
Courting New Solutions Using Problem-Solving Justice: Key Components, Guiding Principles, Strategies, Responses, Models, Approaches, Blueprints and Tool Kits

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“We can’t solve problems by using the same kind of thinking we used when we created them.”

-Albert Einstein

INTRODUCTION

Problem-solving courts focus on the underlying medical and social issues and chronic behaviors of court users who often have recurring contacts with the justice system. They apply promising practices and evidence-based interventions from the behavioral sciences to effectuate change and seek innovative solutions to complex social issues such as substance abuse, mental health, co-occurring disorders, and violence. Problem-solving courts take many forms, but not all have separate foundational principles or key components. Those that do include adult drug treatment courts,¹ driving while impaired courts,² juvenile drug courts,³ mental health courts,⁴ family dependency treatment courts,⁵ do-

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¹ NAT’L ASS’N OF DRUG COURT PROFESSIONALS, *DEFINING DRUG COURTS: THE KEY COMPONENTS* (1997), *available at* <http://www.ojp.usdoj.gov/BJA/grant/DrugCourts/DefiningDC.pdf> [hereinafter *KEY COMPONENTS*].

² NAT’L CTR. FOR DWI COURTS, *THE GUIDING PRINCIPLES OF DWI COURTS* (2005), *available at* <http://www.dwicourts.org/learn/about-dwi-courts/-guiding-principles> [hereinafter *GUIDING PRINCIPLES*].

³ NAT’L DRUG COURT INST. & NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *JUVENILE DRUG COURTS: STRATEGIES IN PRACTICE* (2003), *available at* <http://www.ncjrs.gov/pdffiles1/bja/197866.pdf> [hereinafter *JUVENILE DRUG COURTS*].

⁴ DEREK DENCKLA & GREG BERMAN, CTR. FOR COURT INNOVATION, *RETHINKING THE REVOLVING DOOR: A LOOK AT MENTAL ILLNESSES IN THE COURTS* (2001), *available at*

<http://courtinnovation.org/uploads/documents/rethinkingtherevolvingdoor.pdf>; COUNCIL

mestic violence courts,⁶ community courts,⁷ unified family courts,⁸ and tribal healing-to-wellness courts.⁹ The United Nations has adopted “twelve key principles for court-directed treatment and rehabilitation programmes [sic],”¹⁰ which could apply to drug treatment courts as well as other treatment-focused courts. California has general principles for its problem-solving courts, known in that state as collaborative courts.¹¹ Western Australia’s Law Reform Commission has made twenty recommendations for court intervention programs that sound very much like key components, especially Recommendation 20.¹² In addition to components of specialist courts, there have been attempts to develop performance measures as well.¹³

OF STATE GOV'TS JUSTICE CTR., IMPROVING RESPONSES TO PEOPLE WITH MENTAL ILLNESSES: ESSENTIAL ELEMENTS OF A MENTAL HEALTH COURT (2007), available at http://www.ojp.usdoj.gov/BJA/pdf/MHC_Essential_Elements.pdf [hereinafter IMPROVING RESPONSES].

⁵ MEGHAN M. WHEELER & CARSON L. FOX, JR., NAT'L DRUG COURT INST., DRUG COURT PRACTITIONER FACT SHEET, FAMILY DEPENDENCY TREATMENT COURT: APPLYING THE DRUG COURT MODEL IN CHILD MALTREATMENT CASES (2006), available at http://www.ndci.org/sites/default/files/ndci/FDTC_Fact_Sheet.web%5B1%5D.pdf (applying the KEY COMPONENTS of drug courts to family dependency treatment courts in a narrative fashion rather than listing new components).

⁶ Randal B. Fritzler & Leonore M.J. Simon, *Creating a Domestic Violence Court: Combat in the Trenches*, CT. REV. (2000), available at <http://aja.ncsc.dni.us/courtrv/cr37/cr37-1/CR9FritzlerSimon.pdf>; ROBIN MAZUR & LIBERTY ALDRICH, CTR. FOR COURT INNOVATION, WHAT MAKES A DOMESTIC VIOLENCE COURT WORK? (2003), available at <http://www.courtinnovation.org/uploads/documents/whatmakesdvcourtwork.pdf>.

⁷ NAT'L CRIME COUNCIL, PROBLEM-SOLVING JUSTICE: THE CASE FOR COMMUNITY COURTS IN IRELAND (2007) (Ir.), available at http://www.crimecouncil.gov.ie/downloads/NCC_Problem_Solving_Justice.pdf.

⁸ Barbara A. Babb, *Unified Family Courts: A Comprehensive Solution for Resolving Complex Family Justice System Problems*, UNIFIED FAMILY COURT CONNECTION, Fall 2007, at 3, available at http://law.ubalt.edu/downloads/law_downloads/CFCC_UFC_FALL2007.pdf [hereinafter *Unified Family Courts*].

⁹ TRIBAL LAW & POLICY INST., TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS (2003), available at <http://www.ncjrs.gov/pdffiles1/bja/188154.pdf> [hereinafter TRIBAL HEALING].

¹⁰ United Nations Office on Drugs and Crime, *UNODC and Drug Treatment Courts (“Drug Courts”)* <http://www.unodc.org/unodc/en/legal-tools/Drug-Treatment-Courts.html> (last visited Feb. 22, 2011), and INFORMAL EXPERT WORKING GROUP ON DRUG TREATMENT COURTS, available at http://www.unodc.org/pdf/lap_report_ewg_casework.pdf.

¹¹ JUDICIAL COUNCIL OF CAL., COLLABORATIVE JUSTICE COURTS ADVISORY COMM. FACT SHEET, (2005), available at http://www.courtinfo.ca.gov/reference/documents/fact_sheets/collab.pdf.

¹² LAW REFORM COMM'N OF W. AUSTL., COURT INTERVENTION PROGRAMS: FINAL REPORT 64 (2009), available at <http://www.lrc.justice.wa.gov.au/2publications/reports/P96-FR.pdf>.

¹³ See, e.g., OFFICE OF CRIME STATISTICS AND RESEARCH, ATTORNEY-GENERAL'S DEPT. COMMON PERFORMANCE MEASURES FOR THE EVALUATION OF SPECIALIST COURT PROGRAMS (2010) (Austl.), available at http://www.ocsar.sa.gov.au/docs/research_reports/CPM-Specialist_Court_Programs_Discussion_Paper.pdf; CARY HECK, NAT'L DRUG COURT INST., LOCAL DRUG COURT RESEARCH: NAVIGATING PERFORMANCE MEASURES AND PROCESS EVALUATIONS (2006) http://www.ojp.usdoj.gov/BJA/pdf/Local_Drug_Court_Research.pdf.

Principles for non-specific problem-solving courts, in other words those which attempt to maneuver problem-solving principles into “regular” courts, include those promulgated by the National Center for State Courts,¹⁴ the American Bar Association (ABA),¹⁵ the National Judicial College,¹⁶ the Center for Court Innovation,¹⁷ the Canadian National Judicial Institute,¹⁸ the National Legal Aid & Defender Association,¹⁹ and mental health probation officers.²⁰ Two family court judges recently wrote of their recommendations for incorporating problem-solving court techniques into child support collection actions.²¹ Additionally, there are at least three books²² promoting this new type of justice, which have been published internationally. Elements propounded by non-judges include those of the ABA,²³ defense counsel,²⁴ and mental health probation officers.²⁵ In addition, attempts have been made to establish procedures for statewide

¹⁴ PAMELA M. CASEY ET AL., NAT’L CTR. FOR STATE COURTS, PROBLEM-SOLVING JUSTICE TOOLKIT (2007), available at http://www.ncsconline.org/D_Research/Documents/ProbSolvJustTool.pdf.

¹⁵ AM. BAR ASS’N: COAL. FOR JUST., ROAD MAP TO PROBLEM-SOLVING COURTS (2008), available at http://www.abanet.org/justice/pdf/Problem_Solving_Covered.pdf [hereinafter ROAD MAP].

¹⁶ NAT’L JUDICIAL COLL., EFFECTIVE JUDGING FOR BUSY JUDGES (2006), available at http://www.judges.org/pdf/effectivejudging_book.pdf [hereinafter EFFECTIVE JUDGING], and NAT’L JUDICIAL COLL., EFFECTIVE OUTCOME JUDGING BENCH CARD (2006), available at http://www.judges.org/pdf/bench_card.pdf.

¹⁷ DONALD J. FAROLE ET AL., CTR. FOR COURT INNOVATION, DOCUMENTING RESULTS: RESEARCH ON PROBLEM-SOLVING JUSTICE (1st ed., January 2007); ROBERT V. WOLF, CTR. FOR COURT INNOVATION, PRINCIPLES OF PROBLEM-SOLVING JUSTICE (2007), available at http://www.courtinnovation.org/_uploads/documents/Principles.pdf; DONALD J. FAROLE ET AL., CTR. FOR COURT INNOVATION, COLLABORATIVE JUSTICE IN CONVENTIONAL COURTS (2004), available at <http://www.courtinfo.ca.gov/programs/collab/documents/TransferabilityStudyFullReport.pdf>.

¹⁸ SUSAN GOLDBERG, NAT’L JUDICIAL INST., JUDGING FOR THE 21ST CENTURY: A PROBLEM-SOLVING APPROACH (2005) (Can.), available at <http://www.nji.ca/nji/Public/documents/Judgingfor21stcenturyDe.pdf>.

¹⁹ Nat’l Legal Aid & Defender Association, *Ten Tenets of Fair and Effective Problem Solving Courts* (2003), available at http://www.nlada.org/Defender/Defender_ACCD/ACCD_TenTenets [hereinafter *Ten Tenets*].

²⁰ SETH J. PRINS & FRED C. OSHER, COUNCIL OF STATE GOV’TS JUSTICE CTR., IMPROVING RESPONSES TO PEOPLE WITH MENTAL ILLNESS: THE ESSENTIAL ELEMENTS OF SPECIALIZED PROBATION INITIATIVES (2009), available at http://consensusproject.org/jc_publications/probation-essential-elements/Improving_Responses_to_People_with_Mental_Illnesses_-_The_Essential_Elements_of_Specialize_Probation_Initiatives.pdf.

²¹ JUDGE JIM RAUSCH & JUDGE TOM RAWLINGS, NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, INTEGRATING PROBLEM-SOLVING COURT PRACTICES INTO THE CHILD SUPPORT DOCKET (2008), available at <http://nasje.org/news/newsletter0803/R1cNCJFCJIntegratingProblemSolving.pdf>.

²² BRUCE J. WINICK & DAVID B. WEXLER, JUDGING IN A THERAPEUTIC KEY (Carolina Academic Press 2003); GREG BERMAN ET AL., GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE (The New Press 2005); MICHAEL KING ET AL., NON-ADVERSARIAL JUSTICE (Federation Press 2009).

²³ ROAD MAP, *supra* note 15.

²⁴ *Ten Tenets*, *supra* note 19.

²⁵ PRINS & OSHER, *supra* note 20.

coordination of problem-solving courts.²⁶ At least two law reviews have dedicated whole issues to problem-solving courts.²⁷ Part II of this article will give historical reference to and define each of the problem-solving courts that have components, principles, blueprints, and so forth. Part III compares and contrasts specific types of courts' principles. Part IV discusses generic problem-solving approaches to be used in a regular court docket. Lastly, Part V concludes that "Defining Drug Courts: The Key Components,"²⁸ the first such document, stands the test of time with only a few necessary additions. There has been a second body of literature based on therapeutic jurisprudence that defines not so much the mechanics of these courts, but the emotional intelligence required to run one well.²⁹

II. TYPES OF PROBLEM-SOLVING COURTS

A. Adult Drug Treatment Courts

The first problem-solving court, established before the genesis of that phrase, was created in Florida in 1989.³⁰ Miami's adult drug court was started in response to the crack cocaine epidemic in Florida, which led to the overcrowding of state penal institutions and an inability of the courts to process so many cases.³¹ The court decided to address the root cause of the problem—substance abuse—rather than focus on case processing and the individual merits of each case. The focal point became the substance abuse treatment and recovery of the criminal defendant rather than his or her prosecution, conviction or acquittal. Employing intensive case management and substance abuse treatment coupled with frequent court reviews, this new kind of court showed promise in solving the nation's prison-building boom and high recidivism rates. A few years later, in 1997, the National Association of Drug Court Professionals (NADCP) developed *Key Components* of drug courts.

