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COMMUNITY VOICE AND JUSTICE: AN ESSAY ON PROBLEM-SOLVING COURTS AS A PROXY FOR CHANGE

BRENDA BRATTON BLOM,* JULIE GALBO-MOYES,**

AND ROBIN JACOBS***

I. INTRODUCTION

After years of working in communities in Baltimore, and working with community organizations around issues of crime, justice, and over-incarceration, it has been quite a surprise to encounter a great deal of resistance among hard-working, progressive-minded lawyers to the concept of problem-solving courts. Over the past year, the three of us have attempted to parse this resistance, and make sense of it. As we write this essay, we attempt to step back and use a broader lens, though much of our context is locally rooted in Baltimore, Maryland. This discussion is not just about drug courts, though attempting to respond to the intertwining of addiction and the law is an important part of the discussion. This discussion is not just about mental health courts, though responding to the connection between mental illness and the law is also an important part of the discussion. Nor is this discussion just about youth and the courts, or disorder in communities large and small. This is a larger conversation about how we view our courts, our communities, and our citizens in our collective search to provide justice.¹

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1. AMERICAN HERITAGE DICTIONARY 711 (1969) (“Justice” is defined as: 1. Moral rightness; equity. 2. Honor, fairness. 3. Good reason. 4. Fair handling; due reward or treatment. 5. The administration and procedure of law).

Our collective disclaimer is that we are not criminal lawyers. Brenda Bratton Blom has been working in communities for her entire career, and has represented community groups in Baltimore neighborhoods that suffer from significant disinvestment since 1993. Robin Jacobs and Julie Galbo-Moyes are recent law graduates who participated in the Community Justice Clinic at the University of Maryland School of Law over a two year period and were part of the team that authored the *amicus curiae* brief supporting problem-solving courts in *Brown v. Maryland*,² in which the Maryland Court of Appeals considered a challenge to the fundamental jurisdiction and constitutionality of Maryland's problem-solving courts during the Spring 2009 term.³ Although all of us have an ear turned to the community voice in this discussion, we were not expecting the level or tone of criticism which came our way while writing the *amicus* brief.

The arguments made by some of our colleagues have led us to re-examine our assumptions. We have come to believe that many of the criticisms of problem-solving courts are really about something much deeper—the breakdown of our system of justice. Criticizing the problem-solving courts may be a proxy for this more fundamental critique of the system. Repeat court-based actors are desperately attempting to understand and respond to a much larger problem. Problem-solving courts have become the straw man for the theoretical debate about justice systems more generally.

The American Heritage Dictionary defines a straw man as “one set up as an opponent to be easily defeated or refuted.”⁴ Critics of problem-solving courts, though they contribute immensely to the current discussion, use problem-solving courts as a straw man because they fail to address the real problems with the justice system, no matter what the docket or diversion. On September 6, 2009, the Baltimore Sun newspaper ran a story by Julie Bykowicz, entitled the “Public Defenders’ Identity Crisis,” that illustrates this premise.⁵ Although Ms. Bykowicz interviewed several public defenders (“PDs”), she failed to capture the broad scope of the struggle over how to engage problem-solving courts, instead framing the issue narrowly as a struggle primarily within the Baltimore City Office of the Public Defender. In

2. Br. of Concerned Citizens, Organizations, and Legal Professionals as *Amici Curiae* Supporting Respondent, *Brown v. State*, 409 Md. 1 (Md. 2009).

3. *Id.*

4. AMERICAN HERITAGE DICTIONARY 1274 (1969).

5. Julie Bykowicz, *Public Defenders’ Identity Crisis: Torn Over Whether to Stop at a Fair Trial or Seek Help for Clients*, BALTIMORE SUN, Sept. 6, 2009, at 2.

the article, Ms. Bykowicz describes a public defender who bemoans having counseled a client to enter into the Baltimore City Felony Drug Court initiative despite the client's history and the fact that the client was highly unlikely to succeed.⁶

Scholars concerned with problem-solving courts often focus on issues that individual lawyers within the system face, rather than the crisis in our justice system. The debate within an agency like the Maryland Office of the Public Defender does not exist in a vacuum. To understand the complex issues undermining the quality of justice systems are able to provide, one must attempt to grasp the everyday realities of life in Baltimore and other urban centers throughout America.

In 2007, there were 100,000 arrests in Baltimore,⁷ a city of 631,366 residents.⁸ While data suggests that approximately one-third of those arrested were not charged,⁹ this high number of arrests resulted in roughly 60,000 court appearances, each requiring a judge, prosecutor and defender.¹⁰ And this is only the criminal docket. It does not begin to deal with all of the family law, contracts, landlord-tenant, code enforcement of all variety, and other civil legal matters. Adding up these numbers presents a stark picture of the strain placed on the judiciary. In 2007, according to the PD's annual report, there were 71,870 cases opened.¹¹ In 2008, the PD's office reported little change—opening 71,877 cases in Baltimore City.¹² It follows that, if there are an estimated 250 working days when the courts are open, the PD's office alone must manage 287 cases per day.

The Circuit Court for Baltimore City criminal felony docket is heard in eight designated courtrooms on a regular basis. On a random

6. *Id.* at 1.

7. MD. DEPT. OF PUB. SAFETY & CORR. SERVS., ANNUAL REPORT 17 (2006), <http://www.dpscs.state.md.us/publicinfo/publications/pdfs/AnnualReport2006DPSCS.pdf>.

8. See U.S. CENSUS BUREAU, STATE & COUNTY QUICK FACTS, BALTIMORE (CITY), MARYLAND, <http://quickfacts.census.gov/qfd/states/24/2404000.html> (last visited on Apr. 5, 2010).

9. This includes those who are arrested without being charged or classified as “abated by arrest,” where the criminal activity was ended by the arrest and required no judicial intervention or the prosecutor lacked evidence sufficient to support a conviction. Julie Bykowicz, *Police in City Arrest Fewer*, BALTIMORE SUN, Nov. 24 2007.

10. MD. JUDICIARY, ADMINISTRATIVE OFFICE OF THE COURTS: ANNUAL STATISTICAL ABSTRACT 77 (2007), http://www.courts.state.md.us/publications/annualreport/reports/2007/2007_annual_report.pdf.

