

PowerPoint Two (PP2)

Court Responses to Client Behavior: Rethinking Incentives and Sanctions

The following PowerPoint may be used during Part II if you do not have an expert speaker for this segment of the curriculum.

**The following is adapted from a
presentation given by
Carson Fox, National Drug
Court Institute Fellow, on
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Court Responses to Client Behavior: *Rethinking Incentives and Sanctions*

Based on work by Greg Little, Ed.D., Hon. William G. Meyer, and Jane Pfeifer
for the National Drug Court Institute

What Does Advanced Behavioral Research Tell Us About Motivating Change?

**What behaviors have you
found to be the toughest to
change?**

**Why can't people just
*change?***

Because for the addict....

**“Remaining addicted becomes
easier than trying to change.”**

Breakout

Sanctions Need Not Be:

Painful
Humiliating
Injurious

Harrell, A., and Roman, J. (2001); Brennan, P., and Mednick S. (1994); Murphy et al. (2001); Sherman, L. W. (1993)

Responses Are in the Eye of the Behaver

**Not all punishments are painful, and not
all painful events are punishing.**

Petersilla, J., and Dechanes, E. (1994)

Responses Must Be of Sufficient Intensity

Subjected to punishment at low to moderate intensities, both animals and human beings can become habituated (accustomed) to being punished or to threats of punishment.

Marlowe, B. D., and Kirby, K. (1999)

Responses Should Be Delivered for Every Infraction

The smaller the ratio of punishment to infractions, the more consistent and enduring is the suppression of the undesired behavior.

Responses Should be Delivered Immediately

**Delay in imposition of sanctions can
allow other behaviors to interfere
with the message of the sanction.**

Dayan, P., and Abbott, L. F. (2001); Marlowe, D., and Kirby, K. (1999);
Higgins, S. T., and Silverman, D. (1999)

Undesirable Behavior Must Be Reliably Detected

Failure to uncover an infraction is, in behavioral terms, functionally equivalent to putting the individual on an intermittent schedule.

Higgins, S. T., and Silverman, K. (1999);
Marlowe, D., and Kirby, K. (1999); Torres, S. (1998)

Responses Must Be Predictable and Controllable

Perceived certainty of response has a deterrent effect.

Perception is based not only on what does occur but on what the participant expects will occur.

Harrell, A., and Roman, J. (2001); Burdon, W., et al. (2001);
Higgins, S. T., and Silverman, K. (1999)

Responses May Have Unintended Side Effects

**Learned Helplessness
Frequency of Court Contacts
Extrinsic Rewards for Intrinsic Motivations**

Marlowe, B. D., et al. (2002); Higgins, S. T., and Silverman, K. (1999); Deci, E. L., et al. (1999)

Behavior Does Not Change by Punishment Alone

Positive Reinforcement

Rewards the client in his or her natural social environment to capture positive behavior (e.g., payment vouchers).

Most of today's clinical textbooks conclude that positive reinforcement is far preferable to punishment for changing behavior.

Marlowe, B. D. (1999); Higgins, S. T., and Petry, N. M. (1999);
Higgins, S. T., and Silverman, K. (1999)

Method of Delivery Is Key

Fairness

Empathic communication can
improve patient satisfaction

Andreoni, J., et al. (2001); Hubble, M. A., Duncan, B. L.,
and Miller, S. D. (1999)

Method of Delivery Is Key

**Motivational interviewing can
create the motivation to change**

Hubble, M. A., Duncan, B. L., and Miller, S. D. (1999); Miller, W. R., Benefield, R. G.,
and Tonigan, S. (1993); Rollnick, S., and Miller, W. R. (1995)

Problem-Solving Courts: What Does the Research Tell Us?

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2005 Statewide Judicial Branch Conference (California)
San Diego, CA, September 7, 2005

Questions for This Presentation

- 1. Do Problem-Solving Courts Work?**
- 2. Which Problem-Solving Principles and Practices Work Best?**
- 3. Which Problem-Solving Principles and Practices Can Be Integrated Into Non-Problem-Solving Court Settings?**

Part One

Do Problem-Solving Courts Work?

State of the Practice

- Drug Courts (adult, juvenile, and family)
- Domestic Violence Courts (adult criminal, juvenile, civil, and integrated)
- Community Courts (criminal and multi-jurisdictional)
- Mental Health Courts (adult and juvenile)
- Other Models (e.g., DUI, reentry, homeless, youth, elder abuse, and sex offender courts)

Adult Drug Courts: Retention in Treatment

Conclusion: Drug court retention rates far exceed those for the general treatment population.

- *Treatment generally:* 10-30% retained after one year
- *Adult drug courts:*
 - National: average ~60% retained after one year (Belenko 1998)
 - New York State: 8 of 11 drug courts retained over 60% after one year (median = 66%, range = 47-82%) (Rempel et al. 2003)
 - Graduation rates: national average ~50%

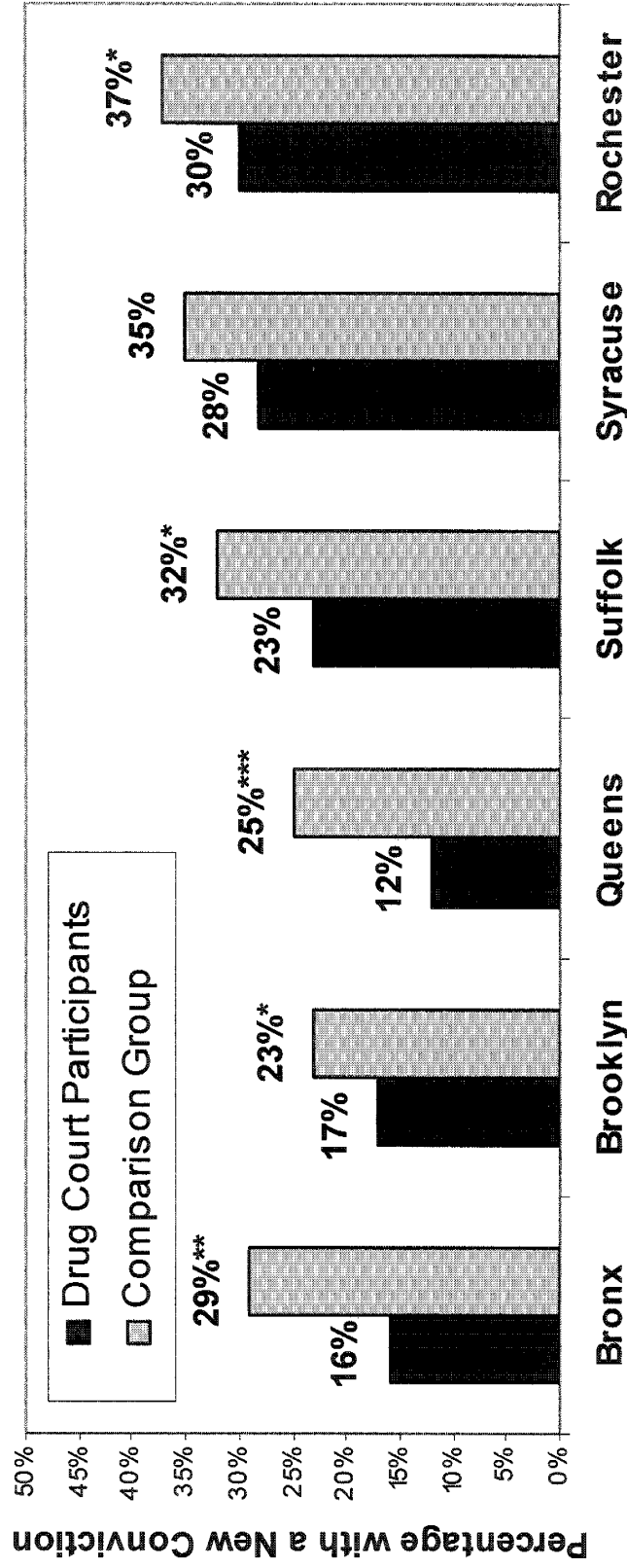
Adult Drug Courts: National Recidivism Results

Conclusion: Drug courts reduce recidivism when compared with conventional prosecution.

- 37 of 42 drug courts studied produced reductions in recidivism (Wilson et al. 2003)
- The average recidivism reduction across all 42 programs was estimated at 13% (Wilson et al. 2003)
- Drug court impacts appear to be long-term: sustained three years after initial arrest in separate studies of 6 NYS sites, 5 Washington State sites, and the Baltimore drug court (GAO 2005)
- The exact magnitude of the drug court impact varies widely across different sites.

Adult Drug Courts: The New York State Evaluation

Impact on Recidivism at One Year Post-Program



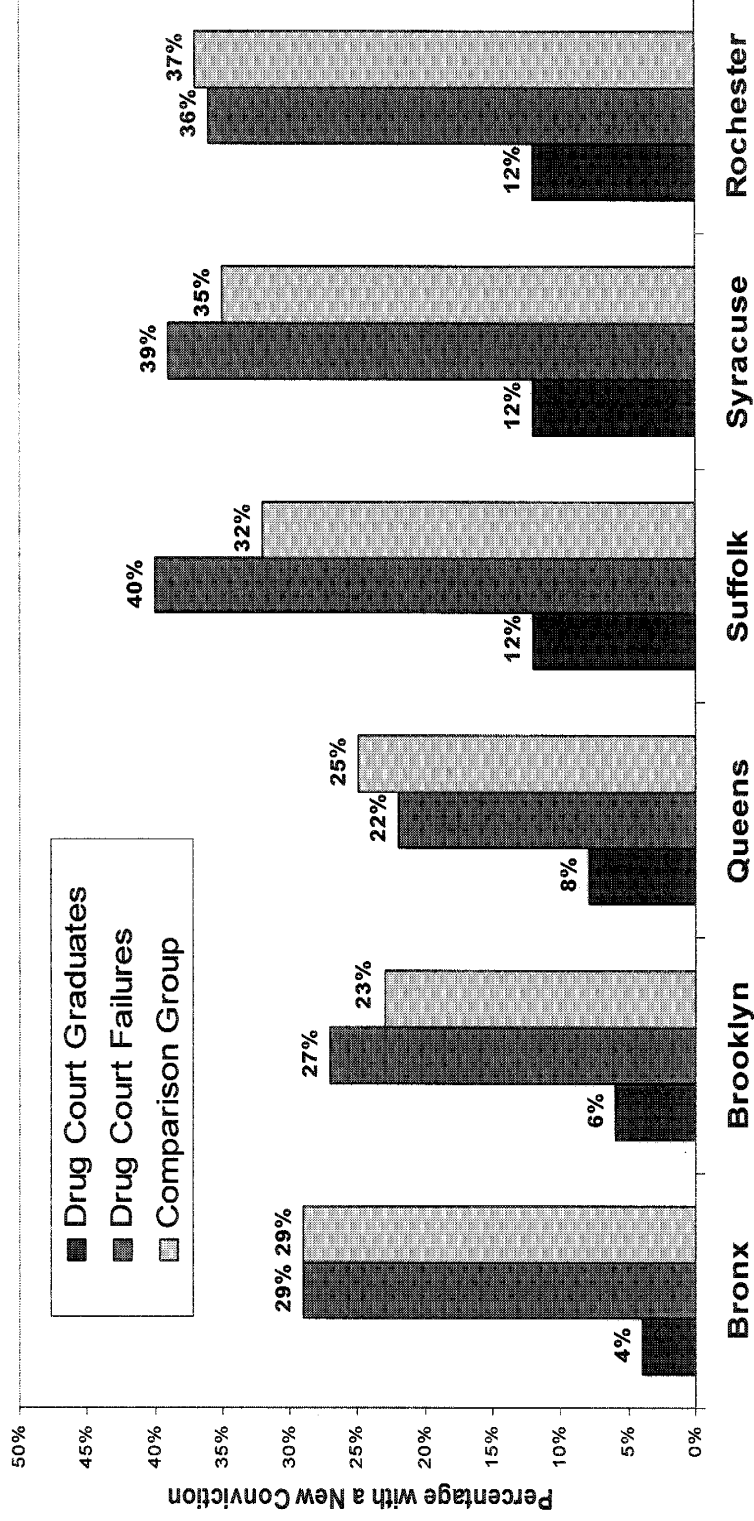
Average Relative Recidivism Reduction = 32%

* p < .05 ** p < .01 *** p < .001

Source: Rempel et al. (2003)

Adult Drug Courts: Impact of Graduation

Impact on Recidivism at One Year Post-Program:
Graduates, Failures, and Comparison Group



Source: Rempel et al. (2003)

Adult Drug Courts: California Cost-Benefit Study

- *2 Studies of 9 California drug courts: Phase One (Carey et al. 2002) and Phase Two (Carey et al. forthcoming).*
- *Results:* For every \$1 invested in drug court (e.g., for personnel, supplies, additional court appearances for monitoring, etc.), 8 of 9 sites produced greater benefits (median court produced just under \$3.50 in savings for every \$1 invested).
- *Primary explanation:* Drug court participants average lower recidivism rates (12% lower across all 9 courts), leading to avoided future cases and savings for courts, prosecutors, defense agencies, probation, law enforcement, and corrections.

Domestic Violence Courts: Offender Accountability and Victim Services

- *Judicial supervision*: More frequent (usually monthly) judicial monitoring and sanctions for noncompliance with court orders (e.g., Newmark et al. 2001; San Diego Superior Court 2000)
- *Increased victim services*: from 55% to 100% of victims linked to advocates after the Brooklyn DV court opened (Newmark et al. 2001); from barely any to 56% of victims linked to advocates after the Shelby, TN, DV court opened (Henning and Kesges 1999)
- *Increased victim satisfaction*: Increased satisfaction with the judge, court personnel, and court process (Gover et al. 2003; Hotaling and Buzawa 2003)

Domestic Violence Courts: National Recidivism Results

- *Four completed studies:* Brooklyn, NY; Lexington County, SC; San Diego, CA; and Shelby County, TN
- *Mixed Results:* 2 studies showed significant reductions in rearrest rates (Lexington and San Diego), while 2 others showed no impact (Brooklyn and Shelby).
- *Possible expectations problem:* Offender accountability and victim services may be more attainable goals than behavioral change.
- *Possible measurement problem:* DV courts may lead more incidents to be reported and detected by justice system authorities, making it potentially deceptive to examine official rearrest records alone.

Sources: Brooklyn study (Newmark et al. 2001), Lexington study (Gover et al. 2003), San Diego study (San Diego Superior Court 2000), and Shelby study (Henning and Kesges 1999).