Drug courts transform the roles of both criminal justice practitioners and alcohol and other drugs (AOD) treatment providers. The judge is

²⁶ Robert V. Wolf, *A New Way of Doing Business: A Conversation about the Statewide Coordination of Problem-Solving Courts*, J. OF CT. INNOVATION (2009), available at http://www.ojp.usdoj.gov/BJA/pdf/CCI_ps_roundtable.pdf.

²⁷ See 30 FORDHAM URB. L.J., (2002), and 33 CRIM. JUSTICE R. (2008).

²⁸ KEY COMPONENTS, *supra* note 1.

²⁹ See, e.g., MICHAEL KING, SOLUTION-FOCUSED JUDGING BENCHBOOK, (Australian Institute of Judicial Administration 2009); WINICK & WEXLER, *supra* note 21.

³⁰ C. West Huddleston et al., Nat'l Drug Court Inst., *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States*, Vol. II, No. 1 (May 2008), available at http://www.ndci.org/sites/default/files/ndci/PCPII1_web%5B1%5D.pdf.

³¹ *Id.*

the central figure in a team effort that focuses on sobriety and accountability as the primary goals. Because the judge takes on the role of trying to keep participants engaged in treatment, providers can effectively focus on developing a therapeutic relationship with the participant. In turn, treatment providers keep the court informed of each participant's progress so that rewards and sanctions can be provided.³²

Drug treatment courts (DTCs) proliferated quickly, from one in 1989 to over one hundred by 1996,³³ and that number more than tripled just three years later. The latest figures available show more than 2,560 drug courts in the United States as of February 2011, and 1,220 other problem-solving courts.³⁴ Fifteen years after its founding in 1994, the NADCP³⁵ represented over 22,000 people in the field including judges, attorneys, community corrections officers, treatment providers, social workers, and drug court managers.³⁶ There are now more than 3,700 problem-solving courts in the United States serving in excess of 70,000 individuals and another 25 or more courts are operating internationally.³⁷

An adult drug treatment court, according to the Bureau of Justice Assistance (BJA), is:

A specially designed court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse among nonviolent substance abusing offenders and to increase the offender's likelihood of successful rehabilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, community supervision and use of appropriate sanctions, and other rehabilitation services.³⁸

These courts use the primary performance measures of retention in the program, sobriety of the participants and recidivism rates.³⁹

³² KEY COMPONENTS, *supra* note 1, at 7.

³³ Huddleston et al., *supra* note 30, at 1.

³⁴ E-mail from Carolyn Hardin, Senior Director, Nat'l Drug Court Inst. (Feb. 21, 2011) (on file with author).

³⁵ See, Nat'l Ass'n of Drug Court Professionals (NADCP) home page, available at <http://www.nadcp.org>.

³⁶ NADCP, A DRUG COURT WITHIN REACH OF EVERY AMERICAN IN NEED (2008), <http://aja.ncsc.dni.us/htdocs/2009Annual/SpeakerMaterials/DrugCourtBrief.pdf> (last visited Jan. 19, 2011).

³⁷ Huddleston et al., *supra* note 30, at 1; and e-mail from Hardin, *supra* note 34.

³⁸ *Id.* at 21.

³⁹ Cary Heck & Meridith H. Thanner, *Drug Court Performance Measurement: Suggestions from the National Research Advisory Committee*, DRUG COURT REV., Vol. 5, Issue 2 (2006).

B. Community Courts

The first Community Court began in Midtown Manhattan in 1993 as a response to “quality of life” crimes affecting New York City. It was based on similar initiatives, predicated upon the “Broken Windows” theory, used by community and problem-oriented policing.⁴⁰ Midtown Community Court was, and remains, a collaboration between the police, businesses and the community whose shared goal is “addressing the problems of defendants and appearing before the court, while using the leverage of the court to encourage offenders to ‘give back’ to the community in compensation for damage they and others have caused.”⁴¹ The Court works on the principle of restorative justice,⁴² seeking to make the community whole after the commission of a crime. For example, “the Midtown Community Court sentences low-level offenders to pay back the neighborhood through community service, while at the same time offering them help with problems that often underlie criminal behavior.”⁴³ A hallmark of these courts is the on-site support services that may also be available to people in the surrounding district, as the neighborhood is an integral part of the court. Community courts are “neighbourhood [sic] focused” and “produc[e] greater efficiency, visibility and accountability.”⁴⁴ Transparency and visibility of these courts is taken to the maximum at the Neighbourhood Justice Centre⁴⁵ in Collingwood near Melbourne, Australia, in that glass panels divide the hallway from the courtroom and windows surround the bench and the gallery.

C. Driving While Impaired Courts

Doña Ana, New Mexico, was the site of the first DWI court in 1995, the first of its kind in the world. As of December 2009, there are now a total of 526 DWI courts (also called sobriety courts), 172 of which exclusively focus on changing the behavior of persons who drive while impaired by alcohol or other drugs. Drug courts that fold in DWI defendants without establishing a

⁴⁰ George L. Kelling, *How New York Became Safe: The Full Story*, THE CITY J., July 17, 2009.

⁴¹ Midtown Community Court, Center for Court Innovation, <http://www.courtinnovation.org/index.cfm?fuseaction=Page.ViewPage&PageID=591¤tTopTier2=true> (last visited Feb 22, 2011).

⁴² For an international look at restorative justice, see <http://www.restorativejustice.org>.

⁴³ Midtown Community Court, *supra* note 41.

⁴⁴ NAT'L CRIME COUNCIL, *supra* note 7, at 16.

⁴⁵ Dep't of Justice, Neighbourhood Justice Center (Austl.), <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/The+Justice+System/Neighbourhood+Justice> (last visited Jan. 13, 2011).

specific court, known as “hybrid” courts, number 354.⁴⁶ So far as it is known, Guam has the first DWI Court outside the United States. DWI courts focus on public safety and reductions in recidivism, and they have wide support from law enforcement.⁴⁷ Using the *Guiding Principles of DWI Courts*,⁴⁸ these courts focus on the high risk offender (defendants with multiple prior convictions or those with high blood alcohol levels) and closely monitor them using the tools of adult drug courts and special methods such as SCRAM™ devices attached to the person’s ankle, providing continuous alcohol monitoring.⁴⁹

D. Family Treatment Courts/Unified Family Courts

As the name implies, these courts focus on the family unit and address issues such as domestic violence and substance abuse. Family treatment courts seek to unify families after children have been removed from the home because of alcohol or drug issues. These courts work to avoid termination of parental rights and pursue the need for children to have a secure home by supporting parents whom they hope will become able to raise their children without substance abuse and trauma.

Unified family courts (UFCs) are unique in that they generally operate with a wider jurisdiction so that all court cases related to one family are assigned to one judge, regardless of whether the matter is criminal, juvenile delinquency, juvenile dependency, civil, or probate. UFCs provide a comprehensive solution for resolving complex family justice system problems.⁵⁰ The shibboleth for some UFCs is “one family, one judge.”

Whether unified or not, family treatment courts “enhance the well being of families and children who come into the justice system.”⁵¹ Evaluations of family treatment courts show that children spend less time in foster care, reunification rates are higher, parents enter and complete treatment at higher rates than in “normal” dependency courts, children have fewer behav-

⁴⁶ Email from David Wallace, Director of the Nat’l Ctr. for DWI Courts (Feb. 21, 2011) (on file with author).

⁴⁷ Nat’l Ctr. for DWI Courts, Endorsements, <http://www.dwicourts.org/learn/endorsements> (listing Mothers Against Drunk Driving, the Governor’s Highway Safety Ass’n, the Int’l Ass’n of Chiefs of Police, the Nat’l District Attorneys Ass’n, Nat’l Ass’n of Prosecutor Coordinators, and the Nat’l Sheriff’s Ass’n have all endorsed DWI Courts).

⁴⁸ GUIDING PRINCIPLES, *supra* note 2.

⁴⁹ SCRAM™, Specialty Courts, <http://www.alcoholmonitoring.com/index/programs/specialty-courts> (last visited Jan. 22, 2011).

⁵⁰ Babb, *supra* note 8, at 3.

⁵¹ *Id.*

ioral problems, and contacts with police, child protective services, or like agencies are reduced.⁵²

E. Juvenile Drug Treatment Courts

Juvenile drug treatment courts are similar to adult drug treatment courts, except that the child is the identified patient. These juvenile courts focus on treatment and recovery for children under eighteen who have been assessed as having problems with alcohol or other drugs. Early evaluations of juvenile drug treatment courts have been disappointing, as two of every five meta-analyses of evaluations have had null results and one has had negative results.⁵³ However, more recent studies have shown the effectiveness of Juvenile Drug Treatment Courts in altering family and peer relationships which were risk factors for antisocial adolescent behavior.⁵⁴

F. Domestic Violence Courts

Domestic violence (DV) courts can be solely focused on criminal cases of intimate partner violence or they may be unified like UFCs, where all dockets relating to domestic violence between the same parties are integrated in one court. The unified approach avoids conflicting restraining orders and duplications of service. The offender is kept accountable by frequent reports to the court and required frequent participation in a batterers' intervention program. Alcohol and other drugs frequently fuel domestic violence cases, and accordingly, assessments and treatment for substance abuse are common. DV courts differ in one important way from other treatment courts in that protection of the victim, rather than the treatment and recovery of the participant, is of paramount importance. Assigned victim advocates are often part of the process and help with services such as housing and job training, if needed. In at least one state, a judicial ethics committee has made a distinction between DV courts and other problem-solving courts. The New York Ethics Committee found

⁵² Beth L. Green et al., *How Effective Are Family Treatment Drug Courts? Outcomes From a Four-Site National Study*, 12 CHILD MALTREATMENT 43, 50–56 (2007); see also Christine E. Grella & Elizabeth Hall, *Dependency Drug courts: Evaluation of Cost Avoidance and Child Welfare Outcomes*, OFFENDER PROGRAMS REPORT (Civil Research Institute) Vol. 14, No. 4 (Nov./Dec. 2010).

⁵³ Douglas B. Marlowe, *The Verdict is in on Drug Courts and Other Problem-Solving Courts*, plenary address to the 2008 Ann. Conf. of the Nat'l Ass'n of Drug Court Professionals, St. Louis, MO (May 2008); see also Douglas B. Marlowe, *The Verdict on Drug Courts and Other Problem-Solving Courts*, 2 CHAPMAN J. CRIM. JUST. 57 (2011).

⁵⁴ Cindy M. Schaeffer et al., *Mechanisms of Effectiveness in Juvenile Drug Court: Altering Risk Processes Associated with Delinquency and Substance Abuse*, DRUG COURT REVIEW 7, 57 (Nat'l Drug Court Inst., 2010). See generally, *Special Issue on Juvenile Drug Treatment Courts*, DRUG COURT REVIEW, (Nat'l Drug Court Inst., 2010).

that, unlike in drug treatment courts, the DV court judge is seen as more closely aligned with the victim, rather than neutral, and that it is not truly a non-adversarial court and standard ethics rules apply.⁵⁵

G. Mental Health Courts

Coincidentally, or maybe not, the first mental health (MH) court also opened in Florida in 1997. MH courts deal with offenders with serious mental illnesses who have committed crimes in the community. The courts may be pre-plea or post-adjudication and some use a police diversion model. The Council of State Government's Justice Center has provided leadership for the interaction of people with mental health issues and the criminal justice system.⁵⁶ Besides components of MH Courts, the Justice Center recently promulgated *The Essential Elements of Specialized Probation Initiatives*,⁵⁷ the first problem-solving court document related specifically to community corrections. After an assessment and development of a treatment plan, the court acts much like an adult drug treatment court by making sure the participant is engaged in treatment, is attending the appropriate 12-Step meetings,⁵⁸ is medication compliant, and is getting the services to which the participant is entitled. Participants in a mental health court, just like those in regular adult drug treatment court, are often "co-occurring," that is, they have both a mental illness and an addiction. The National GAINS Center for People with Co-Occurring Disorders in the Justice System⁵⁹ is specifically set up to assist with this issue. Performance measures developed by the National Center for State Courts for mental health courts are being piloted by four courts and the Center has suggested guiding principles for them.⁶⁰ Likewise, principles for recommendations about persons with mental illness who come into the criminal justice system have been proposed by the California Administrative Office of the Courts and ten other states.⁶¹

⁵⁵ 08 N.Y. Ethics Advisory Op. 08-191 (2008), available at <http://www.nycourts.gov/ip/judicialethics/opinions/08-191.htm>.

⁵⁶ See Council of State Governments Just. Center, Issue Areas, <http://consensusproject.org/issue-areas> (last visited May 16, 2010).

