives of citizens. What does that mean?

In 1998, there were 3.5 million case filings in New York State court alone, everything from marriages, to traffic tickets, to drug crime, to corporate crime. And we know from rapidly rising caseloads that courts are being asked to take on social problems—domestic violence, mental illness, drug addiction, and child neglect—that are not getting addressed elsewhere.

And if that wasn't enough, close to twenty-five percent of Americans serve at one time or another on a jury. When it is all said and done, about half of Americans have some direct experience with a court—as a witness, a victim, a litigant, a defendant, or a juror.



So it makes sense, I think, to at least step back and say now and again: What does the public think about the job the courts are doing?

We know from a generation of surveys conducted by the National Center for State Courts and American Bar Association that there is a consistent pattern. When we ask the public what they think about the operation of state courts, they tend to say three things.

One is that the public respects judges—that is the good news—and believes that, in general, courts are meeting their constitutional obligations. Over half of those surveyed by the National Center for State Courts agreed or strongly agreed that most judges are extremely well-qualified for their jobs—again, good news—and 85 percent that courts do a good job protecting defendants' constitutional rights.

Now, the other two pieces of information that are important is that there are still concerns about unequal treatment. African-Americans consistently believe that they are getting treated worse than other groups.

The third piece—and I think this really speaks to the reason for problem-solving courts and the appetite for it—is the public consistently shows dissatisfaction with court effectiveness: Cases take too long, judges do too little to enforce their rulings, courts are out of touch with communities. More people think that state courts handle cases in a poor manner than think that courts handle cases in an excellent manner.

So, in short, I think it is fair to say that the public wants courts to do a better job.

Now, let's turn to the question of what do judges think about this. Last fall, with the support of the Open Society Institute and the University of Maryland Survey Research Center, we, the Center for Court Innovation, conducted a survey of over 500 state court judges.

We did it to test two hypotheses: the first was that judges are fed up with this conventional approach to problems like addiction, domestic violence, and mental illness; and second, that there is growing interest among judges for new approaches, like judicially monitored drug treatment.

It is important to remember that although we did survey judges who sit on "problem-solving courts," the overwhelming majority of the judges we surveyed are people who are not even familiar with the term "problem-solving court."

So what did we find? The bottom line is that judges themselves are very satisfied with their jobs. Ninety-seven percent of them said they were either “extremely satisfied” or “moderately satisfied.” So you do not get the picture of judges who are ready to take to the streets and lead the revolution.

However, at the same time, judges are surprisingly willing to roll up their sleeves and get involved in addressing the problems they see on a daily basis. What does that mean? That means that 90 percent of judges, when we asked them, said they wanted to be “extensively” or “moderately” involved in helping to reduce drug abuse among defendants, protecting domestic violence victims from batterers’ violence, and helping to get defendants who are mentally ill into treatment. A similar percent favored treatment over jail for non-violent drug addicts. And two-thirds said that judges, their colleagues, should be more involved with community groups in addressing neighborhood safety and quality-of-life concerns.

So what is the bottom line for us in reviewing our surveys about public and judicial attitudes? We really had two important take-aways that I want to talk about today.

The first relates to a question I asked at the beginning, which is: Do judges and the public agree on what should be done? The answer for us appears to be “yes.” I have detailed the way the judges are willing to try out these new mechanisms and these new roles.

What is most exciting is that when you ask the public what they think of judges doing those things, they are incredibly enthusiastic. Eighty percent of all respondents who were surveyed by the National Center for State Courts expressed support for such problem-solving hallmarks as bringing offenders back to the judge to monitor compliance, coordinating with community agencies, and using the knowledge of psychologists and doctors in the courtroom. And even more interesting, the people who are the most supportive of these measures are exactly the same groups, blacks and Latinos, who report being dissatisfied with the operation of the courts.

Now, the second take-away for me is again this idea that judges and the public support problem solving, even when they don’t know what a problem-solving court is. That is, only a few judges have served on a problem-solving court or have heard about them, and the same is true for the public. It is the components of problem solving—the active [inaudible] of judicial authority, a focus on achieving tangible outcomes, and a multi-disciplinary approach

that brings non-lawyers into the courtroom—that resonate very well with this group.

