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In Problem-Solving Court, Judges Turn Therapist

By Leslie Eaton and Leslie Kaufman

The traditional role of a judge is a stark one: to decide who wins and who loses, who is innocent and who is guilty, who goes to prison and who goes free.

Starting about 15 years ago, however, some judges began experimenting with a more active approach, intervening in the lives of drug addicts to get them into treatment and keep them out of overcrowded jails and overburdened courtrooms. Now, in drug treatment courts, judges are cheerleaders and social workers as much as jurists.

New York State is pushing this approach to new frontiers, creating a homelessness court, domestic violence courts and mental health courts. Backed by the state's chief judge, and bolstered by the court system's own research, these new courts are, among other things, trying to cut down on the number of people who appear in courtrooms over and over again.

Judges – who in law school may have mastered the rules of procedure or the penal code – are now meant to know about the science of addiction, the pathology of wife batterers, the bureaucracy of welfare programs.

In this small but rapidly growing world, then, you can find Judge Jaya K. Madhavan in the Bronx, trying to help a pregnant woman facing eviction clear up her housing crisis. You can find Justice Matthew J. D'Emic in mental health court, dealing with murder, kidnapping – and whether or not an arsonist needs to change his psychiatric medicines.

And you can find Judge Miriam Cyrulnik giving a young man in her Brooklyn domestic violence court the choice between jail and anger-management classes.

For the most part, these innovations have been greeted with enthusiasm.

“It's a very important new revolution” in the way courts work, said Bruce J. Winick, a former city health official who is now an academic expert on what he calls “therapeutic jurisprudence.”

And while New York and California are at the forefront of this movement, there are now hundreds of such courts nationwide, from Hartford to Honolulu, addressing problems like drug abuse and drunken driving; Anchorage opened a court last year dedicated to dealing with the

problems of veterans.

But as the number of these courts has exploded – there are now 188 in New York State and 84 in the works – so has criticism.

In the past, when judges have been given so much discretion in the way they handle cases, the results have been uneven, so uneven that they led to the imposition of strict sentencing guidelines in some courts as a way to restore consistency.

And some legal scholars have raised concerns about judges – who are mostly middle class and often politically connected – imposing some of their personal values on people from very different backgrounds.

Lawyers who represent poor clients say that these courts, whatever their good intentions, have left judges intimately – and uncomfortably – involved in the everyday lives of an increasing number of people.

“At what point do you say, ‘O.K., we have enough poor people under court control?’” asked Robin G. Steinberg, executive director of the Bronx Defenders.

And some critics have trouble not so much with the theory but with the way these courts operate. Because while these courts may seem kind, even lenient, critics say, in practice they are unduly harsh, assuming that defendants are guilty from the outset and making it hard for them to defend themselves.

“We are sliding backward, without even realizing it, toward an inquisitorial system of justice,” James A. Yates, a State Supreme Court justice in Manhattan, told an audience of criminal defense lawyers last month.

Times Square Came First

The interventionist approach – known in New York as problem-solving courts - dates to 1989, when a judge in Miami decided to try to order treatment for drug addicts. Soon after, New York developed the Midtown Community Court to deal with quality-of-life crimes in Times Square. At that court, prostitutes, for example, are ordered to perform community service and can receive training for a new career.

In recent years, the problem-solving idea has spread across the country, according to studies done for the Department of Justice, which has spent tens of millions of dollars on these experimental programs. New York alone has received almost \$17 million since 2000, and the state’s chief judge, Judith S. Kaye, says the efforts are worth it – for the people accused and for the court system, which handles 4 million cases a year.

“We’re seeing the same people again and again and again,” Judge Kaye said, because of factors like substance abuse and family dysfunction. With problem-solving courts, she added, “we can use the time that person is before us more constructively, for recovery and rehabilitation.”

To an outsider, a “problem-solving court” might not look very different from a traditional one. These courts exist, for the most part, in regular courthouses, and there are judges in robes and court officers in uniform.

But there are significant differences. The judges often have an unusual amount of information about the people who appear before them. These people, who are often called clients, rather than defendants, can talk directly to the judges, rather than communicating through lawyers.

And the judges monitor these defendants for months, even years, using a system of rewards and punishments, which can include jail time. Judges also receive training in their court’s specialty and may have a psychologist on the staff.

Drug courts generally have a positive track record. A 2003 study of six New York drug courts found that participants were almost a third less likely to be rearrested than similar defendants in the regular criminal courts.

But the results for newer courts are unclear. For example, a specialized court in Harlem for nonviolent parolees is supposed to help them by providing treatment programs and services like job training.

But a 2003 study found that participants in the court program still too often wound up back in jail.

On a recent morning in the mental health court in Brooklyn, the caseload included two women charged with trying to kidnap babies, another woman who stalked a junior high school classmate who she believes is her husband, and a young man who started a fire that shuttered a small public housing complex.

Such cases, where the defendant is accused of a serious crime yet is seriously mentally ill, are the bane of courtrooms across the country. In many of those cases, no one thinks imprisonment is a smart punishment. Yet in a regular court, a judge would possess few other options.

Mental health court, where the goal is to match defendants with appropriate therapy, has been in existence for about two years and it is widely applauded by prosecutors and defense lawyers.