Community Courts: Offender Compliance

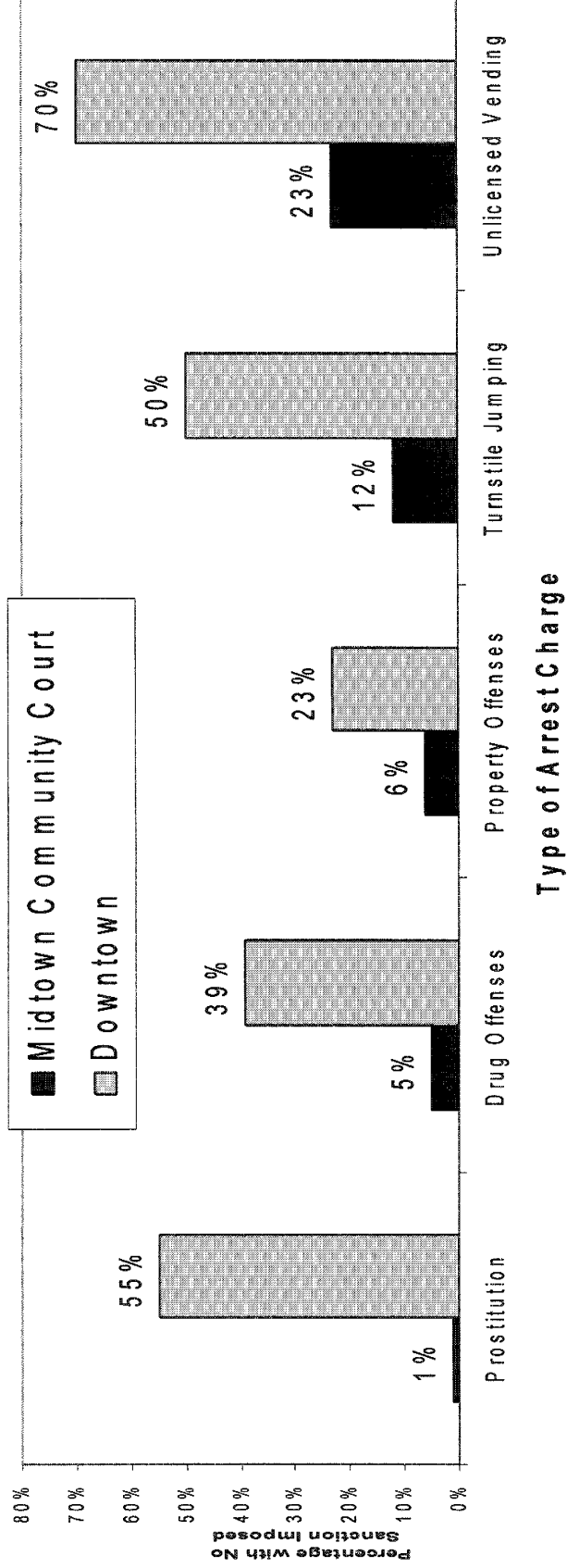
Conclusion: Community courts generate increased compliance with community service sanctions.

- Midtown Community Court (NY): Compliance rose from approximately 50% in downtown Manhattan to 78% at the community court (Sviridoff et al. 2001).
- Hennepin County Community Court (MN): Compliance rose from 29% in downtown, Minneapolis to 54% at the community court (Eckberg 2001).
- Reasons for increased compliance include: case managers track compliance and report noncompliance; and sanctions or resentences are swiftly imposed on noncompliant offenders.

Community Courts: Reduction of “Walks”

Significantly Fewer Cases Disposed With No Criminal Justice Sanction

(A sanction includes community service, social service, jail, ACD with conditions, fine)



Source: Sviridoff et al. (2001).

Community Courts: Reductions in Crime

Conclusion: The Midtown Community Court helped to reduce prostitution and unlicensed vending crime in midtown.

Over the Court's first year:

- *Prostitution:* **56%** reduction in arrests
- *Unlicensed vending:* **24%** reduction in arrests
- *Explanation:* This is not necessarily reduced "recidivism" among individual offenders but rather reduced crime in the community due to court, police, and business collaboration.

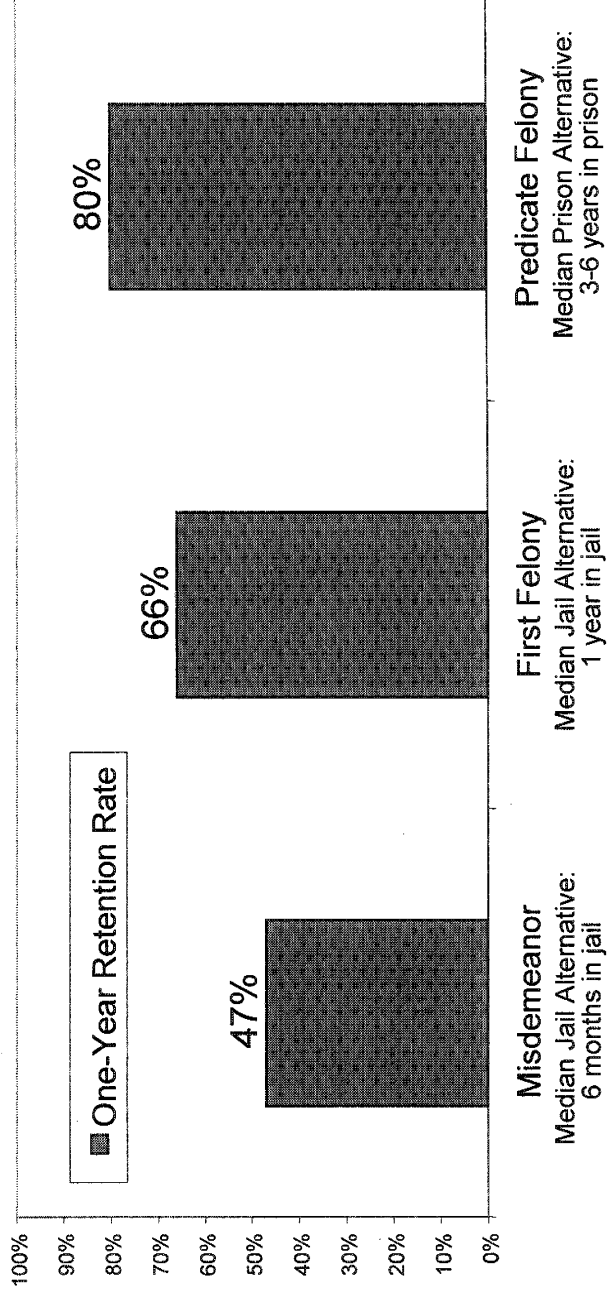
Part Two

Which Problem-Solving Principles and Practices Work Best?

Legal Coercion

Conclusion: Participants are more likely to complete substance abuse treatment when they face clear and serious legal consequences in the event of failure.

Impact of Legal Coercion on Retention
(An Urban New York State Drug Court, N = 2,184)



Source: Rempel and DeStefano (2001).

Legal Coercion (cont.)

Conclusion: Greater *perceptions* of legal coercion lead to improved retention in treatment.

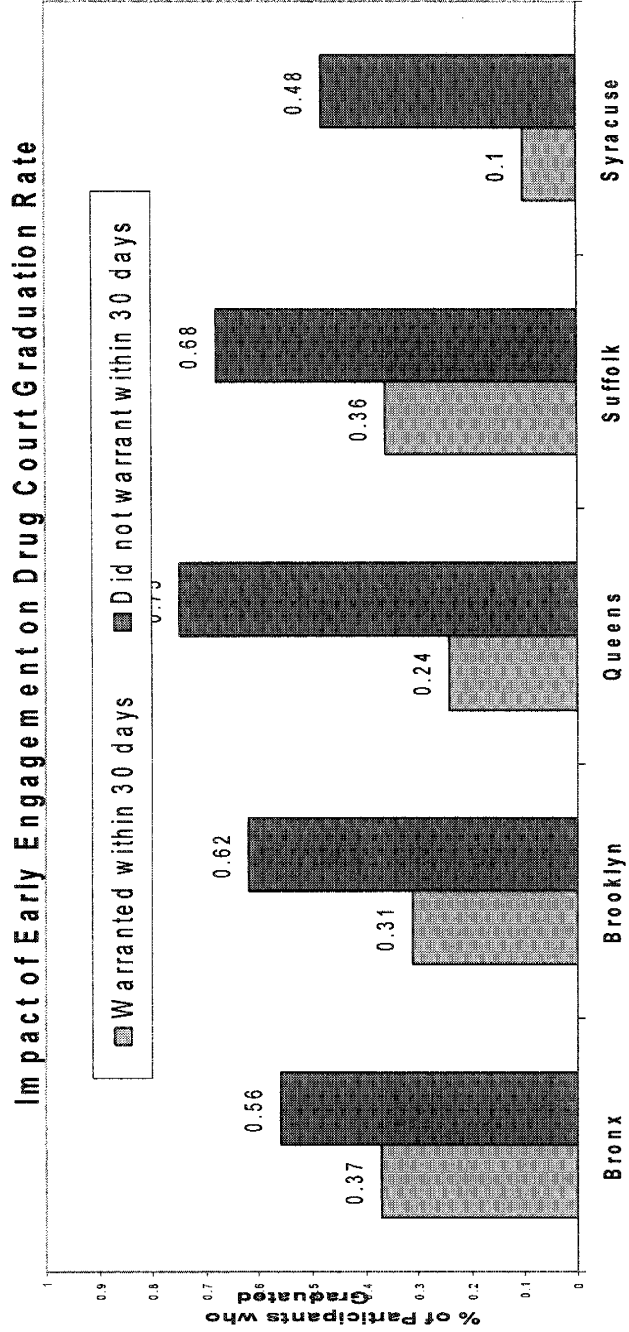
- **Information:**
 - ▲ Number of criminal justice agents (CJAs) who explained rules and program length
 - ▲ Number of CJAs who explained consequences of failure to the client
 - ▲ Number of times client made promises to CJAs to complete treatment
- **Monitoring:**
 - ▲ A CJA would learn within a week if client absconded from the program
 - ▲ Number of CJAs who would learn if client absconded from the program**
- **Enforcement:**
 - ▲ Warrant is issued if the client absconds from the program**
 - ▲ Client would be returned to custody in a month or less after leaving treatment
- **Severity:**
 - ▲ CJA has told client he or she will serve severe penalty for absconding or failing
 - ▲ Length of time client expects to serve in jail or prison for failing program**

p < .05 for all of the above ** p < .01

Source: Young and Belenko (2002)

Immediacy: Early Program Engagement and Compliance

Conclusion: Rapid program engagement increases the probability of subsequent retention and graduation.

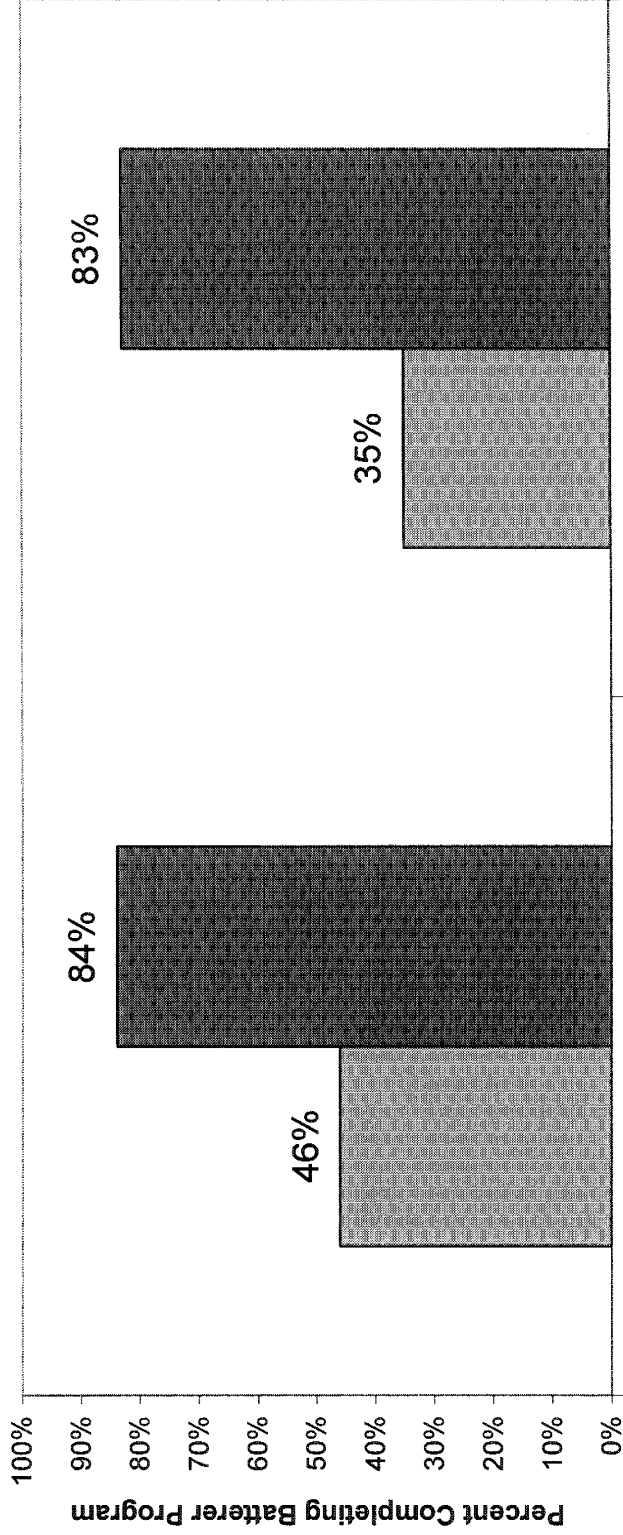


Sources: See Leigh et al. 1984; Maddux 1993; Mundell 1984; Rempel and DeStefano 2001; Rempel et al. 2003. Data for the figure shown is from Rempel et al. (2003).

Immediacy (cont.)

Impact of Early Compliance on Batterer Program Completion Rate

■ Out of Compliance at 30-Day Mark ■ In Compliance at 30-Day Mark



Bronx DV Court (Puffett and Gavin 2004) Brooklyn DV Court (Cissner and Puffett 2005)

Ongoing Judicial Supervision

1. Judicial Supervision With Drug-Involved Offenders (Not Drug Court): The Washington, D.C., Study

- *Sanctions docket*: Drug testing plus regular judicial supervision and sanctions in the event of noncompliance
- *Standard docket*: Drug testing *without* regular judicial supervision or sanctions
- *Results*: Offenders on sanctions docket perform better:
 - Recidivism*: Lower probability of rearrest within 1 year after completion of probation (19% versus 27%)
 - Drug use*: Lower probability of “serious” drug use (excluding marijuana) at 1 year after completion of probation (35% versus 48%)

Judicial Supervision (cont.)

2. Judicial Supervision With Domestic Violence Offenders: Mixed Results Across 3 Sites

- *San Diego:* Rearrest rate declines after implementing domestic violence courts; court staff attribute this impact to more intensive judicial monitoring (San Diego Superior Court 2000).
- *Pittsburgh:* Batterer program completion rate increases after implementing 1 compliance monitoring appearance 30 days after disposition (Gondolf 1998).
- *Bronx:* A study specifically designed to test the impact of post-disposition monitoring shows no effect; monitoring took the form of simple “surveillance” (monthly check-ins), with minimal use of judicial feedback and sanctions (Labriola et al. 2005).

Judicial Supervision (cont.)

3. For Whom Does Judicial Supervision Work Best? The Doug Marlowe Experiments

- *Multiple northeastern sites*: “High risk” drug court participants (anti-social personality disorder and/or previous failed treatment) benefit from biweekly judicial monitoring; whereas “low risk” participants perform as well with “as needed” monitoring (e.g., Festinger et al. 2002; Marlowe et al. 2003).

Judicial Supervision (cont.)

Conclusions

- Ongoing judicial supervision generally produces improved compliance outcomes.
- Simple “surveillance,” however, may be ineffective (and effects with DV offenders are less certain).
- Regular/frequent supervision works best with “high-risk” offenders.
- *Implication:* “Triage” may be an effective strategy for judges interested in applying judicial supervision (see Farole et al. 2004).

Substance Abuse Treatment

Conclusion: Substance Abuse Treatment Works If Participants Are Retained.