11. ELIZABETH JULIAN, OFFICE OF THE PUB. DEFENDER, STATE OF MD: FISCAL YEAR 2009 ANNUAL REPORT 39 (2009).

12. *Id.*

day (October 10, 2009), there were 127 cases listed on Baltimore City's Felony Docket,¹³ which represents approximately sixteen felony matters assigned in each courtroom that day or, by extrapolation, every day. This caseload is, of course, impossible to manage. The Court has responded in many ways, but the most revealing of documents from the court is the New Criminal Initiatives for Felony Docket 2007.¹⁴ On page three of the report, there is a description of Reception Courts:

The primary purposes of [this] concept are to try cases as expeditiously as possible and to preclude postponements within the Felony Trial Courts. In essence, the two Reception Courts . . . are to act as clearing houses, performing administrative review and disposing of felony incidents based on the facts presented, while allowing only ready-to-try felony incidents to go to our eight felony trial courts.¹⁵

But most stunning is the assertion that:

Approximately, 4 to 5% of the Reception Courts workload goes to trial. For example, if our two Arraignment courts had 100 felony incidents to arraign in a day, 64 would go to the two Reception Courts. Out of the 64 *three felony incidents* ($64 \times .04 = 2.56$ or 3; $64 \times .05 = 3.2$ or 3) *would go to the trial courts*. The rest will be disposed of by the Reception Courts: STET, Null-Prose, Guilty Plea, Judgment, Sub-curia, Dismissed, Continued, Postponed, etc.¹⁶

As a result of the court's desire for expediency, there is tremendous pressure on the attorneys to comply with a system that simply processes cases to move people through, rather than either advocating zealously in a traditional model, demanding that the state make its case, or attempting to deal with the underlying issues that bring the defendant into the criminal court system.

13. See CIRCUIT COURT FOR BALTIMORE CITY DAILY DOCKETS, <http://www.baltocts.sailorsite.net/docket/dockets.htm>. (last visited on Apr. 5, 2010).

14. John M. Glynn & Marcella A. Holland, *Circuit Court for Baltimore City, New Criminal Initiatives for Felony Docket 2007* 3 (2007), http://www.baltocts.state.md.us/criminal/notices/NCI_for_Felony_Docket_2007xxdelete.pdf.

15. *Id.*

16. *Id.*

II. HOW DID WE GET HERE?

For years now, we have attempted to arrest and prosecute our way out of social issues. A politics of fear surrounding issues of crime and the War on Drugs¹⁷ in the 1980s and 1990s led to a retributive and ineffective model of justice in the United States, including mandatory sentencing guidelines,¹⁸ Three Strikes statutes,¹⁹ and zero tolerance policies.²⁰ For example, two high-profile murder cases led to the passage of the Three Strikes law in California.²¹ In response to public pressure, politicians who either favored tough-on-crime policies or were fearful of being labeled “soft on crime,” responded with increasingly harsh punishments²² that devastated low-income communities. Because the consequences primarily affected marginalized communities,²³ broader public opinion continued to favor policies of over-imprisonment despite declining or steady rates of violent crime.²⁴

A cognitive dissonance developed between the reality of the mass incarceration of non-violent offenders and the public perception that locking these law-breakers away would keep the public safe. Harsh sentences led to the unconstitutional overcrowding of prisons,²⁵ increased recidivism, and overextended dockets.²⁶ Far from solving

17. See Melody M. Heaps and Dr. James A. Schwartz, *Toward a Rational Drug Policy: Setting New Priorities*, U. CHI. LEGAL F. 175, 179–91(1994) (describing the history of the “War on Drugs,” beginning with the passage of the Anti-Drug Abuse Act of 1988).

18. 21 U.S.C. § 841(b)(1) (2006).

19. David Schultz, *No Joy in Mudville Tonight: The Impact of “Three Strikes” Laws on State and Federal Corrections Policy, Resources, and Crime Control*, 9 CORNELL J.L. & PUB. POL’Y. 557, 558–59 (2000).

20. Catherine L. Carpenter, *Legislative Epidemics: A Cautionary Tale of Criminal Laws*, 58 BUFF. L. REV. 12, 12 (2010); Adam Lamparello, *Reaching Across Legal Boundaries: How Mediation can Help the Criminal Law in Adjudicating “Crimes of Addiction,”* 16 OHIO ST. J. DISP. RESOL. 335, 340–51 (2001).

21. Carpenter, *supra* note 20, at 12–15.

22. *Id.* at 30–32. While legislators passed the statutes, the judiciary deferred to legislative intent. *Id.* at 43.

23. A disproportionate number of African American and Latino men make up the prison population. PEW CTR. ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA (2008), http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf.

24. THE DISASTER CTR., UNITED STATES CRIME RATES 1960-2008, <http://www.disastercenter.com/crime/uscrime.htm>.

25. Carpenter, *supra* note 20, at 51 (2010).

26. Lamparello, *supra* note 20, at 347–48.

public safety issues, these policies overburdened the criminal justice system.

Given that the politics of privatization have ruled public policy for the past twenty years, a corporate model also replaced the public service model in many arenas. For example, profit-motivated private facilities replaced public correctional facilities.²⁷ This shift has had a negative impact on delivery of justice, both in perception and in reality.²⁸ As a result of these retributive policies, state-prison spending spun out of control, from twelve billion dollars in 1987 to forty-nine billion dollars in 2008.²⁹ Even with state budget cuts in 2009, private prison operators continue to see profits.³⁰ With the retributive system in place and a private lobby to continue the policies of moving people through the system, the number of people coming into the courts for criminal cases continues to increase.³¹

In response to these policies, courts began developing coping mechanisms, working with innovators across a broad spectrum, including social workers, mental health experts, and community organizations to respond to the vastly increased mandates to prosecute and incarcerate citizens. These innovations included attempts at diversion, alternative dispute resolution and, as an almost natural extension, problem-solving courts.

Opponents of problem-solving courts argue that they undermine the fundamental protections for defendants in our legal system. The traditional paradigm, in which the accused is represented by counsel at a trial that is heard by a jury of peers, is a relative rarity in Baltimore and in any city. While there are jury trials in Baltimore (there were 5,946 jury trial demands made through the PD's office in

27. Despite the growth in prison privatization, promised cost savings rarely materialize. See Jennifer Steinhauer, *Arizona May Put State Prisons in Private Hands*, N.Y. TIMES, Oct. 24, 2009, available at <http://www.nytimes.com/2009/10/24/us/24prison.html>.