⁵⁷ See PRINS & OSHER, *supra* note 20.

⁵⁸ See e.g., Dual Recovery Anonymous, <http://www.draonline.org> (last visited May 16, 2010).

⁵⁹ See The Center for Mental Health Services' Nat'l GAINS Ctr., <http://www.gainscenter.samhsa.gov/html/> (last visited Feb. 22, 2011).

⁶⁰ NICOLE L. WATERS ET AL., NATIONAL CENTER FOR STATE COURTS, MENTAL HEALTH COURT PERFORMANCE MEASURES: IMPLEMENTATION & USER'S GUIDE (2010), available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/spcts&CISOPTR=222>.

⁶¹ See Task Force for Criminal Justice Collaboration on Mental Health Issues, Administrative Office of the Courts, Draft Recommendations: Invitation to Comment (2010),

H. Tribal Healing-to-Wellness Courts

Like other problem-solving courts, the Tribal Healing-to-Wellness Courts are derived from the adult drug treatment court model. However, they differ in an important way in that the specific cultural needs of the population are considered. This is true because customs and traditions must be used in Indian Country courts. Tribal courts also process many more alcohol cases than traditional DTCs. The location of these courts present particular challenges, such as a lack of services and lack of funding.⁶² Healing-to-Wellness courts, like Mental Health/Co-Occurring courts, may also use more specialized 12-Step programs such as the Red Road⁶³ or White Bison⁶⁴ meetings. Despite these barriers and challenges, there were eighty-nine tribal drug courts as of June 2010.⁶⁵

I. Collaborative Justice Courts in California

The panoply of problem-solving courts in California—drug courts, mental health courts, domestic violence courts, community courts, DUI courts, youth/peer courts where teens are the judge and jury in school discipline cases, homeless courts focusing on housing in addition to other traditional issues, veterans' courts where an eligibility criterion is prior military combat service, and elder courts for those being abused either physically or financially—are governed by the approaches found in *Guiding Principles of Collaborative Justice Courts*.⁶⁶

III: KEY COMPONENTS, PRINCIPLES, ELEMENTS, APPROACHES, *ET AL.*

Defining Drug Courts: The Key Components (1997)

The NADCP was the first to attempt to answer the question, “What makes a drug court a drug court?” In 1997, a committee of early practitioners defined the basic tenets of DTCs as follows:⁶⁷

available at <http://www.courtinfo.ca.gov/invitationstocomment/documents/mentalhealth-rec.pdf> [hereinafter *Draft Recommendations*].

⁶² Tribal Law & Policy Inst., *Healing to Wellness Courts: A Preliminary Overview of Tribal Drug Courts* 1-2 (1999), available at <http://www.tribal-institute.org/download/heal.pdf>.

⁶³ See Red Road, available at <http://www.redroadtraining.com/shop-footsteps-synopsis.php> (last visited Jan. 22, 2011).

⁶⁴ See White Bison, available at <http://www.whitebison.org/firestarter/index.htm> (last visited Oct. 12, 2009).

⁶⁵ Huddleston et al., *supra* note 30, at 4, and e-mail from Hardin, *supra* note 34.

⁶⁶ See JUDICIAL COUNCIL OF CAL., *supra* note 11, at 1-5.

⁶⁷ KEY COMPONENTS, *supra* note 1, at iii.

- **Key Component #1:** Drug courts integrate alcohol and other drug treatment services with the justice system case processing.
- **Key Component #2:** Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- **Key Component #3:** Eligible participants are identified early and promptly placed in the drug court program.
- **Key Component #4:** Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- **Key Component #5:** Abstinence is monitored by frequent alcohol and other drug testing.
- **Key Component #6:** A coordinated strategy governs drug court responses to participants' compliance.
- **Key Component #7:** Ongoing judicial interaction with each drug court participant is essential.
- **Key Component #8:** Monitoring and measuring the achievement of program goals and gauging effectiveness.
- **Key Component #9:** Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- **Key Component #10:** Forging partnerships among drug courts, public agencies, and community-based organizations generate local support and enhance drug court effectiveness.

The components are expanded upon and annotated in the remainder of the document. They have served as the basis for many of the other attempts to define problem-solving courts. The components have also recently been studied for compliance across eighteen drug treatment court sites.⁶⁸

The Guiding Principles of DWI Courts (2005)

The Guiding Principles⁶⁹ were published in 2005 and the National Center for DWI Courts (NCDC), a professional services division of NADCP, was established in 2007. Two of the DWI Principles are specifically tailored to DWI cases: number one, which speaks to eligibility of certain types of DWI offenders, and number eight, which deals with transportation issues for the offender. Also, the language used to designate those involved with the program changes from "participant" in the DTC Components to "offender" in the DWI principles. Finally, co-occurring disorders are

⁶⁸ See SHANNON M. CAREY ET AL., EXPLORING THE KEY COMPONENTS OF DRUG COURTS: A COMPARATIVE STUDY OF 18 ADULT DRUG COURTS ON PRACTICES, OUTCOMES AND COSTS (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>.

⁶⁹ GUIDING PRINCIPLES, *supra* note 2.

addressed for the first time in Principle number three and sustainability is mentioned for the first time in Principle number ten. The remaining principles are similar to the DTC components.⁷⁰

- **GUIDING PRINCIPLE #1: Determine the Population**

Targeting is the process of identifying a subset of the DWI offender population for inclusion in the DWI Court program. This is a complex task given that DWI Courts, in comparison to traditional Drug Court programs, accept only one type of offender: the hardcore impaired driver. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

- **GUIDING PRINCIPLE #2: Perform a Clinical Assessment**

A clinically competent and objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains, including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change. Without clearly identifying a client's needs, strengths, and resources along each of these important bio-psychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan.

- **GUIDING PRINCIPLE #3: Develop the Treatment Plan**

Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI Courts must carefully select and implement treatment strategies demonstrated through research to be effective with the hardcore impaired driver to ensure long-term success.

- **GUIDING PRINCIPLE #4: Supervise the Offender**

Driving while impaired presents a significant danger to the public. Increased supervision and monitoring by the court, probation department, and treatment provider must occur as part of a coordinated strategy to intervene with hardcore DWI offenders and to protect against future impaired driving.

- **GUIDING PRINCIPLE #5: Forge Agency, Organization, and Community Partnerships**

Partnerships are an essential component of the DWI Court model as they enhance credibility, bolster support, and broaden available resources. Because the DWI Court model is built on and dependent upon a strong team approach, both within the court and be-

⁷⁰ The following list is excerpted from GUIDING PRINCIPLES, *supra* note 2.

yond, the court should solicit the cooperation of other agencies, as well as community organizations, to form a partnership in support of the goals of the DWI Court program.

- **GUIDING PRINCIPLE #6: Take a Judicial Leadership Role**

Judges are a vital part of the DWI Court team. As leader of this team, the judge's role is paramount to the success of the DWI Court program. The judge must be committed to the sobriety of program participants, possess exceptional knowledge and skill in behavioral science, own recognizable leadership skills as well as the capability to motivate team members, and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI Court team, therefore, is of utmost importance.

- **GUIDING PRINCIPLE #7: Develop Case Management Strategies**

Case management, which involves the series of inter-related functions that provide for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI Court program.

- **GUIDING PRINCIPLE #8: Address Transportation Issues**

Though nearly every state revokes or suspends a person's driving license upon conviction for an impaired driving offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI Court program. In many cases, the participant and court team can solve the transportation problem created by the loss of their driver's license through a number of strategies. The court must hold participants accountable and detect those who attempt to drive without a license and/or insurance.

- **GUIDING PRINCIPLE #9: Evaluate the Program**

To convince stakeholders about the power and efficacy of DWI Court, program planners must design a DWI Court evaluation model capable of documenting behavioral change and linking that change to the program's existence. A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioral change, and a commitment from the DWI Court team to rigorously abide by the rules of the evaluation design.

- **GUIDING PRINCIPLE #10: Ensure a Sustainable Program**

The foundation for sustainability is laid, to a considerable degree, by careful and strategic planning. Such planning includes considerations of structure and scale, organization and participation, and, of course, funding. Becoming an integral and proven approach to the DWI problem in the community, however, is the ultimate key to sustainability.

As with the first document, there is an expanded version of the principles written by experts in the field.⁷¹

Juvenile Drug Courts: Strategies in Practice (2003)⁷²

So far as can be determined, the committee members who contributed to this publication were the first to be made up of those outside NADCP or the National Drug Court Institute. The authors include drug court practitioners, as well as researchers and educators. In addition, the publication resulted from a collaborative effort with the National Council of Juvenile and Family Court Judges. The strategies include some issues unique to dealing with juveniles, such as including their families in strategies eight and twelve, making sure the program is developmentally appropriate for the age group in strategy nine, and tending to the juvenile's educational needs in strategy thirteen. Strategies ten and eleven are the first in the U.S. to mention gender and cultural competence in these types of documents. Finally, "incentives and sanctions," hallmarks of treatment courts, are mentioned specifically for the first time in strategy fifteen. Although confidentially is anticipated by earlier documents, it is specifically mentioned in strategy sixteen of the juvenile drug court document. The list is as follows:⁷³

1. **Collaborative Planning:** Engage all stakeholders in creating an interdisciplinary, coordinated, and systemic approach to working with youth and their families.
2. **Teamwork:** Develop and maintain an interdisciplinary, non-adversarial work team.
3. **Clearly Defined Target Population and Eligibility Criteria:** Define a target population and eligibility criteria that are aligned with the program's goals and objectives.
4. **Judicial Involvement and Supervision:** Schedule frequent judicial reviews and be sensitive to the effect that court proceedings can have on youth and their families.
5. **Monitoring and Evaluation:** Establish a system for program monitoring and evaluation to maintain quality of service, assess program impact, and contribute to knowledge in the field.
6. **Community Partnerships:** Build partnerships with community organizations to expand the range of opportunities available to youth and their families.

⁷¹ See generally MIKE LOEFFLER ET AL., THE TEN GUIDING PRINCIPLES OF DWI COURTS, NAT'L DRUG COURT INST., available at http://www.dwicourts.org/sites/default/files/nadcp/Guiding_Principles_of_DWI_Court.pdf.

⁷² JUVENILE DRUG COURTS, *supra* note 3.

⁷³ The numbered list following the footnote is excerpted from JUVENILE DRUG COURTS, *supra* note 3, at 10.

7. **Comprehensive Treatment Planning:** Tailor interventions to the complex and varied needs of youth and their families.
8. **Developmentally Appropriate Services:** Tailor treatment to the developmental needs of adolescents.
9. **Gender-Appropriate Services:** Design treatment to address the unique needs of each gender.
10. **Cultural Competence:** Create policies and procedures that are responsive to cultural differences and train personnel to be culturally competent.
11. **Focus on Strengths:** Maintain a focus on the strengths of youth and their families during program planning and in every interaction between the court and those it serves.
12. **Family Engagement:** Recognize and engage the family as a valued partner in all components of the program.
13. **Educational Linkages:** Coordinate with the school system to ensure that each participant enrolls in and attends an educational program that is appropriate to his or her needs.
14. **Drug Testing:** Design drug testing to be frequent, random, and observed. Document testing policies and procedures in writing.
15. **Goal-Oriented Incentives and Sanctions:** Respond to compliance and noncompliance with incentives and sanctions that are designed to reinforce or modify the behavior of youth and their families.
16. **Confidentiality:** Establish a confidentiality policy and procedures that guard the privacy of the youth while allowing the drug court team to access key information.

Rethinking the Revolving Door: A Look at Mental Illness in the Courts⁷⁴ (2001)

The Center for Court Innovation (CCI) was the first body to identify common procedures in mental health courts. It was also the first to specifically identify therapeutic jurisprudence (TJ) as a common thread in problem-solving courts' procedures, although the connection between drug treatment courts and TJ had been made a few years earlier.⁷⁵ Moreover, a new consideration, "shor[ing] up public trust and confidence in the justice system," is standard for mental health courts. CCI also stressed the voluntary nature of such a court and discussed the possible plea structures in the procedures.⁷⁶

⁷⁴ DENCKLA & BERMAN, *supra* note 4.

⁷⁵ Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 448 (1999).

⁷⁶ The guidelines in the indented bullet-point list below are excerpted from DENCKLA & BERMAN, *supra* note 4, at 8–10.