- Retention in treatment for at least **90 days** is critical to achieve any long-term benefits.
- More time in treatment consistently predicts more positive post-treatment outcomes on measures such as drug use, criminal activity, and employment.
- Maximum clinical efficacy **~one year**.
- Long-term heroin users will probably require residential treatment and/or methadone to succeed.

Part Three

Which Problem-Solving Principles and Practices Can Be Integrated Into Non-Problem-Solving Court Settings?

Major Findings of the California/New York Transferability Studies (Farole et al. 2004; Farole et al. 2005)

Research Questions

1. Which problem-solving court principles and practices are most applicable to non-problem-solving court settings?
2. What are the barriers to the more widespread adoption of problem solving, and how might they be overcome?
3. What do key justice system and treatment/service stakeholders think about the broader application of problem solving in the courts?

Overview of the Research

- **Exploratory:** Two phases of qualitative research to obtain the views of judges and other stakeholders familiar with problem-solving courts
- **Phase I: Judges (California and New York)**
 - 4 focus groups—2 in CA, 2 in NY (plus small # of interviews)
 - Total of 35 current or former problem-solving court judges
 - Most with experience in adult drug courts and/or domestic violence courts
- **Phase II: Other Stakeholders (California only)**
 - 4 focus groups:
 - 2 of attorneys: district attorneys, public defenders, and private defense bar
 - 1 of treatment/service providers and probation representatives
 - 1 of representatives of statewide organizations
 - Total of 24 stakeholders in focus groups; plus 3 interviews

Most Applicable Practices

■ Integration of Treatment and Social Services

“You could impose terms and conditions of probation, which would incorporate treatment aspects.”

■ Judge’s Problem-Solving Orientation

“Where I otherwise may have just taken the proposed orders of probation...[and] signed them...I will now ask the questions: Did you look into x, y, and z?...I will ask those questions where I wouldn’t have before.”

■ Ongoing Judicial Supervision

“I will have them come back once a month... I don’t have all the resources of a drug court, I don’t have the testing and I can’t get probation to really supervise them. But I think the issue of judicial supervision and accountability... makes a difference.”

■ Interaction With Defendants/Litigants

“I just talk over the attorneys. I go right to the defendant, and I will leave it up to the defendant’s lawyer to object... I get away with that 95% of the time.”

■ Collaborative Approach

“We have periodic reviews... we bring a whole crew in and try to problem solve as a group... It has been a real positive experience.”

Barriers

- “There are a lot of things that could be done. But only Don Quixote could do them.”
- **Limited Time and Resources**
“You don’t have time for the individualized attention to each defendant, you don’t have access to the wide array of services, [and] you are under a great deal of pressure to move cases.”
 - **Oppositional Philosophies**
Traditional role focuses more exclusively on the *legal process* (“deciding cases”), while the problem-solving role also focuses on *outcomes* (“practical solutions”).
 - **Judicial Inexperience With Problem Solving**
“[Without experience] we wouldn’t have realized that it could work.”
 - **Judicial Leadership**
“There has to be permission from above... [presiding judges have to say] it is OK to do this.”
 - **Opposition From Attorneys**
“[The problem] is the DA and the defense counsel, because without their consent, except in plea bargains... you don’t have any authority to talk to anybody [i.e., the defendant].”

Overcoming Barriers

■ Short-Term Strategies

“Triage”: Selective application to cases most likely to benefit

Focus on judge-driven practices: e.g., ongoing judicial supervision, direct interaction with defendants/litigants

Courtroom leadership: “In my courtroom, I make it happen.”

Build trust: “[I have] built up enough of a reputation... [that attorneys] know I am not going to slam [their clients] into jail... [so] they allow their clients to talk to me.”

■ Long-Term Strategies

Share problem-solving court resources with other parts of system

Create single compliance part for entire courthouse

Compile database of countywide programs and services accessible to all judges and their clerks

Introduce universal screening and case management

Stakeholder Recommendations

“The demand is there, I think from all the key players. Participants, defendants, prosecution, defense, courts, in-service providers alike—they need a venue in which to solve the problems they’re facing. And whether it’s through the specialty courts we have or expanding it one county at a time, there have to be some mechanisms established to open that door a little bit further.”

- **Incremental Change: Implement in pilot counties and/or employ limited eligibility criteria at first.**
- **Expanded Roles for Attorneys and Judges**
- **Some Specialization of Judges, Attorneys, and Court Parts**

“...once they were identified as a drug treatment [case] or a case with mental health issues, an efficient way to do it would be to funnel that to a particular judge and to a particular group of attorneys and probation officers who deal with those cases.”

Concluding Thoughts: Problem Solving Throughout the Courts

■ Potential Drawbacks

Efficacy: Piecemeal application of practices; “watering down” the model

Adverse Impact on Specialized Problem-Solving Courts: Siphon cases, resources, and political support

■ Potential Advantages

Greater Reach: Specialized courts reach only a small fraction of those who might benefit

Tab 6

Case Study #1—Arrestment (Eric)

[Principle: Integration of Services and Partnerships With Public Agencies and Community-Based Organizations]

Eric, age 24, is before you on the arrestment calendar. He is charged with vandalism and a new drunk-in-public charge (having several prior alcohol-related convictions). He has pled guilty and does not want an attorney. He admits that he was drunk when arrested (for breaking windows in a warehouse) and states that he was once in court as a minor in possession. His appearance is disheveled and his clothes are frayed. He does not have a job and volunteers that he has never had one. He demonstrates little affect and does not make eye contact with you.

Questions:

- 1. What would normally happen to this case in your court? In your jurisdiction would you address the question of restitution for the broken window?*
- 2. Assume that Eric has pled guilty and does not want an attorney. You are fairly sure, if not convinced, that he is an alcoholic. How would you confirm your hunch? Are you concerned that at 24 he appears to be homeless? Is there anything more you could do to affect the long-term outcome of this case? What if Eric had requested an attorney?*
- 3. Are there other situations, types of cases or proceedings, or circumstances in which you already "integrate services" into traditional court processes?*
- 4. What ethical considerations are raised by attempts to link Eric to services, and how would you address them?*

Case Study #2—Delinquency (Alice)
[Principle: Collaborative Input for Decision Making]

Alice, age 16, is before you on the delinquency detention (initial hearing) calendar. She is charged with petty theft (spray paint) and graffiti violations. The charging documents state that she was cutting school when caught spray painting obscenities on the concrete wall of the subway station near her home. She did not resist arrest or appear to be violent, but laughed uncontrollably when detained by the metro police.

Alice tells you that her parents are separated, she lives with her grandmother, Ella Finlay, right now (in an older, economically challenged part of town called “Drinkers Gulch”), and she doesn’t need to go to school because she is going to be an astronaut. She has been in court once before for sniffing glue with a group of older girls in the middle school bathroom. She appears to be pregnant.

Questions:

- 1. What’s going on with this young woman? How might you find out, and whom might you want to involve?*
- 2. If you release Alice, what conditions would you impose, if any?*

Note: Don’t worry about the technicalities of juvenile law.

Case Study #3—Felony (Eric)
[Principle: Judicial Supervision of Mandates]

Eric, now 26, is charged with felony possession of heroin. (In his earlier case he never completed the alcohol treatment program ordered by the court as a condition of probation, and he served 30 days in jail after being picked up on violation of probation.) When the defense attorney interviews Eric, it becomes clear that he is in withdrawal. Eric asks for treatment and the lawyer, in turn, asks for an assessment.

Questions:

1. *How would you obtain an assessment for possible addiction in your jurisdiction?*
2. *What could be done with the case from a procedural standpoint in the meantime?*

Assume that Eric was found to have a discernible addiction and the assessment report recommended 10 days of detox and residential treatment. Eric wants to accept these conditions because he needs help and is tired of using drugs. The defense lawyer objects and wants to discuss the length of residential treatment. He requests that Eric be given 5 sessions of outpatient drug counseling. Based on the assessment report, Judge Brown believes that Eric's addiction is beyond what outpatient counseling can address and that the recommended treatment would be appropriate. The judge indicates that conditions would reflect the recommendations set forth in the assessment report if Eric pleads guilty. Eric accepts the plea, with the understanding that violation of the conditions will lead to a state prison sentence. He is also required to appear before Judge Brown every 30 days for status updates.

Eric completes detox and enters residential treatment. He does well in treatment and continues to make good progress. At monthly status hearings, Judge Brown acknowledges this progress and encourages Eric to keep up the good work. After 5 months of treatment, Eric's roommate brings marijuana to their room in the facility. Eric is upset and tells the roommate to keep the marijuana away from him because he doesn't want to be tempted. The roommate hides the marijuana. A few days later, the roommate is caught smoking marijuana. An investigation reveals that Eric knew about the marijuana, but didn't say anything to his counselors because he doesn't believe in "being a rat." Both Eric and the roommate are discharged from the program.

Eric is brought to court. He is so upset at this point that he refuses to have anything to do with drug treatment. The prosecutor says that Eric should receive

the maximum sentence because he did not complete court-mandated residential treatment. The prosecutor says that not punishing Eric would make a mockery of the court and would send a signal to other defendants that there are no consequences for violating a court order. The treatment program says that it is a standard rule to terminate treatment if clients fail to report rule violations to counselors—it is central to operating a drug treatment facility. The agency representative indicates that it would be difficult to accept any referrals from the court if defendants were not punished for violating program rules. The defense attorney says that Eric got a “raw deal” from the program and that Eric was right not to “rat” on his roommate. The defense lawyer tells the judge: “Judge, with all due respect, you wouldn’t have ‘ratted out’ your roommate, either.” Defense counsel concludes by saying: “Judge, I told you this case wasn’t worth more than 5 sessions of counseling at the arraignment. How can you send him to state prison after he did 10 days of detox and 5 months of residential treatment?”

Question:

What should Judge Brown do?

Case Study #4 (Family Law)

[Principle: Interaction Between the Defendant/Parties and the Judge]

Petitioner Roger, age 46, and respondent Joyce, age 44, both unrepresented, are before you in a dissolution proceeding. The couple has three children: Eric, age 24, and Alice, age 16, both children of Joyce's former marriage; and Timmy, age 3, a child of this 10-year marriage. You are not aware of the legal proceedings regarding Eric, Alice, and Timmy (described in other case studies), but you learn from the parents that Eric has been in trouble with the law, that Alice has moved out and is living with her maternal grandmother (in a crime-ridden area of town), and that the couple separated 6 months ago when Joyce moved out, taking Timmy with her. Joyce's affidavit states that Roger's verbal abuse toward her included threats of violence.

Roger alleges that Joyce has a serious prescription drug problem and poses a "substantial risk to the health and safety of the children." He seeks sole legal and physical custody of Alice and Timmy. Attached to Roger's declaration is a list of drugs purchased by respondent during the past year (based on prescription receipts that are available for the court's review).

Joyce denies having a drug problem and alleges that Roger is verbally abusive toward her and the children and that Timmy is afraid of him. She too seeks sole legal and physical custody of Timmy, but believes that Alice is better off living with her maternal grandmother.

Attached to the file is a list of the mother's prescription drugs, including Vicodin, Demerol, OxyContin, Valium, Wellbutrin, and Paxil, that continue to be renewed by multiple doctors.

Questions:

- 1. What questions would you want to ask each party? Which questions could you ask?*
- 2. What services are available, if any, to help in making a custody decision that is in the best interests of the children? If your court provides Family Court Services (for mediation of custody disputes) or Drug Court, how might you interact with it or them?*
- 3. What would you do?*

Note: Assume that you have jurisdiction in this case (you are unaware of the pending case in Juvenile Court).

Case Study #5 (Juvenile Dependency)

[Principle: Interaction Between the Defendant/Parties and the Judge]

Assume that instead of handling a family law case, we are now in Juvenile Dependency Court at an initial detention hearing. Based on a report submitted by Child Protective Services and the declaration of paternal grandmother Ella, mother of Roger and grandmother of Timmy, the Department of Social Services has filed a petition before you requesting the court to declare Timmy a dependent and place him out-of-home with Ella.

CPS reports that a call from a neighbor led them to Timmy, who was wandering more than a block away from his home. After ascertaining from neighbors where Timmy lived, CPS knocked on the door and rang the doorbell for more than 10 minutes before Joyce answered. Joyce acted disoriented and looked drugged, as if waking from a sound sleep (in the middle of the day).

Ella's declaration states that on visiting Joyce's home on several occasions, she witnessed that Timmy was wearing a dirty diaper and had a severe diaper rash. She also states that there is often rotten food in the refrigerator and clothes are always thrown around or piled in the corners. Once she found Joyce sound asleep in front of the TV while Timmy had emptied laundry soap and other cleaning supplies onto the kitchen floor. Ella states that Joyce has already ruined two children and Ella doesn't want the same thing to happen to Timmy.

Ella further states that neither of Timmy's parents, who are currently going through a divorce, is capable of providing care for him right now. Roger, her son, is capable of being a good parent but Joyce has poisoned Timmy against him and Timmy is afraid of him. Ella states that Roger does have a terrible temper and drinks to drown his sorrows, but who wouldn't if your wife was a drug addict and took your kid away? Ella believes that Timmy needs a good, stable home right now so that he doesn't get in the middle of his parents' battle.

Questions:

- 1. What questions would you want to ask each party? Which of these could you ask?*
- 2. What services are available, if any, to help in making a decision regarding placement of this child?*
- 3. What would you do?*

Case Study #6 (Conservatorship)

[Principle: Interaction Between the Defendant/Parties and the Judge]

A conservatorship petition is brought alleging that Joyce's father, George, now 74 years old and living alone, has been wandering at times throughout the neighborhood in dirty clothes full of burn holes. The neighbor who has more or less looked after George since his daughter stopped visiting has also noticed that there have been people unknown to her hanging around George's apartment recently, that he has mentioned several substantial withdrawals from his bank account lately, and that last week when he was outside in his garden, he lost his balance and fell, the third or fourth time this has happened. Once or twice he also appeared to be incontinent. The last time George's daughter visited, she mentioned to the neighbor that she didn't think George was taking his medications.

Question:

What would you do?

Case Study #7 (Community)

[Principle: Focus on Both Process and Outcomes]

Within the last several months, Judge Green has noticed a dramatic increase in the number of criminal cases filed alleging the commission of quality-of-life offenses originating in an older, economically challenged section of town (called "Drinkers Gulch"). The criminal complaints typically involve allegations of prostitution, loitering, marijuana sales and possession, and trespass. The area in question has experienced a marked downturn over the last few years with the closing of a couple of the town's larger industrial employers and the opening of several nighttime social clubs in vacated warehouse spaces. The district attorney's office and the police have received a flurry of complaints from area civic groups and tenants' associations demanding that there be a comprehensive law enforcement response to this proliferation of low-level crime.

Concerned over the influx of these cases and frustrated with the frequency with which she was seeing the same defendants returning regularly to her court on new arrests, Judge Green is interested in exploring strategies to more effectively address these thorny cases and the understandable concerns expressed by community representatives.

Questions:

1. *What steps would you recommend that Judge Green take in the courtroom?*
2. *What about outside the courtroom? What role, if any, would be appropriate for Judge Green to play in addressing chronic neighborhood-wide problems, beyond resolving individual court matters?*
1. *Whom would you recommend that Judge Green meet and work with in pursuing solutions to the problems presented by these cases?*
4. *What ethical issues should Judge Green bear in mind?*

Tab 7

Participant Materials

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Note: Participants should also receive copies of the PowerPoint slides and Case Studies.

