

How should the courts impose solutions?

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Special to The Daily Record

September 29, 2009

The debate over whether the mission of the judicial branch of government should be enhanced to include a problem-solving component is over!

However, the debate over the method by which that enhanced mission should be accomplished and what priority to give it is very much ongoing. It is visible in a variety of forums, including the conference rooms of the Court of Appeals, The Rules Committee, the hallowed halls of the General Assembly and the clerks' offices and judges' chambers of every courthouse in our state.

It presents difficult choices between having more clerks to support traditional case management functions or more professional staff for alternative dispute resolution and other problem-solving operations. Opinions on the merits are pronounced.

The terms and the tenor of that debate are driven far more by economics, budget, legal cultural issues and even philosophy, politics, and personalities than by law. The actors in these legal and judicial reality shows sometimes proffer positions depending on what role they are playing.

Lessons from Forster

The controversy over the "firing" of Nancy Forster as the Maryland Public Defender, allegedly for refusing to terminate or lay off some support personnel not directly involved in the staffing of the day-to-day litigation functions of the office and her refusal to hire more attorneys and support personnel, illustrates how this debate can affect high-level careers as well as the livelihoods of innocent employees.

Let's assume these differences over the office organization and priorities of the Public Defender's Office — as opposed to personal issues between the players — truly created this drama, which is still unfolding. Under that assumption, it is at best incongruous and at worst inconsistent and illogical for the same Public Defender's Office to argue almost contemporaneously to the Court of Appeals in *Robert Calvin Brown III v. State of Maryland* that "Maryland's Problem-Solving Courts including the Baltimore City Adult felony Drug Treatment Court, lack fundamental jurisdiction."

The gravamen of the Public Defender's claim on behalf of Robert Calvin Brown was, as pointed out by Judge Joseph F. Murphy as set forth in Robert Calvin Brown's Petition for Certiorari: "All of these problem-solving courts including the one involved in the case at bar have 'team' meetings prior to any review hearing in open court. In these meetings, the team discusses whether or not sanctions should be imposed and reports on poor behavior and noncompliance with the rules. Further each team member votes on the sanction. All of this is done in the absence of the defendant/participant."

With this "factual" predicate, the Public Defender's Office argued that only legal issues and constitutional issues were available to it based on those facts. The office argued that "Maryland's Problem-Solving Courts including The Baltimore City Adult Felony Drug Court lack fundamental Jurisdiction" and that their client's "treatment" in the form of "sanctions" for Violation of Probation constituted double jeopardy.

Murphy, writing for a unanimous Court of Appeals, almost summarily rejected both arguments and in doing so, in the legally limited context provided by the issues as they were preserved and presented, wrote that "petitioner's fundamental jurisdiction argument overlooks the critical distinction between (1) lack of jurisdiction and (2) the improper exercise of jurisdiction."

The Court of Appeals then held that the Drug Treatment Court has "the power to render a judgment over that class of cases within which petitioner's case falls."

The Court of Appeals, after further ruling that the issue of double jeopardy was not preserved and therefore not properly before the court, pointed out that "if the procedures established by the Baltimore City Adult Felony Drug Treatment Court erroneously violate the rights of a defendant, there are well-developed mechanisms for correcting any violations."

Those mechanisms were not invoked by The Public Defender's Office in *Robert Calvin Brown III v. State of Maryland*, so Murphy could not use them to determine the really important issues the case raised.

Those issues were whether a defendant can be allowed or even required to waive rights as sort of a trade-off to obtain the assistance and support of the drug court and its superior judicial, professional, and therapeutic resources to help him/her solve his/her problem of drug addiction.

Cost/benefit analysis?

In other words, do any constitutional provisions, statutes or even rules preclude or limit an individual from giving up some rights or applying a cost/benefit analysis to their waiver for deciding whether to avail himself or herself of the benefit of the court's problem-solving capacity and mission?

Entry into any Maryland Drug Treatment Court is totally "voluntary." Each defendant who is offered the option of entering into the Drug Treatment Court Program is physically and psychologically prescreened to determine his/her "amenability to the treatment." So "likelihood of success" is considered.

The defendant who chooses to participate in The Drug Treatment Court Program obtains significant benefits. He/she usually receives a suspended sentence where he/she might otherwise be incarcerated for a longer time because of his/her criminal record and the nature of the offense.

His/her case is the subject of much greater attention, time, and focus from the Drug Court presiding judge, who has special training and is more knowledgeable in the treatment of addiction than other judges. In addition, much more intensive drug and psychological therapy as well as community support, job training and housing assistance, if needed, are provided. The goal of the Drug Treatment Court is rehabilitation, not simply deterrence and prevention.

These are the important issues. They may have a constitutional dimension in the context of criminal cases. But in every civil case or even unfiled dispute or controversy there are new and innovative methods of addressing disputes, including the field of alternative/appropriate dispute resolution.

Some of these techniques not only address legal disputes by acknowledging their multidisciplinary roots but also attempt to do so in ways that promise to limit future conflict.

Can courts or legislatures require citizens to receive education and training such as in parent communication and parenting classes as well as participate in mediation and pay for all these things as a precondition to presenting their case to a judge in a conventional courtroom setting?

So far the answer is a conditional "yes" to the overall question of whether the judiciary can impose its enhanced mission of problem-solving on those who approach the judiciary to have their disputes resolved.

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