

## **Delivering Justice Today: A Problem-Solving Approach**

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*The Chief Judge of the State of New York explains how and why New York's state courts adopted a problem-solving approach to delivering justice in certain categories of cases. That approach aims to achieve more constructive interventions than conventional case resolutions, which often do not solve the underlying problem (such as drug addiction or domestic violence) that brings the same people back to court again and again. The examples of community courts, drug courts, and domestic violence courts illustrate how the problem-solving concept is applied in New York. The article also addresses two questions that have been raised about a problem-solving approach--its effectiveness and its fairness--and includes a discussion of studies that have been done to date, acknowledging the need for further evaluation and research. In conclusion, Judge Kaye explains why this approach may be worth pursuing and expanding.*

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When New York Chief Judge Benjamin Nathan Cardozo delivered the Storrs Lectures at Yale Law School, he spoke of the inevitability of change in the common law in words that give me comfort in my adjudicative capacity as presiding officer of the state's high court and my executive capacity as head of the state's court system.<sup>1</sup> As he observed:

The work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures. What is erroneous is pretty sure to perish. The good remains the foundation on which new structures will be built. The bad will be rejected and cast off in the laboratory of the years. Little by little the old doctrine is undermined. Often the encroachments are so gradual that their significance is at first obscured. Finally we discover that the contour of the landscape has been changed, that the old maps must be cast aside, and the ground charted anew. . . .

Ever in the making, as law develops through the centuries, is this new faith which silently and steadily effaces our mistakes and eccentricities. I sometimes think that we worry ourselves overmuch about the enduring consequences of our errors. They may work a little confusion for a time. In the end, they will be modified or corrected or their teachings ignored. The future takes care of such things. In the endless process of testing and retesting, there is a constant rejection of the dross, and a constant retention of whatever is pure and sound and fine.<sup>2</sup>

Seated at Cardozo's desk in Albany, using his books, I cannot help every now and then thinking back on that extraordinary jurist. It occurs to me that he might even have penned the quoted words while seated at that desk, using those books, wondering at the time whether he was creating dross, or something pure and sound and fine. We all have those moments.

The landscape clearly was far different for New York's Chief Judge, say seventy-five years ago, the very year Cardozo erected at least three mansions of the common law: *Moch v. Rensselaer Water Co.*,<sup>3</sup> *Palsgraf v. Long Island Railroad Co.*<sup>4</sup> and *Meinhard v. Salmon*.<sup>5</sup> Page after page of the official New York Reports back then are consumed with cases concerning carriers, canals and shipping; contracts, corporations and fiduciary duties; mortgages; personal injury; and property damage. Commercial subjects in the Court's index of opinions far outstripped criminal law, which today is easily a third of our docket.<sup>6</sup> Then too, twenty-first century society and science have brought our courts so many frontier issues, like the meaning of family and the very

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1. The Storrs Lectures were published as *THE NATURE OF THE JUDICIAL PROCESS* (1921).

2. *Id.* at 178-79.

3. 159 N.E. 896, 899 (N.Y. 1928) (limiting a water company's duty to a property owner for failure to supply sufficient water pressure to the city's hydrants because "liability would be unduly and indeed indefinitely extended by this enlargement of the zone of duty").

4. 162 N.E. 99 (N.Y. 1928) (limiting a defendant's duty for personal injury to the reasonably foreseeable consequences of its negligence).

5. 164 N.E. 545, 546 (N.Y. 1928) (setting the standard for fiduciaries as "[n]ot honesty alone, but the punctilio of an honor the most sensitive").

6. See, e.g., STUART M. COHEN, ANNUAL REPORT OF THE CLERK OF THE COURT TO THE JUDGES OF THE COURT OF APPEALS OF THE STATE OF NEW YORK 7 (2003), available at <http://www.nycourts.gov/ctapps/2002AnnRep.pdf>.

definition of life.<sup>7</sup> Additionally, much of today's case law deals with the interpretation of statutes, as our law has grown increasingly codified.<sup>8</sup>

Those changes, however, are not the ones that most worry me as Chief Judge, challenging as the issues are. The changes that I confront as Chief Judge of the State of New York, my executive and administrative role, worry me more. Since 1977, the New York courts have been unified under the authority of the Chief Judge: roughly four thousand state and local judges with close to four million new cases every year,<sup>9</sup> plus a budget of more than one billion dollars to match the judiciary's breathtaking responsibilities.<sup>10</sup> That is the role that causes the most headaches, or put more positively, it is the one that allows for—indeed demands—new thinking about the effective delivery of justice today.

Like any committed executive, I would like to leave the New York courts in good shape, to improve operations, from the management of cases and selection of juries, to the enforcement of orders and sentencing of offenders. Perhaps most importantly, I would like to help restore public confidence in the courts, which has frayed in recent years. Indeed, if our justice system is to remain vital and strong, all of us need to think seriously not only about the exquisite nuances of the substantive law but also about the hard reality of how our courts—state as well as federal—are responding to the needs of contemporary society.

I am pleased to report that since 1993 many new ideas have taken root in New York. These new initiatives include “community courts” that address pervasive quality-of-life offenses that can erode the vitality of neighborhoods.<sup>11</sup>

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7. *E.g.*, *Kass v. Kass*, 696 N.E. 2d 174 (N.Y. 1998) (disposition of a divorcing couple's frozen embryos); *In re Jacob*, 660 N.E. 2d 397 (N.Y. 1995) (adoption by unmarried couples); *People v Eulo*, 472 N.E. 2d 286, 295 (N.Y. 1984) (defining termination of life in homicide case).

8. *See, e.g.*, GUIDO CALABRESI, A COMMON LAW FOR THE AGE OF STATUTES 1 (1982) (noting that the primary source of American law, previously dominated by the common law, is now statutory); Shirley S. Abrahamson & Robert L. Hughes, *Shall We Dance?: Steps for Legislators and Judges in Statutory Interpretation*, 75 MINN. L. REV. 1045, 1046 (1991) (“[R]esolution of many, if not most, cases today involves statutes.”).

9. *E.g.*, TWENTY-FOURTH ANNUAL REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS 3, 8, 36 (2002), available at <http://www.courts.state.ny.us/reports/annual/pdfs/2001annualreport.pdf> (indicating 1199 authorized state-paid judgeships and 4,014,962 new cases in 2001). New York also has 2300 Town and Village Justice Courts. *Id.* at 3. The jurisdiction of these locally financed courts includes minor civil matters, small claims proceedings, traffic and parking violations, minor criminal matters, local ordinances and the processing of arrests and criminal warrants. They may also handle preliminary proceedings in felony cases, including domestic violence and death penalty cases. N.Y. UNIFORM JUSTICE CT. ACT §§ 201-204, 2001-2005 (McKinney 1989 & Supp. 2003). The Unified Court System does not have caseload statistics for Justice Courts, but we have estimated that they have well more than two million new filings a year.

