

discussion should at least clarify the respective role of courts and the role of probation services in providing treatment. For now, it seems clear that traditional court and problem-solving processes have different goals and require different methods of decision making, different support staff, different monitoring practices after sentencing, and so forth. Grafting problem-solving treatment processes onto mainstream courts is likely to reduce the effectiveness of specialized courts and weaken the adversarial process of mainstream courts. These conflicting characteristics are the reason why the two processes cannot be merged. Problem-solving principles simply cannot be grafted onto traditional courts without doing damage to each process. Before pressing forward with recommendations to expand problem-solving principles to mainstream courts, court leaders should pause to examine the assumptions underlying each process.

¹ Greg Berman & John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 L. & POL'Y 115 (2001).

² Candace McCoy, *The Politics of Problem Solving:*

An Overview of the Origins and Development of Therapeutic Courts, 40 AM. CRIM. L. REV. 1526 (2003).

³ Michael Isikoff & William Booth, *Miami 'Drug Court' Demonstrates Reno's Unorthodox Approach*, WASH. POST, Feb. 20, 1993, A1, A8.

⁴ WEST HUDDLESTON III & DOUGLAS B. MARLOWE, NAT'L DRUG CT. INST., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT CARD ON DRUG COURTS AND OTHER PROBLEM SOLVING COURT PROGRAMS IN THE UNITED STATES (2011).

⁵ AUBREY FOX & ROBERT V. WOLF, CTR FOR CT. INNOVATION, THE FUTURE OF DRUG COURTS 5 (2004).

⁶ For these and other related findings, see SHELLI B. ROSSMAN & JANINE M. ZWEIG, THE MULTISITE ADULT DRUG COURT EVALUATION, NAT'L ASS'N OF DRUG CT. PROFESSIONALS (May 2012).

⁷ CCJ Resolution 22, COSCA Resolution IV (2000).

⁸ Donal E.J. MacNamara, *The Medical Model in Corrections: Requiescat in Pace*, 14 CRIMINOLOGY 439 (1977).

⁹ MacNamara lists some of the new penologists as Norval Morris, Ernst van den Hagg, Andrew von Hirsch, and James Q Wilson.

¹⁰ LAWRENCE BAUM, SPECIALIZING THE COURTS 29 (2011).

¹¹ Andrew J. Polsky, *The Odyssey of the Juvenile Court: Policy Failure and Institutional Persistence in the Therapeutic State*, 3 STUD. IN AM. POL. DEV. 176 (1989).

¹² ROBERT M. MENNEL, THORNS AND THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES 1825–1940 144 (1973).

¹³ *In re Gault*, 387 U.S. 1 (1967).

¹⁴ *Kent v. United States*, 383 U.S. 541, 556 (1966).

¹⁵ JAMES L. NOLAN, LEGAL ACCENTS, LEGAL BORROWING: THE INTERNATIONAL PROBLEM-SOLVING COURT MOVEMENT 10–11 (2009).

¹⁶ The philosophical basis of the problem-solving movement is “therapeutic jurisprudence,” unquestionably a medical approach. See BRUCE J. WINICK & DAVID R. WEXLER, JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS (2003); McCoy, *supra* note 2.

¹⁷ This concept, central to the notion of justice and the rule of law, has been traced back to Book 5 of Aristotle's *Nicomachean Ethics*.

¹⁸ GOVERNOR'S TASK FORCE ON FAMILY LAW, RECOMMENDATIONS AND PROC. FOR ESTABLISHING A FAMILY CT. IN MARYLAND, FINAL REP. (Oct. 1992).

¹⁹ David Eagleman, *The Brain on Trial*, THE ATLANTIC (July/Aug. 2011).

²⁰ *Id.* at 118

²¹ *Id.*

²² William Doherty, *Bridging Psychotherapy and Moral Responsibility*, 5 RESPONSIVE COMMUNITY 42 (1995); AMITAI ETZIONI, THE NEW GOLDEN RULE 135 (1996).

²³ Eagleman, *supra* note 19 at 114.

²⁴ Dr. Karl Menninger, THE CRIME OF PUNISHMENT (1968).

²⁵ DR. DOUG MARLOWE ON A VISION FOR THE FUTURE OF U.S. DRUG POLICY, ALL RISE: A PUBLICATION OF THE NAT'L ASS'N OF DRUG CT. PROF. 4 (2012).

²⁶ Candace McCoy, “Review of *Good Courts: The Case for Problem-Solving Justice* by Greg Berman and John Feinblatt,” LAW AND POLITICS BOOK REVIEW 16 (2006): 964.

²⁷ WINICK & WEXLER, *supra* note 16, at 87.

²⁸ AM. PROBATION & PAROLE ASS'N, EFFECTIVE RESPONSES TO OFFENDER BEHAVIOR: LESSONS LEARNED FOR PROBATION AND PAROLE SUPERVISION (2013).

²⁹ ROBERT V. WOLF, CTR FOR CT. INNOVATION, REENTRY COURTS: LOOKING AHEAD 5 (2011).

³⁰ McCoy, *supra* note 2, at 1528.

³¹ *Id.* at 10.



“Your honor, my client pleads not guilty by reason of mid-life crisis.”