28. In Pennsylvania, judges took kickbacks to send juveniles to private prison facilities. See Ian Urbina & Sean D. Hamill, *Judges Plead Guilty in Scheme to Jail Youths for Profit*, N.Y. TIMES, Jan. 13, 2009, available at <http://www.nytimes.com/2009/02/13/us/13judge.html>.

29. PEW CTR. ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 12 (2008), http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf.

30. Kopin Tan, *Arresting Developments*, BARRON'S, Oct. 19, 2009, available at http://online.barrons.com/article/SB125574536753691649.html?mod=BOL_hpp_mag&page=sp.

31. Douglas E. Abrams, *Crime Legislation and the Public Interest: Lessons from Civil RICO*, 50 SMU L. REV. 33, 79 n.382 (1996).

2007 out of the 71,870 cases opened),³² the numbers are small (less than ten percent of the total number) in contrast with the number of cases in which agreements are made (a plea is made consistent with offers made by the prosecutor and accepted either with or without counsel).

Recent staffing cutbacks in police, prosecutors, public defenders and the courts has made the push for problem-solving courts increasingly difficult. In the 2009 Annual Report of the Maryland Office of the Public Defender, for example, acting PD Elizabeth Julian noted that the “OPD [Office of the Public Defender] lost 65.5 full time State positions (including 24 attorney positions) because of cost containment efforts.”³³ This situation continues to vex attempts by PDs, who are already working above suggested caseload standards, to take on the representation and defense of so many citizens charged with offenses. Similar cutbacks have been seen in police departments, state’s attorney’s offices, and in the courts.³⁴ As a result, each of the agencies charged with justice in our city and in jurisdictions across the country is stretched thin. Furthermore, the number of offenses that are charged criminally is increasing regardless of the decrease in personnel.³⁵ Given that there are an unprecedented number of people coming into the criminal justice system, that the courts themselves are attempting to find some way to manage the volume of matters, and that we have not been able to transform the problems inside the justice system into strategic policy debates, we are then left to examine the ways in which the courts and citizens have attempted to respond.

32. NANCY S. FORSTER, OFFICE OF THE PUB. DEFENDER, STATE OF MD: FISCAL YEAR 2008 ANNUAL REPORT 12 (2008).

33. Elizabeth Julian, State of Maryland Fiscal Year 2009 Annual Report at 1 http://www.opd.state.md.us/Index%20Assets/OPD%20Annual_Report_FY2009.pdf.

34. Joe Follick, *Budget Cuts Weighing on the Scales of Justice*, Jun. 15, 2008, SARASOTA HERALD-TRIBUNE, available at <http://www.heraldtribune.com/article/20080615/NEWS/806150589>; William M. Welch, *Court Budget Cuts Swift Hand of Justice*, USA TODAY, Apr. 1, 2010, available at http://www.usatoday.com/news/nation/2010-03-31-court-cuts_N.htm; Bernard Schoenberg, *State Police Plan Massive Layoffs, HQ Closures*, THE STATE JOURNAL-REGISTER, Mar. 23, 2010, available at <http://www.sj-r.com/news/x99764408/State-Police-plan-massive-trooper-layoffs-to-close-five-districts>.

35. In 1984, when the federal criminal code was rewritten, there were 25,000 federal crimes. They were organized into one volume, and published. There are now estimated to be over 250,000 federal crimes, and no one even knows where they are all located. See John S. Baker, *Revisiting the Explosive Growth of Federal Crimes*, LEGAL MEMORANDUM 1 (The Heritage Foundation, Washington, D.C.), June 16, 2008, http://www.heritage.org/Research/LegalIssues/upload/lm_26.pdf.

A. Mediation within the Criminal Justice System

One way the court system responded to overwhelming caseloads was to implement programs that provide alternatives to litigation like pre-trial mediation.³⁶ Pre-trial mediation, drawing on the success of interracial community conflict resolution,³⁷ provided a less adversarial option for certain litigants before proceeding with the case in court.³⁸ The shared goal of mediation programs linked with the courts was to avoid overwhelming dockets by diverting cases that are more appropriate for a less adversarial, brokered solution.³⁹ Diversion through mediation programs faces some of the same criticisms that other restorative justice and problem-solving models face.⁴⁰

A key response to each of these criticisms, however, is that the programs operate as a voluntary, rather than mandatory, option to litigants where the facts of the case are not in dispute and the parties are willing to work out a solution.⁴¹ Therefore, the parties involved are never forced to sacrifice their constitutional rights. No one argues that a party with a legitimate dispute should forego their constitutional rights or the advice of their attorney in favor of a court diversion program. As Chief Judge Bell of the Court of Appeals of Maryland states, “In Maryland, we know that mediation is not a panacea. It is not always appropriate, and it does not always work.”⁴² Instead, when mediation programs are appropriate, they provide the opportunity to “help people in conflict develop the skill to sit down together, to deepen their understanding of the underlying issues, and to work on

36. The American Bar Association defines mediation as “a form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.” http://www.abanet.org/publiced/glossary_m.html#mediation

37. Robert A. Baruch Bush, *Staying in Orbit or Breaking Free: The Relationship of Mediation to the Courts Over Four Decades*, 84 N.D. L. REV. 705, 710 (2008).

38. *Id.*

39. *Id.* at 708–09.

40. See Tina S. Ikpa, *Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System*, 24 WASH. U. J. L. & POL’Y 301, 311–17 (2007) (addressing the various criticisms of mediation and restorative justice techniques). See also Frank V. Williams, *Reinventing the Courts: The Frontiers of Judicial Activism in the State Courts*, 29 CAMPBELL L. REV. 591, 667 (2007) (arguing that mediation and other similar problem solving approaches represent a nefarious new type of judicial activism to control individual behavior).

41. See Maureen E. Laflin, *Remarks on Case-Management Criminal Mediation*, 40 IDAHO L. REV. 571, 608 (2004)

42. Robert B. Kershaw, *Access to Justice in Maryland – A Visionary’s Model*, 37 MD. B.J. 50, 53 (2004).

creative win-win solutions.”⁴³ When we talk about justice for all in the modern sense, it is predominantly this type of result that we intend to achieve; whether it is achieved by a trial or by a mediation does not matter as much as the fact that justice is ultimately achieved.