10. *See* John Caher, *Judiciary Emerges A Winner in Albany Game of Numbers: OCA Budget Showed Restraint In Time of Fiscal Crisis*, N.Y. L.J., May 16, 2003, at 1 (estimating Judiciary budget between \$1.2 billion or \$1.8 billion, depending on “how you do the math”).

11. “Quality-of-life offenses” generally refers to “low-level offenses, like prostitution, street-level drug possession, and vandalism.” DAVID ROTTMAN ET AL., A LEADERSHIP GUIDE TO STATEWIDE COURT AND COMMUNITY COLLABORATION 101 (2002), available at

They include “drug courts” that attempt to stop the cycle of drugs, crime, jail for addicted offenders. They include “domestic violence courts” that shine a spotlight on a group of cases—violence between intimates—that have historically gotten short shrift from the justice system.

What these courts have in common is an idea we call problem-solving justice. The underlying premise is that courts should do more than just process cases—really people—who we know from experience will be back before us again and again with the very same problem, like drug offenders. Adjudicating these cases is not the same thing as resolving them. In the end, the business of courts is not only getting through a day’s calendar, but also dispensing effective justice. That is what problem-solving courts are about.

In this essay, I want to tell the story of problem-solving courts in New York, starting with an explanation of how we reached this point. I also want to address two basic areas of concern about these courts. The first is: Do they work? Do they actually make a dent in the complicated social, human and legal problems they set out to address? The second is: Are they fair? Do they tip the balance in one direction or the other? Do they compromise our responsibility to protect both individual rights and public safety? As Chief Judge, I wanted these questions answered before going forward.

### I. SNAPSHOT OF NEW YORK STATE COURT DOCKETS

An understanding of why a problem-solving approach has captured our interest starts with an honest look at what happens in the trenches of our nation’s state courts today.

While we certainly have more than our share of mind-bending constitutional, statutory, and common-law questions, the bulk of our caseload is not made up of complex conspiracies and corporate collapses. State court dockets tend overwhelmingly to be the stuff of everyday life: defendants who return to court again and again on a variety of minor criminal charges, landlords and tenants with disagreements over rent and repairs, families who turn to us when their relationships sour—bringing heart-wrenching issues like domestic violence, child abuse, and juvenile delinquency. These categories alone account for roughly two million new cases a year in the New York State courts, about half our total annual filings.<sup>12</sup>

If you think about it for a moment, this docket is not at all surprising.

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[http://www.ncsconline.org/WC/Publications/Res\\_CtComm\\_CFCLeadershipGuidePub.pdf](http://www.ncsconline.org/WC/Publications/Res_CtComm_CFCLeadershipGuidePub.pdf). See, e.g., Michael D. Schrunk & Judith N. Phelan, *Problem Solving Courts: Impact at the Local Level*, JUDGES JOURNAL, Winter 2002, at 17, 17-18 (discussing low-level offenses like disorderly conduct, trespass, shoplifting and prostitution as quality-of-life crimes that “erode communal order, lead to neighborhood deterioration, and create an environment where more serious crime can thrive”).

12. See, e.g., TWENTY-FOURTH ANNUAL REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS, *supra* note 9, at 8-21.

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Courts are, after all, a mirror of society, and even in these years of declining violent crime,<sup>13</sup> we have seen an explosion in misdemeanor arrests, an erosion of community support systems, and a rise in family dysfunction.<sup>14</sup> Much of this is drug-driven, and much of it quite naturally lands in the state courts.

Despite the open floodgates and high tides, our judges have done a fine job of delivering justice and providing due process. In the face of staggering caseloads, the wheels of justice continue to turn. That is good, and we are proud of what we accomplish every day in the New York courts. But another perspective looks at case outcomes. Here, the statistics tell us that we are recycling many of the same people again and again, as their lives spiral downward. Like the child who grows up in the courts, graduating from neglect, to delinquency, to serious crime—from Family Court to Criminal Court. Like the abusive spouse who appears on an assault charge one day and a homicide soon after. Like the drug addict who after each court encounter returns to the same street corner and the same criminal conduct—for example, prostitution and shoplifting—to support a habit.

Conventional case processing may dispose of the legal issues in these cases, but it does little to address the underlying problems that return these people to court again and again. It does little to promote victim or community safety. In too many cases, our courts miss an opportunity to aid victims and change the behavior of offenders. So we started to ask ourselves whether the courts' interventions in these cases could be more constructive—whether it was possible to use our time and resources to help break the cycle, to stop the downward spiral.

After several closely watched experiments, we have concluded that a problem-solving approach holds promise for the future. While problem-solving courts can, and do, vary greatly from place to place, the good ones all share some key elements. First is careful planning involving the usual courtroom participants, like prosecutors and defenders, as well as a broad spectrum of

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13. See BRIAN J. OSTROM ET AL., NATIONAL CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS, 2002: A NATIONAL PERSPECTIVE FROM THE COURT STATISTICS PROJECT 82 (2003) (“[C]rime rates for some of the most serious criminal offenses are at the lowest levels in a generation.”), at [http://www.ncsconline.org/D\\_Research/csp/2002\\_Files/2002\\_Main\\_Page.html](http://www.ncsconline.org/D_Research/csp/2002_Files/2002_Main_Page.html); NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, NEW YORK CRIME TRENDS: INDEX CRIME IN NEW YORK STATE: 1994-2001 (graphing declines in murder, forcible rape, robbery and aggravated assault), at <http://criminaljustice.state.ny.us/crimnet/ojsa/crmtrnd01/ctvc9401.htm>.

14. ROTTMAN ET AL., *supra* note 11, at 3-4. See also SOL WACHTLER, THE STATE OF THE JUDICIARY 3 (1989) (citing failures of society seen in New York Courts, including “endless streams of crack addicts; drug-addicted parents; women battered and bruised; young boys in handcuffs; exhausted police officers; dispirited social workers; and grim-faced judges and court personnel”). An Administrator of the New York City Family Court wrote: “In many of the case brought to the Family Court today, a lack of viable community institutions and resources created the extreme situation which requires judicial intervention. Unfortunately, this same lack of community resources often limits the court’s ability to devise an effective solution.” Kathryn McDonald, *Changes in Children’s Issues Through the Eyes of Family Court*, N.Y. ST. B.J., May-June 1992, at 42.

social service agencies and community groups we refer to as “stakeholders.” Second, and equally important, is having an assigned judge to ensure both continuity in the courtroom and expertise in the issue at hand, be it addiction, domestic violence or neighborhood crime. Third, in one way or another, problem-solving courts all employ close judicial monitoring—a luxury that most of our teeming urban courts simply do not have. Requiring regular court appearances by the parties involved in a case reinforces a message of accountability to defendants and to “the system.” Just as important, regular appearances provide comprehensive, up-to-date information so the judge can make better decisions in individual cases.

