

## PROBLEM SOLVING AND THE AMERICAN BENCH: A NATIONAL SURVEY OF TRIAL COURT JUDGES\*

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*This article presents the results of a nationwide survey of more than 1,000 trial court judges concerning the potential to apply specialized “problem-solving court” practices more broadly in conventional court settings. Specifically, we examine judges’ practices and perceptions related to problem solving in the courts. The survey results demonstrate broad support for problem-solving methods among trial court judges throughout the country—the vast majority holds attitudes consistent with key principles of problem-solving justice and expresses a willingness to employ problem-solving methods in various cases and court settings. Judges also identified a number of potential obstacles to the more widespread use of problem-solving methods. The survey results have implications for how judicial training and education efforts might proceed.*

In recent years, individual courts in jurisdictions across the country have begun to redefine their role in the administration of justice, moving beyond the neutral resolution of legal disputes to intervention in the individual and social problems that underlie them. They have done so primarily through the vehicle of specialized courts dedicated to discrete problems such as addiction, domestic violence, and mental illness—issues that, unresolved by traditional adjudication and punishment, will return litigants to court time and again. While widely known for their “problem-solving” focus, these specialized courts share a number of other unique elements, including enhanced information (staff training on complex issues like domestic violence and drug addiction, combined with better information about litigants, victims, and the community context of crime); community engagement; a collaborative approach to decision making; individualized justice (using risk- and needs-assessment instruments to link offenders to community-based services, where appropriate); accountability (compliance monitoring, often through ongoing judicial supervision); and a focus on outcomes through the active and ongoing collection and analysis of data (Wolf, 2007).

There is now a growing body of research to indicate that drug courts and perhaps other “problem-solving courts” are indeed successful in improving outcomes for defendants and communities. In particular, adult drug courts have been demonstrated to sig-

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nificantly reduce recidivism among substance-abusing defendants.<sup>1</sup> Yet the limited jurisdiction and eligibility restrictions of these specialized courts prevent them from reaching more than a small percentage of the defendants and litigants who might benefit from them. Thus, innovators in the field have begun to explore how to institutionalize and expand problem-solving innovations to reach a greater number and variety of defendants, litigants, and cases—whether through the proliferation of specialized courts or through the application of their core principles and practices in conventional court settings.

A 2000 resolution of the Conference of Chief Justices and Conference of State Court Administrators would seem to endorse the latter approach. The resolution advocated for “Encourag[ing], where appropriate, the broad integration over the next decade of the principles and methods of problem solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, and meeting the needs and expectations of litigants, victims, and the community” (Becker and Corrigan, 2002). The conferences reaffirmed this resolution in 2004.

How problem-solving methods might be integrated in conventional court settings has only recently begun to receive attention from justice system representatives and researchers. The available literature is varied, and consists largely of descriptive accounts chronicling individual judges’ perspectives or personal attempts to apply problem solving in conventional court settings (e.g., Bamberger, 2003; Casey and Rottman, 2000). A related literature considers how judges and lawyers might apply therapeutic jurisprudence, defined as a normative legal theory regarding the potential of law to contribute to therapeutic outcomes, in various contexts (e.g., Abrahamson, 2000; Wexler, 2000). Finally, others have considered opportunities and challenges to institutionalizing specialized problem-solving courts (e.g., Berman, 2004; Fox and Wolf, 2004).

To further explore these issues, the California Administrative Office of the Courts and Center for Court Innovation initiated a research partnership to address the nature and feasibility of expanding the practice of problem solving in conventional court settings. In 2003 and again in 2005, focus groups and interviews were conducted among current and former problem-solving-court judges in California and New York State, as well as with other stakeholders (primarily prosecutors, defense attorneys, probation officers, and treatment providers). The studies addressed which problem-solving principles and practices are more easily transferable to conventional courts and

<sup>1</sup> Although it is premature to offer a definitive assessment of newer problem-solving court models, a consensus has emerged regarding the efficacy of adult drug courts in reducing recidivism (Wilson, Mitchell, and Mackenzie, 2006; Government Accountability Office, 2005; Goldkamp, 2003; Harrell, 2003). For example, Wilson, Mitchell, and Mackenzie (2006) reported that thirty-seven of forty-two completed studies found lower recidivism rates among drug-court participants than comparison groups of otherwise nonparticipating defendants. A random assignment study of the Baltimore City Treatment Court (Gottfredson, Najaka, and Kearley, 2003) and a study of six New York State drug courts (Rempel et al., 2003) both reported recidivism reductions that extended up to three years after the initial arrest, although the magnitude of reductions varied across courts. Others, however, caution that it remains unclear which drugcourt components (other than judicial involvement) are more or less critical to the model’s overall success (Marlowe, DeMatteo, and Festinger, 2003).

what barriers might impede wider application of those principles and practices (Farole et al., 2005, 2004; Farole, Puffet, and Rempel, 2005).

Among the many themes to emerge in the focus groups, four are of note for this research. First and most important, a critical barrier to wider adoption of problem solving may be the judicial philosophies of general bench judges. The challenge, focus-group participants said, is that many of their colleagues are unreceptive to problem solving, and even those who are receptive are often uninformed. The consensus among participants was that most judges' conception of the judicial role is inconsistent with problem-solving practice. Focus-group participants contrasted the "traditional" judicial role ("deciding cases," not "solving problems") with a more problem-solving, collaborative judicial philosophy (see also Hanson, 2002).