In Maryland, integration of pre-trial mediation efforts into the court system has enjoyed a high level of success.⁴⁴ From community-based conferencing that works on and strengthens pre-existing community assets, to school-based conflict resolution programs,⁴⁵ diversionary efforts supplement the work of the courts by allowing parties to resolve conflict without ensnaring them in the confines of the overstretched court system. Even with mediation and diversionary efforts, however, a large number of cases still overwhelm the court system.

B. Problem-Solving Courts

Problem-solving courts, another restorative justice technique, were developed to address concerns that the criminal justice system merely recycles offenders without either resolving the underlying issues prompting them to commit offenses in the first place or addressing their needs for basic services and support.⁴⁶ A traditional problem-solving approach typically involves a flexible judicial response tailored to meet the needs of each defendant, integration of social service providers, and aggressive judicial monitoring, including the use of sanctions.⁴⁷ Specific areas of focus in a problem-solving court may include drug abuse (both adult and juvenile), mental health, domestic violence, homelessness, truancy, prostitution, misdemeanor quality-of-life crimes, and community courts.⁴⁸ Since the problem-solving court model originated with drug courts, which seek to provide addicted offenders with treatment in lieu of incarceration, these specialized dockets remain the most widely proliferated and heavily

43. *Id.* (quoting Bell, C.J.).

44. MARYLAND MEDIATION AND CONFLICT RESOLUTION OFFICE, BRIDGING PEOPLE TOGETHER: CONFLICT RESOLUTION IN MARYLAND, FISCAL YEAR 2004 IN REVIEW (2004), <http://mdcourts.gov/macro/pdfs/reports/annualreportfy04.pdf>.

45. *Id.*

46. GREG BERMAN & JOHN FEINBLATT, GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE 3 (2005).

47. *Id.* at 5–6.

48. Community Courts are those courts with identified jurisdiction that serve a specified geographic area using problem solving methods. *See, e.g.,* Terry Carter, *Red Hook Experiment: In This Brooklyn Neighborhood, Justice Has a Distinct Community Flavor*, ABA J., June 2004, http://www.abajournal.com/magazine/article/red_hook_experiment/.

researched.⁴⁹ Baltimore became one of the first cities to develop a drug treatment docket in 1994, and Maryland has established approximately forty additional drug courts since its inception.⁵⁰ In 2002, the Maryland judiciary established a commission to further develop these specialized drug dockets and establish uniform principles to govern their operation.⁵¹

The connection between reducing overcrowded dockets and a program that potentially involves intensive judicial supervision depends on its effectiveness in reducing recidivism. National studies have confirmed that participants in adult drug treatment courts generally had significantly lower rearrest and reconviction rates than non-participants, as well as a longer time period preceding their first recidivism event.⁵² While drug court programs are generally more expensive than conventional case processing due to their intensive judicial monitoring and treatment services, the net monetary benefits of reduced recidivism exceed these costs by decreasing future arrests and their corresponding costs to the criminal justice system, as well as decreasing costs to potential crime victims in property, health care, and quality of life.⁵³

Evaluations of Maryland's drug courts have revealed similar results. Participants in the Baltimore City Adult District and Circuit Court drug treatment dockets in particular were rearrested 31.4 percent

49. The National Drug Court Institute (NDCI) identified 3,204 problem-solving courts in the United States at the end of 2007. See C. WEST HUDDLESTON, III, ET AL., NAT'L DRUG COURT INST. PAINTING THE PICTURE: A NATIONAL REPORT CARD ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURT PROGRAMS IN THE UNITED STATES 1 (May 2008). Of these, 2,147 were drug courts, including 1,174 adult drug courts, 455 juvenile drug courts, six campus drug courts, and five Federal District drug courts. *Id.* at 4. The remainder of drug courts addressed family dependency (301 courts), Driving While Intoxicated (110 courts), reentry (twenty-four courts), and tribal courts (seventy-two courts). *Id.* See also BUREAU OF JUSTICE ASSISTANCE, DEFINING DRUG COURTS: THE KEY COMPONENTS 1, 4 (2004), <http://www.ojp.usdoj.gov/BJA/grant/DrugCourts/DefiningDC.pdf>. (recommending ten key principles for drug courts to follow).

50. HUDDLESTON, ET AL., *supra* note 49, at T.3.

51. Maryland Judiciary, Office of Problem-Solving Courts, <http://www.courts.state.md.us/opsc/index.html>. (last visited Jan. 5, 2010).

52. U.S. GOV'T ACCOUNTABILITY OFFICE, ADULT DRUG COURTS: EVIDENCE INDICATES RECIDIVISM REDUCTIONS AND MIXED RESULTS FOR OTHER OUTCOMES, 44-49 (2005), <http://www.gao.gov/new.items/d05219.pdf>. While limited data was available to evaluate post-program performance, the existing data showed that significant reductions in recidivism persisted beyond the duration of the program. *Id.* at 52.

53. *Id.* at 72-73. See also HUDDLESTON, ET AL., *supra* note 49, at 6-7 (stating that "drug courts significantly reduce crime rates on average of approximately 7 to 14 percentage points" and "cost an average of \$4,333 per client, but save \$4,705 for taxpayers and \$4,395 for potential crime victims, thus yielding a net cost-benefit of \$4,767 per client").

fewer times than those in the national comparison model over a three-year period.⁵⁴ Indeed, the Baltimore City Circuit Court Adult Drug Court had a graduation rate of 40.8 percent from 2002 to 2007 (compared to the national average for adult participants of 33.4 percent).⁵⁵ While the corresponding adult drug treatment docket in the Baltimore City District Court only achieved a graduation rate of 24.2 percent, program evaluators claim that the participants' grave substance abuse and criminal history profiles make the drug court program one of the nation's most severe.⁵⁶ By utilizing treatment programs rather than incarceration, Baltimore's adult drug treatment courts incurred 24.2 percent less in criminal justice system costs than the comparison sample over a three-year period, for a projected savings of 2.7 million dollars.⁵⁷

1. Problem-Solving Court Critiques

Despite these successes, problem-solving courts have encountered a host of criticism throughout their expansion. These critiques include fears that problem-solving courts harmfully affect the adversarial process.⁵⁸ Critics also argue that the problem-solving movement encourages police to pursue offenders committing low-level quality-of-life crimes that the system would typically overlook.⁵⁹ Other opponents worry about judicial impartiality when the same judge who engages in the problem-solving team approach must suddenly revert to the traditional adversarial process at a probation termination hearing.⁶⁰

Critics of drug courts in particular also highlight the selection process, which often screens out high-risk offenders, offering the option of probation with drug treatment to first-time and nonviolent offenders only.⁶¹ While the latter group has a higher likelihood of

54. MARYLAND JUDICIARY: ADMINISTRATIVE OFFICE OF THE COURTS, ANNUAL REPORT OF THE PROBLEM-SOLVING COURTS IN MARYLAND 6–7 (2007).

