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Problem-Solving Courts: Do They Create Judicial Independence Problems or Opportunities or Both?

Michael R. McAdam, Kevin S. Burke, and Mary Campbell McQueen

The third panel discussion at the National Forum on Judicial Independence explores the tension between setting up specialized, problem-solving courts and maintaining judicial independence for the judges assigned to such courts. The discussion was led by then-AJA president Michael R. McAdam, a judge on the Kansas City (Mo.) Municipal Court. Panelists were Kevin S. Burke, a district judge and past chief judge of the Hennepin County (Minn.) District Court, and Mary Campbell McQueen, president of the National Center for State Courts. The National Forum on Judicial Independence was supported by a generous grant from the Joyce Foundation of Chicago, Illinois.

JUDGE MICHAEL McADAM: This was a topic that I wanted to be particularly involved in as my background was to start off as the Housing Court Judge of Kansas City, which was a newly created position. That position came about because of a charter change in our city form of government that created a judgeship. The underlying reason for the creation of that judgeship was because our court . . . was rotating the housing court docket amongst the then . . . seven judges, and there were several that the constituency group that was heavily involved in testifying and keeping an eye on neighborhood properties and zoning violations . . . did not like in that rotation. So they went ahead and got a charter change, which is not unlike a constitutional change, and created a permanent, but part-time, position of Housing Court Judge so that it would be one person.

Now my guess is that when they did that, their idea was they could then put pressure on that judge. Now I can't quote anyone on that, but that's kind of my speculation, and so what was interesting was I had been previously the prosecutor prosecuting those cases, and so now it went through the Missouri Plan of a selection of judges. We had a panel of three, I was one of them, and then the mayor and the city council voted on the final judge and I was successful.

But as soon as I became the judge, obviously my relationship with the constituency groups that I had been working with previously as prosecutor was different, and it was traumatic, to say the least, to explain that I'm no longer in the role you once thought of me as and I can no longer be in that role, and so it became kind of an ongoing battle, to the point that when there was a full-time position that opened up on our

bench, I immediately grabbed that and went to the full-time position because it was a general ordinance violation docket that doesn't have any particular focus.

I'm no longer the Housing Court Judge, but I did it for three years. It was very interesting work, but there was that element—and I didn't have any formal thought about judicial independence at that time—I just knew that it wouldn't be proper on an ethical basis to engage in the kind of activities that a prosecutor can engage in once I became a judge.

So, with that background, let me introduce our two esteemed panelists, and I mean that literally. These are two very dynamic people. I am in awe of their talent and I will say that probably more than once today, but I will say it for the first time, at least.

Let's start with Mary McQueen, the new President of the National Center for State Courts. Before that she was the State Court Administrator for the state of Washington, responsible for 175 employees, a budget of \$105 million, and a very outspoken member of the Conference of State Court Administrators And then Judge Kevin Burke. Judge Burke, as you know, is a member of AJA. He's also a member of our Board of Governors. He's the Chief Judge of Hennepin County District Court in Minneapolis, Minnesota, and he's the 2003 recipient of the William H. Rehnquist Award for Judicial Excellence. . . .

The format we're going to use is I'm going to give each of our two speakers, beginning with Kevin, five or ten minutes to give opening remarks about this particular topic. I do want to point out that Kevin has two articles in the *Court Review* special edition on judicial independence,¹ so you can check out both of those articles because I'm sure they will be coming up as part of our discussion.

So with that I'll turn it over to Kevin first and then after that, Mary.

JUDGE KEVIN BURKE: A couple weeks ago my friend Mary McQueen gave me a great opportunity. She convinced me to go to Beijing, China, to talk to Chinese judges about judicial independence and accountability and their connection to the community, and so I had a chance for four days to talk to a large number of Chinese judges, and what really struck me

Footnotes

1. Kevin S. Burke, *A Judiciary That Is as Good as Its Promise: The Best Strategy for Preserving Judicial Independence*, *COURT REVIEW*, Summer 2004, at 4; Kevin S. Burke, *The Tyranny of the "Or" Is the Threat to Judicial Independence, Not Problem-Solving Courts*, *COURT REVIEW*, Summer 2004, at 32.

there, and it is whatever transferable to the discussion we're here, what's the appropriate connection to community? How responsive should the judiciary be to the community and yet maintain their independence and accountability as a whole?