Second, focus-group participants suggested that problem-solving methods of judging may be more appropriate and more readily applied in some cases and court contexts than in others. In addition to criminal cases, family- and juvenile-court settings were singled out as particularly appropriate for problem solving, since these court settings (particularly family court) tend to be less adversarial by nature, and judges in these courts may be more receptive to problem solving due in part to self-selection into these assignments.

Third, focus-group participants argued that judges newer to the bench would be more receptive to problem solving. They viewed problem solving as a "learned behavior" and younger judges, less set in their ways, could be more easily "won over" (Farole et al., 2005:69). Finally, focus-group participants suggested that even judges amenable to problem solving would face several obstacles when attempting to employ these methods, with heavy caseloads and a lack of support staff and services perceived as the most daunting obstacles.

The purpose of the current study is to test the accuracy of these appraisals. We present the results of a nationwide survey designed to assess the practices and perceptions of all trial court judges, the vast majority of whom have never served in a problem-solving court. The specific objectives of the survey were a) to investigate judges' current attitudes and practices with respect to problem-solving methods of judging; b) to assess judges' willingness to make greater use of problem-solving practices in non-problem-solving court assignments and to identify conventional court settings that might be seen as especially amenable to problem-solving practices; and c) to identify potential obstacles to the more widespread adoption of problem-solving methods in conventional court settings.

## METHODOLOGY

To measure judges' attitudes and practices regarding problem-solving justice, a nationwide survey was conducted between April and September 2007 among a representative sample of 1,019 trial court judges. The sample included judges sitting on the bench of a state trial court of general, limited, or special jurisdiction and was drawn

from the 2007 edition of *The American Bench*, the most comprehensive nationwide list of judges. To ensure regional representation, judges in the sampling frame were stratified by U.S. Census Region. We then used a proportionate stratified random-sampling method to obtain a sample representative of the geographic location of judges.

Surveys were mailed to the selected judges. To maximize the response rate, judges were given several options to complete the survey: to return the survey by mail, complete an online questionnaire, or arrange a telephone interview (94 percent of respondents returned the survey by mail; no judge chose the telephone option). The survey achieved an overall response rate of 50 percent. Results of the entire survey are statistically significant with a margin of error of  $\pm 3$  percent. For example, if 50 percent of survey respondents provide a particular answer to a question, we have 95 percent confidence that the actual population percentage falls between 47 percent and 53 percent (all tests of statistical significance were conducted at the .05 level). Note that the margin of error increases when looking at differences in responses to the same question across subgroups. The margin of error can also vary across specific questions. Throughout this report, differences in findings (e.g., across questions or across subgroups) are discussed only if they are statistically significant.

A key analysis of interest is to examine survey responses based on the type of cases judges most commonly hear, since focus-group participants emphasized that problem-solving practices may be more appropriate in certain cases and courts than in others. Judges were presented with a list of ten case types and asked which they most commonly hear in their current assignments. For purposes of analysis, the ten types were placed into one of three broad categories based on distinctions that emerged from the focus groups:

1. *Adult criminal*: felony criminal or misdemeanor criminal;
2. *Juvenile and family law*: juvenile (delinquency, status offense), child welfare (protective, custody), family cases (divorce, paternity), and domestic-violence protection orders; and
3. *Other civil*: housing, probate matters, traffic violations, and other civil matters.

A substantial minority of judges, when answering the relevant survey question, did not identify the most common case type on their docket but merely checked all of the case types that they handle. Therefore, all analyses based on the case type most commonly heard rely solely on the surveys for which we have a valid measure ( $n=751$ ).

## DESCRIPTION OF THE SURVEY SAMPLE

Characteristics of survey respondents are described in Table 1. Available data demonstrates that respondents are representative of the entire trial court judge population with respect to geographic location (U.S. Census Region) and gender, although data is

**Table 1**  
**Characteristics of Survey Respondents**

<b>Gender</b>	
Male	77%
<b>Age (Mean)</b>	
	57 Years
<b>Years As Judge</b>	
Less Than 5 Years	22%
6-10 years	23%
11-19 years	37%
20 or more years	19%
<b>Most Common Case Type*</b>	
Adult criminal	58%
Juvenile and family	21%
Other civil	21%
<b>Race/Ethnicity</b>	
White	88%
African-American	5%
Hispanic	2%
Other	5%
<b>Location (U.S. Census Region)</b>	
Northeast	16%
South	37%
Midwest	26%
West	21%

\* Among those with a valid case type measure (N=751).

not available to determine how representative the respondent sample is with respect to other characteristics.<sup>2</sup>

## A NOTE ABOUT INTERPRETING SURVEY RESULTS

To make an informed assessment of the findings, the reader should be aware of two potential sources of bias that arise in all surveys that measure individual attitudes. First, it is unclear the extent to which survey respondents are representative of all judges in terms of their attitudes toward problem-solving approaches. It is possible, for

<sup>2</sup> Geographic location: 16 percent of respondents are from the Northeast, which made up 19 percent of the overall sample; 37 percent from the South (35 percent of sample); 26 percent from the Midwest (25 percent of sample); and 21 percent from the West (21 percent of sample). Gender: 77 percent of survey respondents are male, which is statistically equivalent to the overall trial court judge population (76 percent male, based on the Gender Summary Ratio in *The American Bench*).

example, that those who responded to the survey may be more receptive than nonrespondents to problem-solving methods, which could skew the findings in favor of problem-solving approaches. Note, however, that it is also possible that those keenly interested in the topic—both supportive and unsupportive—are more likely to self-select into the survey, a phenomenon particularly common in mail surveys (e.g., Farnworth, Bennett, and West, 1996). If this were the case, the findings may be skewed not in favor of problem-solving approaches but rather in favor of extreme (*vis-à-vis* moderate) views on the topic. In an attempt to alleviate biases that might arise from self-selection, the cover letter that accompanied the survey questionnaire made no reference to “problem-solving” methods of judging; it instead framed the topic more generally by asking judges to participate in a survey about the “judicial role” and “judging practices.”