So I think, in conclusion, the outlook for advocates of problem-solving courts—and I should be clear that, of course, I am an advocate of problem solving, and so you should take everything I say with a grain of salt—is pretty good. Problem solving is a message that both judges and the public are ready to hear.

And, while we need to know more about costs and impacts and address concerns about net widening and ask what important features of the traditional adversarial system need to be preserved, I think it is also fair to stop and take note of the real potential problem solving has to change the way that courts operate in this country. I think this is an exciting moment.

**Rachel Porter***Vera Institute for Justice*

While I am getting set up here for my PowerPoint schtick, let me just sort of situate where Vera's work comes into the discussion that has gone on thus far.

I conducted three evaluations over the past three years, implementation evaluations of drug courts, two felony courts and one misdemeanor court, in New York City. I think that some of the findings from these evaluations really nicely highlight the tension between what Aubrey and Carl were talking about. Carl has essentially posed to us the question: Are these courts basically reaching beyond their mandate? Aubrey is saying: There is all this terrific stuff the courts can do and look how psyched everyone is who is involved in problem-solving courts to do it.

So before I sort of get into the meat of my presentation, let me just talk for a second about how drug courts fit into treatment related to criminal justice in the City as a whole.

What I mean by that is that we have, as Steven said, not just historically a lot of drug treatment options, but we have right now drug treatment options that are being used in a more or less coordinated way throughout the five boroughs. I am talking about things like the Drug Treatment Alternatives to Prison program that was started in Brooklyn and that we now see all over the City for serious offenders, second-time felony offenders.

You have alternative-to-incarceration programs that are targeting both first-time and second-time felony offenders, with a —

Where are we? That's not me. I think—yeah, that is me, this one. Yes. Where was I?

ATIs that are targeting felony offenders, not necessarily drug offenders, though largely drug offenders, with a very clear interest on displacing people from jail, and specifically state prison sentences.

And then, we have a whole mishmash of programs that I know I don't have a good count of, and I bet no one has a good count of, that exist very much on an ad hoc basis throughout the City, everything from little mom-and-pop shops that are going into—because of relations with a single Assistant District Attorney, a single judge, or community boards, and pulling people out of the courts into their typically day treatment programs.

And, of course, you also have big shops, like Phoenix House, that is taking juveniles, it's taking adults, to provide treatment in lieu of incarceration.

I think the point that it is also punishment is a good one.

In terms of Vera's work, I have done evaluations of several of these programs. Lots of people who have come through Vera over the years, people who are here, have done evaluations of DTAP, of early drug treatment interventions.

Are we set? We are set. All right. I'll read it to you. Don't worry about it.

So that is why initially the Center actually came to Vera. The Center for Court Innovation came to Vera and asked us to help out in the mandatory evaluations of these drug courts.

So the first drug court that —

I am kind of an idiot in PowerPoint. I am new to PowerPoint, so I can't—excellent. Thank you.

Now, of course, you probably cannot see this, so I will just quickly run through it a little.

First, let me just sort of tell you about the court structure in these three courts. We have the Queens Treatment Court for felony offenders, we have the Manhattan Misdemeanor Treatment Court for misdemeanor offenders, and the Bronx Treatment Court again for felony offenders.

Both of the felony courts are taking first-time felony offenders. The Misdemeanor Court is actually taking people with no misdemeanor arrests up to twenty misdemeanor arrests, regardless of conviction. And there are a couple of caveats in here about prior felonies and stuff like this. I am just giving you a rough overview.

Another thing to keep in mind when you are looking at these courts is what kinds of consequences people are accepting when they take the plea. So a big difference between the two felony courts was whether or not conviction of any sort, any sort of criminal conviction, would stand.

In the Queens Treatment Court, you see all charges are dropped if the person successfully completes in the treatment court, whereas in the Bronx what happens is the felony plea is reduced to a misdemeanor but there is still a criminal conviction.

Let me talk a little bit about each court.

In the Queens Treatment Court, you had a very strong coordinated team approach, and what you had was the TASC organization, The Treatment Alternatives to Street Crime, that was coordinating treatment for all of the treatment programs—and there was a wide range of treatment programs—you have a very strong, assertive judge in the Queens who was clearly very motivated, very energetic, very charismatic, who would—you know,

when you would go in and watch him, he was sort of a combination of a counselor and a cajoler and a preacher. I mean, he really is incredibly vibrant on the bench.