Before elaborating on my themes of effectiveness and fairness, I want to give you a closer look at three specific examples of the problem-solving approach in action—community court, drug court, and domestic violence court.

Along the way, I will try to separate misconception from reality. Recently, I have seen articles that suggest that community courts abdicate sentencing authority to neighborhood vigilantes.<sup>15</sup> This is not true—at least not in the New York State experience. I have had people ask whether drug court judges have become social workers in robes. Again, this is not true. Some even seem to think that these new courts have dispensed with defense attorneys altogether.<sup>16</sup> Again, this is simply not true.

Problem-solving courts are courts. They strive to ensure due process, to engage in neutral fact-finding, and to dispense fair and impartial justice. What is different is that these courts have developed a new architecture—including new technology, new staffing, and new linkages—to improve the effectiveness of court sanctions, particularly intermediate sanctions like drug treatment and community restitution.<sup>17</sup>

## II. THE FIRST STEP: COMMUNITY COURTS

In New York City in the early 1960s, we abandoned a system of neighborhood-based courts and centralized our criminal courts, establishing one in each of the five boroughs. This was done to promote efficiency and

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15. See, e.g., Morris B. Hoffman, *Therapeutic Jurisprudence, Neo-Rehabilitationism, and Judicial Collectivism: The Least Dangerous Branch Becomes Most Dangerous*, 29 FORDHAM URB. L.J. 2063, 2091-92 & n.120 (2002).

16. *Id.* at 2092-93.

17. People often ask how the court system can create these courts on its own. These are, technically, not new courts, but actually court parts set up and staffed pursuant to the court system's administrative authority. Except for community courts, which by definition in New York are located in facilities within the community being served, problem-solving courts are typically located alongside traditional court parts, and they exercise existing statutory authority. Where additional statutory authority will facilitate drug court operations, the court system has proposed, and the Legislature has enacted, new provisions—such as authorization for transfer of cases from the court where initiated to drug courts. See N.Y. CRIM. PROC. LAW § 170.15 (McKinney Supp. 2003) (allowing removal to drug court of an action based on an information or a misdemeanor complaint).

achieve economies of scale.

Twenty years later, crack cocaine hit the streets. Drug arrests went through the roof.<sup>18</sup> Dockets mushroomed.<sup>19</sup> We did not know it at the time, but that was just the start of the flood. Then came the 1990s. On the theory that taking minor offenses more seriously would help drive violent crime down—what came to be known as a “broken windows” theory<sup>20</sup>—police increased their enforcement of quality-of-life crimes, like low-level drug possession, fare-beating, and illegal vending.

The courts were not given much warning—or extra resources—to deal with this explosion of cases. With limited time and manpower, our energies had to be directed to serious offenses, often at the expense of these more minor cases. The cases were duly “processed”—legally disposed of—but without any real attention to the cumulative real-world impact of all the processing. As a result, many defendants ended up leaving court with sentences of time served, conditional discharge, or adjournments in contemplation of dismissal.<sup>21</sup> Fewer than one percent of the cases actually went to trial.<sup>22</sup> Very few defendants received jail time.<sup>23</sup> Those given alternative sentences—like community service or a drug treatment program—all too often did not serve out their sentences because the court simply lacked the resources to monitor compliance rigorously. The process became the punishment, as others before me have observed.<sup>24</sup>

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18. See N.Y. STATE COMM’N ON DRUGS & THE COURTS, CONFRONTING THE CYCLE OF ADDICTION AND RECIDIVISM: A REPORT TO CHIEF JUDGE JUDITH S. KAYE 10, 129 (2000), available at <http://nycourts.gov/reports/addictionrecidivism.shtml>; WACHTLER, *supra* note 14, at 3-5.

19. N.Y. STATE COMM’N ON DRUGS & THE COURTS, *supra* note 18, at 1 (“In the last two decades, New York State’s criminal justice system has been confronted with a staggering number of drug cases, the volume of which has risen by over four hundred percent in twenty years.”); see also *id.* at 10 (estimating the courts’ increased drug caseload since 1980 at 430%). Nationwide, arrest rates for drug abuse violations increased 168% between 1980 and 1998. NAT’L CTR. FOR STATE COURTS, CASELOAD HIGHLIGHTS: EXAMINING THE WORK OF STATE COURTS 2 (2000), available at [http://www.ncsconline.org/D\\_Research/csp/Highlights/LLCrimeTrendsV6N2pdf.pdf](http://www.ncsconline.org/D_Research/csp/Highlights/LLCrimeTrendsV6N2pdf.pdf) (noting that arrests went from 580,900 in 1989 to 1,559,100 in 1998). The crack epidemic also had a dramatic effect on families and children, and impacted our Family Court dockets. See Lenore Gittis & Carol Sherman, *Crack/Cocaine, Children and New York City’s Family Court*, N.Y. ST. B.J., May/June, 1992, at 22 (noting that the docket of Family Court neglect/abuse cases reflected the epidemic on the streets).

20. See James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982, at 29.

21. See, e.g., Linda M. Ricci, *Hawking Neighborhood Justice: Unlicensed Vending in the Midtown Community Court*, 12 YALE L. & POL’Y REV. 231, 232-33 (1994) (stating that “turnstile justice . . . abounds in New York City Criminal Court”); N.Y. STATE COMM’N ON DRUGS & THE COURTS, *supra* note 18, at 86 (finding defendants often “processed and released without any significant supervision or sanction”).

22. N.Y. STATE COMM’N ON DRUGS & THE COURTS, *supra* note 18, at 86.

23. *Id.*

24. E.g., JOHN FEINBLATT ET AL., U.S. DEP’T OF JUSTICE, NEIGHBORHOOD JUSTICE: LESSONS FROM THE MIDTOWN COMMUNITY COURT 2 n.1, 10 (1998), available at [http://www.courtinnovation.org/pdf/neighbor\\_just.pdf](http://www.courtinnovation.org/pdf/neighbor_just.pdf) (citing MALCOLM M. FEELEY, THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT (1979)).