A second area of potential bias is that some judges may provide what they perceive as socially desirable responses in favor of problem-solving approaches. As with self-selection effects, it is not possible to quantify whether and to what extent a social-desirability bias exists. There is, however, reason to believe its impact may be minimal, since virtually all respondents chose to participate via the mail survey. It is widely accepted that there is less potential for social-desirability bias in mail surveys than in telephone or in-person surveys because of the absence of an interviewer in the former (e.g., Aquilino and Losciuto, 1990).

### TRIAL COURT JUDGES’ ATTITUDES AND PRACTICES

Problem solving can be conceptualized as both a general approach toward judging as well as the application of specific judicial practices. Accordingly, judges were asked a series of questions regarding both their attitudes and their practices to assess the extent to which they currently embrace a problem-solving orientation. The results presented in this section reflect questions posed early in the questionnaire, before any specific reference to “problem-solving” methods was made in the survey.

***Attitudes Toward Judging.*** Judges were asked to rate the importance of several aspects of trial court judging (see Table 2). Not surprisingly, virtually all believe it “very important” to “ensure legal due process” (98 percent) and “maintain judicial independence” (94 percent). Of note is emphasis placed on maintaining independence—later findings will show that, for some judges, concern about maintaining the neutrality of the court is viewed as a potential obstacle to more widespread use of problem-solving methods. Most also believe it very important to “render decisions that protect public safety” (63 percent).

Other principles, including some directly relevant to problem-solving approaches, are less likely to be rated “very important.” Four in ten (37 percent) think it very important to “render decisions that assist litigants.” Just 17 percent believe it very important to “adopt a proactive role in case resolutions” and 13 percent to “obtain community input about the court system.” Note, however, that majorities believe each at least “somewhat important.”

**Table 2**  
**Importance of Various Aspects of Judging \***

	<b>Very Important</b>	<b>Somewhat Important</b>	<b>Very/ Somewhat Important</b>
Ensure legal due process	98%	1%	99%
Maintain judicial independence	94	5	99
Render decisions that protect public safety	63	28	91
Render decisions that assist litigants	37	43	80
Move cases rapidly to resolution	33	62	95
Follow case-processing timelines	27	57	84
Adopt a proactive role in crafting case resolutions	17	54	71
Obtain community input about the court system	13	54	67

\* Arranged in order based on percent “very important.” Other choices given were “not too important” and “not at all important.” The complete question wording can be found in the Appendix.

Judges were also asked to rate the importance of various factors when deciding cases (see Table 3). “Precedent” (91 percent rated it “very important”) topped the list, with “common sense” (65 percent) and “public safety” (50 percent) also likely to be cited as very important. Other factors were rated somewhat less important. Nevertheless, 70 percent of judges believe the individual needs of a litigant are either a “very important” (17 percent) or “somewhat important” (53 percent) factor. Half (53 percent) also believe the community consequences of a decision are important (although only 7 percent rate it “very important.”) Most judges do not believe public expectations to be important—only 1 percent felt it a “very important” decision-making factor and 21 percent “somewhat important.”

In problem-solving courts, judges are the final authority on case disposition, but they must also make decisions in collaboration with attorneys, case managers, and others (see Figure 1; the complete question wording can be found in the Appendix). When asked about judicial decision making, a substantial minority (42 percent) believe that “judges should make decisions with the collaborative input of others,” although most (52 percent) think that judges “should make decisions on their own.”

This finding indicates a lack of consensus among trial court judges as to the appropriateness of collaborative decision making. This is consistent with themes that emerged in our focus-group research, where several participants noted that even some judges who embrace the problem-solving concept may have difficulty accepting changed decision-making roles. Indeed, others have noted that the traditional concept of the judicial role is perceived as a central barrier to the spread of the idea of a more collaborative approach to justice.

**Table 3**  
**Importance of Various Aspects of Judging \***

	<b>Very Important</b>	<b>Somewhat Important</b>	<b>Very/Somewhat Important</b>
Precedent, when clear and directly relevant	91%	7%	98%
Common sense	65	32	97
Public safety	50	41	91
The judge's view of justice in the case	28	48	76
The individual needs or underlying problems of the litigant	17	53	70
Expert opinion	7	71	78
The community consequences of a decision	7	46	53
What the public expects	1	21	22