I think one of the things that plagues this discussion was something I mentioned in one of the articles I wrote, and that is the tyranny of the one or the other. Too often we look at this as either it's one thing or the other, and I believe that the issue of problem-solving courts, the issue of judicial independence, and the issue of judicial accountability is very susceptible to . . . the tyranny of one or the other. Courts need to be accountable. Courts need to be connected to the community. That is fundamentally how we preserve judicial independence.

We have had in our country a long history of problem-solving courts. A hundred years ago, the juvenile courts were established in Chicago. We've had probate courts, family courts, lots of different courts that have proven that you can have an independent judiciary that solves people's problems.

Last year there were over a hundred million cases that were filed in the state courts of the United States. There are only about 27,000 of us who are judges dealing with those cases. Surely with those numbers judges throughout the United States need to be aggressive, willing to innovate, and willing to make a difference to try to reduce the amount of litigation that we see.

I think one of the things that contributed to the perception that problem-solving courts are an entanglement or a threat to judicial independence in part is [that] although they were well-intentioned, some advocates of problem-solving courts, some advocates of drug courts, some advocates of domestic-violence courts, have come across in such an evangelical fashion that they turned some of our colleagues off. That was unfortunate. It wasn't necessary because I really do believe that problem-solving courts fundamentally enhance the judiciary's ability to be independent.

What we heard this morning to begin with was a discussion about budget, and in the 20 years that I've been on the bench, you can't go to a meeting in which judges won't talk about their concern that we don't have enough money and we're a separate branch of government and they ought to adequately fund us—and that's true, but the fact of the matter is kids ought to get an education and senior citizens ought to get health care and a lot of other things that we compete with [in] society to get the scarce resources that we need.

I think fundamentally what problem-solving courts have done is make the judiciary more responsive to a lot of our society's needs. We're a lot more effective with that. So one problem I think was we oversold it internally and created this image that it is a problem of judicial independence.

The second problem is real. While it's important that the judiciary work with the other two branches of government, some of the problem-solving courts came with strings that

really did conflict with a lot of the things most of us in the room thought were important. I'll give you an example. There were probably 800 or 900 drug courts that were created around the country, largely federally funded. Many of those courts were grant applications in which courts went into it, got the federal grant, and then weren't able to sustain it because the grant application came with so many strings that when the federal money ran out, the court died. That was a problem that we should have anticipated. The money was great, but the strings were too tight to make it effective for us in the long term.

If we're going to be adequately funded, it is many times easier to get new funds for a new initiative than it is to put money into your own base. So the problem-solving courts are a good opportunity to get additional money, but it is a problem in terms of our courts being in a position to design your docket based upon a grant application. I think that is one of the areas where the temptation to get the money sometimes overcomes the judgment that most good judges have.

In the end, I think the answer to the question that was posed is [that] problem-solving courts are no threat to judicial independence. They come from a long tradition of courts trying to do well for people.

There's a social scientist that many of you are aware of, Tom Tyler. Tyler's research,² I think, shows that problem-solving courts in whatever fashion they come about are effective, but Tyler says and what his research shows is almost all people, almost all the hundred million people or hundred million cases that come into the court, those people come into our court not expecting to win. They come in expecting to be listened to. They come in expecting to leave the court understanding what happened, understanding why the judge made that decision. That is the common thread of all the problem-solving courts.

That message is important to maintain judicial independence. The reason that we advocate this is it is a means to an end, not an end in itself. Judicial independence ought to make us more effective. Problem-solving courts are a method of us being more effective. Problem-solving courts for the most part have been places, in which in whatever form, dating back a hundred years ago, people came in and felt like that judge listened to them and that they understood what happened and why it happened when they left, and fundamentally the problem-solving courts in whatever fashion they had were judges throughout the United States who demonstrated to litigants who came before them that they cared about the people and the issues that came before them. Judicial independence is always strengthened when people come in our courts and see judges who care about the people who appear before them. . . .