- **Problem-Solving:** Mental health courts mark an attempt by court systems to address a systemic problem, taking a critical look at the issues that defendants with mental illness pose for the courts and crafting a new set of responses. Put simply, these courts are not satisfied with continuing with business as usual, such as standard case processing or out-sourcing the solution to some other agency.
- **Public Safety:** By responding to widespread concerns about how courts deal with defendants with mental illnesses, mental health courts attempt to shore up public trust and confidence in the justice system. Indeed, many mental health courts have been created in response to a specific local crisis involving mentally ill defendants—for instance, the murder of a retired firefighter in Seattle, Washington by a person with mental illness.⁷⁷
- **Therapeutic Jurisprudence:** In linking defendants with mental illness to treatment alternatives, many mental health courts see themselves as practicing “therapeutic jurisprudence.” In one way or another, mental health courts are testing the extent to which the law can be a therapeutic agent—a social force producing positive life changes for defendants.
- **Identification:** Mental health courts develop new systems to identify defendants with mental illness. The point in the criminal justice process at which this intervention occurs varies by jurisdiction. Usually, identification takes place within twenty-four hours of arrest, while defendants are still in custody. The primary sources of identification are jail staff, family members, and defense attorneys.
- **Targeting:** After identification, each court has created eligibility criteria that target a certain type of defendant. Almost all programs require that defendants have symptoms of severe mental illness and face non-violent, misdemeanor charges. (Note: Modernly, this is no longer the case. Many mental health courts adjudicate felony violations and violent offenders.) San Bernardino’s court has handled some non-violent felonies on a case-by-case basis. In general, mental health courts specify that the defendants’ mental illnesses must be “Axis I disorders” as designated in the Diagnostic Statistics Manual IV.
- **Dedicated Staff:** Each mental health court has a dedicated judge and some additional specialized staff. The specialized staff is usually composed of mental health clinicians who screen cases for eligibility, prepare treatment plans, and report to the judge on defendants’ progress in treatment. In some cases, the staff is hired by the court system using new funding sources. In other cases,

⁷⁷ JOHN S. GOLDKAMP & CHERYL IRONS-GUINN, CRIME AND JUSTICE RESEARCH INSTITUTE, EMERGING JUDICIAL STRATEGIES FOR THE MENTALLY ILL IN THE CRIMINAL CASELOAD: MENTAL HEALTH COURTS IN FORT LAUDERDALE, SEATTLE, SAN BERNARDINO, AND ANCHORAGE (2000), available at <http://www.ncjrs.gov/pdffiles1/bja/182504.pdf>.

the staff is assigned from a collaborative government agency or from a local treatment provider. In general, mental health courts have been planned and overseen by interdisciplinary teams composed of a variety of criminal justice and behavioral health stakeholders. For instance, the Santa Clara Mental Health Court “team” includes the judge, district attorney, public defender, and mental health caseworkers. The team meets to discuss every case with each representative providing input from their unique institutional perspective.

- **Non-Traditional Roles:** Mental health courts—like drug courts before them—have altered the dynamics of the courtroom, including, at times, certain features of the adversarial process. For example, in some courts defenders and prosecutors come together to discuss their common goals for each defendant. Mental health courts may engage judges in unfamiliar roles as well, asking them to convene meetings and broker relationships with service providers.
- **Voluntariness:** Participation in mental health court is voluntary; defendants must affirmatively “opt-in” to receive treatment. For instance, the King County Mental Health Court in Washington gives defendants two weeks in a treatment placement to help them decide whether to participate in the program or not (during this time, their attorneys can also investigate the strength of the case against their client).
- **Plea Structure:** Once a defendant opts into a mental health court, one of two things happens: either prosecution is “frozen” and charges are dropped after the defendant successfully completes treatment, or a plea is taken and later vacated (or charges reduced) after treatment is completed.⁷⁸ All of the mental health courts require a longer period of time in treatment than the defendant would have served in jail or prison if they had plead guilty to the crime charged, and most courts require participating defendants to spend a minimum of one year in treatment. The rationale behind this is two-fold. First, mandated treatment involves many fewer restrictions than being incarcerated (many defendants are even released to their own residences). Second, mental health courts are willing to invest in treatment only if there is real promise of reducing symptom severity (and thereby reducing recidivism). Experience indicates that it takes at least a year to successfully engage people with a mental illness in treatment. Accordingly, many mental health courts reserve the right to extend offenders’ period of treatment in the event of non-compliance.
- **Judicial Monitoring:** Mental health courts require participants to frequently return to court to enable the judge to monitor the

⁷⁸ Some would argue that “completing treatment” is somewhat inaccurate for mental health clients.

progress of treatment. Court appearances are made less frequently as participants demonstrate consistent compliance over a sustained period of time.

- **System Integration:** Mental health courts seek to promote reform with partners outside of the courthouse as well as within. For instance, mental health courts have encouraged mental health and drug treatment providers to come together to improve service delivery for offenders.

Improving Responses to People with Mental Illnesses: Essential Elements of a Mental Health Court (2007)⁷⁹

These mental health court elements are also promulgated by a group outside NADCP/NDCI/NCDC. The Criminal Justice/Mental Health Consensus Project operates under the banner of the Council of State Governments Justice Center.⁸⁰ It is tasked with improving responses to people with mental illnesses who become involved in, or are at risk of involvement in, the criminal justice system.⁸¹ Like DWI courts, mental health courts should target certain populations as set forth in element two. Element four specifically talks about risk assessment, and the notion of “informed choice,” the language of procedural justice,⁸² is found here again in element five. Confidentiality, as is found in *Juvenile Strategies*, and sustainability, as found in *DWI Court Principles*, are also found here in elements seven and ten.⁸³

Element #1: Planning and Administration. A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment, and related systems and the community guides the planning and administration of the court.

Element #2: Target Population. Eligibility criteria address public safety and consider a community’s treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses. Eligibility criteria also take into account the relationship between mental illness and a defendant’s offenses, while allowing the individual circumstances of each case to be considered.

Element #3: Timely Participant Identification and Linkage to Services. Participants are identified, referred, and accepted into

⁷⁹ IMPROVING RESPONSES, *supra* note 4. See also U.S. Dep’t of Health and Human Services, *Practice Guidelines: Core Elements for Responding to Mental Health Crisis* (2009), available at <http://download.ncadi.samhsa.gov/ken/pdf/SMA09-4427.pdf>.

⁸⁰ Criminal Justice/Mental Health Consensus Project, Council of State Gov’ts Justice Ctr., <http://consensusproject.org/about> (last visited Feb. 22, 2011).

⁸¹ DENCKLA & BERMAN, *supra* note 4, at 11.

⁸² Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 CT. REV. 4, 6 (2007).

⁸³ The elements in the indented list below are excerpted from throughout IMPROVING RESPONSES, *supra* note 4.

mental health courts, and then linked to community-based service providers as quickly as possible.

Element #4: Terms of Participation. Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.

Element #5: Informed Choice. Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.

Element #6: Treatment Support and Services. Mental health courts connect participants to comprehensive and individualized treatment, as well as support and services in the community. They strive to use—and increase the availability of—treatment and services that are evidence-based.

Element #7: Confidentiality. Health and legal information should be shared in a way that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

Element #8: Court Team. A team of criminal justice professionals, mental health staff, and service and treatment providers receive special, ongoing training and help mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

Element #9: Monitoring Adherence to Court Requirements. Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

Element #10: Sustainability. Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures are modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded.

Mental Health Courts Performance Measures (2010)⁸⁴

In addition to principles, performance measures have now been developed for Mental Health Courts (MHCs) following the

⁸⁴ Waters et al., *supra* note 60.

performance measures for drug courts developed in 2005.⁸⁵ This document says “there is a lack of consensus on what key elements ought to be used to measure the performance of MHCs.”⁸⁶ The National Center for State Courts offered the following guiding principles:

- These measures are primarily tools designed to better manage and effectively administer MHCs.
- The performance measures will secondarily assist with making policy decisions about how to address mental health issues within the criminal justice system. They will provide information to the public, the court community, defendants, and funding agencies, that speaks to the issues of accountability and sustainability in the context of MHCs.
- The final set of selected measures will be inclusive of the key issues that address the purpose of MHCs (both criminal justice and mental health needs) while *balancing* the need to be *inclusive* of all key domains with the desire to keep the measures to a *manageable* number, practical for implementation in the field.
- Performance measures will be clearly distinguished from process and outcome/impact evaluation measures.
- The performance measures will reflect Problem-Solving Court Principles, developed by the Center for Court Innovation.
- The performance measures will build upon performance measures developed for other types of problem-solving courts (e.g., the [National Research Advisory Committee] measures developed for adult drug courts) and for courts in general (e.g., NCSC’s Court-Tools), where appropriate.
- The performance measures will be specific, measurable, and subject to specific documentation.⁸⁷

As of 2009, four courts were piloting fourteen core measures affecting participant accountability, social functions, case processing, collaboration, individualized and appropriate treatment, procedural fairness and aftercare/post-exit transition.⁸⁸ There are also fourteen supplemental measures that are considered “important . . . but are . . . aspirational.”⁸⁹

⁸⁵ CARY PECK, NAT’L DRUG COURT INST., LOCAL DRUG COURT RESEARCH: NAVIGATING PERFORMANCE MEASURES AND PROCESS EVALUATIONS, (2005), available at <http://www.ndci.org/sites/default/files/ndci/Mono6.LocalResearch.pdf>

⁸⁶ *Id.* at 1.

⁸⁷ *Id.* at 2-3.

⁸⁸ *Id.*

⁸⁹ *Id.*

Task Force for Criminal Justice Collaboration on Mental Health Issues (2010)⁹⁰

Although not specific to mental health courts, California and ten other states (Delaware, Florida, Georgia, Idaho, Nevada, Texas, Vermont, Wisconsin, New Hampshire and Missouri) have formed task forces for criminal justice collaboration on mental health issues. The California draft report adopted ten guiding principles for the work of the task force that are not unlike MHC principles. They are:⁹¹

- Courts should take a leadership role in convening stakeholders to improve the options and outcomes for those who have a mental illness and are at risk of entering or have entered the criminal justice system.
- Resources must be put toward identifying those individuals with mental illness who are involved or who are likely to become involved with the criminal justice system. Interventions and diversion possibilities must be developed and utilized at the earliest possible opportunity.
- Diversion opportunities should exist for defendants with mental illness as they move through the criminal justice system.
- Treatment and disposition alternatives should be encouraged for individuals who are detained, arrested, or incarcerated primarily because of actions resulting from a mental illness or lack of appropriate treatment.
- Effective responses to this population require the collaboration of multiple systems and stakeholders because offenders with mental illness interface with numerous systems and agencies as they move through the criminal justice system.
- Flexible and integrated funding is necessary to facilitate collaboration between the various agencies that interact with offenders with mental illness.
- Offenders with mental illness must receive continuity of care as they move through the criminal justice system in order to achieve psychiatric stability.
- Information sharing across jurisdictions and agencies is necessary to promote continuity of care and appropriate levels of supervision for offenders with mental illness.
- Consumers who have previously gone through the criminal justice system should be involved in all stages of planning and implementation of interventions and services for offenders with mental illness.

⁹⁰ *Draft Recommendations, supra* note 61.

⁹¹ The guidelines in the indented bullet-point list following the footnote are excerpted from *Draft Recommendations, supra* note 61.

- Programs and practices considered best practice models should be adopted in an effort to effectively utilize diminishing resources and improve outcomes.

Principles of an Effective Domestic Violence Court (2000)⁹²

The authors of this article did not list principles in a sequential manner as in the other documents, but rather pointed out differences between DV courts and drug treatment courts (DTCs) as well as tips for dealing with DV offenders. Judicial behavior⁹³ is addressed for the first time in this document, as are psychological tools such as behavioral contracts⁹⁴ and the effect of *nolo contendere* pleas. These shall be excerpted in narrative form as follows:⁹⁵

- DV courts by definition deal with violent offenders, unlike most DTCs
- There is no withdrawal of pleas, sealing of records, or dismissal of charges as a “carrot” in a DV court
- Judges should express empathy for victims, mobilize resources, and make victims feel welcome
- Judges should be respectful to defendants and recognize their successes
- DV courts should confront the defendant’s cognitive distortions, including minimizing harm, denial of violence, or blaming the victim
- Encourage voluntary mental health activities as well as alcohol evaluation and treatment
- Be wary of nolo contendere pleas
- Engage in behavioral contracts between the offender and the court
- Use no contact orders as leverage
- Immediacy is key
- Make referrals for protection of children
- Sentencing should be swift but not severe
- Calendar compliance reviews
- Judges should be well trained on evidentiary and other special DV issues
- Coordinate other cases involving the same parties

⁹² See generally Fritzler & Simon, *supra* note 6.