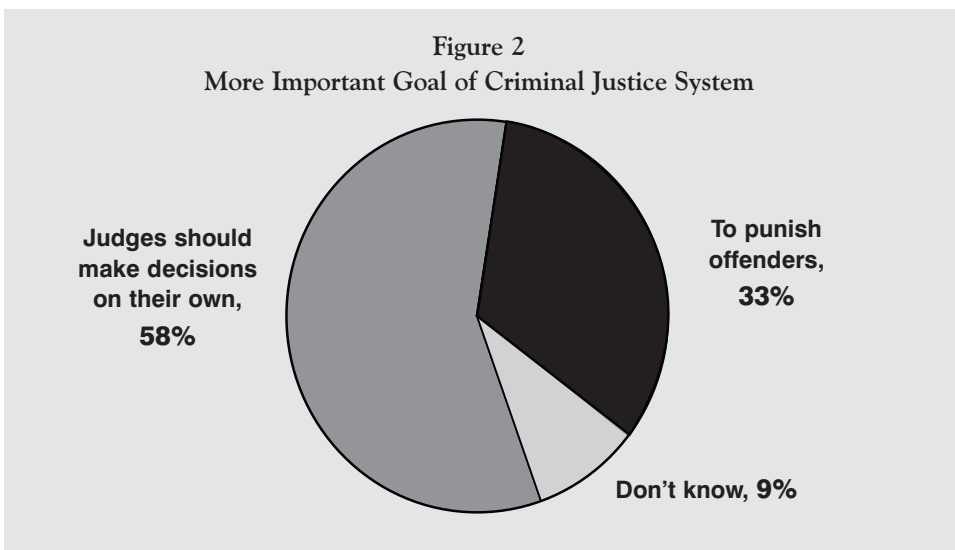
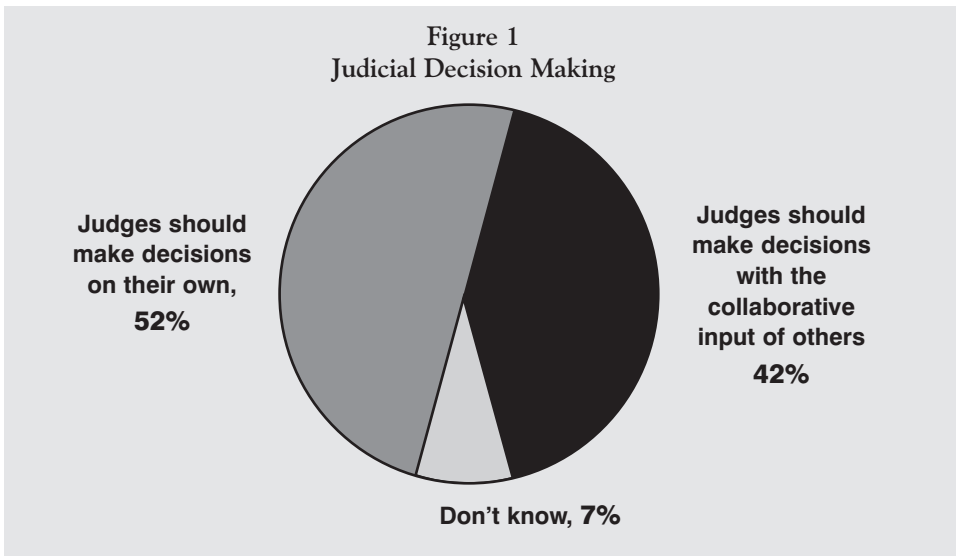
\* Arranged in order based on percent "very important." Other choices given were "not too important" and "not at all important." The complete question wording can be found in the Appendix.

In the focus groups, many judges argued that a preference for punishment over rehabilitation is generally inconsistent or incompatible with a problem-solving approach (see Figure 2, the complete question wording can be found in the Appendix). When asked about the goal of the criminal justice system, far more judges believe that the "more important" goal is "to treat and rehabilitate offenders" (58 percent) rather than "to punish offenders" (33 percent).<sup>3</sup> This finding should not be interpreted to mean that respondents choosing rehabilitation as more important place no value on punishment, or vice versa. The results do, however, demonstrate a general preference for rehabilitation- over punishment-based approaches in criminal cases. Judges in juvenile and family assignments (69 percent) are more likely than those in adult criminal (57 percent) and other civil (50 percent) to choose treatment and rehabilitation as more important.

The survey findings presented thus far begin to challenge the notion that there is widespread philosophical opposition to problem-solving approaches to judging. The majority believe it at least somewhat important to consider the individual needs of litigants when making decisions. Most also generally favor a rehabilitation- rather than punishment-based orientation for the criminal justice system, and many (although not

<sup>3</sup> Although punishment and rehabilitation are not necessarily incompatible goals, judges were posed with a "forced choice" question—they were asked to choose one response to indicate which is more important.





a majority) indicate a preference for collaborative decision making. The general orientation of many judges appears to be if not fully consistent with, then at least not in opposition to, key principles of problem-solving justice.

**Problem-Solving Practices.** In addition to assessing judges' attitudes, the survey also asked judges how often they currently engage in a variety of specific practices common in most problem-solving court models (see Table 4).

Four in ten (42 percent) report that, during the past year, they "often" "followed the recommendation of a treatment agency staff member when making a decision in a case." One in three say they "based a decision on information about the individual needs or problems of a litigant" (33 percent), "offered verbal praise to a litigant for

complying with a court mandate” (33 percent), “ordered a litigant to drug or mental health treatment” (32 percent), “posed questions directly to litigants in court” (32 percent), and “set regular in-court review dates to monitor a litigant’s compliance with a court mandate” (31 percent). Fewer report often having “sanctioned a litigant ... for failure to comply with a court mandate” (20 percent) or “proposed a case disposition or sentence not offered by the attorneys of record” (11 percent).