MARY McQUEEN: Since I'm now removed from a state to a commonwealth, I wanted to find out exactly what the found-

2. See generally TOM TYLER, *WHY PEOPLE OBEY THE LAW* (1990); Tom Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 *CRIME & JUST.* 283 (2003); *Public Opinion of the Courts: How It Has Been Formed and How We May Reshape It*, *COURT REVIEW*, Fall 1999, at 46-53 (panel discussion including Tom Tyler).

ing fathers and mothers in Virginia thought about judicial independence, and as you know, Thomas Jefferson hailed from Virginia. . . . I taught a course at Seattle University on judicial administration—and as you know, Thomas Jefferson was not always one of the most positive advocates for the judiciary. But in fact when the Constitutional Convention was gathered to look at adopting the U.S. Constitution, there was a discussion, and a lot of . . . that played itself out in the Federalist Papers, about an independent judiciary, about the checks and balances, and their experience at that time was that in the laboratory of the states, . . . the judiciaries [had] become agencies or departments of the legislature. And Thomas Jefferson during the Constitutional Convention spoke about the fact that gathering all power into one branch, the legislature, was the extreme

the medical profession to say when an emergency case comes in the door, they evaluate how best to deal with that problem, that case, that patient, and I think problem-solving courts elementally are what is the best way to deal with these issues for this person that has appeared before us.

Chief Justice Judith Kaye from the Court of Appeals in New York wrote a law review article in the [*Yale Law and Policy Review*] about problem-solving courts,³ and the way she tried to define independence was basically whether or not the court felt that it had the ability to make a fair and impartial decision: Was there anything about the way that we had designed problem-solving courts that interfered with its ability to make a fair and impartial decision?

Basically, if you look at what we think of as the general way



[P]eople come into our court not expecting to win. They come in expecting to be listened to. They come in expecting to leave the court understanding what happened, understanding why the judge made that decision. That is the common thread of all the problem-solving courts.

– Kevin S. Burke

example of despotic government. So even Thomas Jefferson recognized the need for an independent judiciary and then the emerging republic.

Justice Cardozo commented that sometimes judges take themselves altogether too seriously, that we need to find ways to deal with the emerging issues brought before us and then not worry so much that they won't work themselves out.

I think Judge Burke has set a foundation for us to begin this discussion about judicial independence in problem-solving courts because how many of you at the end of the day want to feel like you solved someone's problem rather than resolving another case?

Looking back on it, especially going through law school, I think that's what we always thought the judicial system was about, was about solving problems. I think as we move forward, and I do believe and I agree with Judge Burke that it was almost a marketing effort that we could go before legislators and say, look, we're going to solve this problem if you give us this money and they could make that connection, and then it was easier for us to get additional moneys for that specific project, but really what we're talking about here is judicial triage.

We can look to our emergency rooms and our colleagues in

in resolving cases, it's pretty much the same adversarial process up until the sentencing phase, but we've used the ability of the court to garner the services that have been needed to apply them to the defendant's case. It's not unlike what we've seen courts be able to do, whether it's in pro bono support or Legal Aid or in trying to apply the impact [of] the court to make sure that the advice of rights is given or that we have interpreters.

So if we look at the position that prosecutors and public defenders and the Conference of Chief Justices and State Court Administrators have taken, they in fact have endorsed—and defendants have continued to participate in—these problem-solving courts as direct evidence that they think that it has created a fair and impartial forum. So if we define independence as a fair and impartial forum, I don't believe that the problem-solving courts have resulted in an intrusion on judicial independence, and that's the independence to make that particular decision in that particular case.

I think you heard Michael Buenger this morning talk about institutional versus individual independence to make decisions. I would like to comment, however, on the institutional side, and I think Judge Burke began to comment about the strings that were attached to funding.

3. Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 *YALE LAW & POL'Y REV.* 125, 148-49 (2004).

In Washington State when we had the recession and the downturn into the economy, the issue wasn't whether or not we could get additional money for new courts. The discussion formed around, "What are the core functions of the court?" And mental-health courts or drug courts or DUI courts or unified family courts were [said] not [to be] core functions of the court and so therefore shouldn't be funded.

So if we look at the ability of the individual court to determine how to handle dedicated dockets or triage cases, that is a threat on independence, and I think we have to change the discussion to move from the boutique court or the specialty court to a discussion of judicial triage and dedicated dockets.