Quotes

—*Quote from New York Chief Judge Judith S. Kaye:*

“In many of today’s cases, the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street. The battered wife obtains a protective order, goes home and is beaten again. Every legal right of the litigants is protected, all procedures followed, yet we aren’t making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts.”

—*Chief Justice Ronald M. George of California made the following statement in his State of the Judiciary Address to the California Legislature in 2004:*

“Collaborative justice courts, focusing on less serious drug offenses, mental health, domestic violence, and juvenile matters, have been remarkably successful at turning around lives. Fifty out of our 58 counties have created some 250 collaborative justice courts that have proved to be a highly effective tool. They change the offender for the better and dramatically reduce the prospects of his or her return to court on new charges—while protecting society by making communities safer and reducing expenditures for hospitals, jails, and prisons. The drug court graduations I have attended are invariably inspiring. They feature individuals who have made a new start, forsaking drugs and crime in favor of education, gainful employment, and reunited families.”

Ten Key Components of Drug Courts

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

(National Association of Drug Court Professionals, 1997)

Components of Collaborative Justice Courts

Collaborative justice key principles, as defined by the Collaborative Justice Courts Advisory Committee, based on the National Association of Drug Court Professionals' (NADCP) 10 components described in "Defining Drug Courts: The Key Components," are as follows:

- 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.
- 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.

Fact Sheet

➤ Costs

In May 2004, the National Drug Court Institute (NDCI) published *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States*, reporting then-current cost benefit research on drug courts in Washington State; California; New York; Multnomah County, Oregon; Dallas; and Saint Louis, Missouri. In all cases, NDCI reported that “a state taxpayer’s return on the up-front investment in drug courts is substantial.” Benefits were realized from estimated reductions in recidivism (e.g., avoided criminal justice system costs and avoided costs to victims, or “victimization costs”), saved incarceration costs, costs offset by participants’ payment of fines and fees, and other savings, including those realized in higher wages and related taxes paid by drug court graduates.

NDCI’s May 2005 *Painting the Current Picture* cites positive cost benefit ratios for drug court participants as reflected in the U.S. Government Accountability Office (GAO) publication of February 2005 (see below, re: recidivism). It also cites cost benefits to society, in addition to the reduction in the costs of human tragedy, in drug courts’ contributions to the number of confirmed births of drug-free babies to active female drug court clients during the preceding 12 months.

The California Administrative Office of the Courts has conducted three drug court cost studies since 1998. Research conducted between 1998 and 2002 revealed the following:

- *Criminal justice costs avoided through collaborative justice averaged approximately \$200,000 annually per court for each 100 participants.*
- *All drug courts in the study showed “cost avoidance” at their trial courts after the first year of operation. Two of the three courts studied showed reduced trial court costs that began in the first year and were conservatively estimated at \$50,000 per court over the course of the study.*
- *With 90 adult drug courts operating statewide as of 2002, and drug court caseloads conservatively estimated at 100 participants per year, the annual statewide cost savings for adult drug courts suggested by these data is \$18 million per year.*

In an October 2004 report entitled *California Drug Courts: A Methodology for Determining Costs and Benefits; Phase II: Testing the Methodology*, eight of the nine drug courts studied produced net benefits over a four-year period (see below, re: recidivism). Although savings varied among sites from about \$3,200 to \$20,000 per participant, the state realized a combined net benefit of \$9,032,626 for the 900 participants who entered those drug courts.

➤ Case Processing

In a September 2003 report by New York's Center for Court Innovation entitled *The New York State Adult Drug Court Evaluation*, the following was reported with regard to the impact of drug courts on case processing:

—*Initial case processing speed: Drug court cases reach initial disposition more quickly than conventional courts. Participants in all six drug courts spent significantly less time from arrest to initial disposition/program entry than comparison defendants.*

—*Total time pending: When in-program participation time was included in the calculation, processing time for participants was far longer than for comparison defendants (because of the length of the drug court program). Hence, to achieve positive impacts such as lower recidivism, drug courts require a significant up-front investment of court resources.*

➤ Recidivism

(From "Drug Court Evaluations: Looking at the Trend Line," *Problem-Solving Reporter*, National Center for State Courts, Spring 2005)

"Early outcome evaluations of drug courts often produced very positive results, but many were methodologically flawed. More recent studies, incorporating more sophisticated methodological designs, however, are continuing to show positive results.

The Government Accountability Office (GAO) released its latest report on drug court evaluations in February 2005. The GAO reviewed 117 evaluation studies conducted between May 1997 and January 2004. Less than a quarter of these studies met the GAO's criteria for methodological rigor, but those that did indicated that drug courts remain a promising intervention. The GAO's review of 27 evaluations of 23 different drug court programs indicated:

—Less recidivism for both new arrests and new convictions among drug court participants than among individuals in an appropriate comparison group (these differences were significant for 10 of 13 programs that examined re-arrest rates and 10 of 12 programs that examined reconviction rates).

—Reduced recidivism for a period of time following drug court completion (according to most of the evaluations)."

In California's October 2004 report, recidivism rates averaged 17 percent for drug court graduates, 29 percent for all drug court participants, and 41 percent for a comparison group of offenders.

Ten Science-Based Principles of Changing Behavior Through the Use of Reinforcement and Punishment

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1. SANCTIONS SHOULD NOT BE PAINFUL, HUMILIATING OR INJURIOUS.

- a. Research on offender perceptions and specific deterrence effects on offenders subject to sanctions report that:
 1. Certainty of sanctions does exert a specific deterrent effect on future behavior.
 2. Perceived severity, if certainty is present, does not exert a deterrent effect on future behavior. Harrell, A., & Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions." *Journal of Drug Issues*, 31 (1), 207-232.
- b. While research on animals indicate that severity of punishment is directly related to behavior extinguishment, the same is not necessarily true for criminal offenders.

Research reports that controlling for age, socioeconomic status, and time of incarceration the risk that the offender would re-offend was not related to the prior sanctions imposed irrespective of whether the sanction was probation, a fine or prison. The one exception to this finding is when first and second time offenders received prison instead of a fine or probation, they were more likely to re-offend. Brennan, P and Mednick, S., "Learning Theory Approach to Deterrence of Criminal Behavior," Vol. 103 *Journal of Abnormal Psychology*, pp. 430-440 (1994).

- c. In controlled studies, participants tend to choose heavy future punishment over smaller immediate punishers. As it relates to substance abusers, they tend to discount the future consequences. The immediacy of the effect is the best predictor of whether there will be a change in the status quo. Murphy, J. G., Vuchinich, R. E., & Simpson, C. A. (2001). "Delayed Reward and Cost Discounting." *The Psychological Record*, 51, 571-588.
- d. Multi-disciplinary research posits that defiant behavior results when sanctions are perceived as unfair punish the individual not the act, imposed on individuals poorly bonded to the community and on individuals who fail to feel shame or contrition for their acts. Sherman, L. W. (1993). "Defiance, Deterrence, and Irrelevance: A Theory of the

Criminal Justice Sanction.” *Journal of Research in Crime and Delinquency*, 30 (4), 445-473.

2. RESPONSES ARE IN THE EYES OF THE BEHAVER.

- a. Contrary to expectations, incarceration is not necessarily viewed by the criminal offender as the harshest punishment. In a comparison of alternative sanctions to prison time, 6-24% of inmates surveyed preferred 12 months incarceration compared to sanctions ranging from a halfway house (6.7%), probation (12.4%) or day fines (24%). Those inmates desiring alternative sanctions seemed to have better connections with the community, for example children, job, etc. Wood, P. B., & Grasmick, H. G. (1995). “Inmates Rank the Severity of Ten Alternative Sanctions Compared to Prison.” Oklahoma Department of Corrections; www.doc.state.ok.us/DOCS/OCJRC/OCJRC95/950725j.htm See also Petersilla, J. and Deschanes, E., “What Punishes? Inmates Rank the Security of Prison v. Intermediate Sanctions?” *Federal Probation*, Vol. 58, No. 1 (March 1994).
- b. Research also indicates that punishment or the possibility of punishment as a sanction tends to be a greater motivator of behavior for those addicts who have a lot to loose. For those addicts who have nothing to lose, the threat or actual imposition of punishment causes them to withdraw from treatment or drop out. The use of positive reinforcement has been shown to be particularly effective in motivating abstinence in this population. See Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association; particularly Chapter 17, Crowley, T., “Clinical Implications and Future Directions,” pp. 345-351.
- c. An extensive study focusing on whether criminal sanctions reduce, increase or have no effect on future crimes found the following:
 1. Similar sanctions have completely different effects depending upon the social situation and offender type.
 2. Treatment can increase or decrease criminality depending on offenders’ personality type.
 3. Criminal sanctions decrease criminality in employed offenders but increase criminality in unemployed offenders.
 4. Threat of criminal sanctions deters future criminality in people who are older.

5. People obey laws more when they believe laws are enforced fairly. See Sherman, L. W. (1993). "Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Justice Sanction." *Journal of Research in Crime and Delinquency*, 30 (4), 445-473.
- d. The concept of the perception of fairness and its effect on the behavior may have greater importance than previously believed. Behavioral economic research suggests that people will react to perceived unfairness by engaging in activity that will "punish" the person perceived as being unfair even to the extent of punishing themselves to get back at that person. Andreoni, J., Harbaugh, W., & Vesterlund, L. (2001). "The Carrot or the Stick? Rewards, Punishments and Cooperation." Unpublished paper, National Science Foundation Grant.
- e. Just as a sanction may be misperceived, so can a system of rewards. Providing such things as appointment books, pencils or even increasing monetary rewards as a bonus may even jeopardize continued abstinence. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association., pp. 334-335.
- f. As drug court professionals we must be particularly cognizant of the participant perception that a response of increased drug treatment imposed upon therapeutic recommendation will be perceived by the participant as a punishment. To the extent we can persuade the participant that treatment is in their best interest, we should do so. See Center for Substance Abuse Treatment, "Combining Substance Abuse Treatment with Intermediate Sanctions for Adults in the Criminal Justice System." Rockville, Maryland: Center for Substance Abuse Treatment, U.S. Department of Health and Human Services publication SMA 94-3004; 1994 d. *Treatment Improvement Protocol (TIP) Series 12*.

3. RESPONSES MUST BE OF SUFFICIENT INTENSITY.

- a. Animal Research has demonstrated that punishment must be of sufficient intensity to motivate the change in behavior. If the punishment is of not sufficient consequence, the behavior is not motivated to change or becomes habituated to the punishment Azrin, N. and Holz, W. "Punishment" in Honig W. (ed). *Operant Behavior: Areas of Recidivism and Application*. (Meredith Publishing 1966) pp. 381-447. Particularly p. 426 and 433. Using animal testing, authors answer whether punishment is effective in eliminating undesirable behavior and what has to be present to heighten efficacy.
- b. Research also indicates that graduated sanctions work in the drug court context. Using the DC drug court, a positive drug test sanction group was

compared with a group not sanctioned for positive urine testing. The graduated sanction group had significantly fewer arrests than the non-sanctioned group. Harrell, A., & Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The impact of Graduated Sanctions." *Journal of Drug Issues*, 31 (1), 207-232.

- c. Research on graduated rewards demonstrates that participants receiving graduated reinforcement achieved greater mean levels of abstinence than participants receiving fixed reinforcement. Roll, J., Higgins, S. and Badger, G. "An Experimental Comparison of Three Different Schedules of Reinforcement of Drug Abstinence Using Cigarette Smoking as an Exemplar." *Journal of Applied Behavioral Analysis*, Vol. 29, p. 495-504 No. 4 (Winter 1996).
- d. A word of caution to practitioners: Some rewards may actually interfere with a person's intrinsic motivation. (See unintended consequences below). Deci, E. L., Koestner, R., & Ryan, R. M. (1999). "A Meta-analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation." *Psychological Bulletin*, 125 (6), 627-668.

4. RESPONSES SHOULD BE DELIVERED FOR EVERY TARGET BEHAVIOR.

- a. Early animal research pointed out that punishment is only effective if it is delivered for every targeted behavior. Azrin, N. and Holz, W. "Punishment" in Honig W. (ed). *Operant Behavior: Areas of Recidivism and Application*. (Meredith Publishing 1966) pp. 381-447. Particularly p. 426 and 433.
- b. Outcomes in the criminal justice context is in line with animal-based research. In work by Brennan & Mednick, those offenders who received sanctions on a continuous schedule evidenced a significantly lower arrest rate than those offenders who received intermittent sanctions. Brennan, P. and Mednick, S. "Learning Theory Approach to the Deterrence of Criminal Recidivism." Vol. 103, *Journal of Abnormal Psychology*, pp. 430-440 (1994).
- c. Experts in contingency management suggest that reinforcers be used for every target behavior. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association. (Particularly see Kirby and Crowley pp. 334 and 349). Recent research indicates the mere opportunity to participate in getting an immediate reward can be effective in changing behavior. Participants who had clean urine tests were given an opportunity to draw paper slips from a fishbowl. Prizes indicated on the slips ranged from nothing to a dollar to a TV set. Results showed

group drawing for reward was more likely to complete treatment (84% vs. 22%) and significantly more likely to be abstinent. Petry, N. M., Martin, B., Cooney, J. L., & Kranzler, H. R. (2000). "Give Them Prizes and They Will Come: Contingency Management for Treatment of Alcohol Dependence." *Journal of Consulting and Clinical Psychology*, 68 (2), 250-257. Petry, N. M. (2001). "Contingent Reinforcement for Compliance with Goal-related Activities in HIV-positive Substance Abusers." *The Behavior Analyst Today*, 2 (2), 78-85.

- d. Rewards need not be something tangible to be effective in motivating behavior, praise when delivered both immediately and continuously for achieving target behavior is very effective. Deci, E. L., Koestner, R., & Ryan, R. M. (1999). "A Meta-analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation." *Psychological Bulletin*, 125 (6), 627-668.

5. RESPONSES SHOULD BE DELIVERED IMMEDIATELY.

- a. In laboratory settings, a one hour delay in imposition of punishment has been demonstrated to decrease the sanctions' ability to change behavior. Delay in imposition of sanctions can allow other behaviors to interfere with the message of the sanction. Marlowe, D. B., & Kirby, K. C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research." *National Drug Court Institute Review*, II (1), 11-xxix.
- b. Similarly, experts in contingency management recommend that the uses of positive and negative reinforcements are more efficacious when imposed immediately. Griffith, J. D., Rowan-Szal, G. A., Roark, R. R., & Simpson, D. D. (2000). "Contingency Management in Outpatient Methadone Treatment: A Meta-analysis." *Drug and Alcohol Dependence*, 58, 55-66. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-drug Abusers*, Washington, D.C.: American Psychological Association, pp. 334. Burdon, W., et al. "Drug Courts and Contingency Management." *Journal of Drug Issues*, 31(i), pp. 73-90 (2001).
- c. What we have learned about the schedule of reinforcement from behavioral research is now being confirmed by the biomedical brain research. The effects of reinforcement appear to be exerted in the brain areas that are part of the dopamine reward system. From brain research, scientists conclude, "rewards and punishments received soon after an action are more important than rewards and punishments received later." Dayan, P., & Abbott, L. F. (2001). *Theoretical Neuroscience: Computational and Mathematical Modeling of Neural Systems*. Cambridge, MA: MIT Press.