Justice D’Emic presides over the court as a father figure, usually genial but sometimes stern. The relationships are almost intimate. The judge may note a change in a defendant’s appearance or comment on a particularly fetching piece of clothing, and often talks to the defendant directly instead of through a lawyer. Many defendants who have passed through the court say Justice D’Emic has turned their lives around.

Take, for example, the man who started the fire, an immigrant from Barbados who is now 25. When he arrived in Justice D’Emic’s courtroom at the beginning of 2003, he had been hospitalized nine times in five years; in his delusional state he believes he is the son of God.

Call Me Anytime

Justice D’Emic decided that he could safely return to live with his mother if he stayed on his medications. It was the judge who later warned him to change his medicine when he started skipping appointments, complaining of stomach cramps.

But the judge did not insist on prison. He did, however, give the man his personal cellphone number and told him to call if he was in a jam again. The man says he used it only once, to ask the judge for advice about a girl to whom he was considering proposing.

In this instance, as in many of the cases that come before mental health court, the insistence on therapy appears to have benefits. The man has signed up for city-sponsored job training (despite telling the judge he preferred to become a rapper). If all continues to go well, he will “graduate” from court with only a misdemeanor on his record.

His lawyers credit the court for his progress. “He would have been in jail without it, there is no doubt,” said Mary Elizabeth Anderson, a lawyer with the Legal Aid Society.

Of all the problem-solving experiments, courts that specialize in domestic violence are probably the most controversial. Advocates for victims tend to think they are too lenient, saying that batterers deserve jail time, not anger-management treatment.

But public defenders have darkly dubbed these courts “victims’ courts,” contending that they are meant to protect the person – usually a woman – bringing charges rather than determining the guilt or innocence of the person being charged with the crime.

That is certainly how it appeared to 19-year-old Jewell P., who asked that his last name be withheld to protect his privacy. He turned up in domestic violence court hoping to clear his name, only to be tempted to settle the case and accept treatment.

His troubles began last October, Jewell said, when his girlfriend gave birth to their child and they began to quarrel over the extent of his child support. After one particularly heated fight, court records show, the girlfriend complained to the police that he had pulled out some of her hair and punched her in the ribs.

Jewell insists he never touched her. A high school graduate with no criminal record, Jewell was arrested, charged with assault in the third degree, and sent to Rikers Island until he posted bail. He was eventually ordered to stay away from his girlfriend and daughter for a year.

But in the misdemeanor domestic violence court, the prosecution made an offer that was hard to resist: If Jewell completed 12 weeks of anger-management courses, the assault charge would be wiped from his record and maybe the court would limit the order of protection.

Outside, in the hallway, Steven E. Kliman, his Legal Aid Society lawyer that day, explained that it was probably the best deal he could get. Although he was tempted, Jewell ultimately rejected the plea because of its terms: if he was late to anger-management class even by five minutes, he

would be locked out of the program, and if he failed the program, the full assault charge would be reinstated.

Mr. Kliman said that Jewell, who is awaiting trial, was lucky to have choices. Too many of his clients, irrespective of their guilt, take the plea – either because they cannot make bail or because the orders of protection would rob them of the only place they have to live.

A One-ZIP-Code Court

Judge Madhavan's courtroom in the Bronx is the home of New York's newest problem-solving court. It does not handle criminal matters; it deals with landlords and tenants and aims to reduce homelessness in one Bronx ZIP code, 10451.

In a \$3 million pilot project financed by the United Way, the court employs teams of lawyers and social workers, available right in the courthouse, to consult with tenants facing eviction – almost none of whom have lawyers.

Unlike a regular housing court, its goal is not merely to deal with the crisis of the moment, but also to deal with underlying problems – mental illness, language difficulties, low job skills – that lead to homelessness.

It is labor intensive for Judge Madhavan and his staff, though it appears to be a labor of love on the part of the judge, a 35-year-old former Legal Aid lawyer who has been on the bench less than a year. He may hear as many as 100 cases a day, most of them negotiated agreements between landlords' lawyers and the tenants who are behind on their rent.

The tenants are not merely asked if they understand the agreements, as they would be in a regular court; they are also questioned about where they are going to get the money they owe, which is usually two or three thousand dollars. If the answers are not satisfactory, the judge sends the tenants down the hall to the welfare office or, if they are eligible, to the homelessness-prevention program. Not that he can order them, exactly, but his "Take this piece of paper next door and tell them I sent you" carries a lot of authority.

Landlords get scrutiny too, as the judge tries to ensure that the deals also provide for repairs requested by the tenants.

And the judge is also on the alert for problems like elder abuse or domestic violence. Judge Madhavan describes himself as an impartial fact-finder. But he is also "part social worker, part therapist, part lawyer," he said. "I wear many hats." (Including, reluctantly, the green eyeshade of an accountant while poring over tangled rent records.)

To take on so many roles requires many hours. The judge arrives at his chambers at 7:30 a.m., although the courtroom doors do not open until 9:30. He works after the doors have closed, too, looking over cases at night.

It is a sacrifice that Judge Madhavan, who spent his early childhood about two blocks from the

courthouse, seems to think is worth it; he said happily that since the program began, he has not seen a single eviction in the ZIP code.

But asking every judge in the system to take on all those roles – and all that work – seems like a stretch. Fern A. Fisher, the administrative judge whose brainchild the homelessness program is, said that all the Civil Court judges have the legal knowledge to do it.

But, she noted delicately, “Some people are more equipped to problem-solve than others.”

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