I think Alexander Hamilton said it in Federalist 7, that nothing contributes more to the public's respect and esteem for government than the effective administration of justice, and it's that public trust and confidence that judges can bring about and garner to ensure that the services that are necessary to cut through the cycle, whether it be of family or of domestic violence or of drug abuse, will be applied.

It's no different than the U.S. Supreme Court's decision in *Miranda*. Sometimes it takes a judge and the influence of the court to ensure that the resources that are necessary are applied, and I believe that that's what problem-solving courts have done.

I think one of the challenges that we have is because problem-solving courts do garner the interest of the public. Sometimes I know that my former Chief Justice in Washington really felt good about being asked to attend drug-court graduations, and I think what we have to caution ourselves against is cutting into the core funds for the court that would then be dedicated by a funding agency rather than obtain additional funds for additional services.

I also believe that as we're moving forward to establish the elements of a problem-solving court, we have to ensure that all the judges on the bench appreciate the direction that we're going because I think that sometimes we're our own worst enemies, that somehow the judge that is on the problem-solving court is viewed by her or his colleagues as getting more resources or getting more public attention, and there has to be an ability for everyone to see the importance and the improvement in the entire administration of justice, rather than it being seen as an individual judge's special advocacy or issue.

In looking at the public's reaction to problem-solving courts, the National Center for State Courts . . . conducted a public opinion poll. Resoundingly when you ask questions about the types of services that problem-solving courts provide, there was overwhelming support on the part of the public that, yes, courts should be providing these services, and it increases almost by 20 points if you're asking African-American defendants or Hispanic defendants because you are the face of justice and the courts are where the defendants look for an open and fair forum.

So when we're talking about accountability, the cautions that we've already heard are: Is there a balance between accountability and independence? I noticed that you'll have a panel that will talk more directly on that later, but I think that the accountability issue in looking at problem-solving courts, the measure people want to use is recidivism, and I think we have to be very cautious of that.

We don't have to look more recently than when we first started pretrial diversion programs to know that in the first four or five years the recidivism rates look great, but then they tend to start a downturn. Well, it's just mathematical. The bigger the pool, the more opportunity that recidivism is going to have to affect what looked like a 90% success rate. But I think the evidence that we've seen still supports the adoption of the elements of problem-solving courts across the lines for all types of courts.

The final thing that I wanted to mention that I don't think is a problem, but that when you're having discussions about problem-solving courts gets raised, are issues of judicial ethics, and specifically that somehow when you participate with advocacy groups and social service groups, does that somehow raise an issue under Canon 3 about ex parte communications?

The ABA now, in reviewing the model Code of Judicial Conduct, is specifically addressing that issue. I think with a close reading of Canon 3 it is not a concern because it says "ex parte communications otherwise provided by law," so if in fact there is a court rule or a statute or a local ordinance that is establishing a problem-solving court, I think that we can work closely with the legislative branch of government to ensure that those types of interactions are "authorized by law," so I don't think that there's any attack on judicial independence or judicial conduct from that area.

And the final thing I just wanted to mention was that I think that the central goal of the judiciary is to speak with one voice. My colleagues here from Washington, that's not a new mantra. They heard that from me for 25 years. But I think that when we speak as individual judges and we speak as individual court levels, it's not in the best interest of the judiciary because the legislature when finding a vacuum will fill it, and I think the American Judges Association is that place for us to speak with one voice. Thank you.

JUDGE McADAM: Very good, Mary, and I agree a hundred percent with your final comment that the AJA needs to take up this challenge and fill that void, because it's certainly being filled whether we do it or not, and we may not like the result that we get if we don't step up and get involved in this issue.

I have a question that I wanted to ask that was based on what Mary was saying because it's . . . almost changed my thinking about this.

Kevin, tell me, do you think that problem-solving courts are like the magic bullet? I mean they respond to community needs as we've heard they do, and I think they do; they're favored by funders and budget types, legislators and executives alike; and they're an efficacious way to handle our dockets, our caseloads, certainly in certain kinds of cases, anyway. Have we discovered the magic bullet?

JUDGE BURKE: I don't think that there is a magic bullet. I don't think that there's a magic way to deal with an assignment system of judges and so it seems to me a natural extension of that to say problem-solving courts are important, but it's not the most important thing that's on in judicial administration.