The other branches of government—to say nothing of the public—clearly expected better. They knew that quality-of-life cases were not the stuff of CourtTV or law reviews, but they also knew that these crimes profoundly affect how secure people feel at home, how safe tourists feel on the street, and how confident employers feel about opening new businesses.

The court system began planning a community court in midtown Manhattan, a neighborhood renowned for many things, including pervasive quality-of-life offenses.<sup>25</sup> This became our first attempt at problem-solving justice. In addition to the Bar, we collaborated with the City of New York, the surrounding business and residential neighborhoods, corporations and foundations, and two dozen social service agencies and civic organizations. After two years of study and planning, in October 1993 the Midtown Community Court opened its doors.<sup>26</sup>

Located a few blocks from Times Square, the goal of the Midtown Court is to ensure that justice in misdemeanor cases is prompt, restorative, and rehabilitative, and that the community views this local tribunal as a fair and effective dispenser of justice. Strictly speaking, this is a branch of the New York City Criminal Court. Indeed, it is not a new courthouse at all, but a refurbished version of one of the local courts before consolidation. The words “XI Judicial Dist. Court” are prominently etched into the façade of the building.

Some of the community court’s procedures are naturally quite similar to those in the centralized courts. Before seeing the judge, defendants receive a detailed pretrial assessment—just as they do in other criminal courts—although with additional questions about housing, employment, financial status, health, and substance abuse.<sup>27</sup> What is completely new in Midtown is a state-of-the-art computer application, for use by the judge in making individual decisions about defendants.<sup>28</sup> Also new in the courtroom is a Resource Coordinator, a court employee who serves as a link between the judge and the interested social

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25. The origin and development of the concept of a community court in Midtown Manhattan is described in DAVID C. ANDERSON, U.S. DEP’T OF JUSTICE, IN NEW YORK CITY, A “COMMUNITY COURT” AND A NEW LEGAL CULTURE 3-4 (1996), *available at* <http://www.ncjrs.org/pdffiles/commcrtr.pdf>; ROTTMAN ET AL., *supra* note 11, at 30-33, 101-03; and Ricci, *supra* note 21, at 250-63.

26. For a brief description of the initial project, see MICHELE SVIRIDOFF ET AL., U.S. DEP’T OF JUSTICE, DISPENSING JUSTICE LOCALLY: THE IMPLEMENTATION AND EFFECTS OF THE MIDTOWN COMMUNITY COURT 1 (1997) [hereinafter DISPENSING JUSTICE LOCALLY], *available at* [http://www.courtinnovation.org/pdf/disp\\_just\\_loc.pdf](http://www.courtinnovation.org/pdf/disp_just_loc.pdf).

27. ERIC LEE & JIMENA MARTINEZ, U.S. DEP’T OF JUSTICE, HOW IT WORKS: A SUMMARY OF CASE FLOW AND INTERVENTIONS AT THE MIDTOWN COMMUNITY COURT 1-2 (1998), *available at* [http://www.courtinnovation.org/pdf/how\\_works.pdf](http://www.courtinnovation.org/pdf/how_works.pdf).

28. The computer application allows the judge, while on the bench, immediately to access all relevant information about the defendant, such as pretrial assessment, the district attorney’s complaint, the defendant’s criminal record, prior appearances at the Midtown Community Court, and compliance with past sentences. *See* LEE & MARTINEZ, *supra* note 27, at 1-3. Sample screen images can be found in ANDERSON, *supra* note 25, at 5-6.



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service agencies.<sup>29</sup>

The Midtown Community Court is one of the busiest arraignment parts in the state.<sup>30</sup> As is true in the centralized criminal courts, most cases at the Midtown Community Court are disposed of at the first appearance.<sup>31</sup> Wherever appropriate, the judge in imposing a sentence seeks to combine punishment and help, sentencing offenders to perform community service and receive social services like drug treatment and job training. In the process, the Midtown Court has significantly reduced the number of people who walk out of court with no sanction whatsoever. It has also significantly reduced the use of short-term jail sentences as a response to low-level crime.<sup>32</sup>

Community service takes place in the neighborhood where the crime was committed. The punishment, in effect, restores the community that has suffered injury. Most of the projects are designed to be visible, whether it is removing graffiti, cleaning subway stations, or planting trees. This sends a message not only to defendants, who learn that even minor offenses do harm that must be repaired, but also to the community, which sees its justice system at work. Justice is neither remote nor abstract.

In addition to emphasizing alternative sanctions, the Midtown Court has tested a variety of new methods to engage the local community in the Court's goals, including advisory boards, neighborhood newsletters, community mediation programs, and victim-offender impact panels.<sup>33</sup>

The Midtown Court has received several recognitions for these efforts<sup>34</sup> and

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29. LEE & MARTINEZ, *supra* note 27, at 3.

30. Anderson reports:

[T]he Midtown Community Court arraigned 11,959 cases from the time it first opened in October 1993 through the end of 1994. Most were commonplace misdemeanors. Theft-of-service (turnstile-jumping) cases accounted for 38 percent of the total; unlicensed vending, 17 percent; petty larceny (shoplifting in the area's big department stores), 16 percent; and prostitution, 10 percent. A mix of assaults, minor drug possession cases, and other offenses made up the remaining 19 percent.

ANDERSON, *supra* note 25, at 3.

31. For an outline of procedures at the Midtown Community Court, see LEE & MARTINEZ, *supra* note 27.

32. MICHELE SVIRIDOFF ET AL., EXECUTIVE SUMMARY, DISPENSING JUSTICE LOCALLY: THE IMPACT, COSTS AND BENEFITS OF THE MIDTOWN COMMUNITY COURT 3 (2000) [hereinafter EXECUTIVE SUMMARY], available at [http://www.ncsconline.org/WC/Publications/Res\\_CtComm\\_MidtownExecSumPub.pdf](http://www.ncsconline.org/WC/Publications/Res_CtComm_MidtownExecSumPub.pdf); DISPENSING JUSTICE LOCALLY, *supra* note 26, at 6.

33. See DISPENSING JUSTICE LOCALLY, *supra* note 26, at 2-4 (discussing advisory boards, newsletters, and mediation); FEINBLATT ET AL., *supra* note 24, at 11 (discussing the operation of advisory boards and related issues); ROBIN CAMPBELL, U.S. DEP'T OF JUSTICE, "THERE ARE NO VICTIMLESS CRIMES": COMMUNITY IMPACT PANELS AT THE MIDTOWN COMMUNITY COURT (2000) (detailing the origins and operation of panels in Midtown), available at [http://www.courtinnovation.org/pdf/no\\_vic\\_crime.pdf](http://www.courtinnovation.org/pdf/no_vic_crime.pdf). For a brief report on a discussion between offenders and citizens at a community impact panel, see *Offenders Face Community Residents at NYC's Midtown Community Court*, N.Y. STATE JURY POOL NEWS, Winter 2002, at 4, available at <http://www.nyjuror.gov/general-information/jury-pool-news.php>.