6. UNDESIRABLE BEHAVIOR MUST BE RELIABLY DETECTED.

- a. Early studies by Crowley and others demonstrated in a contingency management situation, abstinence must be reliably detected. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association. (Particularly see Kirby's chapter, pp. 330-332 and Crowley's chapter, p. 339).
- b. Failure to reliably detect drug use in effect puts a person on an intermittent schedule of rewards and sanctions which is ineffectual in changing behavior. Marlowe, D. B., & Kirby, K. C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons From Behavioral Research." *National Drug Court Institute Review*, II (1), 11-xxix.
- c. Random and frequent scheduling of urine testing that is both quantitative and qualitative can make detection relatively foolproof. See Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, pp. 283-308.
- d. The credibility of an intermediate sanction program is dependent upon reliable drug use detection. Torres, S. (1998). "A Continuum of Sanctions for Substance-abusing Offenders." *Federal Probation*, 62 (2), 36-45.

7. RESPONSES MUST BE PREDICTABLE AND CONTROLLABLE.

- a. Early research in contingency management provided patients with clear, usually written agreements or contracts. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, p. 348-349.
- b. Abstinence based research indicates that perceived certainty of consequence does have a deterrent effect. Obviously, this perception is based not only on what does occur but what the participant expects will occur. See Harrell, A., & Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions." *Journal of Drug Issues*, 31 (1), 207-232.
- c. Using a contingency management protocol "requires clear articulation of behaviors that further treatment plan goals," Burdon, W., et al. "Drug Courts and Contingency Management.", *Journal of Drug Issues*, 31(i), pp. 73-90 (2001).

- d. Failure to specify particular behaviors that are targeted and the consequences for non-compliance can result in a behavior syndrome known as “learned helplessness where a drug court participant can become aggressive, withdrawn and/or despondent.” Marlowe, D. B., & Kirby, K. C. (1999). “Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.”, *National Drug Court Institute Review*, II (1), 11-xxix.

8. RESPONSES MAY HAVE UNINTENTIONAL SIDE EFFECTS.

- a. Punishments that are too excessive or used inappropriately may cause unanticipated side effects like learned helplessness. Marlowe, D. B., & Kirby, K. C. (1999). “Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.”, *National Drug Court Institute Review*, II (1), 11-xxix.
- b. Applied research in behavior analysis suggests that negative side effects from punishment contingencies include behavioral supervision, fear, anger, escape and avoidance. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association p. 330.
- c. Even the application of positive reinforcements can have negative unexpected consequences – the addition of bonus payments to an escalating pay schedule actually reduced weeks of cocaine abstinence. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association p. 335.
- d. Frequency of contacts between the judge and drug court participant can actually have a negative impact on successful program completion. However, this does not apply to ASPD participants and those participants with substantial substance abuse problems. Marlowe, D. B., Festinger, D. S., Lee, P. A., Schepise, M. M., Hazzard, J. E. R., Merrill, J. C., Mulvaney, F. D., & McClellan, A. T. In press: *Criminal Justice & Behavior*. Marlowe, D., *et al.* “Are Judicial Status Hearings a ‘Key Component’ of Drug Court; During Treatment Data From a Randomized Trial.” *Criminal Justice and Behavior*, (in press 2002). See also Festinger, et al. “Court Program Matching in Drug Court” (in press 2002).
- e. Behavioral research strongly suggests that extrinsic rewards for behavior that is intrinsically motivated can actually reduce the motivation to continue that behavior. Thus, additional economic rewards for a person who intrinsically likes their work can actually reduce desire to work. Motivation by praise is the most effective way of heightening participants intrinsic motivator. Deci, E. L., Koestner, R., & Ryan, R. M. (1999)., “A

Meta-analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation.” *Psychological Bulletin*, 125 (6), 627-668.

9. BEHAVIOR DOES NOT CHANGE BY PUNISHMENT ALONE.

- a. Punishment has the drawbacks pointed out under other principles (See 8(a) and (b) above.)
- b. Controlled comparisons of reinforcement and punishment report that clients in the reinforcement contingency stayed in treatment while those in the punishment contingency did not. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, p. 330.
- c. Effects of punishment are temporary and the punished behavior returns when the punishment contingency terminates. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, p. 330.
- d. Punishment is most effective when used in combination with other behavior notification techniques such as positive reinforcement. Marlowe, D. B., & Kirby, K. C. (1999). “Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.” *National Drug Court Institute Review*, II (1), 11-xxix. Higgins, S. T., & Petry, N. M. (1999). “Contingency Management: Incentives for Sobriety.” *Alcohol Health & Research*, 23 (2), 122-127.

10. THE METHOD OF DELIVERY OF THE RESPONSE IS AS IMPORTANT AS THE RESPONSE ITSELF.

- a. If the participant feels that the process is unfair either to him or to others, the participant will be defiant. Andreoni, J., Harbaugh, W., & Vesterlund, L. (2001)., “The Carrot or the Stick?: Rewards, Punishments and Cooperation.”, Unpublished paper, National Science Foundation Grant. Sherman, L. W. (1993). “Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Justice Sanction.” *Journal of Research in Crime and Delinquency*, 30 (4), 445-473. Thus, the drug court judge must articulate the differences in two apparently similar situations where there is a different judicial response. Otherwise a perception of unfairness will be projected.
- b. Research based upon patient physician communication has demonstrated that interpersonal skills and empathic communication can improve patient satisfaction. Hubble, M. A., Duncan, B. L., & Miller, S. D. (Editors)

(1999). *The Heart & Soul of Change: What Works In Therapy*. Washington, DC: American Psychological Association, p. 274-275.

- c. Psychiatrists who are enthusiastic about the effectiveness of a prescribed course of treatment and communicate same to the client obtain a significantly higher success rate (77% to 10%). Hubble, M. A., Duncan, B. L., & Miller, S. D. (Editors) (1999). *The Heart & Soul of Change: What Works In Therapy*. Washington, DC: American Psychological Association, p. 277.
- d. Research has consistently demonstrated that the psychoactive effects of a drug can vary based upon how the physician described the expected effect. Hubble, M. A., Duncan, B. L., & Miller, S. D. (Editors) (1999). *The Heart & Soul of Change: What Works In Therapy*. Washington, DC: American Psychological Association, p. 300-309.
- e. Certain styles of participant – therapist interaction result in more compliant behaviors. For instance, in parent training, confrontational and teaching oriented approaches tended to result in non-compliant responses whereas when support and facilitation were used compliant behaviors resulted. Patterson, G. A., & Forgatch, M. S. (1985). “Therapist Behavior as a Determinant for Client Noncompliance: a Paradox for the Behavior Modifier.” *Journal of Consulting and Clinical Psychology*, 53, 846-851.
- f. Research involving substance abuse (alcohol) using the two styles above confrontative vs. client centered (motivational interviewing - MI) approach resulted in reduced alcohol use in MI group and less resistance to change. Lawendowski, A. L. (1998)., “Motivational Interviewing with Adolescents Presenting for Outpatient Substance Abuse Treatment.”, Unpublished doctoral dissertation, University of New Mexico;. “Dissertation Abstracts International,” 59-03B, 1357;. Miller, W. R., Benefield, R. G., & Tonigan, S. (1993)., “Enhancing Motivation in Problem Drinking: A Controlled Comparison of Two Therapist Styles.” *Journal of Consulting and Clinical Psychology*, 61, 455-461.
- g. Motivational interviewing techniques shown to be successful include (1) let client do talking; (2) open-ended questions; (3) no more than two playbacks of what client said per main question; (4) complex reflections (playbacks) should be used at least 50% of the time when summarizing totality of clients statements; and (5) do not move beyond clients level of readiness. Do not warn confront or give unwelcome advice. Miller, B. (1999). Kaiser. “Motivational Interviewing Newsletter for Trainees,” 6 (1), 1-2; Rollnick, S., & Miller, W. R. (1995). “What is Motivational Interviewing?” *Behavioral and Cognitive Psychotherapy*, 23, 325-334.
- h. Recent research confirms that motivational interviewing techniques are

effective in the drug court context. When a judge uses positive reinforcement with a participant, the number of positive urine tests is lower than when neutral or critical comments are employed. Scott Senjo & Leslie Leip, *Testing Therapeutic Jurisprudence Theory: An Empirical Assessment of the Drug Court Process*, 3 WESTERN CRIMINOLOGY REVIEW 1-21 (2001) also available at <http://wcr.sonoma.edu/v3n1/senjo.html>

Enhancing Compliance With Court Orders

It has been shown repeatedly, through user surveys, National Center for State Court surveys on Public Trust and Confidence, and evidence-based research on compliance with court orders, that interaction between the judge and the defendant/litigant can have a profound positive impact on case outcomes. What is more, the way a judge interacts through verbal and nonverbal communication has been shown to be a main, if not *the* main, determinant of behavioral change and positive outcomes.

The following communication skills have been shown to be effective in motivating behavioral change and ensuring compliance with court orders:

- Active listening
- Good questions
- Feedback
- Affirmation

In addition, when dialogue engenders trust by demonstrating the following, it enhances the likelihood that participants will comply with court orders:

- Empathy
- Respect
- Impartiality

The following communication skills define and illustrate the concepts set forth above:

- Active listening is usually defined as having four elements: (1) acknowledgement, (2) listening (for content and emotion), (3) probing, if necessary, and (4) paraphrasing, restatement, or summarization.
 - Acknowledgment* may be as simple as eye contact, a nod of the head, a salutation (e.g., “good morning”) accompanied by parallel nonverbal cues (e.g., neutral or forward lean, smile, neutral or engaged tone of voice).
 - Active listening is sometimes called “*reflective listening*” when it focuses on the feelings behind the surface content of the words. If a juvenile says, “It’s not fair that my parents get drunk on weekends and I get punished for taking a sip of beer,” a reflective response might be: “So you are angry that your parents are sabotaging your success by setting a bad example.” Other examples include: “So you...” / “It sounds like you...” / “You’re feeling...” and “It seems to you that...”
 - Probing* seeks elaboration or clarification; open-ended questions are most effective.
 - Questions* can be either open- or close-ended. Open-ended questions cannot be answered with a “yes” or “no” (e.g., “Tell me more about...” / “How

so?”). Close-ended questions can (e.g., “Have you been attending group meetings regularly?” instead of “How often are you attending AA?”).

—*Restatement* or *reflecting back* invites further information and clarification (e.g., “You say that you are doing better in your group and are attending school regularly”).

—*Summarization* restates back both the speaker’s statements and the listener’s understanding (e.g., “In summary, I heard that your home life is in turmoil, work is going OK, and you feel better about your classes and support group”). In addition to reflecting the speaker’s words back, it can also connect potentially discordant pieces of information, allowing the speaker to see the “bigger picture.”

- Acknowledgment Responses (made during participants’ responses) such as nods of the head, “uh-huh” responses, or “I see,” all encourage speakers to continue speaking. The judge might want to clarify that these gestures or comments indicate that he or she is listening to and understands the speaker (not necessarily that he or she agrees with the speaker or condones negative behavior).
- Affirmations are statements of appreciation and validation such as “That’s a good idea,” or “I appreciate how hard this must have been for you to come here today.”

Justice Paul Bentley, Ontario Court of Justice, offers the following examples of active listening in *Judging for the 21st Century: A Problem-Solving Approach*, as paraphrased:

- Give participants the opportunity to speak, listen attentively, refrain from rushing speakers, and seldom interrupt.
- Ask clarifying questions and make comments that acknowledge that you want to know about and understand a person’s position.
- Refer to the participant’s position in giving reasons for your decision.
- Read verbal and nonverbal cues such as facial expressions, body language, and/or tone of voice, that could signal a participant’s discomfort, confusion, or emotional state.
- Maintain body language that indicates that you are paying attention: maintain eye contact, sit up straight, focus on the speaker.
- Ask court participants if they have any questions.

Justice Bentley also suggests ways that judges normally demonstrate empathy and respect:

Empathy

- Ask questions of court participants that indicate an interest in their position.
- Relate events to court participants’ lives; for example, in a domestic violence context, instead of talking about a “cycle of violence,” ask if defendant has children and talk about how his or her behavior will affect the children.

- Acknowledge not only the facts of a case, but also participants' emotional responses to court events (e.g., "I can see that this is frustrating").
- Acknowledge your own emotional responses to cases and court events (e.g., "I am confused by what happened here," or "It makes me quite sad to see how things have turned out").
- Convey a sense of caring, compassion, and respect for all participants.
- Treat all participants fairly and consistently, respecting due process rights.
- Be aware of your own biases and predetermined ideas.

Respect

- Speak slowly and clearly, loud enough to be heard by everyone (not only lawyers).
- Speak in words and tones that convey concern for the participant as a person, without pity or condescension.
- Refer to defendants by title and name (e.g., Mr. Smith, Ms. Jones) rather than by first name, by the title "defendant," or by case number.
- Pronounce names correctly; when in doubt, ask court participants for guidance in pronouncing names.
- Refrain from sarcasm.
- Have high expectations: hold defendants accountable for their words and actions; expect them to be on time; refuse to accept excuses or inconsistent information.
- Encourage dialogue rather than making speeches.

Impartiality

Active listening, good communication skills, and the demonstration of empathy and respect, as discussed above, build trust and confidence in the court's neutrality. Richard Zorza, who has written extensively on issues related to self-represented litigants, identifies further techniques that lead to "transparency"—that is, ways to help the public (defendants, litigants, other court participants) understand that the judge and the system are "neutral" (paraphrasing):

- Structural transparency: Structuring and explaining the courtroom process so that each side has the greatest opportunity to be heard.
- Sequential transparency: Breaking the proceeding into steps, or phases, and explaining what is happening at each step.
- Inquiry: Asking the parties whether they understand what is expected, what has been decided, and the consequences of that decision.
- Consistency: Making decisions that are predictable, not necessarily symmetrical, but rather decisions that are based on a neutral set of rules that have been explained.

Sources

1. *Judging in the 21st Century: A Problem-Solving Approach*, National Judicial Institute, Ottawa, Canada (2005).
2. "The Therapeutic Impact of the Judge in Collaborative Court Programs," Dr. Donna L. Boone, Director, Therapeutic Courts Program, The College of William and Mary (May 2005).
3. "Effective Communication/Motivation Strategies in Assessing and Overcoming Resistance to Change," *An Introductory Training*, by Ray Ferns, Mark Gornik, and Deena Cheney, National Institute of Corrections, 2004.
4. "The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality When Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications," Richard Zorza, *Georgetown Journal of Legal Ethics* (2004).

Five Basic Principles of Motivational Interviewing

First, the interviewer needs to express empathy. This involves understanding the individual's feelings and perspectives without judging, criticizing, or blaming.

Second, the interviewer, in a nonconfrontational way, should seek to develop discrepancies between the individual's present behavior and important personal goals. Applying this approach, the judge should attempt to elicit the individual's underlying goals and objectives and, through interviewing techniques, including open-ended questioning, reflective listening, the provision of frequent statements of affirmation and support, and the elicitation of self-motivational statements, should attempt to enable the individual to recognize the existence of a problem. For example, if the individual wishes to obtain or keep a particular job, the judge can ask questions designed to probe the relationship between his drinking or substance abuse and poor performance in previous employment that may have resulted in dismissal. Only when people perceive the discrepancy between how they are behaving and the achievement of their personal goals will motivation for change be created.

Third, the interviewer should avoid arguing with the individual, which can be counter-productive and create defensiveness.