I think one of the difficulties is if you look at the problem-solving courts around the country, they're all different. For example, I mentioned the drug courts. If you look around at

the evaluations, what do we know about them? One, there was a cottage industry of people who were evaluating them. They were almost all different. A lot of them had screenings on who could get in and some of them were really narrow so that only Mother Teresa who was caught with a small amount of marijuana could get in—and surprisingly enough, she was successful—and then there was another group that did other kinds of things.

So I've been trying to think about what made them uniquely successful at the time, and I think it comes down to this. The judges initially who went into the drug courts were not afraid to exhibit to the defendants that they cared about them. Neutrality is really important for the judiciary, but it's not the same as saying that you don't care about people and I think too often judges, in their understandable desire to be neutral, have masked that they care about the people who appear before them.

Secondly, I think the atmosphere and awe of the drug courts and all the other problem-solving courts that initially were quite successful is that they were by design a place in which the judges put a premium on listening to what the defendant had to say and making the defendant believe that you were really listening to them, so their atmosphere was a little different.

I think the third factor was that there was a premium in the problem-solving courts that the people who left those courts understood why we made those decisions. Those principles apply in every area of practice that courts have, and so if we could just take the lessons from problem-solving courts and say my court, whether it's designated as problem solving or not, is a place in which people will be listened to and people will leave my court understanding why I made that decision, we will be a lot more successful.

And then the point that I made which I will repeat: I think neutrality is really important. Don't misunderstand what I'm saying. But being neutral doesn't mean that you don't care, and I think that there have been instances in which judges have been afraid to show the community that they care about the problems that appear before them.

MS. McQUEEN: I would just add one element to that, and I think it's defendant accountability. I think that one of the aspects also of the judges that participated in the early problem-solving courts is they held defendants personally accountable. It wasn't that you showed up for one judge for a pretrial motion and another judge for the plea and then a final judge if there was some kind of revocation. There was an individual judge who showed an individual interest, as Judge Burke said, and we've had a lot of research on settlement conferencing and whether or not settlement conferences are effective or not, and we know because of judicial involvement that they are, so I would say that one of the other aspects of problem-solving courts is that sense that there's judicial follow-up.

JUDGE McADAM: A question from the floor.

JUDGE MARK FARRELL: Judge Mark Farrell from the Buffalo, New York, area. I've been running a drug court for the past eight years and a domestic-violence court for six and now a gambling court for two years, and one of the things I would

agree with the judge's comments about is the fact that initially when these courts were formulated and brought about, they were brought about with an element of china-breaking and creativity and spontaneity, which I'm going to pose the question as to whether the tenor of problem-solving courts now has changed since judicial bureaucracy has overlaid them and now we have bureaus of people at state levels saying, well, you can't graduate someone from drug court until they do X, Y, and Z, and we now have standards and goals as to what they are. . . .

But the concern I have after running these for eight years and being involved in a number of different areas is that the judicial independence is sponsored and fostered more by allowing the judges to be creative without an excessive amount of bureaucratic overlay, and I just would like your response.

MS. McQUEEN: I agree a hundred percent. I think that that's why when I talk about judicial triage, I think that it's the attending physician who evaluates that client when they come into the emergency room, and I absolutely think that that is the one thread on problem-solving courts and judicial independence that are, I guess, barriers that are established by these funding bodies and/or legislative, either state or local, on entrance or exit criteria, and so I think that's why when I talk about problem-solving courts, I've tried to—and I think Chief Justice Kaye has as well—tried to move the discussion away from boutique or specialty courts to more of a discussion about the way that we do business and hold us accountable for the way that we do business and let the laboratories of the trial courts and the state courts find the best way to deal with these defendants.

JUDGE BURKE: I, too, agree with you. I think that one of the problems that we have had, though, in problem-solving courts is our reluctance to figure out how we are going to measure or hold ourselves accountable, and that becomes difficult.

I'll give you my experience in our drug court. We did not say that our goal was abstinence. We said we were going to reduce drug usage, and the reason that we said that is ours was largely a crack cocaine court. If you take a crack cocaine addict of ten years and get them simply to smoke marijuana, is that failure or progress? I think that you can make an argument it's progress.