Some differences emerge in the frequency of self-reported practice based on the types of cases judges most commonly hear. Not surprisingly, a larger percentage of judges hearing adult criminal cases report often ordering drug or mental-health treatment (39 percent compared to 33 percent for juvenile/family and 14 percent for other civil) and sanctioning litigants (21 percent compared to 14 percent for both juvenile/family and other civil)—these practices are most suitable in a criminal-court context. Judges hearing juvenile and family cases are especially likely to report having posed questions directly to litigants (41 percent compared to 32 percent for other civil and 30 percent for adult criminal) and having offered verbal praise for compliance with a court order (40 percent compared to 30 percent for adult criminal and 21 percent for civil). Finally, judges most often hearing civil cases are far less likely than others to report having based decisions on the individual needs of litigants (18 percent compared to 44 percent for juvenile/family and 40 percent for adult criminal) and to have followed treatment recommendations (29 percent compared to 50 percent for juvenile/family and 46 percent for adult criminal). These findings suggest that certain cases and court contexts may provide greater or lesser opportunity to engage in certain specific problem-solving practices.

It may appear that the percentages of judges indicating that they “often” engage in various problem-solving practices are high. This may reflect, in part, survey respondents’ inclination to provide socially desirable responses and to overestimate the frequency with which they take certain actions. However, the findings are also consistent with themes that emerged in the focus groups. Participants in several focus groups commented that many problem-solving practices are already applied on general court calendars, albeit informally and unsystematically:

Some courts simply make ... treatment plans[s] informally, make treatment plans a part of the conditions of probation, and schedule regular court reviews so that they’re overseeing it ... The treatment process is very informal ... It’s just the judges’ way of doing business ... I think that in mainstream courts informally much of this is going on (Farole et al., 2005:11).

Indeed, use of practices common in problem-solving court models does appear limited. Judges, on average, report “often” engaging in just more than two (mean=2.4) of the eight practices about which they were asked. Just 27 percent often engage in four or more of the practices. In other words, consistent with themes that emerged in our focus groups, many judges currently use problem-solving practices, but in a limited and piecemeal fashion.

**Table 4**  
**Current Judging Practices**

<b>Practice</b>	<b>Often</b>
Followed the recommendation of a treatment agency staff member in making a decision in a case	42%
Based a decision on information about the individual needs or problems of a litigant	33
Offered verbal praise to a litigant for complying with a court mandate	33
Ordered a litigant to drug or mental-health treatment when not required to by statute	32
Posed questions directly to a litigant in court	32
Set regular in-court review dates to monitor a litigant's compliance with a court mandate	31
Sanctioned a litigant short of imposing a final sentence or outcome for failure to comply with a court mandate	20
Proposed a case disposition or sentence not offered by the attorneys of record	11

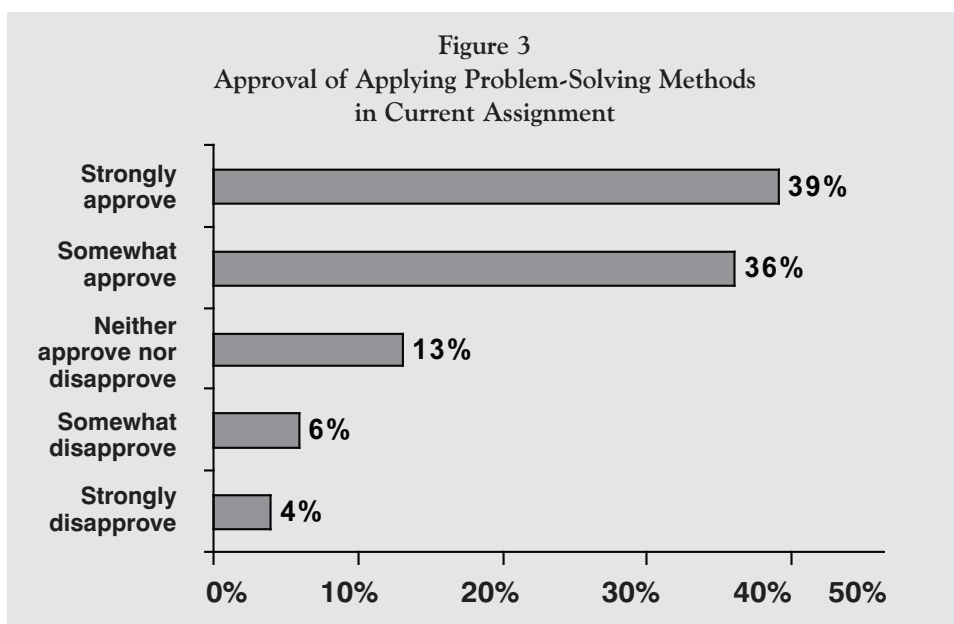
\*"Often" was defined in the survey as 40% or more of cases. Other response options included "sometimes (10-39%)," "rarely (1-9%)," and "never (0%)." The complete question wording can be found in the Appendix.

### PROBLEM-SOLVING METHODS OF JUDGING

After being asked about attitudes and specific practices they engage in on the bench, judges were then asked a series of general questions about problem-solving methods of judging. To ensure a common understanding, the following definition of "problem solving" was provided in the survey:

Methods of judging that aim to address the underlying problems that bring litigants to court. Such methods could include the integration of treatment or other services with judicial case processing, ongoing judicial monitoring, and a collaborative, less adversarial court process.