Fourth, when resistance is encountered, the interviewer should attempt to roll with the resistance rather than becoming confrontational. This requires listening with empathy and providing feedback to what the individual is saying by introducing new information, thereby allowing the individual to remain in control, to make his own decisions, and to create solutions to his own problems.

Fifth, it is important for the interviewer to foster self-efficacy in the individual. Unless the individual feels that he or she can reach the goal, overcome the barriers and obstacles to its achievement, and succeed in effectuating change, change will not be attempted.

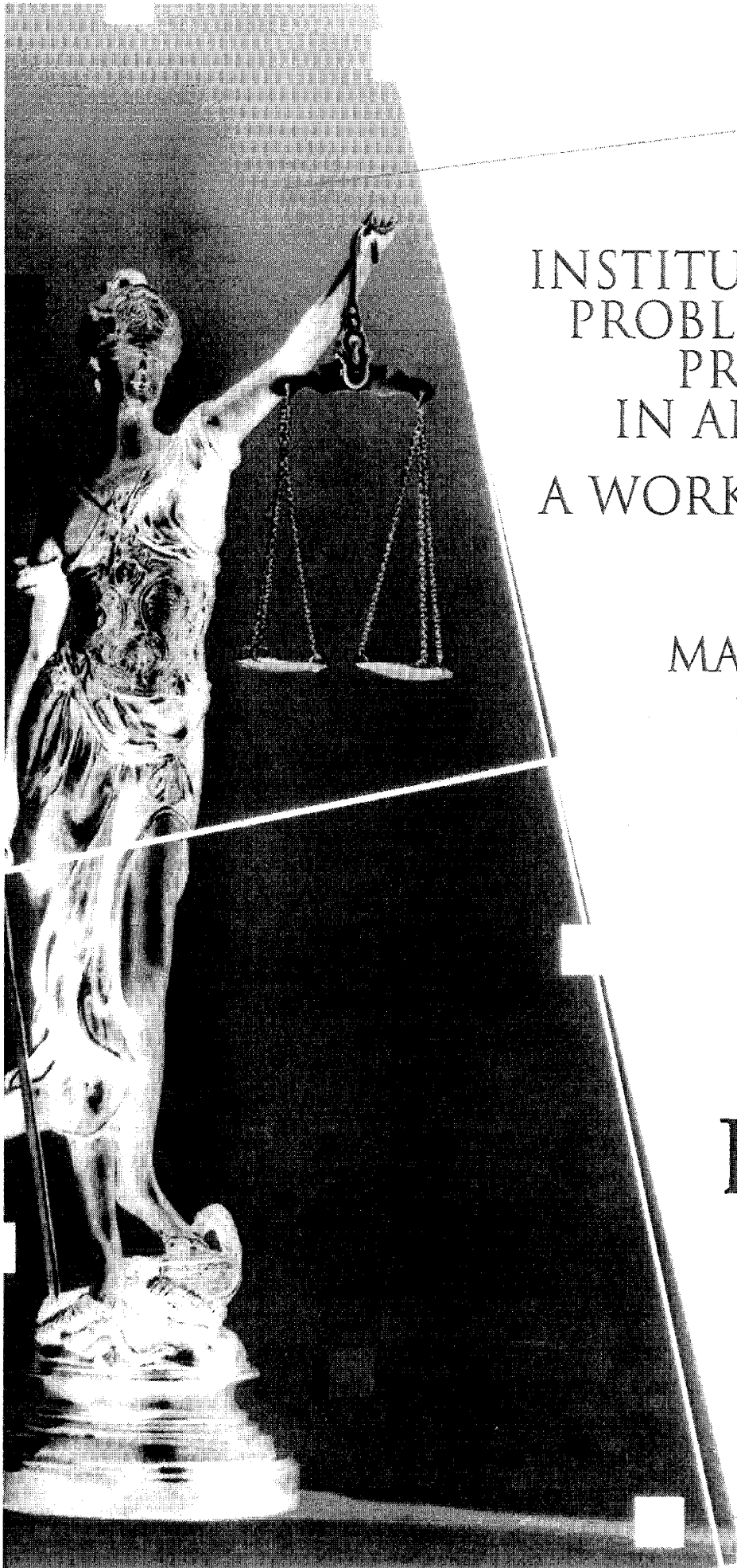
Excerpted from "Judging in a Therapeutic Key," *Therapeutic Jurisprudence and Courts*, ed. by Bruce J. Winick and David B. Wexler, Carolina Academic Press (2003), p. 187.

What Is Motivational Interviewing?

1. Let the client do the talking.
2. Use open-ended questions.
3. Give no more than two "playbacks" per main question.
4. Use complex "Playbacks" at least 50% of the time.

5. Do not move beyond the client's level of readiness.

Adapted from "What Is Motivational Interviewing?," *Behavioral and Cognitive Psychotherapy*, vol. 23, pp. 325–334.



INSTITUTIONALIZING
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Techniques Used in Problem Solving Courts that are Applicable to General Assignment Courts

Establish an Outcome Focus

- Change focus from process to outcome-may require cultural change in court
- Take charge of the courtroom. Have the attorneys, and all of the agencies involved understand that you are changing the way the cases will be heard. That you are interested in the best outcomes, not an adversarial process. That you expect everyone to offer suggestions to improve the dependency system and obtain better outcomes.
- Attitude shift: from process to outcome, from accepting what's handed to you to aggressively seeking out information about defendant, about victim, about impact on community

Problem Assessment

- Identify cases that are appropriate for problem solving approach and divert from general calendar to part of calendar where more time is available
- Identify core issues that are seen in the majority of all cases, such as drug use, mental illness, lack of life skills, and focus on placing clients into treatment or programs for each of these core issues. Tell the client that you will personally monitor their progress and encourage each client to make their very best effort.
- Demand attorneys to be more problem solving i.e. getting assessments of their clients, go to 12 step etc.
- Assessing the contributing factors to the problem presented. Determining the strength of the case and the potential outcome. Assessing temporary relief and the resources available.

Monitor Treatment

- Put processes and policies in place which will allow the judicial officer to monitor case/treatment progression - e.g. review hearings, or if inadequate docket time for hearings receiving written updates as set by the court.
- Speed in plea and assessment. Good quality assessment. Victim input. Adequate treatment options, with monitoring of treatment quality as to what works. Good probation oversight of testing, treatment and medications.
- Organize your calendar for follow up appearances (in a timely way)
- Require the defendant or client to enter treatment or other program immediately and monitor whether or not they have done so.

On the Bench

- Ask questions of parties instead of just accepting the information provided.

- Start looking every defendant in the eye for 30 seconds and ask them one question that allows the person to interact with you.
- Talk with litigants directly to acknowledge behavior, be accountable to changing behavior
- A commitment to giving each case the time necessary to make informed decisions
- Judge should be willing to be educated and cross-trained regarding addiction, mental illness, domestic violence, and other social issues. Judges should strive to use respect and empathy. Judges should use active listening and not just sit waiting to talk. Judges should learn motivational interviewing techniques and use such techniques rather than confrontation.

Collaboration with Others

- Place more of the burden on others involved in the case to provide the information, which the Judge needs to oversee the case. Set specific expectations for those involved in the case as to what information needs to be provided and the timeframes for accomplishing those expectations.
- Pick one area where teamwork would really help with your assignment and apply collaborative principles in that one area.

Procedures

- Identify concrete procedural steps -- How are you going to gain access to the information you need? Who do you need to call?
- Develop more detailed forms for court orders to accommodate problem solving approaches

Collaboration with Others

- Offender input and buy in to the nature of problem & solutions. Build trust with attorneys, collaborative/problem solving attitudes. Put pressure on the system to be accountable to the litigants, not just the other way around.
- Think about politics of problem solving: Does chief judge approve? Do you need buy-in from prosecution and defense bar? There are limits to what a single judge can accomplish on their own.
- The need for the courtroom to be judge driven yet having the collaboration with outside resources so that you have a system mindset of how to handle issues or problems.
- Reach out to experts (e.g. social service agencies) to make them part of the process and to develop an ongoing relationship.

Concrete Applications of Problem-Solving Court Principles in Conventional Courts and Calendars

[These recommendations were compiled from comments made during several events at which judicial officers in conventional court assignments discussed ways in which they do or might incorporate problem-solving court principles into their courts or calendars. The events included a forum during which judges from New York and California met to discuss the “transferability” of problem-solving court principles (August and September 2003); the National Judicial College “Institutionalizing Problem-Solving Practices in All Courts: A Working Summit” held on May 10–12, 2005, in Reno; and the pilot course for this curriculum, held in San Diego on September 9–11, 2005. Recommendations re: domestic violence are from the Center for Court Innovation’s Rural Innovation: Domestic Violence and Town Village Courts. The recommendations given in this summary do not necessarily represent the views of the Advisory Committee for this project or of the faculty who taught the pilot course. Some are duplicative of the “Teaching Points” in this curriculum.]

1. General Calendars

- The easiest problem-solving principle to transfer into a conventional court or calendar is a judicial communication style that motivates behavior change. Regardless of the judge’s personality, the key factor in achieving better outcomes is the judge’s ability to listen, encourage, and demonstrate respect and fairness.
- Learn to triage for types of cases/litigants who should be referred to a specialty court, if one exists in your jurisdiction.
- Learn what resources specialty courts may be able to provide to a general judge and how the judge might tap into that expertise without sending the litigant to the specialty court.
- Carve out a small group of defendants to intensively monitor; get the clerk and court reporter to understand the need to temporarily add more matters to the calendar.
- Convince the presiding judge to place a major “judicial resource eater” case area, such as all drug cases, in one location with one set of judges.
- Where lack of initiative, inertia, and skepticism are obstacles to change, communicate with other courts re: solutions, share whatever resources you may have (e.g., research), and invite colleagues to attend a program or meeting to specifically and directly discuss these ideas, explain benefits, and so forth.
- Based on the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) resolutions made in 2000, ask the presiding judge and Chief Justice to support and attend education sessions for supervising judges on successful collaborative court programs.

2. Criminal

- The arraignment judge is the most important judge in a problem-solving court system. Currently, arraignment judges have no investment in the outcome at a later proceeding. This needs to change. Start at the first appearance with a problem-solving approach. Ask attorneys for a “road-map” for problem-solving interventions that can be immediately implemented. Use interventions as conditions of bail.
- Determine whether there are contributing causes that brought the individual before you (abuse, mental health, addiction, lack of education/employment skills, and the like). Communicate your goal(s)—a desire for cooperation, a focus on solving defendant’s underlying problems, whatever—to advocates and others in the courtroom.
- Identify and address the needs of the victim and the community.
- Work with the prosecutor and the defense bar to streamline the process for resolving cases and moving people into treatment quickly.
- In some states, the vehicle code provides authorization for drug assessment in DUI cases and funding has been provided by the legislature.
- Develop a process to measure compliance (were social services used? was community service performed?).
- Build in flexibility of scheduling (e.g., for status hearings).
- When you expand collaborative practices into cases where serious due process issues exist, meet early in the process with all potential stakeholders. Include both the DA and the PD at all points, seek to incorporate their ideas and concerns, focus on outcomes (e.g., reduced recidivism, total cost of case processing), and start initially with selected cases/issues. Where the PD contract does not cover appearances at selected hearings at which the DA is present, deal with the contract issues and consider bundling like cases onto a single calendar where those issues can be heard with both the DA and the PD present.
- In one college town known to be a “party-community,” in lieu of jail for those brought in on a DUI after a history of alcohol possession, one judge required offenders to stay two nights in an emergency room, work at a rehab hospital, talk with a neurosurgeon re: the effects of alcohol, attend AA meetings, write an essay, and help clean up garbage related to drinking. Merchants provided brooms, hoses, and so on; hospitals and doctors were cooperative. Once the community became aware, through the success of the drug court, that the court was open to working with the community, there was virtually no end to the resources it was willing to provide.
- For repeat “quality-of-life” offenders in a court where the presiding judge cites lack of shelter resources and judicial time constraints as

insurmountable obstacles to the Homeless Court model, *act* as though the court is starting a Homeless Court; involve the Drug Court judge, and set up a meeting with business, law enforcement, and mental health and see how far you get. Funding may be available in California through Prop. 63.

- An undocumented worker without resources, who speaks little English, cannot legally work, and has no education or marketable skills, is a repeat offender (he saves \$50 in tips washing cars, buys rock cocaine, sells it for \$100, goes to jail, gets out, saves \$50, repeats cycle). Deportation has been ineffective. One jurisdiction established a “life skills” program in county jail for undocumented workers. The program was so popular that it was expanded to serve all inmates.
- In one area with heavy gang activity, high numbers of youth were joining gangs. The DA and law enforcement set up a juvenile diversion program centered on a boxing club. They rented a facility (now in the process of being purchased for their permanent use) and volunteered to supervise. Juveniles had to earn passing grades to participate in tournaments.
- In another court where gang-related crimes were hugely draining of judicial time, several judges took a special course designed to help them understand gang language. In the same jurisdiction, corrections focused on those most likely to go to prison and set up a “jump-out” program in the county jail. Corrections set up separate, non-gang-affiliated housing in the jail, supervised a day program, brought people in to teach life skills, and is now in the process of working with housing authorities to set up group transition homes.
- When family members accompany an alcohol addict to court, one judge thanks them for their support, tells them that the strongest predictor of recovery is family support, tells them that she is worried about them, and recommends that they go to Al-Anon, Alateen, Alatot, or ACA-ACOA.
- When sentencing a mentally ill person to jail, one judge ascertains beforehand that the person will receive the same medication(s) that he or she is on, and in a timely manner.
- When sentencing a pregnant, substance-abusing woman to jail, one judge determines beforehand that the facility provides supervised detox, good nutrition and enough time to eat, prenatal care and vitamins, exercise, medical checkups, lower bunk beds, and appropriate conditions for delivery.
- When sentencing an HIV-infected person to jail, one judge ascertains beforehand that the person will receive the medications he or she is on in a timely manner.

3. Civil

- Create structural and procedural mechanisms that encourage dispute resolution and discourage/prevent manipulation to avoid ADR. Grant permission within the dispute resolution process to engage in collaborative efforts.
- In uncontrolled, expensive, and contentious discovery battles, set earlier pre-discovery status conferences to identify and prioritize the most important areas of discovery. Despite potential obstacles (e.g., time factors, rules of court that don't provide for this, possible disapproval of the presiding judge, or resistance from the bar), discuss with local bar, get stipulations, identify cases that have difficult discovery matters during case management conference, and set a special discovery calendar for target cases.
- Prior to civil case management conferences (CMC), assess and identify cases that need intensive work and prepare a list of specific questions in addition to the CMC form questions for targeted cases. Intensive questioning of lawyers at the CMC will identify problem issues and allow the judge to take control early, set follow-up CMC where warranted, and so forth.

4. Family Law

- Establish effective system for the management of family law caseload that allows for timely completion of cases for both represented and pro se litigants
- Several courts have established systems of status/settlement conferences where litigants are brought into the court between 60–150 days after their initial filing to determine what the next steps are toward the completion of their cases. By so doing, the rate of case completions within one year from commencement has increased significantly.
- Provide opportunities for comprehensive early dispute resolution that addresses all issues in a case, followed by mandatory mediation of any unresolved child custody issue.
- One court has established comprehensive dispute resolution program that takes place in the courtroom on a “pro se day”. It is staffed with the attorneys from the family law facilitator’s office and volunteer attorneys from the local bar. These attorneys meet with the litigants when their cases are set for their first hearing. They assist them to reach settlement of all issues if possible, and to get a judgment entered that day. If the parties cannot agree, or if the case is too complex to make such an early settlement reasonable, the litigants will be assisted to stipulate to what they can, and given information about the next steps in the court process.