⁹³ See, e.g., BRUCE J. WINICK, *Domestic Violence Court Judges as Risk Managers, in JUDGING IN A THERAPEUTIC KEY* 201-211 (Bruce J. Winick & David B. Wexler eds., Carolina Academic Press 2003).

⁹⁴ *Id.* at 227–230.

⁹⁵ The guidelines in the indented bullet-point list below are excerpted from Fritzler & Simon, *supra* note 6.

What Makes a Domestic Violence Court Work? (2003)⁹⁶

A more typical list of principles was published by the Center for Court Innovation and reprinted in the *Judges Journal* in 2003. This article highlights “the building blocks of a successful domestic violence court: victim services, judicial monitoring, accountability, and coordinated community response.”⁹⁷ It provides strategies to overcome pushback from prosecution, defense, and community agencies. It is the first set of principles to focus on someone other than the defendant/participant. An international perspective on judicial behavior in domestic violence courts has just emerged in Australia.⁹⁸ The principles include:

Victim Services:

- Provide victims with immediate access to advocates
- “Frontload” social services
- Keep victims informed
- Schedule cases promptly
- Create “safe places” within the courthouse

Judicial Monitoring:

- Assign a permanent judge
- Supervise defendants continuously
- Explore new methods of judicial monitoring
- Dedicate additional staff and resources for monitoring
- Create a separate compliance docket if there is high volume

Accountability:

- Build strong relationships with service providers
- Hold batterers programs accountable
- Think creatively
- Use technology to enhance access information

Coordinated Community Response:

- Create strong linkages with a variety of partners

⁹⁶ Robyn Mazur & Liberty Aldrich, *What Makes a Domestic Violence Court Work?: Lessons from New York*, 42 JUDGES J. 5 (2003), available at <http://www.courtinnovation.org/uploads/documents/whatmakesdvcourtwork.pdf>.

⁹⁷ *Id.* at 7.

⁹⁸ Michael S. King & Becky Batagol, *Enforcer, Manager or Leader? The Judicial Role in Family Violence Courts*, 33 INT'L J. OF L. 406 (2010).

- Convene regular meetings with criminal justice and social service partners
- Provide court personnel and partners with domestic violence education and training

Community Courts Characteristics (2007)⁹⁹

The National Crime Council in Dublin recommended that Ireland establish community courts. The following characteristics were used to help persuade policy makers to endorse the idea. The Council focused on quality of life crimes such as “Drunk in Public, Disorderly Conduct, Threatening/Abusive/Insulting Behaviour [sic], Refuse to Give Name, Wilful [sic] Obstruction, Failure to Comply with the Direction of a Member of Garda Síochána (Irish police agency), Assault, Criminal Damage, Soliciting/Loitering, Drug Use, Theft, Handling Stolen Property (one thousand Euros or under), and Illegal Street Trading.”¹⁰⁰ Unlike most community courts, the Council did not recommend that services such as substance abuse programs be delivered on site, but rather suggested they be accessed near the defendant’s home. They also recommended continuous monitoring, something that is done in most treatment courts:

- Dedicated judge
- Pre-trial assessment in every case
- Early guilty plea from defendants
- Problem solving focus/individualised [sic] response
- Using Court as gateway to treatment
- Speedy access to key services
- Rigorous monitoring of compliance with court orders
- Element of restitution through community work
- Formalized involvement of the local community

***A Blueprint to Establish a Unified Family Court (2007)*¹⁰¹**

Unified family courts have been championed by the University of Baltimore’s Center for Families, Children and the Courts. “[J]udicial action, informal court proceedings, and social service agencies coordinate their efforts to produce an all-encompassing resolution tailored to the individual family’s legal, personal, emo-

⁹⁹ NAT’L CRIME COUNCIL, *supra* note 7 at 18.

¹⁰⁰ *Id.* at 6.

¹⁰¹ *Unified Family Courts, supra* note 8; See generally Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469 (1998).

tional and social needs.”¹⁰² This document is the first to address court administration and organization. Like community courts, it specifically mentions community involvement. Uniquely, it champions “accommodating litigants in the most therapeutic manner possible” and suggests that the court be “user-friendly.”¹⁰³

Elements of a unified family court include:

- A specialized court structure that is either a separate court or a division or department of an existing court and is established at the same level and receives the same resources/support as a generalist court;
- Comprehensive subject-matter jurisdiction over the full range of family law cases, including juvenile delinquency and child welfare;
- A case management and case processing system that includes early hands-on contact with each family law case and a judicial assignment system that results in the family appearing before one judge for the completion of one case or one-case management team;
- An array of court-supplied or court-connected social services that meet litigants’ non-legal needs, particularly those that exacerbate family law problems; and
- A user-friendly court that is accessible to all family law litigants, including the large volume of self-represented litigants.

Tribal Healing to Wellness Courts: The Key Components (2003)¹⁰⁴

The major difference between this document and the *Key Components* of drug courts is the emphasis on culture, tradition and community. It emphasizes both physical and spiritual healing as well as a holistic approach. It specifically mentions sanctions and incentives in Key Component #6, rather than “[a] coordinated strategy [which] governs drug court responses to participants’ compliance,” the more amorphous phrase found in Drug Court Component six.

- Key Component #1: Tribal Healing-to-Wellness Courts bring together community-healing resources with the tribal justice process, using a team approach to achieve the physical and spiritual healing of the participant and the well[-]being of the community.

¹⁰² *Unified Family Courts*, *supra* note 8.

¹⁰³ *Id.*

¹⁰⁴ TRIBAL HEALING, *supra* note 9.

- Key Component #2: Participants enter the wellness court program through various referral points and legal procedures, their due process rights protected all the meanwhile.
- Key Component #3: Eligible substance abuse offenders are identified early through legal and clinical screening for eligibility and are promptly placed in the Tribal Healing-to-Wellness Program.
- Key Component #4: Tribal Healing-to-Wellness Programs provide access to holistic, structured, and phased, substance abuse treatment and rehabilitation services that incorporate culture and tradition.
- Key Component #5: Participants are monitored through intensive supervision that includes frequent and random testing for alcohol and other substance use.
- Key Component #6: Progressive consequences (or sanctions) and rewards (or incentives) are used to encourage participant compliance with program requirements.
- Key Component #7: Ongoing judicial interaction with each participant and judicial involvement in team staffing is essential.
- Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness to meet three purposes: providing information to improve the Healing-to-Wellness process, overseeing participant progress, and preparing evaluative information for interested community groups and funding sources.
- Key Component #9: Continuing interdisciplinary education promotes effective wellness court planning, implementation, and operation.
- Key Component #10: The development of ongoing communication, coordination, and cooperation among team members; the community and relevant organizations are critical for program success.

Twelve principles for court-directed treatment and rehabilitation programmes [sic] (1999)¹⁰⁵

This United Nations report acknowledges that the first ten components are based on the *Key Components* of drug courts; however, it adjusted the language to be more applicable worldwide. Phrases like “substance dependency,” and “substance abuse testing,” rather than “alcohol or other drug testing,” are used, and two new components are added. The eleventh principle, employing techniques of restorative justice, talks about “social support necessary to achieve social reintegration,” while the twelfth addresses cultural competence for the first time, saying programs should address the needs of women, indigenous people,

¹⁰⁵ UNODC and Drug Treatment Courts, *supra* note 10.

and minority ethnic groups. It was not until four years later that an American set of strategies, those for Juvenile Courts, mentioned cultural competence in Principle number ten:¹⁰⁶

- a) The programmes [sic] should integrate substance dependency treatment services with justice system caseprocessing [sic];
- b) A non-adversarial approach should be used, in this manner prosecution and defence [sic] lawyers promote public safety while protecting offenders' due process rights;
- c) Eligible offenders should be identified early and promptly integrated into the programme [sic];
- d) The programmes [sic] should ensure access to a continuum of substance dependency treatment and other rehabilitation services;
- e) Compliance should be monitored objectively through frequent substance abuse testing;
- f) A coordinated strategy should govern responses of the court to programme [sic] non-compliance (and compliance) by offenders;
- g) Ongoing judicial interaction with each offender in a programme [sic] is essential;
- h) Monitoring and evaluation should be carried out to measure the achievement of programme [sic] goals and gauge effectiveness;
- i) There should be continuing interdisciplinary education to promote effective planning, implementation and operation of these court-directed programmes [sic];
- j) Partnerships should be forged among courts directing treatment programmes [sic], public agencies, and community-based organizations in order to generate local support and enhance programme [sic] effectiveness;
- k) Ongoing case management should include the social support necessary to achieve social reintegration;
- l) There should be appropriate flexibility in adjusting programme [sic] content, including incentives and sanctions, to achieve better programme [sic] results with particular groups, such as women, indigenous people and minority ethnic groups.

IV. GENERAL APPROACHES TO PROBLEM-SOLVING IN NON-SPECIALIST COURTS

Judges, both nationally and internationally, started the drug treatment court movement; thus, it should not be surprising that judicial attitudes about problem-solving methods have led to a wider use of that approach in traditional courts. A large judicial survey (1,019 trial court judges) was conducted in 2007 by the

¹⁰⁶ The indented lettered list of principles following the footnote is excerpted from *UNODC and Drug Treatment Courts*, supra note 10.

Center for Court Innovation and California's Administrative Office of the Courts' Center for Families, Children and the Courts.¹⁰⁷ It found that "[m]ost trial court judges hold attitudes consistent with key principles of problem-solving justice and many currently engage in practices commonly employed in specialized problem-solving courts."¹⁰⁸

There is also evidence that judges who work in problem-solving courts experience greater job satisfaction than those who have traditional dockets.¹⁰⁹ The general approaches literature includes not only "how to" approaches, such as the National Center for State Courts "Toolkit,"¹¹⁰ but also describes judicial behaviors that are likely to elicit better compliance with court orders. Prior to the problem-solving court movement, a notion of emotional intelligence in the judiciary would have been unthinkable, but now we have federal judicial nominees chosen for their "empathy" and "heart."¹¹¹

Effective Judging for Busy Judges/Effective Outcome Judging (2005)

Through a grant from the Bureau of Justice Assistance, the National Judicial College (NJC) called together twenty judges and other professionals to a summit entitled "Institutionalizing Problem-Solving Principles in All Courts" in May of 2005. This working group produced a bench guide ("Effective Judging for Busy Judges") and bench card ("Effective Outcome Judging") that were widely distributed throughout the United States.¹¹² They supplied the bench officer with a very practical approach to cases in which they would want to try an "outcome focused" approach. They encouraged direct communication with the defend-

¹⁰⁷ DONALD J. FAROLE, JR. & MICHAEL REMPEL, CTR. FOR COURT INNOVATION, PROBLEM-SOLVING AND THE AMERICAN BENCH: A NATIONAL SURVEY OF TRIAL COURT JUDGES, 3 (2008), available at http://www.courtinnovation.org/_uploads/documents/natl_judges_survey.pdf.

¹⁰⁸ *Id.* at iii.

¹⁰⁹ See, e.g., Deborah J. Chase & Peggy Fulton Hora, *The Implications of Therapeutic Jurisprudence for Judicial Satisfaction*, 37 CT. REV. 12 (2000), available at <http://aja.ncsc.dni.us/courtrv/cr37/cr37-1/CR9ChaseHora.pdf>; Peggy Fulton Hora & Deborah J. Chase, *Judicial Satisfaction when Judging in a Therapeutic Key*, 7 CONTEMPORARY ISSUES IN LAW 8, 36-37 (2003/2004); Robert V. Wolf, *Law as Therapy: What Impact Do Drug Courts Have on Judges? An Interview with Judge Peggy Fulton Hora*, 1 J. OF COURT INNOVATION 159, 166-67 (2008); Peggy Fulton Hora & Deborah J. Chase, *The Best Seat in the House: The Court Assignment and Judicial Satisfaction*, 47 FAM. CT. REV. 209, 234 (2009).

¹¹⁰ Casey et al., *supra* note 14.

¹¹¹ Carol J. Williams, *Obama to influence our courts; When picking judges, how will he balance campaign-trail vows about 'empathy' and bipartisanship?* L.A. TIMES, Mar. 15, 2009, at A33.