55. *Id.* at 11–12.

56. *Id.* at 12.

57. *Id.* at 7.

58. GREG BERMAN & JOHN FEINBLATT, *supra* note 46, at 180.

59. BERMAN & FEINBLATT, *supra* note 46, at 174. *See also* Steven Zeidman, *Policing the Police: The Role of the Courts and the Prosecution*, 32 FORDHAM URB. L.J. 315, 316–17 (2004-2005) (arguing that the focus on quality-of-life crimes that accompanied the “Broken Windows” theory – also a foundation of the problem-solving court movement – prompted mass arrests for low-level offenses as a pretext for investigating more serious crimes).

60. BERMAN & FEINBLATT, *supra* note 46, at 185.

61. Maryland's Felony Drug Court Dockets now only work with offenders who have significant criminal justice histories, though still focused on non-violent offenders. *See* DAVE

successfully completing treatment, critics argue that persistent offenders' needs are the most vital.⁶² Some argue that drug courts coerce defendants to choose a guilty plea, drug treatment, and the immediate freedom that accompanies the drug court program over waiting in jail to litigate a claim with an uncertain outcome.⁶³ Finally, critics fear that sentences imposed after failing drug court may exceed the prison term accompanying a standard plea for the same offense, although studies of Baltimore's drug court participants have shown that they spent fewer days in jail than the control group processed in conventional court.⁶⁴

Adopting best practices, such as requiring a different judge to preside over probation termination hearings to ensure judicial neutrality, could assuage many of these concerns.⁶⁵ The Red Hook Community Justice Center ("Red Hook"), a model problem-solving court located in New York,⁶⁶ has adopted new policies regarding information sharing: defendants meet with their defense attorneys first, who order existing social workers' reports. The prosecutor does not include this information in her report, and nothing is entered into the record until sentencing. If the defendant successfully completes the program, the case is dismissed before sentencing, and nothing accrues on the record.⁶⁷ As Maryland's problem-solving courts evolve, they should likewise continue to refine their policies and procedures to incorporate best practices like those of Red Hook.

While evaluation is essential for the development of best practices in any evolving field, critics must use the justice system as it currently exists as a baseline of comparison, rather than an idealized, theoretical paradigm. It will better serve justice to carefully distinguish

CRUMPTON ET AL., NPC RESEARCH, COST ANALYSIS OF BALTIMORE, MARYLAND DRUG TREATMENT COURT 21 (2003), available at <http://www.npcresearch.com/Files/Baltimore%20City%20Drug%20Court%20Analysis.pdf>.

62. NAT'L. ASS'N. OF CRIMINAL DEFENSE LAWYERS, AMERICA'S PROBLEM-SOLVING COURTS: THE CRIMINAL COSTS OF TREATMENT AND THE CASE FOR REFORM, 23 (2009), [http://www.nacdl.org/public.nsf/2cdd02b415ea3a64852566d6000daa79/665b5fa31f96bc40852574260057a81f/\\$FILE/problem-solvingreport_110409_629\(K+PMS3145\).pdf](http://www.nacdl.org/public.nsf/2cdd02b415ea3a64852566d6000daa79/665b5fa31f96bc40852574260057a81f/$FILE/problem-solvingreport_110409_629(K+PMS3145).pdf) [hereinafter NAT'L. ASS'N. OF CRIMINAL DEFENSE LAWYERS].

63. BERMAN & FEINBLATT, *supra* note 46, at 178.

64. *Id.* at 177.

65. NAT'L. ASS'N. OF CRIMINAL DEFENSE LAWYERS, *supra* note 55, at 28

66. Greg Berman & Aubrey Fox, *From the Benches to the Trenches: Justice in Red Hook*, 26 JUST. SYS. J. 77, 77 (2005), available at <http://www.courtinnovation.org/uploads/documents/Justice.pdf>.

67. Interview with Public Defender and Prosecutor, Red Hook Justice Center (Sept. 25, 2009).

flaws inherent to problem-solving courts from those endemic to the current system as a whole with its extensive reliance on plea-bargaining.⁶⁸ This is particularly applicable when the criticism involves coercive plea setups or the impact of problem-solving courts on the adversarial process, especially in a post-adjudication court such as Maryland's adult drug treatment courts. The Maryland and California drug court models provide useful insight into how the court system has adapted in response to these criticisms as well as the effect the courts have on the community.

2. *Maryland's Model: Probation Problem-Solving*

While concerns about a defendant's individual rights in problem-solving courts draw impassioned criticism,⁶⁹ Maryland's use of post-conviction probation for drug court prevents many of the commonly-cited due process concerns. Like many drug court models, offenders entering Maryland's drug treatment courts plead guilty and receive a suspended sentence, which may be reinstated should the defendant fail to successfully complete the drug treatment program. This post-conviction model has gained popularity nationwide. The first wave of problem-solving adult drug court programs primarily employed a diversionary or pre-plea framework. However, today only seven percent of these programs are diversionary, while seventy-eight percent only serve offenders at a probationary or post-conviction stage of adjudication.⁷⁰ One rationale for this shift may be a prosecutor preference for the post-plea model, as many contend that delayed