You also had an issue of intake in the Queens Court. The issue was largely around this question of net widening that I will come to at the end of the presentation. That is, most of the people who were coming into the Queens Court were coming in at C-level felony offenses. So while the Queens Court said they were accepting B-, C-, and D-level offenses, what they really were taking in was overwhelmingly C-level offenses. What that means in New York State is that these are not people who would be very likely to face mandatory incarceration and could well—you know, maybe you would be looking at a split sentence of probation and some jail time; maybe you would just be looking at straight probation. So there was a real net-widening issue in the Queens Court.

In the Bronx Court, again, you had a moderately strong team, but it was not as unified as in Queens. And you had a very interesting thing when it came to the role of the judge, because the judge was not as charismatic, she was not as oriented towards counseling from the bench. And yet, what we saw, and in one of the next slides you will see, she was still very much appreciated by the participants.

So, to me, comparing Queens and the Bronx, one of the critical aspects is: Well gee, how charismatic a judge do you need to sort of engage the participants in this judge-defendant relationship?

In terms of coordinating treatment, what you saw in the Bronx was initially an effort to take a small number of treatment providers and have them screen all cases coming into the Court, and participants would then be farmed out, primarily to these theoretically five providers. That did not work, for a whole host of reasons, so they kept expanding and expanding treatment, and in the Bronx they struggled to a certain extent with figuring out: well, how many treatment providers do you keep pulling in, do you keep pulling in treatment providers, because the treatment providers then start to say, "We are not getting anyone." The core treatment providers in the Bronx were allocating staff time to screening intake at the Bronx Treatment Court and they were not getting enough cases to make it worth their while.

Just a few things on the Manhattan Treatment Court. Again, you had a very strong team working together in Manhattan. Again, you had caseload issues.

There was an effort in all three of these courts in the planning stages to—I think essentially what was done is you look at the total potential number of cases coming into the court and you figure “we can take half of those.” These numbers that were initially set proved to be too high. This I will get back to at the end of my presentation.

The other issue in the Manhattan Court is that, because it is a misdemeanor court, they were essentially planning on providing relatively short periods of treatment. Treatment in Manhattan ranged from two days to thirty days, and these are not full-time days. So they knew—you know, “We’re dealing with a population that we have only so much coercive power over, and we cannot put them in treatment for much longer than that.”

So let me tell you a little bit about who came in.

I think the most interesting thing to look at here is actually what happened in terms of drug use in the Manhattan Misdemeanor Treatment Court.

What you see at the bottom there in “drug of choice” is that Manhattan actually has the most serious drug use of all these courts. You’ve got two felony courts, one misdemeanor court, and it is the misdemeanants who are actually using drugs, reporting the most serious drug use.

In Queens, nearly half of the population is using marijuana. This is a major issue in terms of net widening.

Another thing to notice about these groups is that the Manhattan group is also sort of the most stable in terms of educational and vocational markers. They are most likely to have a high school diploma and they also are—I mean, they are not far above unemployment for either of the other groups. So with all of them, you have about half of the population—in Manhattan and Queens a little bit more—that is unemployed coming in. They are also an older group.

So, to me, actually the Manhattan data was really the most interesting because it is really flying in the face of this idea that very serious drug use is going to be correlated with your most serious offending.

In terms of the types of treatment that were used, a couple of things to note here.

Methadone maintenance was only available in the Bronx. That is a big issue. Methadone maintenance is a very touchy subject throughout the treatment community, but it is also considered one

of the most effective treatments that we know about. In Queens, methadone maintenance was not accepted.

You know, there are some people from Manhattan here, and correct me if I am wrong, but you guys don't do methadone maintenance; is that right?

PARTICIPANT: Not in misdemeanors.

MS. PORTER: Right.

So it is an issue, right, because if you have someone who comes into the court who is eligible on everything else, but they are on methadone maintenance and they do not want to get off of methadone—they are not doing methadone to abstinence; methadone maintenance works for them.