¹¹² See generally EFFECTIVE JUDGING, *supra* note 16.

ant/participant and gave directions such as “look every defendant in the eyes.” Judicial communication and fact-finding were emphasized and, if practiced, the court may look more like one in an inquisitorial system rather than in an adversarial one.¹¹³ The NJC documents advise the following:¹¹⁴

1. ESTABLISH AN OUTCOME FOCUS

- a) Shift courtroom focus from case processing to case outcome. Have a conversation with each defendant/participant to determine how to proceed with the case.
- b) Establish the expectation with lawyers, court staff, and participants that you will be having a conversation with each defendant/participant that may impact the outcome of the case.
- c) Develop resources/alternatives that you can access depending on the circumstances of the case and list those resources [found in the material] on the back of this card.

2. CONVERSATION WITH DEFENDANT/PARTICIPANT: The purpose of the conversation is to identify core issues such as drug use, mental illness, lack of life skills, family issues, violence/abuse that might impact long-term effective outcomes.

Questions:

Look every defendant in the eyes and ask the following questions:

- a) Do you have any special problems such as substance abuse, homelessness, or mental illness that I should know about with regard to this case?
 - b) Does anyone in your family or with whom you live have issues with alcohol or other drugs or mental health?
 - c) Do you have a case manager, counselor, therapist, or psychiatrist in the community? If so, when will you see this person next?
 - d) Do you have a guardian, conservator, or payee?
 - e) Was there another person physically harmed or property damaged in this case and, if so, what was the damage?
3. SEEK PROFESSIONAL ASSISTANCE: If you believe, based on the answers to your questions and all of the other information available to you, that there is alcohol or other drug use, mental illness, lack of life skills, family issues, violence/abuse in this case, then consider getting a professional assessment.

¹¹³ To further explore this issue, in May 2010 the Australasian Institute of Judicial Administration and Monash University Faculty of Law hosted a conference titled “Non-Adversarial Justice: Implications for the Legal System and Society.” Australian Inst. of Judicial Admin. Inc.

¹¹⁴ The indented text reproduces EFFECTIVE OUTCOME JUDGING BENCH CARD, *supra* note 16.

4. CREATE A ROAD MAP: In consultation with attorneys and the defendant/participant, establish a “road map” based on the information available to you and the professional assessment (if available).
 - a) If there are alcohol or other drug issues with the defendant, and a system of monitoring the results, establish a schedule of alcohol or drug testing.
 - b) If there are mental health issues, establish/coordinate with community treatment.
 - c) If there are mental health or alcohol or other drug issues in the home or family, coordinate with a community treatment provider.
 - d) If there is a case manager, counselor, therapist or psychiatrist put that information in the file and have notification sent to this person of actions you are taking requesting his or her input/participation, if appropriate.
 - e) If there is a guardian, conservator or payee, put that information in the file and have notification sent to this person of actions you are taking requesting his or her input/participation, if appropriate.
 - f) If there is a victim in this case, make sure that restitution/meeting the needs of the victim are considered in your plan.
 - g) When appropriate, move defendant/participant into treatment as quickly as possible.
 - h) Establish compliance mechanisms for court orders and dispositions.
 - i) Schedule a hearing, if possible, to have the defendant appear again within thirty days with reports on what you have ordered.
 - j) Communicate your initial goals to participant, advocates and others in the courtroom.

Guiding Principles of Collaborative Justice Courts (2005)

Shortly after the Conference of Chief Justices (CCJ) and the Conference of Chief State Court Administrators (COSCA) passed a resolution supporting problem-solving courts in 2000,¹¹⁵ the California Chief Justice, Ronald M. George, appointed the Collaborative Justice Courts Advisory Committee as a successor to the former Oversight Committee for the California Drug Court

¹¹⁵ CCJ/COSCA also supported “Problem-Solving Courts Principles and Methods” in 2004. See Conference of Chief Justices, Conference of State Court Administrators, Resolution 22 (July 29, 2004), *available at* <http://cosca.ncsc.dni.us/WhitePapers/Resolution-Natl%20Agenda-Final-Aug-04.pdf>.

Project.¹¹⁶ “Increasing attention is being focused on integrating collaborative justice principles and methods with ongoing court operations, developing guidelines and promising practices for collaborative courts, and supporting education and training.”¹¹⁷

One of the projects of the committee was to make recommendations to incorporate problem-solving principles into traditional case processing. It identified components of collaborative justice courts and admittedly relied heavily on the *Key Components of Drug Courts*, noted above. The principles follow the Key Components of drug courts quite closely except for the addition, once again, of cultural competency. The eleventh principle links such competency to “an attitude of respect in the collaborative justice court setting.”¹¹⁸ This is the first mention in all the documents of the trust and confidence in the justice system that may grow out of problem-solving courts. Additionally, as seen in other principles that were developed after 1994—for instance *Juvenile Drug Courts: Strategies and Practice*—incentives and sanctions are specifically mentioned and “[a]wareness of and responsiveness to diversity and cultural issues” is noted as a basis for respect for the courts.¹¹⁹ *Opportunities and Barriers to the Practice of Collaborative Justice in Conventional Courts*¹²⁰ was the report to “[t]ransfer . . . collaborative justice principles to traditional court calendars.”

Guiding Principles of Collaborative Justice Courts are:

- Collaborative justice courts integrate services with justice system processing.
- Collaborative justice courts emphasize achieving the desired goals without using the traditional adversarial process.
- Eligible participants are identified early and promptly placed in the collaborative justice court program.
- Collaborative justice courts provide access to a continuum of services, including treatment and rehabilitation services.
- Compliance is monitored frequently.
- A coordinated strategy governs the court’s responses to participants’ compliance, using a system of sanctions and incentives to foster compliance.
- Ongoing judicial interaction with each collaborative justice court participant is essential.

¹¹⁶ JUDICIAL COUNCIL OF CAL., *supra* note 11.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 5.

¹¹⁹ *Id.* at 5.

¹²⁰ *Id.* at 2.

- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- Effective collaborative justice court operations require continuing interdisciplinary education.
- Forging partnerships among collaborative justice courts, public agencies, and community-based organizations increases the availability of services, enhances the program's effectiveness, and generates local support.
- Effective collaborative justice courts emphasize a team and individual commitment to cultural competency. Awareness of and responsiveness to diversity and cultural issues help ensure an attitude of respect within the collaborative justice court setting.¹²¹

The Collaborative Justice Project also developed “[m]odels for going systemwide with collaborative justice”:¹²²

(1) transferring principles and practices of collaborative justice to general calendars; (2) developing linkages statewide and within local court systems to maximize benefits/effectiveness of the diversity of types of collaborative justice courts; (3) developing modified collaborative justice court systems that serve large numbers of offenders (e.g., Proposition 36¹²³ courts that use modified drug court models; dependency drug court models that serve all substance abusing parents in dependency courts).¹²⁴

Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts (2005)¹²⁵

The authors identified three consistent themes in applying problem-solving principles in mainstream court:

1. The broader use of problem solving requires changing traditional attitudes and role orientations of judges, attorneys, and other justice system actors;
2. Resource constraints (lack of time, money, and staff) can pose serious barriers to attempts to apply specific problem-solving practices more widely; and,

¹²¹ Judicial Council of Cal., Collaborative Just. Courts Advisory Comm. Fact Sheet, <http://www.courtinfo.ca.gov/programs/collab/> (last visited Apr. 28, 2010).

¹²² JUDICIAL COUNCIL OF CAL., *supra* note 11, at 2.

¹²³ Substance Abuse and Crime Prevention Act of 2000 (codified at CAL. HEALTH & SAFETY CODE § 11999.20 (2010)).

¹²⁴ JUDICIAL COUNCIL OF CAL., *supra* note 11, at 2.

¹²⁵ Donald Farole, Jr., et al., Ctr. for Court Innovation, *Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts*, 26 JUST. SYS. J. 57 (2005), available at http://www.courtinnovation.org/_uploads/documents/applying_ps_principles.pdf.

3. Judicial leadership is critical in any effort to expand problem solving, either through the expansion of specialized courts or the integration of problem-solving practice in conventional courts.¹²⁶

They conducted focus groups of judges and explored three topic areas: “1) core principles and practices of problem-solving courts that differ from conventional courts; 2) the extent of possible application of these principles and practices within conventional courts; and, 3) strategies to disseminate problem-solving more widely throughout the court system.”¹²⁷

Finally, the authors asked the question, “Which problem-solving principles and practices are more easily applied in conventional courts and which are less easily applied?”¹²⁸ Five principles and practices emerged from the conversations:

1. . . . The proactive role of the judge in problem-solving courts could be applied to other cases and calendars in various ways—asking more questions, seeking more information about each case, and exploring a greater range of possible solutions. . . .
2. . . . Direct interaction with the defendant/litigant was deemed a prerequisite for effective behavior modification, enabling the judge to motivate defendants to make progress in treatment, bringing to light the most crucial needs of parties in civil cases, and laying the groundwork for positive solutions. Judges regarded this as one of the easiest practices to apply in conventional courts, perhaps because it requires no additional resources. . . .
3. . . . Requiring defendants, particularly probationers, to report back to court for treatment updates and judicial interaction was identified as one of the least controversial and most effective practices that could be applied in conventional criminal courts. . . .
4. . . . Many judges reported that service coordination was a valuable tool in any court—especially for litigants with addiction, mental illness, or vocational/educational needs. . . .
5. . . . There was less consensus and greater skepticism about adopting a team-based, nonadversarial approach in general court calendars than about other practices. . . .¹²⁹

Principles of Problem-Solving Justice (2007)¹³⁰

This document, written by Robert V. Wolf, communications director for the Center for Court Innovation (CCI), was the first to link problem-solving courts to initiatives in law enforcement such as community policing or community-focused policing.

¹²⁶ *Id.* at 59.

¹²⁷ *Id.*

¹²⁸ *Id.* at 62.

¹²⁹ *Id.* at 64.

¹³⁰ WOLF, *supra* note 17.

Problem-solving justice can trace its theoretical roots to innovations in policing, particularly community and problem-oriented policing, which attempted to replace traditional law enforcement's focus on responding to individual offenses with a focus on identifying and addressing patterns of crime, ameliorating the underlying conditions that fuel crime, and engaging the community as an active partner.¹³¹

The Principles are also the first to discuss the quality of information that is provided to all the players in a problem-solving court. They mention the importance of interdisciplinary meetings and technology. Community engagement is specifically covered in the CCI principles. Probably the most important variation on previous principles is the high importance of invoking "individualized justice" and using risk/needs assessments (also found in CCI's Mental Illness document the same year) to these courts.¹³²

Enhanced Information

Better staff training (about complex issues like domestic violence and drug addiction) combined with better information (about litigants, victims, and the community context of crime) can help improve the decision making of judges, attorneys, and other justice officials. High-quality information—gathered with the assistance of technology and shared in accordance with confidentiality laws—can help practitioners make more nuanced decisions about both treatment needs and the risks individual defendants pose to public safety, ensuring offenders receive an appropriate level of supervision and services.

Education

Some states have sponsored training sessions for judges and other key courtroom players. Through such trainings, states can, for example, ensure that all drug court judges understand basic pharmacology or how to apply sanctions and rewards. Training can also be conducted on a more local and less formal basis. Individual projects, for instance, can host brown bag lunches and lectures to keep staff up to date on best practices and topics of interest.

Meetings

To make sure all the relevant stakeholders stay informed about participants' progress, many courts hold regular meetings. In many drug courts, for instance, representatives of the court (including judges, prosecutors and defense attorneys) and treatment provider agencies regularly meet to discuss each participant's progress.

Computers

Many problem-solving courts rely on management information systems to maintain relevant client information. Computer systems to

¹³¹ *Id.* at 1.

¹³² The paragraphs and headings following the footnote are excerpted from WOLF, *supra* note 17.

which all partners have access (with appropriate safeguards to protect confidentiality) allow everyone to share reliable data instantaneously. This is especially helpful when trying to hold participants accountable; for instance, the sooner a judge discovers a participant has failed to comply with a treatment mandate, the sooner the court can respond with an appropriate sanction. An effective management information system can also help programs to collect data to measure success.

Community Engagement

Citizens and neighborhood groups have an important role to play in helping the justice system identify, prioritize, and solve local problems. Actively engaging citizens helps improve public trust in the justice system. Greater trust, in turn, helps people feel safer, fosters law-abiding behavior, and makes members of the public more willing to cooperate in the pursuit of justice (as witnesses, jury members, etc.).