So I think some of the difficulty for people who are in the trenches like I think you and I have been is that we recognize that that's progress or we believe it's progress, and I think if you look in drug courts 29% of the people who go to Hazelden, which is one of the premier drug programs in the country, are there on their fifth admission. So the difficulty, it seems to me, for people who are doing drug courts is that if 29% of the people can go to Hazelden for their fifth time, then three strikes and you're out of my drug court doesn't quite work.

I would go back for the comment I made before, though, to say that there should be some universal measures of program effectiveness. I believe that no matter what court you have, you ought to be able to measure and assess whether or not people felt like they were being listened to and that when they left, they understood what was going on.

I think that is what Mary indicated: People only being held accountable. For the most part, the problem-solving judges were good, if not great, at making sure that people understood

what the expectations were and that the expectations were, by and large, reasonable.

MS. McQUEEN: I would add one thing because I know that in every panel that we've heard today, I think the "A" word has come up, accountability. I would, if I could take a moment, put in a paid political announcement. Ncsconline.org is the National Center's website, and the National Center has done an excellent job on developing workload measures as well as trial performance standards. . . .

[W]hen I was working in Washington State, we had a pilot project of unified family courts, basically one judge/one family but trying to pull together dependency/juvenile-delinquency/family-violence issues under one judge, and so the discussion there was what do we measure?

Resoundingly, when you ask questions about the types of services that problem-solving courts provide, there was overwhelming support on the part of the public that, yes, courts should be providing those services . . . because you are the face of justice and the courts are where defendants look for an open and fair forum.

— Mary Campbell McQueen

Well, the ability for the judge to have better information to apply when making that decision I think is a valid measure of success and I don't think that we should back away from the court system establishing what we think the measures of success are.

JUDGE McADAM: Any other questions?

JUDGE RICHARD KAYNE: Richard Kayne. I'm a municipal court judge from eastern Washington, and I have a question for Mary. I will preface it by saying Washington State's loss is the National Center's gain, and this is not a parochial question to Washington State, but in addressing the lack of state funding for trial courts in the state of Washington, especially courts of limited jurisdiction, Washington State is, through the court-funding task force, seemingly trading court reform or nominal court reform for funding, and it seems to Washington State judges that we'll probably get nominal court reform, but no funding, and it will result in a great deal of centralization.

Mary, do you think that this trend will limit the ability of courts to innovate in areas that we're talking about now?

MS. McQUEEN: I think it makes a difference in the definition of centralization, and you've worked with me long enough to know that my position on that is that the role of the judicial

counselor of the supreme court is to provide the trial court with the tools they need, not to direct how they do their work.

I know that there's been a lot of discussion over the years about court reform and the trial-court-funding task force in Washington. Washington, by the way, is fiftieth out of all 50 states in the amount of money that the legislature provides for the trial courts. It's basically a locally funded system and I say that to preface my response. So when we were talking to legislators about what the nexus is between the state's interest and what goes on in the trial court, it was kind of like what's going to change? Is there going to be major judicial reform?

Well, those of you who have been visionaries in looking at unified court systems were, I guess, the testing ground for those of us who came later to look at that, but all the efficiencies that have been gained, I think, in unification have been



through the consolidation of administration, not through the change in subject-matter jurisdiction. So I think at least what I know is going on in Washington at this point in time is that there is probably going to be effort to look at consolidation of the administration, which I don't think will interfere with an individual judge's ability to develop and handle the way that they would handle cases, but probably not a consolidation of subject-matter jurisdiction.

JUDGE McADAM: Any other questions from the audience?

JUDGE DARVIN ZIMMERMAN: Darvin Zimmerman from Clark County, Washington. That's across the river from Portland, Oregon.

I was wondering how many jurisdictions have problem-solving courts. In Clark County we have a domestic-violence court; we have a substance-abuse court and a substance-abuse judge; we have the mental-health court, sort of a newer court; and we have a homeless court. With five judges it gets a little bit tough to run all those courts and those on specialty dockets like for non-support [of children]. With so many other statistics, I'm wondering how many or what jurisdictions or what percentage jurisdictions in the United States or whatever actually have problem-solving courts, is my question.

