



Q & A follow up from October 3, 2016

Civility Series Forum: Civility & Justice for All

Moderator: Nicole Pantera

Panelists:

- Judge Roger Burdick
- Judge Timothy Hansen
- Judge Michael Reardon

To listen or watch the forum, or any in the Civility Series, visit www.boisecivilityproject.org.

There were many audience questions, including from high school students, the panel did not have time to address. Following the forum, the panelists, along with Norma Jaeger (who was unable to participate on the panel) respond in writing to those questions. -----

Q: Given experience with problem solving courts, are there any statutory changes you would like to see considered?

We have not recently identified necessary statutory changes. There are very useful and important provisions in statute now that enable persons in good standing in problem solving courts to apply for and receive a restricted driving permit that allows them to effectively participate in treatment activities. This has been very useful.

Q: Do you see virtual reality being implemented as a form/addition to treatment for mental health issues?

We have not seen or heard of virtual reality being used in treatment presently, but have seen it used as an educational tool to demonstrate the experiences someone suffering from schizophrenia might have. However, there are a growing number of apps to support people in recovery and to support their efforts in treatment. This use of technology will continue to grow and be a particular benefit to the generations that have "grown up" with such technology. There are those working on the development of virtual "recovery community centers" and the Idaho judiciary is in the process of developing an on line adjunct to DUI courts in the Orofino area to make DUI Court more accessible to persons in this very "frontier" part of the state. Telehealth is a growing and well accepted means of delivering a growing range of health and behavioral health related services.

Q: What kind of programs/treatment might be available to at-risk individuals prior to committing a crime? Anything?

There are publicly funded mental health and addiction services available to persons with very low income, and particularly in the case of mental health services for persons experiencing crisis. BPA Health, Inc. is the access point for addiction services under the public system. They can be reached at 208-922-3406. The well-publicized "gap" in coverage for health services applies equally to behavioral health services.

One of the purposes of establishing a mental health crisis center is to provide a resource for people who need mental health services immediately, like those referenced above (for example, Allumbaugh House). These services are important - to the extent that providing those services in a time of crisis would deter someone from committing a crime, either under the influence of their mental illness, or as a result of self-medicating through drugs or alcohol, a crisis center could reduce the risk of crime.

Q: Student Question: How do Idaho courts interface with other organizations (hospitals, FACES, other local groups) in order to solve problems?

In a number of individual courts, there are local advisory committees that engage a wide variety of community resources to develop important resources to meet the wide range of needs of individual's in problem solving courts. These resources range from employment services, vocational rehabilitation, primary health care providers, particularly federally qualified health centers, faith community resources, literacy and other adult education providers, to name just a few.

Q: Student Question: To what extent to juvenile courts relate to Idaho's problem of child and sex trafficking? What would be the process for developing a problem-solving court to address this problem?

Child and sex trafficking is an extraordinarily serious crime and criminal cases presented to the court are rare. It is unlikely those cases would come before a juvenile court, as the offender rather than the victim would be the defendant in a criminal court case, and these individuals would most likely be adults. It is not the type of offense that would lend itself to the structure of a problem solving court. However, there likely are community resources available for victims of trafficking.

Q: Student Question: How do you gauge effectiveness of a court system? Against what standards is effectiveness judged?

The generally accepted standard of outcome measurement is recidivism, measured (by the courts) as a subsequent adjudicated finding of guilt for a subsequent criminal offense. But in addition, we also consider such measures as employment, increased earnings, family reconciliation, enhanced education or other improved employability factors, responsible financial management, paying child support and restitution, and drug free births.

Q: Student Question: Given the growing public acceptance of marijuana legalization and the states around us legalizing it, what impact – if any – would legalization have on the problem solving courts and probation system? What percentage of cases and time are spent on marijuana charges?

I don't have statistics to address the last question, but I am fairly confident that marijuana is not the drug of choice in most cases in drug and mental health courts. Anecdotally, I would say alcohol and methamphetamine are far more prevalent, with opioids gaining ground quickly. My personal view is that legalization would have little or no impact as far as treatment goes, as alcohol is legal now and it's status doesn't impact the court's ability to prohibit its use in the treatment environment.

In addition, for courts in jurisdictions where marijuana has been legalized in some way, we have heard anecdotal reports of some complications relating to the change in the legal status of marijuana and individuals' perceptions of the acceptability of its use, because it is legal. However, problem-solving courts only accept people who are addicted to alcohol and drugs, or experience severe mental illness. For such people the use of alcohol or any non-prescribed drugs is counter indicated and it is prohibited in problem-solving courts, irrespective of the legal status.

Q: What is your response to people that view problem-solving courts as just a way to avoid jail time?

We would counter this view with the data, both national and Idaho-specific, that shows that people commit fewer reoffenses when they address a significant issue that increases their risk of reoffenses (addiction) as well as when they are subject to the much greater ongoing legal system oversight than what would be offered by a term in jail followed by much less scrutiny of their behavior. Problem-solving courts address the major risk factors associated with recidivism and hold people much more accountable for ongoing behavior and real behavior change.

People often have a much greater confidence in the ability of incarceration to change behavior after release. While jail may be a temporary incapacitation of criminal behavior, over a longer view, Jail alone has been found to actually increase recidivism, when compared to other sanctions. And jail or prison is a very expensive solution having a very limited long-term benefit.

Avoiding the use of incarceration is exactly the point of problem-solving courts. However, in order for that to become a reality for individual defendants, they must be successful in the problem solving court process. If they are successful, it is likely they will come out the other side a healthy, productive member of society, which an impact that incarceration is not effective at fostering.

Q: What is/is there a limiting factor that prohibits more people from using problem solving courts? # of judges? Budget? Facilities?

All of these factors create a ceiling (to which we are very close or at which we have actually arrived). To expand problem-solving courts we would need more judicial time, possibly more courtroom space in some jurisdictions, more funds to carry out the intensive level of drug testing, more treatment funding, and more community supervision from the Department of Correction in the form of probation officers.

Q: If an individual is not successful in completing a treatment program and are sanctioned or otherwise do not complete “drug court” or mental health court, etc., can they get “back in”?

It depends on the circumstances of the individual. This depends on the nature of their unsuccessful termination from the court but generally a person can be considered for another admission to a problem solving court if the circumstances of the new application indicates that they meet the court’s eligibility requirements. From the perspective of mental health court, it is possible for someone to be re-admitted after a period of intensive treatment or a retained jurisdiction. I am aware of several cases where that has happened and the individual has been more successful the second (and occasionally third) time around. In the early days of the development of problem solving courts, there was some philosophy of “only one bite of the apple”. This is generally no longer the operating philosophy.

Q: How do we reactivate people who have lost their faith in the judiciary system so they become better civilians in the courts?

Invite persons to come to a problem-solving court hearing, and particularly a “graduation”. Continue to take advantage of community education opportunities such as this City Club Forum. Help people understand that court as television entertainment does not represent what really transpires in Idaho courts.

To learn more, visit:

- Idaho Law Foundation Idaho Citizens Law Academy <https://isb.idaho.gov/ilf/lre/cla.html>
- State of Idaho Judicial Branch Supreme Court <https://www.isc.idaho.gov/>
- State of Idaho Judicial Branch Problem Solving Courts <https://www.isc.idaho.gov/solve-court/home>
- National Association of Drug Court Professionals <http://www.nadcp.org/>