- When you expand into the collaborative process, meet early in the process with members of the local bar, legal services, and other stakeholders to discuss due process and confidentiality protections for both represented and pro se litigants.
- Provide legal education and assistance to pro se litigants throughout the entire court process—from initial filing through judgment, and on post-judgment motions.
- Implement a differentiated calendar management system that allows like matters to be heard together. For example, domestic violence cases may be set at a particular time, or child support modifications. Some courts have established pro se calendars, job search calendars, or family drug calendars.
- In particularly conflicted cases, determine whether there are underlying contributing causes that might be addressed (abuse, mental health, addiction, lack of education/employment skills, etc.). Communicate to the parties, the attorneys, and others in the courtroom a desire to address and solve the underlying problem.
- Coordinate multiple cases involving the same family members, using court technology if possible.
- In one court, all family law cases are screened to see if any other cases exist for the same family members. If there are other family law cases, they are coordinated so that the same family law judge hears all the cases. If there is a juvenile case, then all the cases involving that family are heard by the judge hearing the juvenile case. It is a one-judge-one-family unified family court. Another court has a unified family and juvenile administration but not one judge-one family. Other courts employ coordinators who provide information about related cases and/or assist litigants with referrals to services (to avoid unnecessary duplication and conflicting orders).
- Develop “Midtown Community Court Model” for family court that would include commonly court ordered services such as parent education, drug testing, supervised visitation, and counseling or domestic violence intervention. It would also include supportive services such as health care, housing, education assistance, job assistance, government benefits, etc.
- Work to develop compliance assistance strategies that help litigants connect with court-ordered programs, promote attendance, and successful completion. Implement a court review procedure to support compliance.
- For high conflict custody cases, consider a high-conflict calendar that provides more frequent review hearings for “check-in” and praise for successes. Set a separate, combined calendar for all case types that need frequent court contact. You might be able to use available funding sources and get outside agencies to provide services.

5. Domestic Violence

- Focus on speedy adjudication, victim support and treatment services, and speedy adjudication of probation violations.
- Provide victims with immediate access to advocates.
- Make sure that victims have immediate and thorough access to social services.
- Make certain that victims are informed about the progress of their cases.
- Schedule cases promptly.
- Create strong collaborations with a wide range of partners.
- If new to a domestic violence calendar, participate in special judicial training re: the dynamics of domestic violence and how they may influence the case presentation in the courtroom.
- Schedule regular compliance hearings to monitor defendants who have been convicted or have taken a plea. Consider creating a separate compliance calendar. Even if a court does not meet frequently with defendant, explore techniques such as curfews, phone check-ins, and ankle monitors.
- Use judicial authority to build strong relationships with service providers such as batterers' programs and substance abuse treatment providers, so that the court is notified immediately of noncompliance and can act accordingly.

6. Child Support

- Profile noncustodial parents for specific needs in order to overcome barriers to employment, such as substance abuse, disability, poor literacy, limited life skills, or prior criminal record.
- Offer alternatives to incarceration as incentives, using opportunities available through outside resources.
- Use electronic house arrest to monitor compliance and increase motivation.

7. Juvenile Dependency

- Overriding principles: Expect dual diagnosis 70 percent of the time; expect mothers to be subject to physical or sexual abuse themselves; expect resistance; review criminal records and prior abuse reports.
- At the first hearing: Employ motivational interviewing techniques; involve extended family and identify family strengths; identify strengths in individual; promote treatment; use objective criteria to identify problems; empower social worker and other treatment teams; do not engage in a discussion about resistance with respondent; educate attorneys about motivational interviewing techniques and encourage

their support of treatment; order school records and developmental assessment of children; set quick review hearing.

- Where dependency court is not meeting federal standards for final plans and is driving up the costs to the county for foster care placement, change the system to require all parents to be assessed for drug treatment. Place parents in treatment if indicated and hold frequent status hearings. This will both reduce time to permanency and increase reunifications.
- Set review hearings at short enough intervals to allow modifications as necessary to affect case disposition and outcomes as needed, rather than setting hearings only to coincide with dates when outcomes must have been achieved.
- Put in place staffing processes (e.g., family group conferences) or alternative dispute resolution options (e.g., mediation for adjudication or termination hearings) to require all parties to work collaboratively between court hearings.

8. Juvenile Delinquency

- Encourage agencies (probation, Youth Corrections, and Human Services) to work together to identify juvenile's needs and systems or resources available to meet those needs prior to sentencing hearings.
- Set review hearings post-sentencing to monitor provision of services or compliance for appropriate cases (e.g., those cases where coordination of services is critical, juvenile is high risk).
- As appropriate, interact with juvenile and family directly during hearings to determine treatment progress, challenges re: compliance, questions re: expectations of court and others involved with family/juvenile (treatment providers, probation, and the like).

9. Status Offenses

- Encourage parents to work with court and involved agencies to identify those services that they believe will be helpful to meet challenges their family is facing. Don't discourage, but rather encourage, direct family involvement in case planning, instead of relying solely on agency-directed planning.

10. Probate

- If possible, place conservatorship and guardianship proceedings involving mental illness or low functioning in a collaborative mental health court.

11. Welfare Fraud

- In a typical welfare fraud case, those convicted are placed on probation and ordered to perform community service to make restitution. Five years later, having failed, they are sentenced to 180 days in jail. Consider more rigorous monitoring and interim sanctions. For example, order the performance of 80 hours of community service (out of 200 hours total) within four months, and schedule a return appearance at that time. Short periods of incarceration will be more effective and can lead to successful completion of remaining conditions.

12. Self-Represented Litigants

- Establish a court-based, attorney supervised, staffed Self-Help Center to meet the needs of self-represented litigants, and to facilitate efficient processing of their cases in court.
- Each county in California has a family law facilitator who is an attorney working for the court who provides information and assistance to self-represented litigants on matters of child support, spousal support, and health insurance. In many courts, the family law facilitator also provides assistance on other family law issues. In three courts, there are attorney supervised family law information centers, operated through the local family law facilitators' office, that provide assistance to pro se litigants on all family law issues.
- Initial assessment of litigants' needs by the Self-Help Center (triage) allows for the most effective assistance to the public and the most prudent allocation of resources and can save valuable court time.
- Referrals to resources such as housing, parenting classes, child care, and other assistance in addition to the legal needs of the self-represented litigant is often an important tool at self-help centers. One court partners with its counties information and referral service to provide in-person referrals at the self-help center.
- Clinics and workshops have proven effective for many types of assistance and are useful for centers handling a high volume of cases daily.
- Several courts provide workshops on the basis of subject matters. For example, a workshop will be scheduled on how to start dissolution, or how to file a motion for child custody or child support. Workshops usually can serve 10 or more persons at a time and allow individuals to complete their own paperwork.
- The court-based Self-Help Centers should serve as a focal point for countywide or regional programs, in collaboration with legal services, local bar associations, and other community stakeholders, for assistance for self-represented litigants.

- One large court has several Self-Help Centers in various locations operated by a local legal services agency and funded by the County Dept. of Consumer Affairs. Another court has a Self-Help Center located in its law library. Several courts work in partnership with local legal services that have been given grants to provide services to pro se litigants at these courts. Two court Self-Help Centers have partnered with local community agencies to provide volunteer interpreters for the centers and for court appearances when necessary.
- Self-Help Centers should provide education and assistance to self-represented litigants throughout the entire court process, including collection and enforcement of judgments and orders, and assist the court in early dispute resolution programs and other timely caseflow management operations in pro se matters.
- One court has made use of its facilitator to meet with pro se litigants 150 days after the filing of the petition for dissolution to determine what the next step is toward completion of the case. This has helped the pro se litigants move their cases to judgment much more frequently than before the program began. Another court has established judgment workshops through its Self-Help Center to assist litigants in completing their cases.
- Several courts have self-help attorneys, family law facilitators, and/or volunteer attorney from the local bars present in the courtroom on “pro se” calendars to assist pro se litigants reach settlement of their issues on the day of hearing. If the litigants cannot reach an agreement, these attorneys help them narrow their issues for the judge so that they can present the relevant information. If they do reach an agreement, the attorneys can write up a stipulation and order for them. If a hearing is necessary, the attorneys can write up an order after hearing so that the parties can both leave the courtroom with a written order.
- Design of future courthouse facilities, or remodeling of existing facilities, should include space for Self-Help Centers. There should also be sufficient space at or around courtrooms to wait for cases to be called, meet with volunteer attorneys, conduct settlement talks, and meet with mediators and social services providers. Facilities should include children’s waiting areas for litigants who are in the courthouse for hearings or to prepare and file paperwork. Information booths should be available near courthouse entrances to provide general information about the court facilities and services. Courts should provide maps and signage in several languages to assist self-represented litigants to navigate the courthouse.

A Summary of “Cultural Proficiency in Drug Court Practice”

[The following is drawn from two grant-funded curricula, “Cultural Proficiency in Drug Court Practice” (“DCP”) and “Cultural Proficiency with African American Men in Drug Court” (“AAM”), and teaching materials developed in conjunction with their pilot programs. Funding sources for the two curricula are fully cited at the end of this article; page references below not attributed to DCP or AAM refer to the teaching materials; page references attributed to DCP or AAM are to the Instructors Manuals.]

I. Overview

“Cultural proficiency” within an agency or system refers to more than individual sensitivity or competence in cross-cultural interactions. A culturally proficient drug court system aims 1) for effective service delivery for diverse client populations; 2) to assess multiple needs, including hidden needs; 3) to gain knowledge of the client from the client and utilize this knowledge in identifying culturally-appropriate services; and 4) for systems-level coordination to make assessments and facilitate linkage to drug treatment and other services. (DCP, p. 30) A culturally proficient system also “seeks to enhance supports for members of historically disadvantaged groups and for historically disadvantaged individuals” (DCP, p. 56), because historically disadvantaged groups and individuals “evidence the greatest risk for incarceration” (DCP, p. 44, citing Mauer, 2000; The Race to Incarcerate, The Sentencing Project).

Historically disadvantaged groups include (DCP, p. 53):

- Native people
- Descendants of enslaved persons
- Immigrants
- Members of protectorates
- Refugees, asylum seekers
- Sexual minorities
- Physically challenged individuals
- Women, including women of the above groups

Historically disadvantaged individuals include (DCP, p. 54):

- Crime victims, including domestic violence survivors and rape/sexual assault survivors
- Children with special circumstances, including children of drug-addicted parent(s), children of incarcerated parent(s), and children in foster care
- Homeless adults and children
- Institutionalized individuals, including incarcerated juveniles and adults and psychiatric patients

II. A culturally proficient drug court will reflect certain basic assumptions

First, “the key to successful drug court and client outcomes is an understanding of the perspective of the client. A client’s experiences will determine his or her level of involvement and commitment to a treatment plan. These experiences will have been interpreted through a lens that reflects a particular client’s culture. The understanding of these lenses will increase the likelihood that the drug court treatment plan integrates the

clients' individual strengths, needs and resources and therefore increases the likelihood of a successful outcome." (DCP, p. 90)

It is assumed that "the true expert on the client's strengths, limitations, and resources will be the client him or herself," and that "in all program design, implementation, and evaluation, the client is the most important consultant." (DCP, p. 79)

Thus, "client outcomes will be determined by the extent to which the intervention plan reflects the strengths and deals with the barriers that might arise due to culture and experience" (DCP, p. 112) and different programs will work better for different populations. (p. 102)

III. Which programs/treatment/interventions work best for which populations?

One must first identify the "elements of culture" in any given population. These elements include, among other things, the way persons of a given population view and use power and authority, the role and use of language in that culture, the role of religion and spirituality, etc. (AAM, p. 2) Next, one must identify that population's "cultural anchors," or the ways that the various cultural elements protect or strengthen the culture. "Racial identity issues" are barriers to the constructive manifestations of cultural anchors, and effective program alternatives are those that both address racial identity issues and move toward culturally anchored strategies.

Examples:

A. Access to services (p. 18)

- We set clients up for failure by sending them to a resource that they are uncomfortable with because it does not meet their cultural needs.
- If we have a good assessment, we can look beyond AA/NA/CA, if appropriate, to identify other support networks. These may include family, persons or affiliations that have been influential, or other culturally traditional solutions.
- Language barriers are obvious impediments to successful participation in treatment.

B. Sanctions and incentives (p. 19)

- Incentives should be culturally based; know what your participants like when giving incentives; family members may be able to inform you.
- Consider age and religious differences.

C. Team approach (p. 20)

- Does your team represent the community and the people coming into your program?
- Talk to your team about individual cultural differences and the organizational cultures of the agencies each represents.

D. Monitoring and evaluation (p.20)

- Collecting data about race/gender, etc. will help determine culturally proficient services.
- Look also at demographics and jail data—are your programs representative?

IV. Factors that can influence the fact-finding and decision making process

Cultural factors can impact the perception of motivation and are frequently used to judge motivation. Care must be taken not to make culture-based assumptions.

A. Factors that may impact the perception of motivation:

- Eye contact
- Use of silence (which in some cultures is a highly regarded form of language communication)
- Punctuality
- Style of dress

B. Criteria frequently used to judge motivation

- Missing appointments/being late
- Missing a drop
- Missing a court date
- Flat affect
- Disheveled appearance
- Disagreeing with practitioner
- Establishing different priorities
- Relapse

V. Specific populations

A. Women

To be most effective, program alternatives should be gender-specific. Where day care, special women's groups, and other special services are offered, females are graduating from drug court programs at a higher rate than their male counterparts. (DCP, p.137)

Women do better with all-female staff and respond better to a "relational" rather than a "confrontational" treatment model. (p. 56)

Issues that might affect a woman's ability to comply with treatment/orders include (DCP, p. 132):

- Child care
- Grandchild care
- Child support
- Access to programs/treatment
- Relationships with co-defendants
- Domestic violence
- Childhood and/or adult sexual abuse
- Trauma
- Mental illness (i.e., depression, anxiety disorder, PTSD)

The characteristics of women in drug treatment may include (p. 51):

- Single parents with little or no financial support from birth fathers
- Lack employment skills/education
- Live in unstable/unsafe environments/homelessness
- Ethnic, cultural and language issues
- Lack transportation
- Victimized by various forms of abuse
- Undiagnosed medical needs, especially gynecological problems
- Co-occurring mental health disorders

Services recommended for women include (p. 52):

- Comprehensive inpatient and outpatient medical services
- Gender and culturally-specific services that are community-based, family oriented, and multigenerational
- Child care, baby-sitting, day care services for children
- Counseling services, including individual, group, and family therapy
- Support services for lesbian, bisexual, and transgender women
- Vocational and educational services leading to training for GED, meaningful employment, and higher education
- Drug-free safe housing
- Financial support services
- Case management services
- Pediatric follow up and early intervention services re unique needs of pregnant, adolescent substance users

SAMHSA Tip 23 (Substance Abuse Treatment for Women Offenders) identifies three key issues that must be addressed when working with women in drug treatment:

- Chronic medical problems
- Complex psychosocial problems
- Pressure of raising dependent children

B. African American men

Non-responsiveness or confrontation in programs may indicate that a person feels excluded, does not identify with, does not feel welcome in, and/or does not have pride of membership in the group. Cultural influences and ethnic identification may significantly influence reduced drug use and make treatment programs more effective.