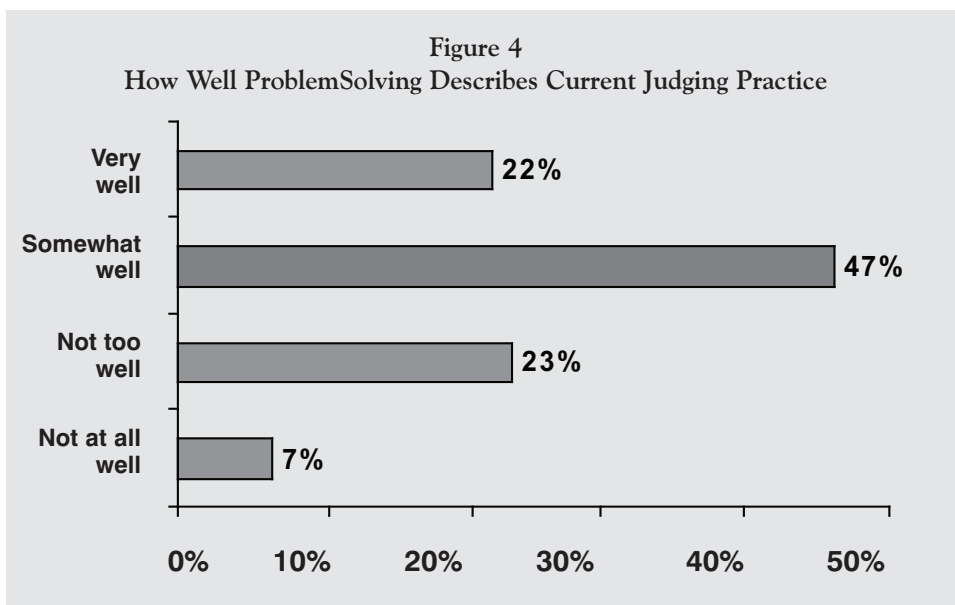
The findings indicate strong support for problem solving, as defined above, among trial court judges (see Figure 3, the complete question wording can be found in the Appendix). Seventy-five percent either "strongly" (39 percent) or "somewhat" (36 percent) approve of using problem-solving methods in their current assignment. By



contrast, only 10 percent expressed disapproval of using these methods. Judges who most commonly hear civil cases (69 percent) are slightly less likely than those who most often hear juvenile and family (78 percent) and adult criminal (73%) cases to “strongly” or “somewhat” approve of such methods in their current assignment. Nevertheless, large majorities in all court settings indicate support for problem-solving approaches.

In the focus groups, several participants suggested that judges newer to the bench would be more receptive to problem-solving methods. However, the survey findings reveal no significant difference in approval of problem-solving methods based on tenure on the bench. While a slightly higher percentage of judges on the bench less than 5 years (79 percent) strongly or somewhat approve of problem-solving methods than judges on the bench 6 to 19 years (75 percent) or 20 or more years (74 percent), the differences are not statistically significant. Overall, support for the principles of problem solving is widespread among all judges, both more and less senior.

There appears to be not only a high level of support for problem-solving methods, in principle, but also a belief among many bench judges that they currently employ such methods (see Figure 4, the complete question wording can be found in the Appendix). Nearly seven in ten (69 percent) say that “problem solving,” as defined in the survey, describes their current judging practice either “very well” (22 percent) or “somewhat well” (47 percent). This should be understood in light of findings, presented earlier, that a large percentage of trial court judges report engaging in at least some of the specific practices common in problem-solving court models. Note that judges who believe problem solving describes their current practice either “very well” or “somewhat well” report, on average, “often” engaging in about three (mean=2.7) of the eight practices; those who believe it describes their practice “not too well” or “not



at all well” report often engaging in less than two (mean = 1.5) of the specific practices.

A larger percentage of judges hearing juvenile and family cases believe problem solving describes their judging practice “very well” or “somewhat well” (75 percent, compared to 65 percent for adult criminal and 64 percent for civil). This is understandable since, as focus-group participants recognized, these court settings already encourage problem-solving court practices (“the best interests of the child”):

The rules [in juvenile court] are already kind of written to incorporate a lot of [problem-solving court practices]. There is already a rule that says it shall be non-adversarial to the maximum extent possible . . . [and] that says the well-being of the child, the minor, treatment needs and all of those take precedence over any issue (Farole et al., 2004:32).

Judges were posed with two questions asking them to identify which types of cases are, and are not, appropriate for problem-solving methods.<sup>4</sup> Many of the responses to the open-ended questions lacked the level of specificity to permit systematic analysis of all findings. However, some findings are of note. Family cases—cited by half (50 percent) of respondents—were by far the most often-mentioned category cited as appropriate for problem-solving methods, a finding consistent with what was suggested by participants in our focus groups. Fifteen percent indicate that either “most” or “all” types of cases were appropriate for problem-solving approaches. By contrast, less than 1 percent say no type is appropriate.