34. The court's awards are listed at the Center for Court Innovation Web site, at

was a key reason why the Center for Court Innovation—a full-time research and development arm of the New York courts<sup>35</sup>—received an Innovations in American Government Award from the Ford Foundation and the John F. Kennedy School of Government in 1998.<sup>36</sup> Nice as they are, the public accolades are less important than the recognition we have received from other state court systems.<sup>37</sup> Building on the Midtown model, more than thirty community courts are operating or in the planning stage across the country.<sup>38</sup> We now have other community courts in operation in New York State, with several more being planned.<sup>39</sup> In the spring of 2003, Great Britain's Home Secretary and Lord Chancellor announced that they had engaged the Center for Court Innovation to help develop community justice centers in England and Wales.<sup>40</sup>

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[http://www.courtinnovation.org/center\\_3honors.html](http://www.courtinnovation.org/center_3honors.html) (last visited Aug. 12, 2003).

35. For a description of the Center, see <http://www.courtinnovation.org/center.html> (last visited Aug. 12, 2003), and ROTTMAN ET AL., *supra* note 11, at 40, 44, 48, 99-101.

36. JOHN F. KENNEDY SCHOOL OF GOVERNMENT, THE TAUBMAN CENTER REPORT 28 (1999) (listing the 1998 award winners), *available at* <http://www.ksg.harvard.edu/taubmancenter/reports/tcreport99.pdf>. The reasons for the center's selection can be found through the "Awards Recipients" link at the "Innovations Award" page at <http://innovations.harvard.edu>.

37. See BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, COMMUNITY COURTS: AN EVOLVING MODEL iii (Community Justice Series No. 2, 2000), <http://bja.ncjrs.org/publications/#C> ("The community court movement has come a long way since the first opened in midtown Manhattan in 1993. The concepts pioneered by that court have taken root across the country.").

38. NAT'L CTR. FOR STATE COURTS, COURT AND COMMUNITY INITIATIVES: EXECUTIVE SUMMARY, *at* <http://www.ncsconline.org> (last visited Oct. 13, 2003) (listing twenty operating courts in Atlanta, Ga.; Austin, Tex.; Denver, Colo.; Midtown Manhattan, Red Hook, Harlem, Hempstead, and Syracuse, N.Y.; Hartford and Waterbury, Conn.; Indianapolis, Ind.; Los Angeles (Van Nuys) and San Diego, Cal.; Memphis, Tenn.; Minneapolis, Minn.; Philadelphia, Pa.; Portland, Or.; South Tucson, Ariz.; West Palm Beach, Fla.; and Washington, D.C.); Quintin Johnstone, *The Hartford Community Court: An Experiment That Has Succeeded*, 34 CONN. L. REV. 123, 124 n.3 (2001) (listing other locations planning community courts); BUREAU OF JUSTICE ASSISTANCE, *supra* note 37, at iii (stating that concepts pioneered by the Midtown Community Court have "taken root" across the country).

39. Some commentators have expressed concern that "[c]ommunity courts are rarely focused on the interests of low-income communities." Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U.J. L. & POL'Y 63, 89 (2002); see also DAVID ANDERSON, *supra* note 25, at 10 (stating that the Midtown Community Court raised "concerns about elitism"). However, in 2000, the first multi-jurisdictional community court opened in Red Hook, a poor neighborhood in Brooklyn, to hear criminal, delinquency, housing, and family offense matters. See GREG BERMAN, RED HOOK DIARY: PLANNING A COMMUNITY COURT (1998) (describing the early planning stages for the Red Hook community court), *available at* [http://www.courtinnovation.org/pdf/redhook\\_diary.pdf](http://www.courtinnovation.org/pdf/redhook_diary.pdf); Alex Calabrese, "Team Red Hook" Addresses Wide Range of Community Needs, 42 N.Y. ST. B.J. 14 (June 2000). In 2001, the Harlem Community Justice Center in Manhattan officially opened as a multi-jurisdictional court, focusing on Family Court and housing matters. See Rolando Acosta, *The Birth of a Problem-Solving Court*, 29 FORDHAM URB. L.J. 1758, 1759-62 (2002). (Acosta is the presiding judge of the Harlem Community Justice Center.) Planning is underway for community courts in the city of Buffalo, as well as in Queens and Staten Island within New York City. In 1999, a community court opened in suburban Long Island to address low-level crime in the Village of Hempstead and four neighboring communities. See BUREAU OF JUSTICE ASSISTANCE, *supra* note 37, at 13-14 (describing the Hempstead court).

40. Press Release, Home Office, Support Package for the Development of Community Centres Agreed (Apr. 2, 2003), *available at* <http://www.homeoffice.gov.uk/pressreleases.asp> (last visited Aug. 12, 2003). The Home Secretary later announced that the first "American-style community justice centre"

### III. DRUG COURTS

Statistics about the relationship between drugs and crime are grim. Approximately seventy-five percent of arrests in New York City, for example, are linked to drug or alcohol abuse.<sup>41</sup> Clearly, the scourge of substance abuse drives much of our criminal caseloads. All too many people commit crimes to feed an addiction. Given this reality, the idea of testing a problem-solving approach to addiction—as had been done in Miami since 1989<sup>42</sup>—made sense.

New York's first drug court opened in the upstate community of Rochester in 1995.<sup>43</sup> As with most things in life, it is thoughtful, dedicated people who get new ideas going. In this case, it was a Rochester judge, frustrated by the daily flow of drug addicts before him, who was determined that the court system do better. The immediate public reaction—I well remember—was cool to downright hostile: “soft on crime” was the criticism.<sup>44</sup> Today, eight years later, there are ninety-six drug courts spread across New York State and about a thousand nationwide.<sup>45</sup>

Like the community courts, each of our drug courts was preceded by rigorous planning with a wide spectrum of stakeholders. In most of our drug courts, defendants plead guilty at the outset with the understanding that, if they complete court-mandated treatment, the court will vacate the plea and dismiss the charges or reduce the sentence. In a few, prosecution is deferred pending the outcome of treatment.<sup>46</sup>

Several features are common among New York's drug courts. One is that the judge, prosecution, and defense must all agree that a defendant meets the

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would be established in Liverpool to “act as [a] focal point for the community's fight against the selfish minority whose loutish and criminal behaviour is impairing their quality of life. It will combine punishment and help by providing services such as drug treatment, family and parenting support and education and training.” Press Release, Home Office, Liverpool to Pioneer One-Stop Crime Busting Centre (Sept. 11, 2003), available at <http://www.homeoffice.gov.uk/pressreleases/asp> (last visited Oct. 3, 2003).