In Queens, I believe there was one case where there was so much back and forth, the woman was so stable, her doctor wrote a letter, the whole court met around this one person extensively, and eventually she graduated, even though she had not gone to abstinence.

But, by and large, there is a real problem with methadone maintenance that may be a problem for treatment courts.

The other thing to look at here is that Queens, which had the lowest drug use, has the highest use of long-term residential treatment. The point there is that, I think, often when you look at treatment within the criminal justice system, there is a preference for residential treatment because it seems like it is more restrictive, it is a more severe punishment—so, for example, you often see a correspondence between a person who is coming in as a second-time felony offender being sentenced to residential treatment, as opposed to outpatient, and this is not a clinical decision, this is a criminal justice decision.

What I did was try to understand participants' perceptions of the utility of drug court components. Here are a couple for you.

I think the thing that is interesting to note here is that participants respond—the scale is zero to five; zero is “completely not helpful in helping me stay on the straight and narrow in the court”; five is “completely helpful.”

Threat of sentence, the coercive elements of these courts, was reported to be a significant motivator for participants in the court.

Similarly, drug testing is a high motivator.

Interestingly, the contact with the judge and the praise from the judge is also quite important. One of the things that has certainly occurred to me, sitting in on these courts and other courts, is that that really is a substantive difference you can see. The courts—and



not only the judges, but the court staff—are respectful, speak directly to the defendants, and the defendants are telling us, “We dig it, we like that interaction.”

On the other hand, they say that the sanctions are not that effective. I am not showing you here the breakdown in terms of sanctions that are sitting in the courtroom and observing, writing an essay, or a couple of days in jail. It is the court’s perspective overwhelmingly—court staff think that a couple of days in jail is a real turning point.

The participants in the courts are a little more equivocal on the subject. Some people felt that that was very useful. Other respondents in these surveys said, “No, the sentences are not helpful”—not a big shock, I guess.

Finally, a few retention findings.

Again, you see your largest graduation rate with the Misdemeanor Court because it is the shortest period. I am putting these up because of course we did them, but I wouldn’t take a lot home from retention findings—not yet anyway, because this wasn’t an outcome.

Stop. Can I make two quick little points, three? All right.

So let me broadly say the issues that I thought came up out of these evaluations.

One is the point of realistic goals, and that goes to intake. It goes to treatment need.

It goes to cost savings, because if you are using jail as a punishment, you are costing money there, and that has to be factored into cost savings.

It goes to eligibility. If the district attorney is only letting some cases go in that are not going to be a big public safety threat and public relations threat to the district attorney’s office, then you may necessarily be limiting your caseload. That is something that was definitely seen in both the Bronx Court and the Manhattan Misdemeanor Court.

And outcomes. I think the point that my colleagues here made about looking at outcomes and what is important to look at—is re-arrest the key issue? Or, if you are going to say that these courts are addressing all of these other issues, then we need to do research that is looking not just at re-arrest, which is an easy statistic to get, but data about drug use, data about housing stability.

I am not a big one for data about drug-free babies. There are a lot of other things that go into drug-free babies.

The two other points are I think net widening has to be addressed, in terms of Carl's point; and also, for a city like New York, integrating drug courts with other treatment programs so that we can get out of this sort of haphazard system of what we do with our addicted offenders.

### Questions and Answers

QUESTION: Within this issue of problem-solving courts, is there any discussion of legalizing drugs and looking at the base problem differently, so that if drugs are legal, you are not going to be dealing with them in the criminal justice system to start with? It also then might take away some of the other criminal behavior that people engage in in order to get money to buy drugs that are illegal.

MR. BAAR: It does appear as if drug courts are an alternative to decriminalizing, as well as being promoted as an alternative to more traditional coercive means. They seem to allow—you know, you talk about the end of history or the end of politics, and it seems as though that is something that contributes to that. I fear it may merely disguise that.

When I was trying to work through the material on this paper a couple of years ago, I discovered that the nearest law school campus to me in Toronto had a long week-end conference that was built around participation by political prisoners in the War Against Drugs. It thought that was a little bit different paradigm than the one within which the debate is focused here in this country.