Collaboration

Justice system leaders are uniquely positioned to engage a diverse range of people, government agencies, and community organizations in collaborative efforts to improve public safety. By bringing together justice partners (e.g., judges, prosecutors, attorneys, probation officers, court managers) and reaching out to potential stakeholders beyond the courthouse (e.g., social service providers, victims groups, schools), justice agencies can improve inter-agency communication, encourage greater trust between citizens and government, and foster new responses—including new diversion and sentencing options, when appropriate—to problems.

Individualized Justice

Using valid, evidence-based risk and needs assessment instruments, the justice system can link offenders to individually tailored community-based services (e.g., job training, drug treatment, safety planning, mental health counseling) where appropriate. In doing so (and by treating defendants with dignity and respect), the justice system can help reduce recidivism, improve community safety, and enhance confidence in justice. Links to services can also aid victims, improving their safety and helping restore their lives.

Accountability

The justice system can send the message that all criminal behavior, even low-level quality-of-life crime, has an impact on community safety and has consequences. By insisting on regular and rigorous compliance monitoring—and clear consequences for non-compliance—the justice system can improve the accountability of offenders. It can also improve the accountability of service providers by requiring regular reports on their work with participants.

Outcomes

The active and ongoing collection and analysis of data—measuring outcomes and process, costs and benefits—are crucial tools for evaluating the effectiveness of operations and encouraging continuous im-

provement. Public dissemination of this information can be a valuable symbol of public accountability.

Road Map to Problem-Solving Courts (2008)¹³³

The American Bar Association calls its “Road Maps” a “how-to series to help the community, the Bench and the Bar implement change in the justice system.”¹³⁴ While acknowledging that change in the justice system is slow and sometime resisted, the document finds “problem solving courts are demonstrating that it is possible to use the power of the justice system—coupled with innovative alliances and options—to improve outcomes for participants with seemingly disparate needs.”¹³⁵ The Road Map contains a nice discussion on the pitfalls of problem-solving courts, giving particular attention to the rights of the defendant, including due process. Whether the participation is voluntary is also stressed, as it was in the mental health documents. It raises issues of judicial neutrality and abuse of judicial discretion. Moreover, it discusses the changing role of attorneys in these types of courts. Rather than develop a new set of principles, it relies on Berman and Feinblatt’s definitions and principles in *Problem-Solving Courts: A Brief Primer*.¹³⁶

Case Outcomes

“Problem-solving courts seek to achieve tangible outcomes for victims, for offenders and for society. These include reductions in recidivism, reduced stays in foster care for children, increased sobriety for addicts and healthier communities.”¹³⁷ As Chief Judge Kaye has written, “outcomes—not just process and precedents—matter. Protecting the rights of an addicted mother is important. So is protecting her children and getting her off drugs.”¹³⁸

System Change

“In addition to re-examining individual case outcomes, problem-solving courts also seek to re-engineer how government systems respond to problems like addiction, mental illness and child neglect. This means promoting reform outside of the courthouse

¹³³ ROAD MAP, *supra* note 15, at 1.

¹³⁴ *Id.*

¹³⁵ *Id.* at 4.

¹³⁶ GREG BERMAN & JOHN FEINBLATT, CTR. FOR COURT INNOVATION, PROBLEM-SOLVING COURTS: A BRIEF PRIMER (2001), *available at* http://www.courtinnovation.org/pdf/prob_solv_courts.pdf.

¹³⁷ ROAD MAP, *supra* note 15, at 4.

¹³⁸ *Id.* at 8 (citing a statement by Judith S. Kaye, *Making the Case for Hands-On Courts*, NEWSWEEK, Oct. 11, 1999, at 13).

as well as within.”¹³⁹ For example, family treatment courts that handle cases of child neglect have encouraged local child welfare agencies to adopt new staffing patterns and to improve case management practices.¹⁴⁰

Judicial Authority

Problem-solving courts rely upon the active use of judicial authority to solve problems and to change the behavior of litigants. Instead of passing off cases—to other judges, to probation departments, to community-based treatment programs—judges at problem-solving courts stay involved with each case throughout the post-adjudication process. Drug court judges, for example, closely supervise the performance of offenders in drug treatment, requiring them to return to court frequently for urine testing and courtroom progress reports.¹⁴¹

Collaboration

“Problem-solving courts employ a collaborative approach, relying on both government and non-profit partners (i.e., criminal justice agencies, social service providers, community groups and others) to help achieve their goals.”¹⁴² For example, many domestic violence courts have developed partnerships with batterers’ programs and probation departments to help improve the monitoring of defendants.¹⁴³

Non-Traditional Roles

“Some problem-solving courts have altered the dynamics of the courtroom, including, at times, certain features of the adversarial process.”¹⁴⁴ For example, at many drug courts, judges and attorneys (on both sides of the aisle) work together to craft systems of sanctions and rewards for offenders in drug treatment. And by using the institution’s authority and prestige to coordinate the work of other agencies, problem-solving courts may engage judges in unfamiliar roles as conveners and brokers.¹⁴⁵

In 2001 the ABA adopted a policy on Problem-Solving Courts that supports:

- (1) the use of the term "problem-solving" courts to refer to specialized initiatives such as drug courts, community courts, and mental health

¹³⁹ ROAD MAP, *supra* note 15, at 4.

¹⁴⁰ *Id.*

¹⁴¹ ROAD MAP, *supra* note 15, at 8–9.

¹⁴² ROAD MAP, *supra* note 15, at 5.

¹⁴³ ROAD MAP, *supra* note 15, at 9.

¹⁴⁴ ROAD MAP, *supra* note 15, at 5.

¹⁴⁵ BERMAN & FEINBLATT, *supra* note 136.

courts, as well as programs such as unified family courts; (2) the continued development of problem-solving courts to improve court processes and court outcomes for litigants, victims, and communities; and (3) the consideration of the use of the principles and methods employed by problem-solving courts in the daily administration of justice while preserving the rule of law and traditional due process protections and adherence to the Model Code of Judicial Conduct. Encourage law schools, state, local and territorial bar associations, and other organizations to engage in education and training about the principles and methods employed by problem-solving courts.¹⁴⁶

Problem-Solving Justice Toolkit (2007)¹⁴⁷

The National Center for State Courts researched problem-solving courts quite early.¹⁴⁸ Rather than strictly a list of principles, the Toolkit “offers a blueprint for using the problem-solving approach, a form of differentiated case management for cases involving recurring contacts with the justice system due to underlying medical and social problems.”¹⁴⁹ It “includes a set of assessment questions to help courts determine the best path to implement a problem-solving approach and a set of implementation steps for courts choosing to implement a formal problem-solving court program such as a community or mental health court.”¹⁵⁰ It has an extensive resource section and it is the most practical of all the documents for assessing and planning a problem-solving court.

After a discussion of problem-solving courts, it asks a series of “assessment questions”:¹⁵¹

Question 1: Are you hearing cases that might benefit from a problem-solving approach?

Question 2: Are other relevant stakeholders also seeing the problems?

Question 3: What are the nature and prevalence of the problems?

Question 4: What options are there to address the problems?

Question 5: What resources are available or could be developed to help address the problems?

Question 6: How will you proceed given the prevalence of the problems, the possible options to address the problems, and the available resources?

¹⁴⁶ ROAD MAP, *supra* note 15, at 19.

¹⁴⁷ CASEY ET AL., *supra* note 14, at 1.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 5–8.

The document then leads decision makers through [a] series of implementation steps that are necessary to plan a problem-solving justice initiative:¹⁵²

- Step 1: Identify stakeholders to involve in the planning process
- Step 2: Identify possible models for the court-centered program
- Step 3: Identify program goals and objectives
- Step 4: Define target population and screening criteria
- Step 5: Define terms of program participation
 - Step 5a: Legal status of participants
 - Step 5b: Fees and fines associated with the program
 - Step 5c: Attorney representation
 - Step 5d: Confidentiality
- Step 6: Define primary substantive program elements
 - Step 6a: Assessment
 - Step 6b: Intervention and service delivery
 - Step 6c: Monitoring
 - Step 6d: Incentives and sanctions
 - Step 6e: Completion and follow-up
- Step 7: Determine resources necessary and available to implement program elements
 - Step 7a: Estimating required program resources
 - Step 7b: Using and enhancing existing resources
 - Step 7c: Identifying and securing external resources
- Step 8: Determine how the program will be phased in
- Step 9: Specify management structure and program procedures
- Step 10: Provide education and training for stakeholders and program staff
- Step 11: Determine when and how to disseminate program information to the public
- Step 12: Evaluate the program
 - Step 12a: Understand why and how evaluations are conducted
 - Step 12b: Review previous implementation steps to prepare for the program's evaluation
 - Step 12c: Select the evaluation methods
 - Step 12d: Identify who will do the evaluation

¹⁵² The following steps are excerpted from CASEY ET AL., *supra* note 14, at 9–25.

Step 12e: Secure adequate funding for the evaluation

Step 12f: Use evaluation results

Judging for the 21st Century: A Problem-solving Approach (2005)¹⁵³

After the United Nations published its drug treatment court guidelines in 1999,¹⁵⁴ the Canadian National Judicial Institute was the first international body to discuss taking problem-solving courts to scale.¹⁵⁵ The publication relies heavily on principles of therapeutic jurisprudence,¹⁵⁶ procedural justice principles, and stresses communication in order to have “a fair, relevant judicial process.”¹⁵⁷ It also emphasized specific judicial skills akin to those in the National Judicial College’s “Effective Judging for Busy Judges.”¹⁵⁸

This approach requires procedural justice, a perception on the part of the participant that they are:¹⁵⁹

- [B]eing treated with respect and dignity
- [H]aving a sense of voice and opportunity to tell their story
- [B]eing treated as individuals, rather than numbers on a docket
- [B]eing treated fairly and consistently
- [B]eing able to understand and play an active role in the proceedings

Judges are advised to:

- Enhance their interpersonal skills to make sure a judge’s interactions with court participants are characterized by empathy, respect, active listening, a positive focus, non-coercion and non-paternalism, and clarity.¹⁶⁰
- Craft behavioral contracts and relapse-prevention plans that involve the offender; identify and incorporate high-risk situations, require offenders to take responsibility for their actions; set specific goals; set specific rewards and sanctions; encourage participation of family and community members; treat the offender with dignity and respect;

¹⁵³ See GOLDBERG, *supra* note 18. See also Sherry L. Van de Veen, *Some Canadian Problem-Solving Court Processes*, 83 CANADIAN BAR REV. 91 (2004).

¹⁵⁴ UNDOC and Drug Treatment Courts, *supra* note 10.

¹⁵⁵ GOLDBERG, *supra* note 18.

¹⁵⁶ See <http://www.therapeuticjurisprudence.org>.

¹⁵⁷ *Id.* at 9.

¹⁵⁸ EFFECTIVE JUDGING, *supra* note 16.

¹⁵⁹ GOLDBERG, *supra* note 18, at 9.

¹⁶⁰ *Id.* at 9–16.

and, schedule regular review hearings/judicial supervision.¹⁶¹

- Develop a non-adversarial, team approach, and to encourage lawyers to be both team players and vigilant to their clients' best interests and recognize that court staff can also play a key role in creating a therapeutic environment in the court through their treatment of defendants and the tone they set in the courtroom.¹⁶²
- And sentence therapeutically by incorporating Canadian sentencing principles, using guidelines for postponed and conditional sentencing, employing principles of restorative justice, and making informed decisions.¹⁶³

Ten Tenets of Fair and Effective Problem Solving Courts (2004)¹⁶⁴

The National Legal Aid and Defenders Association (NLADA) is the largest group of attorneys who represent indigent defendants in the United States.¹⁶⁵ It is the only group of attorneys, besides the American Bar Association, to develop principles of problem-solving courts, and their tenets are important to promote the defense perspective in such courts.¹⁶⁶ Like the mental health and Canadian principles,¹⁶⁷ NLADA stresses a knowing and voluntary entry into a problem-solving court and, although many principles include inter-disciplinary education, it emphasizes training for the defense bar. *The Tenets* suggest a tension between prompt placement in the court, as is found in Key Component three,¹⁶⁸ and a need to explore the facts of the case as well as an opportunity to explain all options to a criminal defendant. Unlike any other set of principles,¹⁶⁹ this organization wants only pre-plea programs;¹⁷⁰ whereas post-adjudication programs are the fastest

¹⁶¹ *Id.* at 17–25.

¹⁶² *Id.* at 26–31.

¹⁶³ *Id.* at 32–39.

¹⁶⁴ TEN TENETS, *supra* note 19.

¹⁶⁵ *About NLADA*, NLADA website, http://www.nlada.org/About/About_Home (last visited May 16, 2010).