41. N.Y. STATE COMM'N ON DRUGS & THE COURTS, *supra* note 18, at 15.

42. *See id.* at 17.

43. *Id.* at 41.

44. Gary Craig, *Verdict Still Out on City Experiment*, DEMOCRAT & CHRONICLE (Rochester), Oct. 8, 1995, at 1A (citing County Executive describing drug court as having a “soft-on-crime approach”); see Janet H. Cho, *Judge Defends Drug Court: Aim Is to Stop Addiction, Not Legalize Drugs*, He Says, DEMOCRAT & CHRONICLE (Rochester), Jan. 22, 1995, at 1 (charging that drug court will mean legalization of drugs); Trif Alatzas, *Conservatives Rip Creation of “Drug Court,”* TIMES-UNION (Rochester), Jan. 19, 1995, at 1A (claiming that drug courts are “unfair, illogical and anti-democratic”).

45. The drug courts in operation are listed on the Unified Court System's Web site, at <http://www.nycourts.gov/ip/drugcourts/index.shtml> (last visited Aug. 22, 2003). At this writing, eighty-nine additional drug courts were in the planning stages. *Id.* National data reported in September 2003 indicates that 1,078 drug courts were in operation and 418 in the planning process, and that more than 300,000 adults and 12,500 juveniles had been enrolled. National Drug Court Institute, Drug Courts Today, at <http://www.ndci.org/courtfacts.htm> (last visited Aug. 12, 2003).

46. *See* N.Y. STATE COMM'N ON DRUGS & THE COURTS, *supra* note 18, at 35-36; MICHAEL REMPEL ET AL., THE NEW YORK STATE ADULT DRUG COURT EVALUATION: POLICIES, PARTICIPANTS AND IMPACTS 13-27 (2003) (reviewing the policies of eleven drug courts under study).

eligibility criteria—typically a nonviolent charge and history of addiction. Another is that participants must agree to a formal plan stipulating the length and type of treatment, and the consequences for failure to comply with court orders. In addition, to help insure successful transition from addiction to sobriety—and from crime to law-abiding behavior—drug courts link defendants to services like job training, health care, education, and housing.

Once defendants are in treatment, they are closely monitored, reporting to the court at regular intervals and submitting to frequent drug testing. Like community courts, drug courts have Resource Coordinators charged with the responsibility of assuring that the judge has comprehensive, up-to-date information at each court appearance.

Drug courts tend to look a lot like conventional courts pre-adjudication. But after a plea has been entered, judge, prosecutor, and defense counsel, together with treatment providers, social service agencies, and case managers, all focus on the defendant's future, rather than the merits of the original charges.<sup>47</sup> So when a drug treatment court defendant tests positive for drugs, a prosecutor may acknowledge that relapse is part of the recovery process and urge that a lesser sanction than jail is appropriate. A defense attorney may agree with the prosecutor that a move from out-patient to in-patient treatment is appropriate. The judge may speak directly to the defendant and not only impose sanctions but also reward success in treatment with applause or a graduation ceremony in the courtroom.<sup>48</sup>

The program is voluntary, and some defendants reject the opportunity to participate, preferring jail time to the rigors of court-monitored treatment.<sup>49</sup>

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47. See generally OFFICE OF JUSTICE PROGRAMS, DRUG COURT PROGRAM OFFICE, *DEFINING DRUG COURTS: THE KEY COMPONENTS* (1997) (describing benchmarks developed by court practitioners and experts to describe the best practices, designs and operations of drug courts), available at <http://www.nadcp.org/docs/dkeypdf.pdf>.

48. See N.Y. STATE COMM'N ON DRUGS & THE COURTS, *supra* note 18, at 33-40 (reviewing the workings of a drug treatment court); Jo Ann Ferdinand, *The Judicial Perspective*, 29 FORDHAM URB. L.J. 2011-14 (2002) (discussing the effect on proceedings of the judge, prosecution and defense sharing the goal of successful treatment); see also JUDICIAL DIV., AMERICAN BAR ASS'N, *Standard 2.77: Procedures in Drug Treatment Courts*, in STANDARDS RELATING TO TRIAL COURTS (Aug. 7, 2001) (noting that drug treatment courts "have become one of the fastest growing innovations in the American Judicial system," and establishing procedures to ensure that "treatment is ordered and implemented on the basis of adequate information, in accordance with applicable law, and with due regard for the rights of the individual and of the public"), available at <http://www.abanet.org/jd/drugctstandfinal.pdf>.

49. Currently, in the New York court system, data on defendants who are offered, but decline, the opportunity to enter a drug court program is not available for each and every drug court. However, available data shows that fifteen percent of eligible defendants refused to enter drug court in Suffolk County, REMPEL ET AL., *supra* note 46, at 199; thirteen percent in Queens, *id.* at 180; eleven percent in Brooklyn, *id.* at 159; and eight percent in the Bronx, *id.* at 140. See also Jeff Storey, *Rockland Drug Court Leads the Way*, N.Y. L.J., Dec. 26, 2000 (noting that many defendants considered drug court too difficult, as evidenced by an estimate by the Rockland District Attorney's office that forty-five of ninety-three eligible defendants enrolled in drug court, and one defense attorney's estimate that only one half of her clients volunteered for drug court participation). One researcher has noted several studies showing that "25 to 35 percent of offenders offered some the [sic] type of correctional treatment program refused the program with a preference for jail time" and "prefer incarceration to participation in

Those who do elect to participate can have a life-changing experience, moving from the streets to a home, a job, and a family.<sup>50</sup>

I think it worth noting at this point that drug courts are not the only effort in the state criminal justice system to provide treatment alternatives for addicted defendants. Several prosecutors in our state and others also offer diversion programs for non-violent drug offenders facing mandatory prison sentences. I have seen debates about who is the preferable gatekeeper and monitor for such programs—courts or prosecutors—and which programs are fairer and more successful, with defenders opting for the courts.<sup>51</sup> At least in New York, both programs have operated side-by-side with seeming success.<sup>52</sup>

Indeed, the success of criminal drug treatment courts has encouraged us to adapt the model to serve other litigants. Since the opening of the first drug court in 1995, we have created mental health courts to link mentally ill offenders to community-based treatment instead of incarceration. We have created juvenile drug courts to give young people arrested for drug-related crimes the structure and support they need to get on the right track. And we have created family treatment courts to help substance-abusing parents charged with neglect in Family Court.