When asked which case types are inappropriate for problem-solving approaches, “civil” cases (20 percent) was the most common response. One in ten (11 percent)

<sup>4</sup> The questions about case types were open-ended—respondents were allowed to answer in their own words rather than choosing from preset categories.

mention criminal cases generally as inappropriate, and another 9 percent specify that only serious or violent criminal cases were not suitable for problem-solving approaches. One in five judges (20 percent) feel there is no category of cases unsuitable to these methods.

## POTENTIAL OBSTACLES TO USING PROBLEM-SOLVING METHODS

In the focus-group research, judges and other stakeholders identified a number of obstacles to the more widespread use of problem-solving methods in conventional court settings (see Table 5). Many of these potential obstacles were presented in the survey, and judges were asked to identify which apply to them in their current assignment. Most commonly cited, by far, is a “lack of support staff or services”—half (51 percent) agree that this is a barrier to the more widespread use of problem-solving methods. A second tier of relatively often cited barriers includes “heavy caseloads” (29 percent), the possibility that “problem-solving compromises the neutrality of the court” (25 percent), the “need [for] additional knowledge or skills” (24 percent), and the fact that “cases on my calendar are not appropriate for problem-solving” (19 percent). One in five (18 percent) judges feel that none of the obstacles apply to them.

The findings provide important insights as to what are, and are not, perceived as significant obstacles to the more widespread use of problem-solving methods, as well as in which court settings those methods might be most appropriate.

**Limited Resources.** The emphasis placed on lack of support staff and heavy caseloads in conventional courts echo a prominent theme from the focus-group research, as exemplified by one participant’s comment:

When you leave treatment court . . . 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. . . . In some places . . . the concern is not what are you doing for the defendant, but what are you doing about reducing your caseload, and you don’t have the same kind of pressure in drug courts or [other] problem-solving courts (Farole et al., 2004:37).

In our focus groups, participants offered various suggestions about how judges might overcome, or at least deal with, problems raised by limited resources and caseload pressures. One possibility is to obtain additional resources, perhaps by borrowing resources from existing specialized courts or creating central structures within each court building that would provide resources for all defendants. Others suggested a “triage” approach that selects only those cases most in need of or most likely to benefit from a problem-solving approach.

**(In)appropriate Cases.** The findings suggest juvenile and family assignments may hold particular promise for the more widespread adoption of problem solving practices. Judges who most often hear juvenile and family cases—who are more likely to say problem solving describes their current judging practice—are less likely to cite the

**Table 5**  
**Obstacles to More Widespread Use of Problem-Solving Methods**

<b>Obstacle</b>	
Lack of support staff or services	51%
Heavy caseloads	29
Problem-solving compromises the neutrality of the court	25
Need additional knowledge or skills	24
Cases on my calendar are not appropriate for problem solving	19
Problem-solving methods are soft on crime	7
Attorneys would oppose it	6
Problem-solving methods are not effective	6
I do not agree with problem-solving methods	4
My colleagues on the bench would oppose it	4
<i>None of these</i>	18

**Note:** Percentages do not add up to 100% because respondents were permitted to cite multiple factors.

inappropriateness of using problem-solving methods as an obstacle than are those most often hearing adult criminal or civil cases (11 percent for juvenile- and family-court judges compared to 22 percent for both adult criminal and civil).

**Opposition to Problem-Solving Methods.** Only 4 percent say that not supporting problem-solving methods is a reason for not using them more often, providing further support for the conclusion that the vast majority of judges do not have a broad philosophical opposition to problem-solving approaches.

**Punishment-Based Approaches in Criminal Cases.** Earlier findings showed that a substantial minority of judges (33 percent) identify punishing offenders as a “more important” goal of the criminal justice system than treating and rehabilitating offenders. However, the vast majority of judges also believe that a preference for punishment-based approaches in criminal cases is not an obstacle to more widespread use of problem-solving practices—only 7 percent cite the belief that problem-solving methods are “soft on crime” as an obstacle. Even among those who identify punishment as the more important goal, just 12 percent cite this as an obstacle. Most judges do not appear to believe problem-solving justice is incompatible with the need to punish criminal offenders.

**Training and Education.** One of the more commonly cited obstacles to the greater use of problem-solving methods is the need for additional knowledge and skills. Judges not only recognize the need for additional training but also appear receptive to learning more. Another question in the survey asked about their willingness to learn more about various topic areas relevant to problem-solving practice in many contexts. Fully 86 percent are “very interested” or “somewhat interested” in learning more about mental illness and treatment, 85 percent about substance abuse and addiction, and 79 percent about domestic violence.<sup>5</sup>

## CONCLUSIONS

The survey offers encouraging news for those interested in integrating problem-solving methods in more traditional court settings. The picture that emerges is one of broad support for problem-solving methods by trial court judges throughout the country. Large majorities express a willingness to consider applying them in various cases and court settings. There is even a belief among many judges that they currently engage in activities common in problem-solving courts. In our focus groups, participants suggested a lack of support for the concept of problem solving among trial court judges. The survey results do not support this hypothesis and suggest that focus-group participants underestimated the level of support for problem-solving justice among those sitting in conventional court assignments. Survey respondents did, however, identify a number of perceived obstacles to the more widespread adoption of problem-solving methods, including limited resources and the need for additional training and education, a finding that supports a theme that emerged in our focus groups.

**Implications for Judicial Training and Education.** The findings are encouraging but, of course, translating support for a general approach to judging into changed and effective practice remains a challenge. As participants in our focus groups recognized, training and education (e.g., developing courses on problem-solving and using them at judicial training and new-judge orientations) are key to changing practice. Our survey findings have implications for how training, education, and other outreach efforts might proceed.