68. News stories are replete with examples of system failures from both sides. For example, a recent crime victim lamented the early release of her attacker due to a plea deal of her attacker caused by overcrowded dockets. Peter Hermann, *Victim Told Rock-Solid ID of Attacker Isn't Enough*, BALTIMORE SUN, Jan. 20, 2010, <http://www.baltimoresun.com/news/maryland/crime/bal-md.hermann20jan20,0,2502168.story>. Two days later, National Public Radio (NPR) ran a story about Shadu Green, charged with a series of misdemeanors, who could not afford to make bail and faced an impossible decision between pleading guilty for a crime for which he claims innocence, or staying incarcerated until a trial date months later to fight the charges. Laura Sullivan, *Inmates Who Can't Make Bail Face Stark Options*, Jan. 22, 2010, <http://www.npr.org/templates/story/story.php?storyId=122725819&ft=1&f=3>. The story notes that more than a half-million inmates face this choice daily. *Id.*

69. Indeed, concerns about violations of the defendant's individual rights in our current system of plea bargaining draw the same kind of impassioned criticism, and mirror the complaints lodged against problem-solving courts. Jeff Palmer, *Abolishing Plea Bargaining: An End to the Same Old Song and Dance*, AM. J. CRIM. L. 505, 518-29 (1999).

70. HUDDLESTON, ET AL., *supra* note 49, at 4-5. Fifty-nine percent of adult drug courts are strictly post-plea, while nineteen percent serve offenders at both the pre-plea and post-conviction stages of adjudication. *Id.*

judgment could result in lost witnesses or stale evidence.⁷¹ Additionally some argue that convicted participants also have more at stake and ostensibly, increased motivation to successfully complete the program.⁷² Any due process issues potentially triggered by the unique operation of the traditional drug court model⁷³ lose salience after sentencing. The fact that participants in post-conviction programs retain the more limited due process rights afforded probationers, rather than criminal defendants, permits drug courts to legally carve out a space between the adversarial processes of sentencing and probation termination within which problem-solving methods may proceed.⁷⁴

The participants' probationary status also avoids implicating the Double Jeopardy Clause of the Fifth Amendment,⁷⁵ which protects defendants in a criminal proceeding against multiple punishments for the same offense. Double jeopardy does not attach in disciplinary and probation, parole or bond revocation proceedings because such proceedings are not concerned with adjudicating guilt or innocence for the previously committed offense.⁷⁶ In *Brown v. State*,⁷⁷ the Maryland

71. COMM. ON CRIMINAL JUSTICE OPERATIONS, NEW YORK CITY BAR, THE IMMIGRATION CONSEQUENCES OF DEFERRED ADJUDICATION PROGRAMS IN NEW YORK CITY 3 (2007), <http://www.nycbar.org/pdf/report/Immigration.pdf>. *But see* NAT'L. ASS'N. OF CRIMINAL DEFENSE LAWYERS, *supra* note 62 (arguing that prosecutors' fears are "largely overstated" since most drug court evidence—police testimony, surveillance and physical evidence—will remain unaffected by delay and prosecutors can require defendants to waive their rights to a speedy trial).

72. NAT'L. ASS'N. OF CRIMINAL DEFENSE LAWYERS, *supra* note 62, at 3.

73. Critics express concerns that include the collaborative approach in which judge, defender, and prosecutor work as a team to promote successful treatment and the possibility of jail time as a sanction. Eric Lane, *Due Process and Problem-Solving Courts*, 30 FORDHAM URBAN L.J. 955 (2003).

74. Probation, as "a matter of grace," does not afford probationers the same procedural protections as those granted to a criminal defendant at trial. *See* *Smith v. State*, 306 Md. 1, 6, 506 A.2d 1165, 1168 (1986). *See also* *State v. Rogers*, 170 P.3d 881, 886 (2007) ("Intermediate sanctions imposed in [problem-solving courts] do not implicate the same due process concerns, and continued use of informal hearings and sanctions need not meet the procedural requirements articulated" in *Morrissey v. Brewer* for probation termination hearings).

75. U.S. CONST. amend. V, § 1, cl. 2.

76. *United States v. Miller*, 797 F.2d 336 (6th Cir. 1986); *United States v. McInnis*, 429 F.3d 1, 5 (1st Cir. 2005) (double jeopardy not to apply to revocation of supervised release because it is considered part of the original sentence); *United States v. Carlton*, 442 F.3d 802, 809 (2d Cir. 2006). *See also* *Gibson v. State*, 328 Md. 687, 690 (1992) (*quoting* *Clipper v. State*, 295 Md. 303, 313 (1983)) (The revocation of probation is "not a second punishment added upon the original sentence; it represents rather, the withdrawal of favorable treatment originally accorded the defendant."). Probation is, by definition, conditional; the defendant is on notice that breaching those conditions may lead to the reinstatement of his original sentence. *Clipper v. State*, 295 Md. 303 (1983). Thus, criminal behavior during a probationary period can be grounds for both successful criminal prosecution by the court and revocation of

Court of Special Appeals affirmed that the use of brief incarceration as a drug court sanction does not violate double jeopardy, stating “[i]f a probationer violates the conditions of his probation, the court may revoke the probation and ‘direct execution of all or any part of the sentence it had previously imposed but suspended.’”⁷⁸ Therefore, Maryland’s drug court model avoids implicating many double jeopardy and individual rights concerns.

C. California’s Model: Expanding the Availability of Treatment

California’s courts responded to the critique that drug courts were self-selective⁷⁹ by broadly expanding the reach of its program. In an effort to capitalize on the economic successes of the drug court model, California enacted Proposition 36, otherwise known as the Substance Abuse and Crime Prevention Act of 2000 (SACPA), which addressed the “skimming” concerns by making probation with drug treatment universally available to all qualified drug offenders.⁸⁰ Before the enactment of SACPA, California’s drug courts offered intensive drug treatment to an average of 3,000 carefully selected participants per year; approximately 36,000 drug offenders receive probation with drug treatment annually under SACPA.⁸¹

This unprecedented expansion of drug treatment as a punitive alternative did not duplicate the regularly scheduled status hearings before a judge that characterize the conventional drug court model. Under SACPA, the role of the judge is minimized; after drug treatment is initiated, the probation department primarily supervises SACPA

probation for a violation based on the underlying facts. *See* *Dunn v. State*, 65 Md. App. 637 (1985), *rev’d on other grounds*, 308 Md. 147 (1986).

77. *Brown v. State*, 181 Md. App. 735 (Md. App. 2008), *aff’d*, 409 Md. 1 (2009).