JUDGE BURKE: The National Center would know that. I guess my flippant answer, and it's not actually that flippant, is I don't think there's probably a court in the country that doesn't have some form of a problem-solving court. If you start with juvenile court[, which] was originally identified as a problem-solving court, there is one of those everywhere in some form. There's a family court in some form all around the United States. There are then a lot of the smaller things that you have mentioned, homeless courts and mental-health courts and drug courts, and to a certain extent even probate court is a problem-solving court for the recently passed, so my guess is that there probably is no court that isn't. I think that some part is just the rhetoric has taken over. . . .

JUDGE McADAM: Next question, front row.

JUDGE SAMUEL LEVINE: [Samuel Levine, Nassau County, New York.] I was very involved in disability law before going on the bench and my question to the panel is shouldn't every judge in every courtroom be a problem-solving judge, espe-



cially on the criminal side? Whether it's an arraignment and you see that there's a health-related problem, shouldn't you be ordering some health treatment when they get over to the jail, and especially in the sentence where you're asking your probation department not only for recommendations about punishment? [B]ut I've had the experience of asking for a treatment plan as to what will be done while they're incarcerated or when they get on the street, how are they going to be corrected in their health-related problems?

MS. McQUEEN: Couldn't say it any better.

JUDGE McADAM: When we had the conference call for this committee, one of the things I pointed out was that I don't really see the difference between what I do as a judge in what is called the general docket, the limited jurisdiction docket in a city, and these particular modalities of treatment and identification of what the course of action should be taken with any one individual person. I mean we're relying on probation reports. We're relying on providers to let us know if someone has failed and why and we have to deal with why that is. We find out from family members who may attend

court that there are problems and elements that we didn't know about.

I mean these are not new skills that we're learning here, I don't think, and I agree. I think this is something that we don't recognize as being what we've always done in the past because it has this label of problem-solving courts. It sounds like it's something new and different even though, as Judge Burke pointed out, we've had juvenile courts for a hundred years now. . . .

JUDGE RAYMOND PIANKA: I'm Ray Pianka from the Cleveland Municipal Court Housing Division and we were set up in 1980 as a specialized court by an act of the state legislature, and so we handle all the housing-type issues/health issues in the city of Cleveland. There's 13 judges on the municipal court, but I just handle the housing docket.

It's interesting on judicial independence if you go on the City of Cleveland website, "Community Relations," they've set up a program called "Court Watch," which if you go into that section, it says send criminals and judges a message that you

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won't tolerate crime in your neighborhood and join Court Watch to come and watch the judges in the courtroom.

I have been on the bench about eight years, and so I've taken that as a challenge to turn things around, and those people who are court watchers, we have trained court watchers so once they get in a courtroom, they know what they're watching and they know what the judge is doing.

Then every quarter I meet with code-enforcement advocates, those people who want their neighborhoods to be upgraded through code enforcement, just to talk about in an informal way what the state of the art is in code enforcement.

I handle about 16,000 cases a year—6,000 criminal, 10,000 civil in the housing court—and one of the things, there are only three courts in the state of Ohio that have housing/health-type jurisdictions, and it would be helpful if the [National] Center for State Courts could help weave together those type of courts throughout the state and then also the municipal courts. Each municipal court has a docket that handles housing-type issues. It's not the favorite part of most judges' dockets. In fact, I go to judicial conferences and they say, "Well, you're with rat court," and of course I specialize in a type of rats. In fact, I have a video program on how to keep

out of housing court, one of them devoted to rodent infestation, so it plays about six times a week on access video.

So trying to weave together these specialized dockets for people that may have problems with them and also talk about state of the art, vacant abandoned property, foreclosed property, all those type of issues that are of importance to cities and even suburban and rural areas, I think would be helpful, but identifying the people that are involved would also be helpful, so maybe the [National] Center for State Courts might be of assistance.

MS. McQUEEN: I think one of the things that I've seen that has changed, too, is that in the past where we were kind of looking at a pyramid with the court sitting up here and then, you know, different layers down, starting maybe with social service agencies and prosecutors and public defenders, now you have more of a wheel where the judiciary is in the middle and we're almost the air traffic controller trying to coordinate all these partners in the process, and I think housing courts have been an excellent example of that.