First, and perhaps most important, training and education might best be focused on the “nuts and bolts” of problem-solving methods and practices—teaching new practices, enhancing skills—more so than on promoting a general approach to judging which most judges already appear to embrace. Efforts might include introducing judges to specific practices and approaches that they may not be aware of or currently implement (for example, adopting a proactive role by attending team meetings or speaking directly to defendants, involving treatment and other service providers in the court process, and setting in-court review dates to monitor litigants’ compliance with a court mandate),<sup>6</sup> and educating them about how these practices might be most effectively

<sup>5</sup> The other response options given were “not too interested” and “not at all interested.”

<sup>6</sup> For a more in-depth discussion of the core practices and approaches of problem-solving courts that differ from conventional courts, see Farole et al. (2004).



employed and in which case settings. Training and education might also address when problem-solving methods may be more or less appropriate and how they may be employed in such a way that does not compromise the neutrality of the court—thus addressing other areas of concern and perceived obstacles.

Second, the results suggest particular opportunities to apply problem-solving approaches in family- and juvenile-court settings, a finding supportive of another hypothesis that emerged from the focus-group research. Judges in these court settings are somewhat more supportive of problem-solving approaches and practices than are judges in other assignments—likely due in part to self-selection into these assignments. Most survey respondents also often cited family cases as appropriate for problem-solving approaches. Efforts specially focused on these court settings may be among the more effective methods of enhancing problem-solving practice.

Finally, the survey provides no support for the hypothesis—broadly discussed in the focus groups—that younger judges are more likely to embrace the problem-solving concept than are those who have been on the bench a longer time. There is widespread support, at least in principle, regardless of tenure. Certainly, new-judge orientations may provide an excellent venue for training and education—but this ought not to be the only venue, as more senior judges also support problem-solving approaches. (This does not necessarily mean, however, that younger judges ought not to be a primary focus of training and outreach efforts. As focus-group participants suggested, judges newer to the bench are likely less set in their ways, so developing and refining practices earlier in their career may be easier than changing the behavior of more-senior judges.)

Of course, it remains an open question for some as to whether problem-solving approaches ought to be encouraged in conventional court settings. Criticisms of specialized problem-solving courts—for example, that they compromise the neutrality of the court or raise due-process concerns—may also apply to the use of problem-solving methods outside specialized court settings. Others may argue that the application of these methods in a more piecemeal fashion in conventional courts would be less effective than applying the “full” model in a specialized court setting. Nevertheless, while these questions remain, the results of this survey do demonstrate that judges from a variety of regions and a variety of local court cultures are receptive to integrating problem-solving methods into a range of conventional court settings in an effort to improve the quality of justice nationwide. **jsj**

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## APPENDIX

## WORDING OF SELECT SURVEY QUESTIONS

The full wording of select survey questions are presented below, with a reference to the relevant table or figure in which the survey results are presented.

**Table 2**

In general, how important is it for trial court judges to do each of the following? (*Response options:* “not at all important,” “not too important,” “somewhat important,” “very important”)

- a) Ensure legal due process
- b) Maintain judicial independence
- c) Move cases rapidly to resolution
- d) Adopt a proactive role in crafting case resolutions
- e) Render decisions that assist litigants
- f) Obtain community input about the court system
- g) Follow case-processing timelines

**Table 3**

How important should the following factors be to a judge in deciding a case? (*Response options:* “not at all important,” “not too important,” “somewhat important,” “very important”)

- a) Precedent, when clear and directly relevant
- b) What the public expects
- c) The community consequences of a decision
- d) The individual needs or underlying problems of the litigant
- e) Expert opinion
- f) The judge’s view of justice in the case
- g) Public safety
- h) Common sense

**Figure 1**

Which of the following is a more important goal of the criminal justice system? (Please mark one circle)

- a) To treat and rehabilitate offenders
- b) To punish offenders

**Figure 2**

Which of the following statements most closely represents your view? (Please mark one circle)

- a) Judges should make decisions on their own
- b) Judges should make decisions with the collaborate input of attorneys and other partners

**Table 4**

During the past year, in approximately what percentage of all cases you heard, did you do each of the following? (*Response options*: “never [0%],” “rarely [1-9%],” “sometimes [10-39%],” “often [40% or more]”)

- a) Proposed a case disposition or sentence not offered by the attorneys of record
- b) Ordered a litigant to drug or mental-health treatment when not required to by statute
- c) Based a decision on information about the individual needs or problems of a litigant
- d) Followed the recommendation of a treatment agency staff member in making a decision in a case
- e) Posed questions directly to a litigant in court
- f) Set regular in-court review dates to monitor a litigant’s compliance with a court mandate
- g) Sanctioned a litigant short of imposing a final sentence or outcome for failure to comply with a court mandate
- h) Offered verbal praise to a litigant for complying with a court mandate

**Figure 3**

In general, to what extent do you approve or disapprove of applying problem-solving methods in the types of cases you currently hear? (*Response options*: “strongly disapprove,” “somewhat disapprove,” “neither approve nor disapprove,” “somewhat approve,” “strongly approve”)

**Figure 4**

In your opinion, how well does problem solving, as defined above, describe your current judging practice? (*Response options*: “not at all well,” “not too well,” “somewhat well,” “very well”)