78. *Id.* at 8–9 (quoting *Cathcart v. State*, 397 Md. 320, 326 (2007)). *See also* JUDGE WILLIAM G. MEYER, NATIONAL ASS’N OF DRUG COURT PROFESSIONALS, CONSTITUTIONAL AND OTHER LEGAL ISSUES IN PROBLEM-SOLVING COURTS 26 (2008) [hereinafter CONSTITUTIONAL AND OTHER LEGAL ISSUES].

79. *See* CONSTITUTIONAL AND OTHER LEGAL ISSUES, *supra* note 78, at 12 (discussing the criticism that drug court programs selectively choose participants most likely to succeed).

80. CAL. PENAL CODE § 1210, § 3063.1, CAL. HEALTH AND SAFETY CODE § 10.8. In passing SACPA, California emulated Arizona’s Drug Medicalization, Prevention and Control Act (Proposition 200) passed in 1996 to divert first and second time nonviolent drug offenders into treatment rather than incarceration.

81. *See Q & A on New UCLA Report on Prop. 36* (Drug Policy Alliance, Sacramento, Cal.), <http://www.prop36.org/Q&AUCLAreport.html> [hereinafter Drug Policy Alliance]. In contrast, 1,849 participants entered Maryland drug courts in Fiscal Year 2007. MD. JUDICIARY: ADMIN. OFFICE OF THE COURTS, ANNUAL REPORT OF THE PROBLEM SOLVING COURTS IN MARYLAND 5 (2007).

participants via quarterly progress reports received from drug treatment providers.⁸² Only after receiving word that the participant is “unamenable to . . . drug treatment” of all forms may the probation officer move to revoke probation.⁸³ SACPA participants who *twice* either violate a drug-related condition of probation or who are arrested for non-violent drug possession face mandatory probation revocation if the state proves by a preponderance of the evidence that the defendant is not amenable to drug treatment.⁸⁴ In a termination hearing for a third drug-related offense, the defendant loses SACPA eligibility if the state proves the probation violation.⁸⁵ Thus, SACPA differs from traditional drug courts by constraining judicial discretion to this “three-strikes” formula. Courts also may not impose “shock incarceration” penalties for noncompliance by briefly incarcerating participants for setbacks such as a “dirty” urine test. Many California judges objected to these judicial limitations,⁸⁶ and on July 12, 2006, Governor Schwarzenegger signed Senate Bill 1137⁸⁷ into law, which allowed “flash incarceration”⁸⁸ of SACPA participants. The law has never taken effect, however, since advocacy groups sued and received an injunction shortly after the bill’s passage.⁸⁹

While proponents speculate that SACPA has resulted in substantial savings in incarceration costs—the approximate cost of drug treatment for one participant is \$3,333 while the cost of a year’s imprisonment is \$30,929⁹⁰—the recidivism rate for SACPA participants did not match that of California’s more selective and intensive drug courts,⁹¹ and many participants who elected SACPA

82. CAL. PENAL CODE § 1210.1(c).

83. CAL. PENAL CODE § 1210.1 (c)(2).

84. CAL. PENAL CODE § 1210.1 (e)(3)(B). In determining this, “the court may consider . . . whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant’s ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program.”

85. CAL. PENAL CODE § 1210.1 (e)(3)(C).

86. See Alex Ricciardulli, *Getting to the Roots of Judges’ Opposition to Drug Treatment Initiatives*, 25 WHITTIER L. REV. 309 (2003).

87. S.B. 1137, 2005 Leg., 2005-06 Reg. Sess. (Cal. 2006).

88. “Flash incarceration,” like “shock incarceration,” refers to brief incarceration of drug treatment participants for setbacks such as failing a urine test.

89. See *Gardner v. Schwarzenegger*, No. RG06-278911, 2006 WL 4717840 (Cal. Sup. Sept. 14, 2006).

90. Drug Policy Alliance, *supra* note 81.

91. DOUGLAS LONGSHORE, ET AL., CALIFORNIA HEALTH & HUMAN SERVS. AGENCY, EVALUATION OF THE SUBSTANCE ABUSE AND CRIME PREVENTION ACT: 2004 REPORT 30-32 (2005),

never showed up for treatment at all.⁹² Proponents associate drug courts' higher recidivism rates with their more scrupulous selection of participants.⁹³ Counties that reportedly used one or more of the recommended drug court procedures promulgated by the National Drug Court Institute, however, did experience higher drug treatment attendance rates.⁹⁴

Critics of SACPA analogize the program to the tacit legalization of drug use, contending that it merely recycles participants through the system without the substantive successes of traditional drug courts in addressing the underlying addiction via intensive supervision and meaningful sanctions.⁹⁵ It is unclear whether SACPA's minimal judicial involvement, decreasing the pressures of burgeoning dockets and overcrowded prisons, comes with a price in the form of social costs associated with higher recidivism rates. Moreover, the program has suffered funding setbacks. One outcome seems clear: with sufficient financial backing, such a program does have the potential to compel the development of drug treatment resources within communities. This is clearly in line with many of the desires of those who oppose the courts taking a therapeutic orientation. Pushing treatment into the community—with monitoring by state agencies—might well satisfy the criticisms of some who oppose drug court initiatives.

III. CONCLUSION

The underlying dilemma remains: What role should, and can, courts and the formal justice system play in sorting out problems that are essentially social problems? How can courts distinguish social problems, which cannot be “solved” in a court process, from criminal acts that require a response from the criminal justice system? The fact that we are asking these questions suggests that being poor, being

<http://www.uclaisap.org/prop36/documents/112344%20SACPA%20FINAL%202003%20REPORT%20092304.pdf> (citing SACPA treatment completion rates of approximately thirty-four percent for SACPA's first and second years and fifty-five percent for California's drug courts as reported by the California Department of Alcohol and Drug Programs in 2005).

92. *Id.* at 53 (reporting “show rates” for treatment of over eighty percent in two-thirds of the counties (less than twenty percent of participants failed to appear) and less than fifty percent in one-fifth of the counties (approximately half failed to appear for treatment)).

93. *Id.* at 30.

94. *Id.* at 53.