Program alternatives should consider the cultural value placed on relationships, the role and use of language, and a support system that can include an extended family but also extend outside kinship ties to persons not necessarily blood relatives. Neighbors, civic organizations, church groups, mosques, and community centers can be supportive.

Program or sanction alternatives might include (pp. 78-85 and AAM, p. 43-44):

- Volunteer/intern at local nursing/extended care facility
- Join creative writing or non-fiction writing class
- Join a martial arts class.
- Take part in creative writing/poetry events
- Deliver a drug prevention talk to a church or school
- Community service (community-based organizations, soup kitchens, homeless shelters, Salvation Army, voter registration and education, peaceful rallies, community organizing/activism)
- Attend presentation by motivational speaker
- Help organize a drug prevention event, an HIV/AIDS awareness event, or fundraiser for community-based organization or charity

Incentives might include vouchers or discount coupons to local African American or community resources such as (AAM, p.43):

- Barber shops
- Beauty supply stores
- Restaurants

- Theaters/museums/bookstores/music stores
- Tickets to cultural events/celebrations
- Tickets to sporting events/car shows
- Membership to wholesale shopping club

VI. Program Evaluation

Cultural proficiency issues can impact every stage of the process, from eligibility through screening, movement through various program phases, sanctions and incentives, to termination. (p. 102) These issues can also impact data collection, compilation, and interpretation. Program evaluation at formative, process, and outcome stages should include inquiry re (p. 97):

- Race/ethnic identities of clients in program and those excluded from program
- Race/ethnic breakdown re number, frequency, and types of referrals to services
- Race/ethnic breakdown re sanctions and incentives
- Number of lesbian, gay, bisexual and transgender clients admitted to/completed program
- Number and type of vocational/educational opportunities available to male and female clients

Program evaluation can be approached in several different ways, including (DCP, p. 80):

- Expert panel review
- Internal audits of resource distribution
- Program utilization and record reviews
- Community and participant surveys or focus groups
- Observation of programs or sessions

Some program outcome measurements include (DCP, p. 80):

- Retention or graduation rates
- Numbers of positive toxicologies
- Recidivism rates
- Numbers of clients earning their GED's
- Percentage of families reunited

The “Cultural Proficiency in Drug Court Practice” and “Cultural Proficiency with African American Men in Drug Court” curricula were prepared by National Development and Research Institutes (NDRI), Inc. under a grant awarded by the Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice to American University.

Applying Problem-Solving Principles*

Identify Problem	Propose Solution*	Barriers	Overcoming Barriers/ Group Ideas
1.			
2.			
3.			

Your name (please print): _____
(optional)

Collaborative Justice and Domestic Violence Cases: Special Considerations

There may be a tendency to relate the emergence of domestic violence courts to the establishment of other specialty courts, such as drug courts. Both types of specialty courts represent recent judicial innovations designed to better respond to significant individual and community problems. Both often use a “team approach” involving judge, prosecutor, defense counsel, treatment or intervention provider, and probation or correctional personnel. By considering specialty courts as close developments, however, we may neglect the particular context in which domestic violence courts have developed, as well as the unique considerations that must be taken into account when addressing intimate partner abuse and violence.

Violent Criminal Activity

For example, in domestic violence matters, unlike in most drug court cases, the court must contend with responding to violent criminal activity—for most drug courts indicate clearly that they will not take cases involving violent criminal activity. Knowing this, courts handling domestic violence matters have the challenge of fashioning responses that hold perpetrators accountable while simultaneously enhancing victim safety. This is particularly important and challenging, because the parties involved in these matters may be dependent on each other for financial support or will have reason to be in contact in the future.

Guiding Principles: Batterer Accountability and Victim Safety

For many years, those handling domestic violence cases have been guided by two important principles: (1) ensuring batterer accountability and (2) enhancing victim safety. The consequences of ignoring either victim safety or batterer accountability may be dire. For example, focusing only on punishing or “rehabilitating” a perpetrator of a domestic violence crime may unintentionally place a victim at greater risk of additional harm if professionals do not take into consideration the effects on the victim of the criminal procedure. Likewise, if interventions only focus on individual victims and fail to hold batterers accountable, it is unlikely that the batterer will stop being abusive or violent. While these principles may seem obvious on their face, in practice addressing both these concerns can be challenging and requires a great deal of thought and planning.

Appropriate, Enforceable Orders

In addressing the criminal aspect of a case, courts need to consider the fact that the perpetrator and the victim have had a relationship together. This is important in ensuring that any future contact is prohibited or restricted (for example, by issuing appropriate restraining orders). But courts should avoid allowing that reality to result in any minimization of the criminal activity. Likewise, in civil domestic violence cases, appropriate and enforceable restraining orders are critical and can help avoid future harm while protecting children as well as adults.

Making sure respondents are aware of the restrictions the law imposes once restraining orders are in effect helps reinforce the seriousness with which the court handles these matters and supports accountability.

Intersection of Collaborative Justice Principles and Domestic Violence

When considering the guiding principles established for collaborative justice courts in general, those handling domestic violence might consider how the collaborative justice court principles intersect with the principles of batterer accountability and victim safety, as suggested in the following chart

Guiding Principles of Collaborative Justice Courts	Issues to Consider When Handling Domestic Violence Matters
Integrate services with justice system processing	Are those referred to batterer intervention programs monitored by the court regularly? Are victims provided appropriate referrals for services (e.g., housing, job assistance, child care), but not ordered to attend (given the court's jurisdiction and need to hold the perpetrator, not the victim, accountable)?
Achieve the desired goals without the use of the traditional adversarial system	Where violent, possibly criminal activity is involved, the adversarial process might provide the most appropriate judicial response. Consider how other similar cases are handled and whether the adversarial system might provide the most effective approach to addressing batterer accountability and safety of both victim and the community. In civil cases, such as child custody, rather than focus on nonadversarial processes, it is appropriate to ensure the victim's need to avoid contact with the perpetrator, by establishing specialized procedures such as separate orientation/parenting classes, separate waiting areas, and separate mediation/investigation sessions.
Intervene early, and promptly place participants in the collaborative justice court program	As is true with drug cases, the earlier the judicial system can provide an effective, appropriate response to domestic violence, the more likely it is that those needing assistance in the future will have confidence in the system. Similarly, batterer accountability is increased if the system responds swiftly to violent activity.
Provide access to a continuum of services, including treatment and rehabilitation services	In criminal cases in California, those found guilty of domestic violence offenses are required to attend a 52-week batterer intervention program. It is important to note that many disagree as to whether batterer intervention (or "treatment") programs are effective. Victims may assume that a violent partner enrolled in a court-mandated program is safer and may put more stock in the program than is appropriate. The court should do what it can to increase victim safety by avoiding contributing to this perception. Additionally, much debate goes on about "rehabilitation" and whether it is possible; recidivism is extremely difficult to measure, given the private nature of intimate partner violence and the fact that victims harmed after reporting violence may be less likely to report future violence. While providing victims with appropriate services (such as victim witness or referrals for housing) can be beneficial, courts should avoid creating the perception that if a <i>victim</i> receives services, the violent behavior of the <i>perpetrator</i> is likely to stop.
Use a coordinated strategy that governs the court's responses to participants' compliance, using a system of sanctions and incentives to foster compliance	In criminal domestic violence cases, it is more likely that by using probation and court supervision, compliance can be tracked and noncompliance addressed quickly. However, domestic violence cases are often handled civilly through the restraining order process. Monitoring compliance, other than through law enforcement, is therefore challenging in this area.
Use ongoing judicial interaction with each collaborative justice court participant	Routine court monitoring of those ordered to participate in batterer intervention programs, for example, provides opportunities to ensure compliance.

<p>Use monitoring and evaluation to measure the achievement of program goals and gauge effectiveness</p>	<p>Where possible, data collection and self-assessment can contribute to increasing the courts' effectiveness in this area.</p>
<p>Ensure continuing interdisciplinary education</p>	<p>Interdisciplinary education is especially helpful to provide, in conjunction with community groups working with petitioners/victims and respondents/defendants.</p>
<p>Forge partnerships among collaborative justice courts, public agencies and community-based organizations to increase the availability of services</p>	<p>Courts might become involved in or lead local coordinating council efforts or participate in similar coalitions that provide opportunities to coordinate with justice system partners and community-based agencies.</p>
<p>Enhance the program's effectiveness and generate local support</p>	<p>By monitoring compliance, gathering data where possible, and considering the perspectives of those seeking protection from the courts, the judicial system can improve its effectiveness and increase the likelihood that those needing help will seek out the courts in the future.</p>
<p>Emphasize team and individual commitments to cultural competency</p>	<p>Understanding the impact that culture might have on the experience, and perpetuation, of domestic violence is critical. Resources specifically designed for courts and judges in this area are available by contacting the Administrative Office of the Courts.</p>

Tab 8

Faculty Reading and Materials

	<u>Title</u>	<u>Page</u>
1.	Communication Exercise Sheet	1
2.	Sample Active/Motivational Listening Role-Play Case Study #6	2
3.	Sample Active/Listening Exercise #2 (Drug Court Model)	4
4.	Bibliography	6

Demonstrate giving an intangible reward.

Demonstrate giving a tangible reward.

Demonstrate giving a sanction with positive reinforcement.

Demonstrate explaining that there is a range of judicial responses to both compliance and noncompliance with court orders.

Demonstrate articulating the reason for giving one person a different sanction or incentive than that given to someone else present in court.

Demonstrate a discussion of service or treatment options with a defendant, victim, or other litigant.

Sample Active/Motivational Listening Role-Play Case Study #6

- Judge: Now, in the matter of Alice M., I've received a disposition recommendation and I have listened to everyone, but there is one person I have not heard from yet, and that is Mrs. Finlay. Ella Finlay. Good afternoon, Mrs. Finlay. So kind of you to come down.
- Ella: *(nods apprehensively)*
- Judge: You are the grandmother of Alice, as I understand it.
- Ella: *(looking down)* Yep. Yep, Judge, I am.
- Judge: Well, I want to thank you for coming all the way down here today. I know it's been hard to get here—particularly for grandparents, and we have so many, but I'm so pleased that you took the time—that you're here. It really makes a difference. Because I have to make a difficult decision, and I really need your help. Would you be willing to help me?
- Ella: Well, Judge, I just wish *(sigh)* you'd just, uh, take her off my hands... I think that would be best.
- Judge: Well, you know, Mrs. Finlay, what I'd really like to know is, how would you feel about doing something like that? Is that really going to make you happy? You don't *seem* happy.
- Ella: Well, I just think that, you know, she's 16 and if somebody doesn't take her hand, her whole life is gonna be ruined. And I just haven't been able to do it. I'm... I'm... she's...
- Judge: But you love her, don't you?
- Ella: Well yes, of course. Yes. With all my heart. With all my heart.
- Judge: Well, let me ask you this....
- Ella: But you can do it better than me.
- Judge: You think I can do it better... But you see, I have so many youngsters who come into the court. What I try to do is find ways that I can help them not continue the behavior, whatever it is at the present time. And help them stay with their families—that's my

goal. And since you are the only member of her family willing to help her, can you help us in any way? Can you give us some suggestions?

Ella: Well....

Judge: Other than my just taking her away.

Ella: She won't go to school, Judge. I... I know because the school calls and they say, "Where is she?" and I say, "She went off to school"—I don't know what she does. And sometimes she acts real funny—she doesn't, she.... I... I think she's on drugs—you know.

Judge: You think she's on drugs?

Ella: *And* I think she's pregnant!

Judge: Really. And have you had an opportunity to go see a doctor? Or...

Ella: We don't have any doctor, no...

Judge: Well, let me ask you this—if I could get some help for you, would you be willing to let her stay with you awhile so we could monitor things and see how they go? Would you be willing to give this a chance, instead of pushing us all out?

Ella: Well...sure, if you helped me.

Judge: Well, I am willing to help you. I have a whole team willing to help you. But I need your willingness to accept that help.

Ella: OK, but I need all the help I can get.

Judge: You understand that what is really happening here, is you're helping me.

Ella: Well, no kidding.

Judge: Absolutely.

Ella: I never thought about that.

Judge: Well, why don't you think about it that way. Because if we can work together, we may be able to do something to help Alice.

Ella: Thank you, Judge.

Sample Active/Listening Exercise #2 (Drug Court Model)

Goals:

1. Empower person to see himself or herself, by reflecting their unconscious beliefs/feelings back to them.
2. Work through the emotional level to get to the rational level.
3. Model positive and respectful interpersonal interaction.
4. Avoid paternalistic “one-up” stance that absolves offender of accountability for internal motivation re: behavior.

Judge: Good morning, Ms. Johnson. Tell me what’s gone on in your life since I last saw you.

Ms. Johnson: Not much. I’ve just been hanging out.

Judge: You seem disappointed...a little down.

Ms. Johnson: Well, it’s not that bad. I’ve been going to treatment three times a week and I’ve stayed sober two months. Group’s going OK, I guess. I’ve been helping some people look at their stuff.

Judge: You’re walking your talk—proving you have the power to make it sober. And you’re helping others stay straight. You are succeeding, but it sounds as though you’re also afraid of falling off the wagon.

Ms. Johnson: Yeah. I guess I can only be sure of today...and what I’ve done the last two months. I don’t know about the future. I don’t really know what I will do.

Judge: You’re afraid that you will disappoint your loved ones.

Ms. Johnson: I have before.

Judge: Well, you are looking at reality and acknowledging your fears. Is this bad or good?

Ms. Johnson: I guess it’s good. I thought recovery would be automatic if I wanted it bad enough. Now I know how hard it is. It’s like....I’m walking a tightrope. I know there are people there to help me...not

to fall. I'm trying to keep my focus on what's ahead, but I always feel like I'm gonna fall.

Judge:

Well, it seems to me that you are looking at your addiction realistically and you are connecting with others to help you during times of temptation. You are succeeding one day at a time and your hope of remaining on the road to recovery is growing day by day. I recognize and applaud your progress so far.

Bibliography

Source material for this curriculum included numerous publications from the Center for Court Innovation (www.courtinnovation.org), the National Drug Court Institute (www.ndci.org), the National Center for State Courts (www.ncsconline.org), and the Judicial Council of California (www.courtinfo.ca.gov). Reference to the publications lists for these organizations will provide more than can be listed here. Of these sources, this curriculum relied extensively on:

Collaborative Justice in Conventional Courts: Opportunities and Barriers, Center for Court Innovation and Judicial Council of California, 2004.

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 2004 and May 2005.

Problem-Solving Courts: Models and Trends, by Pamela M. Casey and David B. Rottman, National Center for State Courts, 2003.

In addition, this curriculum relied heavily on the following two resources:

Institutionalizing Problem-Solving Practices in All Courts: A Working Summit, National Judicial College, Reno, Nevada, May 10–12, 2005; Meeting Summary by the Kolbe Company.

Judging for the 21st Century: A Problem-Solving Approach, National Judicial Institute, Ottawa, Ontario, Canada, November 2004.

The following were also sources:

“Judicial Satisfaction When Judging in a Therapeutic Key,” Hon. Peggy Fulton Hora and Deborah J. Chase, J.D., Ph.D., *Contemporary Issues in Law* 7 (1) 2003/2004.

“The Therapeutic Impact of the Judge in Collaborative Court Programs”, Dr. Donna L. Boone, Director, Therapeutic Court Programs, William and Mary School of Law, May 2005.