¹⁶⁶ *See* MARJORIE A. SILVER, *THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION* (Carolina Academic Press 2007).

¹⁶⁷ GOLDBERG, *supra* note 18.

¹⁶⁸ KEY COMPONENTS, *supra* note 1, at 13.

¹⁶⁹ *See, e.g.*, KAREN FREEMAN-WILSON, NAT'L DRUG COURT INST., *CRITICAL ISSUES FOR DEFENSE ATTORNEYS IN DRUG COURT* (2003), available at <http://www.wvpds.org/Drug%20Court/Critical%20Issues%20Section%202.pdf>.

¹⁷⁰ Pre-plea programs are also recommended by the National Association of Criminal Defense Lawyers (NACDL), which recently issued a report calling for legalization of drugs and modification of drug treatment courts. *See* NACDL, *AMERICA'S PROBLEM SOLVING COURTS: THE CRIMINAL COSTS OF TREATMENT AND THE CASE FOR REFORM* (2009), available at <http://www1.spa.american.edu/justice/documents/2710.pdf>.

growing model in the United States and most likely constitute the majority of courts.¹⁷¹

The Ten Tenets:¹⁷²

1. Qualified representatives of the indigent defense bar shall have the opportunity to meaningfully participate in the design, implementation and operation of the court, including the determination of participant eligibility and selection of service providers.
2. Qualified representatives of the indigent defense bar shall have the opportunity to meaningfully participate in developing policies and procedures for the problem-solving court that ensure confidentiality and address privacy concerns, including (but not limited to) record-keeping, access to information and expungement.
3. Problem solving courts should afford resource parity between the prosecution and the defense. All criminal justice entities involved in the court must work to ensure that defenders have equal access to grant or other resources for training and staff.
4. The accused individual's decision to enter a problem solving court must be voluntary. Voluntary participation is consistent with an individual's pre-adjudication status as well as the rehabilitative objectives.
5. The accused individual shall not be required to plead guilty in order to enter a problem solving court.
6. The accused individual shall have the right to review with counsel the program requirements and possible outcomes. Counsel shall have a reasonable amount of time to investigate cases before advising clients regarding their election to enter a problem solving court.
7. The accused individual shall be able to voluntarily withdraw from a problem solving court at any time without prejudice to his or her trial rights.
8. The court, prosecutor, legislature or other appropriate entity shall implement a policy that protects the accused's privilege against self-incrimination.
9. Treatment or other program requirements should be the least restrictive possible to achieve agreed-upon goals. Upon successful completion of the program, charges shall be dismissed with prejudice and the accused shall have his or her record expunged in compliance with state law or agreed upon policies.

¹⁷¹ C. West Huddleston, III et al., *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*, National Drug Court Institute (May 2008), available at http://www.ndci.org/sites/default/files/ndci/PCPII1_web%5B1%5D.pdf.

¹⁷² The list of the Ten Tenets is excerpted from TEN TENETS, *supra* note 19.

10. Nothing in the problem solving court policies or procedures should compromise counsel's ethical responsibility to zealously advocate¹⁷³ for his or her client, including the right to discovery, to challenge evidence or findings and the right to recommend alternative treatments or sanctions.

The Essential Elements of Specialized Probation Initiatives (2009)¹⁷⁴

The Consensus Project has recently published the first guidelines for court officers who are not attorneys.¹⁷⁵ Although they do not incorporate any new notions *per se*, they do specifically speak to a different audience. It is clear that the key components can be adapted to and accepted by different audiences:

1. Collaborative Planning and Administration
2. Defining, Identifying, and Assessing a Target Population
3. Designing the Initiative and Matching Individuals to Supervision and Treatment Options
4. Setting Conditions of Community Supervision
5. Developing an Individualized Case Plan
6. Providing or Linking to Treatment and Services
7. Supporting Adherence to Conditions of Community Supervision and Case Plans
8. Providing Specialized Training and Cross-Training
9. Sharing Information and Maintaining Confidentiality
10. Constructing Evaluations and Ensuring Sustainability

Integrating Problem-Solving Court Practices into the Child Support Docket (2008)¹⁷⁶

In this Technical Assistance Bulletin published by the National Council of Juvenile and Family Court Judges, two judge authors identified non-payment of child support as “yet another revolving door” in the justice system.¹⁷⁷ They recommend applying therapeutic, problem-solving approaches to this docket and anecdotally report success in doing so.

¹⁷³ Although this phrase is often cited by defense counsel, there is no “duty of *zealous* representation.” That word has not been used for eighteen years in the Model Rules. Rather, there is a duty of “reasonable diligence and competence.” MODEL RULES OF PROF'L CONDUCT R. 1.3 (1983) available at http://www.abanet.org/cpr/mrpc/rule_1_3.html.

¹⁷⁴ PRINS & OSHER, *supra* note 20.

¹⁷⁵ *Id.*

¹⁷⁶ RAUSCH & RAWLINGS, *supra* note 21.

¹⁷⁷ *Id.* at 4.

“Because problem-solving courts are judge-driven, judges must take the lead in creating these courts.” Taking their lead from Farole and Byrne,¹⁷⁸ they emphasize “five major tasks a judge in a problem-solving court must accomplish to be successful”:¹⁷⁹

1. The judge must take the initiative to dig deeper into each case, asking hard questions and searching for possibly unconventional solutions. Doing so requires judicial leadership and may mean that “standard” orders must be abandoned.
2. The judge must interact directly with the nonpaying parent in court, creating a person-to-person relationship with the judge that is more effective in modifying behavior than a sterile, written order.
3. The judge must hold regular reviews of the obligor’s progress to ensure ongoing compliance. Doing so makes the obligor less a “case” and more a person in whose activity and compliance the judge has taken a real interest.
4. The court must integrate its work with that of social service agencies. Doing so is especially key in the child support arena, where obligors often need educational assistance, job skills, and substance abuse treatment if they are ever to hold down a job long enough to pay significant child support.
5. The court and agencies addressing the obligor’s needs must be willing to cooperate and work together with a minimum of fighting over turf.

CONCLUSION

*Drug Courts: The Key Components*¹⁸⁰ has stood the test of time for about fifteen years in an era of tremendous growth of problem-solving courts. In 1997, the year the Key Components were published, there were 230 drug treatment courts; that number doubled two years later, and more than tripled by the year 2000. Today there are almost 4,000 problem-solving courts in the United States and internationally. Its simple but brilliant standards have been adopted by many other problem-solving courts.

Additions of specific issues in DWI courts (eligibility and transportation) and Juvenile Treatment Court (inclusion of families, age appropriate services as well as education) have been necessary. Other more general principles began to appear quite

¹⁷⁸ *Id.* at 6 (quoting Donald Farole, Jr., et al., Ctr. for Court Innovation, *Applying Problem-Solving Principles in Mainstream Courts: Lessons for State Courts*, 26 JUST. SYS. J. 57 (2005)).

¹⁷⁹ *Id.*

¹⁸⁰ KEY COMPONENTS, *supra* note 1.

early, such as the inclusion of the needs of women, indigenous people, and minority ethnic groups by the United Nations in 1999. In the United States, gender and cultural competence appeared in the Juvenile Drug Court, and Tribal Healing-to-Wellness Courts included culture, traditions and community in 2003. That year also found the first set of principles that were focused not on the participant but, rather, the victim in Domestic Violence Courts.

As methods and practices continued to develop, components such as voluntariness, public safety, a dedicated staff, and plea structure were added by the Center for Court Innovation for Mental Illness issues in 2001.¹⁸¹ The term “sanctions and incentives” appeared for the first time in Healing-to-Wellness Court components in 2003,¹⁸² and “sustainability” was added for the first time for DWI Courts in 2005.¹⁸³ In 2007, the Mental Health Court principles added “risk assessment” and “restitution,” which found their way into the lexicon in Community Court principles.¹⁸⁴ The Principles of Problem-Solving Courts addressed technology and the quality of information available in problem-solving courts and the *Blueprint to Construct a Unified Family Court*¹⁸⁵ included court administration and organization. California’s Collaborative Justice principles were the first to specifically mention public trust and confidence in the judiciary as an outcome for problem-solving courts.¹⁸⁶

Although the authors of the Key Components may very well never have heard of therapeutic jurisprudence (TJ),¹⁸⁷ a second body of literature was emerging at the turn of the century that either specifically mentioned TJ or employed similar notions, such as procedural fairness.¹⁸⁸ The Center for Court Innovation Mental Illness document was the first to specifically refer to TJ in 2001, but other documents talked about “informed choice” (CCI’s Mental Illness); “a family’s emotional needs,” “user friend-

¹⁸¹ DENCKLA & BERMAN, *supra* note 4, at 8–10.

¹⁸² TRIBAL HEALING, *supra* note 9.

¹⁸³ GUIDING PRINCIPLES, *supra* note 2.

¹⁸⁴ NAT’L CRIME COUNCIL, *supra* note 7, at 18, 43.

¹⁸⁵ Babb, *supra* note 101.

¹⁸⁶ JUDICIAL COUNCIL OF CAL. & CTR. FOR COURT INNOVATION, CALIFORNIA’S COLLABORATIVE JUSTICE COURTS (2005), available at http://www.courtinnovation.org/_uploads/documents/CA%20Story_1.pdf.

¹⁸⁷ Peggy Fulton Hora, *A Dozen Years of Drug Treatment Courts: Uncovering our Theoretical Foundation and the Construction of a Mainstream Paradigm*, in DRUG COURTS: CURRENT ISSUES AND FUTURE PERSPECTIVES (Lana D. Harrison et al. eds., 2002).

¹⁸⁸ Douglas Denton, *Procedural Fairness in the California Courts*, 44 CT. REV. 44 (2007–2008), available at <http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2Denton.pdf>; David B. Wexler, *Adding Color to the White Paper: Time for a Robust Reciprocal Relationship Between Procedural Justice and Therapeutic Jurisprudence*, 44 CT. REV. 78 (2007–2008), available at <http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2Wexler.pdf>.

ly” courts and “therapeutic manner” (Unified Family Court Blueprint); an attitude of respect (California Collaborative Justice); and, direct communication between the judge and the participant (Effective Judging).

The role of judges as neutral arbiters has been redefined, as they are now leaders of a treatment team with transformational leadership,¹⁸⁹ motivational interviewing and stages of change literature.¹⁹⁰ Judges’ attitudes about problem-solving courts show a willingness to make the changes necessary to employ problem-solving methods in their courtrooms.¹⁹¹ As treatment courts “go to scale” and serve “every individual who needs court-supervised treatment in the justice system,”¹⁹² these principles will continue to be employed and may need adjustments from time to time. However, as evidence-based sentencing is more widely accepted, as has been predicted, it will become the norm in every court.¹⁹³ In addition, judicial education, attorney training, and law school education will have to, as recommended by the ABA, change to accommodate these new principles. Prior to the problem-solving court movement, a notion of emotional intelligence as a valued judicial skill would have been unthinkable, but now we have federal judicial nominees chosen for their “empathy” and “heart.”¹⁹⁴ The first twenty years of problem-solving courts has brought a revolution to the justice system that will have long lasting effects.

¹⁸⁹ Michael S. King, *Problem-Solving Court Judging, Therapeutic Jurisprudence and Transformational Leadership*, 17(3) J. OF JUDICIAL ADMIN. 155 (Austl.) (2008).

¹⁹⁰ See, e.g., William G. Meyer, *Motivational Interviewing*, presented at the National Judicial College Co-Occurring Mental and Substance Abuse Disorders (Oct. 5–9, 2009); Elke Rechberger, *Motivational Interviewing in the Courtroom*, presented at NADCP 15th Annual Training Conference, Anaheim CA (June 3-6, 2009); William G. Meyer, *Ten Science-Based Principles of Changing Behavior Through the Use of Reinforcement and Punishment*, presented at NADCP 14th Annual Training Conference, Washington DC (May 28-31, 2008).

¹⁹¹ Donald J. Farole, Jr., et al., *supra* note 125.

¹⁹² Peggy Fulton Hora, *Through a Glass Gavel: Predicting the Future of Drug Treatment Courts*, in *Future Trends in State Courts*, National Ctr. for State Courts (2009), available at http://www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends05.pdf.

¹⁹³ *Id.*

¹⁹⁴ Carol J. Williams, *Judge Appointments are Obama's Chance to Shape California Courts*, L.A. TIMES, March 15, 2009, <http://articles.latimes.com/2009/mar/15/local/me-judges15?pg=2>.