QUESTION: There was an article in *The New York Times Magazine* a couple of weeks ago about drug treatment that was dealing exclusively with people in treatment who had been sent there by the courts. It was not a very flattering view of it. Particularly, one of the things that was of particular interest to me was discussion about challenging the disease model of addiction, which seems, from what you were saying, Steven, to be pretty key to the whole concept of the drug courts. I was wondering if you or anyone could speak to that debate?

MR. BELENKO: In terms of being key, I think the key to the disease model, as opposed to a moral or whatever other model of drug use, is that there is some intervention that can assist people in overcoming that addiction.

I think it also plays out in terms of a court or any criminal justice oversight view of what do you do when someone keeps using drugs. If you come from a non-disease model, I think a lot of the drug court philosophy kind of falls apart, because then you have the more traditional criminal justice model, which is the judge orders you to stop using drugs, may or may not give you an opportunity to get treatment or suggest treatment as a means of helping you stop using drugs; but if you do not stop using drugs, if you test

positive, then you are sanctioned, and that's it, you are in contempt of court.

So I think one of the underpinnings, it seems to me, of the drug court model is accepting that drug addiction is a chronic relapsing disease. It is hard to imagine an intervention which accepts relapse and allows people second chances. There may be graduated sanctions happening. But at least the notion is that you are accepting relapse and not blaming the person, in the sense that you are out of the program if you use drugs again—you know, that's it, and that is the way many criminal justice probation and parole supervision models work.

MR. FOX: I had a little different read of the article. The three take-aways that I had reading it were that:

One, when you are dealing with addiction, you are dealing in the world of realistic expectations, and I think that was the experience that the writer had, which was this is not miracle work. We are in the land of trying to improve upon what are pretty dismal outcomes. So that is one.

And I think that the second point the article made was you are not totally hopeless in terms of understanding what works and what does not. I think the article pointed out that treatment retention—that is, the longer someone stays in treatment, the better off they are—that is something that has been echoed in many studies. Courts may serve the purpose of keeping people in treatment long enough so that the treatment itself takes effect.

The third thing I took away from the article, which is again a controversial issue that we have dealt with from time to time all day, is this issue of coercion. You know, it may be that some people initially need to be coerced into seeking treatment. If we open up the black box of thinking of there being coercion versus voluntariness, and those being completely separate ideas, then, naturally, we might find that objectionable.

But I think actually these issues are much more complicated, and so what we are seeing is that courts may possess some institutional strengths that allow us to improve upon the outcomes that we are finding in drug treatment. That was the message that I got from the article.

MR. BAAR: To add another point, I found that even when Canadian judges have accepted a disease model—and this is in terms of Fetal Alcohol Syndrome and these sorts of things—that a couple of them I have talked to still had difficulties with the American drug court model to the extent that some of these courts actually

had treatment programs attached to the court. The judges said, "We want to be free to refer someone to a variety of programs we are familiar with that will work for that individual and not be locked into a particular program that may be operating in that court." I know that is something that varies among courts, but that is another dimension, is how the treatment model is implemented in particular court settings.

MS. PORTER: And how the treatment model is implemented generally. I don't think you have to throw out the whole disease model to say we still have a long ways to go in terms of drug treatment, we still have a long ways to go in terms of what we know about how treatment is actually delivered, how consistently it is actually delivered, what are the components, what is the amount of time, what is the utility of each component. There is a lot about that we just do not know.

QUESTION: Do I misread the findings of the panel? It seems to me that all of you are searching for an answer to the various problems that exist, but that at this point you have not as yet come to the light at the end of the tunnel?

MR. BAAR: I would hope not.

MR. BELENKO: I think drug courts and other problem-solving courts arose because judges and others were frustrated by the system's inability to resolve that revolving-door question.

But I think, you know, drug courts have been around for twelve-thirteen years, and the drug treatment field is starting to reach maturity, but it is still relatively young compared to other psychological or social or medical interventions. So I agree with Rachel that there is an enormous amount that we do not know about treatments.

I think the debate may be very different in ten years, when we do have treatment models that really we can implement in a way that has fidelity to the model and know that we are going to get good success rates with particular types of people, and I can see that happening. I mean, again, no program is ever going to have a 100 percent success rate.