I next turn briefly to the subject of family treatment courts. The goal of family treatment court is to assure that children do not languish in foster-care limbo for what, to a child, can seem an eternity. By providing parents with a meaningful, immediate opportunity to get clean and sober, the court seeks to

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a treatment program because the jail time is 'easier time' than being held accountable for their behavior." FAYE S. TAXMAN, REDUCING RECIDIVISM THROUGH A SEAMLESS SYSTEM OF CARE: COMPONENTS OF EFFECTIVE TREATMENT, SUPERVISION, AND TRANSITION SERVICES IN THE COMMUNITY 7 (1998), available at <http://www.ncjrs.org/ondcppubs/treat/consensus/taxman.pdf>.

50. Perhaps the best evidence of the effect on those who complete drug court are their own words, which have been quoted in many publications. See, e.g. N.Y. STATE COMM'N ON DRUGS & THE COURTS, *supra* note 18, at 143-48; Larry Fisher-Hertz, *Drug Court Enjoys First Success: Man Stays Sober for 1 Year*, POUGHKEEPSIE J., July 23, 2003, at B1; John Caher, *Albany Family Treatment Program Holds First Graduation Ceremony*, N.Y. L.J., June 6, 2003, at 1; Christiana Sciaudone, *Choosing Treatment Over Time*, NEWSDAY (N.Y.), Feb. 23, 2003, p. G6; Steve Lieberman, *Drug Court Turns Lives Around*, THE JOURNAL NEWS, Dec. 7, 2001, available at <http://www.thejournalnews.com/newsroom/120701/07drugcourt.html>; Elizabeth Stull, *Brooklyn Treatment Court Dismisses 30 Cases*, BROOK. DAILY BULLETIN, Dec. 6, 2001, at 9; Barbara Ross, *Cleaned-Up Moms Get Final Applause*, DAILY NEWS (N.Y.), June 10, 1999, Suburban Section, at 3.

51. One such debate was an exchange of letters to the editor of New York's daily legal newspaper. Compare Daniel L. Greenberg, Letter to the Editor, *Prosecutors Are the Wrong Gatekeepers*, N.Y. L.J., Mar. 17, 2003, at 2 (president and attorney-in-chief of the Legal Aid Society, arguing that "greater promise of fairness and success lies with returning discretion to judges" than in leaving the roles of gatekeeper and monitor to district attorneys), with Charles J. Hynes, Letter to the Editor, *Prosecutors Should Run Drug Diversion Program*, N.Y. L.J., Mar. 18, 2003, at 2 (District Attorney for Kings County, arguing that the success of prosecutors' Drug Treatment Alternative to Prison (DTAP) programs show that "prosecutors are the right gatekeepers").

52. See NAT'L CTR. ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIV., CROSSING THE BRIDGE: AN EVALUATION OF THE DRUG TREATMENT ALTERNATIVE-TO-PRISON (DTAP) PROGRAM 12-13 (2003), available at [http://www.casacolumbia.org/usr\\_doc/Crossing\\_the\\_bridge\\_March2003.pdf](http://www.casacolumbia.org/usr_doc/Crossing_the_bridge_March2003.pdf); Anne Swern, *The Birth of a Problem-Solving Court*, 29 FORDHAM URB. L.J. 1755, 1763-66 (2002) (commenting on the co-existence of prosecutor's program with drug court program).

expedite the permanency planning process, reuniting children with their biological parents or, where that is not possible, placing them in a permanent adoptive home.<sup>53</sup>

To participate in a family treatment court, parents must admit to neglect due to drug or alcohol abuse—parents charged with sexual or physical abuse are ineligible. The family's social service needs—like housing, job training, parenting skills—are assessed at the beginning of the case, and compliance with treatment is closely monitored. Here too, the problem-solving judge, instead of being a remote adjudicator, asks what needs to be done to get the parent off drugs, and takes a leadership role in seeing that everyone works together—from Medicaid eligibility specialists, to private foster care agencies, to drug treatment providers, to child welfare agency caseworkers.

Respondents progressing well through the early phases of treatment may be given enhanced visitation rights and greater responsibility for the child while in foster care. Parents who are drug-free for a time may have the child provisionally released to their care while court monitoring continues. To graduate from a family treatment court program and receive full custody, participants usually must be drug-free for at least a year and working or attending school.

As a veteran of drug court graduations—whether adult or family treatment court—I can tell you that these are very moving events. Typically, a lifelong drug addict who never before could complete treatment tearfully thanks everyone, including the judge, for giving her a chance to start her life again. Frequently I hear, “I wasn’t just arrested, I was saved.” Grown men report that for the first time in their lives they are able to have an apartment, a credit card. I heard a graduate in New York City say: “My head was bowed when I was brought before you in handcuffs, Judge, but today my head is high. I’m looking you right in the eye.”

A Rochester graduate said:

I don’t know if I’d be around today if not for the court, which motivated me to stay clean and take responsibility for my life. I had a healthy baby, obtained joint custody of the middle son, resumed my relationship with my eldest child and became reacquainted with my mom.<sup>54</sup>

At family treatment court graduations, I have heard parents express gratitude for the opportunity to regain their dignity and self-esteem, re-establish

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53. See generally Robert Victor Wolf, *Fixing Families: The Story of the Manhattan Family Treatment Court*, 2 J. CTR. FOR FAM., CHILD. & CTS 5 (2000), available at <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/jourvol2.pdf>. The children of substance-abusing parents have been described as “the most vulnerable and endangered individuals in America.” NAT’L CTR. ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIV., NO SAFE HAVEN: CHILDREN OF SUBSTANCE-ABUSING PARENTS, at i (1999), available at [http://www.casacolumbia.org/usr\\_doc/7167.pdf](http://www.casacolumbia.org/usr_doc/7167.pdf).

54. *Court Adopts New Strategy to Fight Addiction and Crime*, N.Y. STATE JURY POOL NEWS, Winter 1999, at 1, 2, available at <http://www.nyjuror.gov/general-information/jury-pool-news.php>.

connections with family members, and raise their own children. I have seen a child stand up in a crowded audience and proclaim, "Mom, I'm proud of you."

For me, the only thing better than hearing statements like these is hearing from the judges themselves—hardly revolutionaries—many of whom for years have presided over a docket of recycling addicted offenders. Their message: "This is what I became a judge to do."<sup>55</sup> One drug court judge initially resisted accepting that assignment, but after two years he declined the opportunity for reassignment to another court part.<sup>56</sup> Quite frankly, for me as Chief Judge, these firsthand evaluations from people I respect are compelling evidence from the front lines of the value and effectiveness of these courts.