Even when I talk to judges who [work in] mental-health courts, housing is a very important issue in helping the defendants in those cases develop a treatment plan. In Washington, the new issue that I found kind of interesting that the legislature adopted as a problem-solving court is water courts. Now there's legislation being considered of creating a water court.

So I think that part of it is accountability, I think part of it is people wanting to see that there's actually some benefit for the dollars that are spent, but given the issues that Judge Burke and most of you have identified, I think it can be balanced within an independent judiciary.

JUDGE JAY DILWORTH: I'm Jay Dilworth, of Reno, Nevada. We have the municipal court and we also have a fund for three counties for a drug court.

I have two things that concern me. They aren't really questions. They're concerns. One, I don't see myself as solving somebody's problems. In fact, I wrote that down here. I do not solve problems. I try to provide tools so somebody else can solve their own problem because if I solve the problem, that's easy, but then it will come back to me again when we have new problems.

And the other is, as you spoke of before, a lot of folks go through treatment five times. We can't give up on them. At the same time, we have an offender who continues to buy [illegal drugs] and I can't say, "Well, okay, go back to drug court and just do better." At some point I have to say, "I don't care about drug court anymore. You're going to jail because you continue to violate the law."

We have a felony drug court and they get around it by . . . no longer . . . doing cocaine. They're smoking marijuana or they're doing methamphetamines or something like that. They're still dealing on the streets and as soon as they get arrested [say,] "Well, I'm in drug court and I go to see Judge Williams."

And I say, "No, you don't. You go to jail."

And so I have this problem with how many times do you give a person a chance. At some point I have to say, "No. I don't care. Jail won't help you, but I'm going to do it."

And the other is I don't see myself as solving somebody else's problem. I just put out tools that they can possibly use.

JUDGE BURKE: Let me try to answer real quickly. I actually respectfully disagree with part of what you say. Let's take family law as an example. A judge who is effective in dealing with a family who is going to reorganize themselves by getting divorced is not encouraging them to enjoy the experience and come back for a second divorce, and so I do think that judges can end up doing things to people in the family-court example that will prohibit them or discourage them from coming back again, so I think that there are instances in which undeniably judges are in a position to help people solve their problems.

The second thing is you're right: You've got to hold people accountable. The drug offender is a very good example. On the other hand, almost all states look at intervention for treatment and use the least expensive intervention that they can, and so as between putting somebody in outpatient treatment or letting them quit on their own, they say quit on your own. As between outpatient and inpatient, they say outpatient. When that doesn't work, no one holds the assessor accountable and says to the defendant, "Well, we're going to hold you accountable and put you in jail." That may be appropriate, but I do think that there are public policies that have contributed to people's inability to get straight.

Michael R. McAdam is a judge (and former presiding judge) on the Kansas City (Mo.) Municipal Court. He was president of the American Judges Association in 2004-2005. He has been a member of the Kansas City Municipal Court since 1987, initially as its first part-time Housing Court Judge (1987-1990) and then as a full-time judge since 1990. A graduate of the University of Missouri-Kansas City School of Law and Rockhurst University, he has served as an adjunct faculty member teaching real-estate law at Rockhurst University.

Kevin S. Burke is a judge (and former chief judge) on the Hennepin County District Court in Minneapolis, Minnesota. He received the 2003 William H. Rehnquist Award for Judicial Excellence from the National Center for State Courts, having previously received the National Center's Distinguished Service Award in 2002. Burke established the drug court in Minneapolis and has engaged in detailed studies of court fairness, including ones exploring what factors determine whether criminal defendants and victims believe a proceeding was fair. He is a 1975 graduate of the University of Minnesota School of Law, where he is a member of the adjunct faculty.

Mary Campbell McQueen is president of the National Center for State Courts in Williamsburg, Virginia. Before taking that job in 2004, she was the Washington state court administrator for 16 years. While there, she initiated a program to reduce appellate-court delay, created a court-consulting unit to provide professional management evaluations to the courts, and played a key role in getting increased funding for the Washington judicial branch during an economic recession. She is a past president of the Conference of State Court Administrators. McQueen has a law degree from Seattle University.