95. Jack Riley, et al., *Drug Offenders and the Criminal Justice System: Will Proposition 36 Treat or Create Problems?*, RAND, at 6–7 (2000), available at http://www.rand.org/pubs/issue_papers/IP204/IP204.pdf.

addicted to drugs, or having a mental health issue is a good predictor that you will have an encounter with the criminal justice system.⁹⁶

A system of restorative justice is the most complex justice system to build. Restorative justice aims to restore the one (person or community) harmed to as good a position or better as before the harm was done. This is a fairly straightforward idea; yet, in many ways it is inconsistent with our basic system of justice, where once something is classified as a crime, the state owns the harm and the goal is not restoration of the one harmed, but instead punishment of the offender. While we do, in some instances, have provisions for restitution, restoration for the offender and the community is not generally the goal.

The criticisms lodged at restorative justice and problem-solving solutions miss the mark because they take a narrow view of a system dealing with broad problems. Critics view restorative justice techniques as ineffective,⁹⁷ undemocratic,⁹⁸ and the cause of constitutional violations of defendants' rights.⁹⁹ While many articles address these concerns about restorative justice techniques,¹⁰⁰ we need to take a broader view to truly understand the problems facing our courts.

All the criticisms of problem-solving courts—that they violate due process rights, that they fail to rehabilitate, or that they represent a form of undemocratic reform—apply to the reality of the court system today. It is the overcrowded dockets caused by the retributive policies adopted during the 1980s and 1990s, a period characterized by politics of fear that led to the concerns that restorative justice critics present. A look at non-restorative justice court proceedings shows a stark picture: a commonplace waiver of individual rights, backdoor plea deals in lieu

96. K. Babe Howell presents a good summary of the challenges of having decided to use aggressive or “zero tolerance” policing to deal with social disorder and disordering behavior in communities. He artfully articulates the costs to communities, individuals and the larger state of using criminal processes to deal with low-level disruptions in communities. See K. Babe Howell, *Broken Lives From Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271 (2009).

97. See Morris B. Hoffman, *The Rehabilitation Ideal and the Drug Court Reality*, 14 FED. SENT'G REP. 172 (2001-2002).

98. See Williams, *supra* note 40, at 706.

99. James L. Nolan, Jr., *Redefining Criminal Courts: Problem-Solving and the Meaning of Justice*, 40 AM. CRIM. L. REV. 1541, 1559 (2003).

100. Mary E. Reimund, *Is Restorative Justice on a Collision Course with the Constitution?*, 3 APPALACHIAN J.L. 1, 31 (2004); See also Ikpa, *supra* note 40, at 311–18 (2007); Peggy F. Hora, *Drug Treatment Courts in the Twenty-First Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717 (2008).

of open jury trials, prison sentences without hope of rehabilitation, and a system whose burdens undemocratically fall disproportionately on marginalized communities.¹⁰¹ Problem-solving courts and mediation arose in response to these fundamental problems facing the judiciary, and, while still evolving, offer hope to ameliorate some of the harsh results of over-incarceration. In this way, proponents of restorative justice and problem-solving techniques and critics of those same techniques come from a common place of concern about how the current system often misses the needs of individual defendants and communities.

Many who work within the legal system tightly cling to tradition, even when it no longer serves our citizens. The adversarial system of trials—long celebrated in our popular and legal culture—represents an ideal that is rarely achieved in today’s overstretched courts. While we do not suggest that this formal adversarial process is never appropriate, it should, perhaps, be one of many forums for seeking justice. It should, perhaps, be part of a continuum of justice alternatives.

Our processes have not and cannot remain the same over time. What worked for one set of population numbers cannot necessarily work for a set of numbers three and four and five times that. We have choices to make. We can change the baseline laws and remove many things that are currently seen as crimes from our criminal frame (prostitution and drug use, for instance). We can move some practices into different kinds of tribunals (specialized dockets, dispute resolution in the communities or other non-traditional venues). We can provide housing, drug treatment, and employment for those who complete their sentences, to help them re-integrate into their communities,¹⁰² thereby reducing recidivism.

Maybe we can do all of these things. But what we cannot afford to do is to process cases in the same way that we are attempting to do now. What is currently happening in our courts and communities is madness. We are dehumanizing and demoralizing millions of people whose primary crime was to be born poor and of color in this country. Those who have been involved in problem-solving courts are desperately aware that this is true, and are attempting to change systems to respond to this reality. We now have best practices from the

101. *See infra* Part I.

102. Eric Eckholm, *Battling Addiction With Those Who Know It Best*, N.Y. TIMES, Oct. 23, 2009, available at http://www.nytimes.com/2009/10/23/us/23drugs.html?_r=1&pagewanted=print.

National Association of Drug Court Professionals,¹⁰³ the National Association of Criminal Defense Attorneys,¹⁰⁴ the National Association of State Courts,¹⁰⁵ and others. This is the time to take the wisdom of all those involved in the system and in our communities to make the changes reflect the best of our system, and of our country, and work to improve the lives of our citizens.

While it is critical to improve all the systems that have the capacity to strip citizens of rights and liberties, it is also important to remember that our system of justice includes all of us. We must all be working to solve conflicts and to seek justice. This is essential to democracy. The task of solving conflict cannot be assigned to lawyers and judges alone. Community members and family members have a stake in the outcome at all levels of a dispute. Building the capacity of those who are not lawyers and judges increases our capacity to live in a just society; it does not diminish that capacity. The straw man is dead. Best practices exist. We should together focus on the underlying issues of building and guaranteeing justice in America, one person and one community at a time.

103. BUREAU OF JUSTICE ASSISTANCE, DEFINING DRUG COURTS: THE KEY COMPONENTS (2004), <http://www.ojp.usdoj.gov/BJA/grant/DrugCourts/DefiningDC.pdf>.

104. NAT'L. ASS'N. OF CRIMINAL DEFENSE LAWYERS, *supra* note 62.

105. PAMELA M. CASEY ET AL., NAT'L. CTR. FOR STATE COURTS, PROBLEM-SOLVING JUSTICE TOOLKIT: THE PROBLEM SOLVING COURT APPROACH FOCUSES ON DEFENDANTS AND LITIGANTS WHOSE MEDICAL AND SOCIAL PROBLEMS HAVE CONTRIBUTED TO RECURRING CONTACTS WITH THE COURT SYSTEM (2007), http://www.ncsconline.org/d_research/Documents/ProbSolvJustTool-Bro-v4.pdf.