I just want to make a quick comment for just a second about the idea of paternalism. I think we talked about that and people are uncomfortable with the role of a paternalistic court. But I think—and Rachel, probably because Rachel's data on the perceptions of clients are consistent with what other studies have found—but I think that for those of us who may be critical of certain aspects of drug courts, it is really instructive to talk to those who participate

and what their experience is. I think you may come away with a different—I don't think we here should speak for them, should speak for either substance abusers or addicts or those who get involved in the criminal justice system in terms of what is best for them. I think we need, at least in part, to listen to them.

I think the consistent message that comes from focus groups and interviews with drug court participants and other criminal justice substance-abuse-involved offenders are some of the positives that they take away from the drug court experience, even when they do fail. That includes the relationship with the judge and the fact that there are people in official positions who are actually listening to them and listening to their stories and trying to understand and trying to help them.

QUESTION: Rachel, I was wondering why on your data chart that the people in Manhattan were only limited to two treatment options?

MS. PORTER: The Manhattan Court is just for misdemeanor offenders. I did not go into this, but it is broken down into three tiers of treatment based solely on criminal history—that is, how many times have people been arrested in the past.

The treatment options for the lowest level—these are people with zero to two prior arrests—it is a two-day treatment readiness program. It is run by the Osborne Association. It is not—I don't think anyone associated with the Court calls it "treatment" really. It is getting people into the frame of mind where they might think about treatment. The Court encourages people to volunteer into more treatment.

The outpatient treatment is fairly low-level outpatient treatment. It is twelve days or thirty days. These are, as I said, a couple of hours a day. And again, it is really because these are people who are facing a couple of days in jail. You know, a lot of people do not like therapeutic communities or do not want to be told "you're going into treatment for a year."

An issue that I did not bring up in my presentation is that sometimes treatment for a year turns into treatment for eighteen months because the Court has a stipulation that you have to be clean for three months; or, if you had so many violations, you are going to go back in terms of what phase of the Court you are in. So people end up staying in under the jurisdiction of the Court for a long time

The Manhattan Misdemeanor Court cannot do that because they are misdemeanants. It has no authority to do that.

I should mention just one more thing. The Manhattan Treatment Court's efforts to get people to volunteer into more treatment have essentially—I mean, Pat, correct me if this is too strong a word—failed. I mean, you know, people are not there, they are not willing to take them up on that.

QUESTION: My question is: since we were talking, the panel before also spoke about the perimeters that are placed on people allowed to take treatment, and I was wondering how many programs are there for people who have substance abuse histories, that have any cases of violence in their past, in all five boroughs and any boroughs anywhere?

MS. PORTER: Well, it really varies. I mean, drug courts, you know, of course, have prohibitions against taking people with violence, and some courts try to get around that because of a commitment to actually taking people—so it can be arrest versus conviction or something like this.

But I do not think it is drug courts where you are going to find a real effort to reach out to more serious incident offenses or histories of violence.

It is a great question, because certainly there are programs throughout the City—CASES comes to mind—that have had terrific success with violent offenders. But serving violent offenders is a very hard sell to the public. It is a very hard sell to district attorneys' offices.

I think the place where you are going to find the most violent offenders is in ATIs, where there is a real commitment in some of these programs—the Osborne Association, the Fortune Society, the Women's Prison Association—to serve this group of people.

MR. FOX: I think that is a really critical question. I just want to make a quick comment on it.

The people who have run problem-solving courts to date—you know, we joke about this term “bottom feeders.” The idea is that most of these courts deal with kind of the lowest level of offenses, and there are a lot of reasons for that.

One of them is, to be blunt, the political rationale, that if you are going to start somewhere, you start where the risks of being splashed on the cover of the *New York Post* are as little as possible.

I think a question for the field ahead is: how far up the ladder of caseload severity are you willing to go? It is not just the issue of do you give someone who has been arrested for a violent crime treatment. It is: Do you give someone who has a history of violence—which may be a burglary, a crime driven by addiction, for exam-

ple—in the past, who has been re-arrested subsequently, that opportunity? Right now, I think, for the most part, problem-solving courts have been pitched at that lower level.

That question of how far it goes is one of the most important ones that I think we are dealing with right now.