The success stories from our drug courts are only the anecdotal evidence. In 2000, I appointed a blue-ribbon Commission on Drugs and the Courts headed by former United States Attorney for the Southern District of New York Robert Fiske, that spent the better part of a year studying drug courts. At the conclusion of its study, the Commission issued an exhaustive report recommending that judicially monitored treatment be extended throughout New York State.<sup>57</sup> Acting on that recommendation, we expect by the close of 2003 to have more than 6,000 active participants in our drug courts.<sup>58</sup>

### III. DOMESTIC VIOLENCE COURTS

My third example of problem-solving in New York concerns domestic violence, another modern-day scourge. Just to give you some sense of the dimension of this problem, between 1984 and 1995, domestic violence case

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55. I heard these precise words spoken at a graduation ceremony by a New York City Family Court Judge, but many judges have expressed the same sentiment to me. By coincidence, only months ago, while I was on vacation in upstate New York, the local paper carried an article about a retiring judge who disclosed that he was initially pessimistic about family treatment court, but was subsequently sold on the program after seeing the progress of its participants. In his words: "That was one of the highlights of my life experience, that treatment court." Don Lehman, *Judge Reflects on Decades of Service: Austin Cites Family Court, Drug Court, as Career Highlights*, POST-STAR (Glens Falls, N.Y.), Aug. 18, 2003, at B5; see also Emer Scott, *Judge Jo, the Queen of Care*, MANCHESTER EVENING NEWS, Sept. 25, 2000, at 19 ("The drug court is the most satisfying thing I have ever done as a judge."); see generally *Judicial Roundtable: Reflections of Problem-Court Justices*, 72 N.Y. ST. B.J. 9, 12-14 (2000) (containing comments of several judges who have presided at problem-solving courts).

56. This was State Supreme Court Justice Joseph D. Valentino of Rochester. In addition, Deputy Chief Administrative Judge Joseph J. Traficanti, who has headed our Office of Drug Treatment Programs since the fall of 2000, describes himself as initially "one of the doubters." Jim O'Hara, *Judge Praises Court, Grads*, POST-STANDARD (Syracuse, N.Y.), Feb. 1, 2001, at B3; see Terry Corcoran, *7 Graduate from Putnam Drug Court*, JOURNAL NEWS (N.Y.), June 26, 2003, available at <http://www.thejournalnews.com/newsroom/062603/b03p26drugcourt.html> (containing a former drug court judge's explanation that he originally worked against the idea of drug courts but became a drug court judge himself after attending Rockland County's first graduation).

57. N.Y. STATE COMM'N ON DRUGS & THE COURTS, *supra* note 41.

58. In January, the Office of Drug Treatment Programs estimated that there would be 5541 by September 2003. JOSEPH J. TRAFICANTI, OFFICE OF COURT DRUG TREATMENT PROGRAMS, THE SECOND YEAR: REPORT TO CHIEF JUDGE JUDITH S. KAYE 13 (2003), available at [http://www.nycourts.gov/reports/drugtreatment/drugCourts\\_report02.pdf](http://www.nycourts.gov/reports/drugtreatment/drugCourts_report02.pdf). Internal estimates bring that number to more than 6000 active participants by the end of 2003.

filings increased ninety-nine percent nationally.<sup>59</sup> In addition, in October 1995, New York began a Statewide Domestic Violence Registry, an automated data bank that allows judges and law enforcement to know immediately a person's prior domestic violence orders of protection and warrants.<sup>60</sup> Our Registry now exceeds one million entries. That is more than one million orders of protection reported to the Registry by the New York State courts in the past seven years.

I will start with my own education on the subject of domestic violence. Shortly before I became Chief Judge ten years ago, tragedy struck in an affluent community in Westchester County, north of New York City. Sadly, it often takes a tragedy to galvanize attention. A woman was bludgeoned to death by her husband of four years, who then jumped to his death from a nearby bridge. The wife, an educated, articulate woman, had appeared in Family Court weeks earlier. With no lawyer or victim advocate to assist her, she stood before the judge, asked for an order of protection, and received precisely what she requested: an order that allowed the husband to remain in the house but prohibited him from harassing her or removing their child. Her death was headline news, and the media heaped blame on the judge for permitting the husband to stay in the home.<sup>61</sup> I wondered what more might have been done.

Not long after that, in Brooklyn, a Russian immigrant was murdered by her ex-boyfriend. While the ex-boyfriend was awaiting trial on prior charges of assaulting her and violating prior orders of protection, a judge modified the bail terms into terms the ex-boyfriend was able to satisfy. Shortly after his release, he went to the car dealership where she worked, shot her in the head, and then fatally shot himself. Again, press coverage was unrelenting, with blame heaped on the courts.<sup>62</sup> Again I asked myself, what more could be done to prevent tragedies like these?

Sad to say, tragedies like these proliferate all across the nation, and they have many familiar elements, like murder-suicide and young children left

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59. NAT'L CTR. FOR STATE COURTS, REPORT ON TRENDS IN THE STATE COURTS 34 (1997), available at [http://www.ncsconline.org/WC/Publications/KIS\\_CtFutu\\_Trends96-97\\_Pub.pdf](http://www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends96-97_Pub.pdf). From the opening of New York City's first drug court in 1995, through December 2002, more than 16,000 have participated in our adult drug court programs. See REMPEL ET AL., *supra* note 46, at 6, 7 tbl.1.1.

60. See N.Y. EXEC. LAW § 221-a (McKinney 2003) (requiring the Superintendent of the State Police, the Division of Criminal Justice Services, the Office of Court Administration, the Division of Probation and Correctional Alternatives, and the Division for Women to establish and maintain a statewide computerized registry of specified orders of protection issued in New York State and by courts of competent jurisdiction in other states).

61. See, e.g., Jonathan Bandler, *Westchester Family Court Judge Announces Retirement*, JOURNAL NEWS (N.Y.), Nov. 27, 1999, at 3B (stating the judge "came under fire in 1994 following the death of . . . the newspaper heiress"); Michael Moss, *Heiress' Mom: Judge Let Abusive Hubby Stay*, NEWSDAY (N.Y.), Jan. 8, 1994, at 2 (stating that the mother of deceased "blasted the judge who allowed her daughter's husband—now suspected in her beating death—to stay in the couple's home").

62. See, e.g., Press Release, New York City Mayor's Office, Mayor Giuliani Honors the Memory of Domestic Violence Victim Galina Komar, (Feb. 19, 1997), available at <http://www.nyc.gov/html/om/html/97/sp093-97.html>; Max Boot, *What Does It Take to Fire a Judge?*, WALL ST. J., Sept. 17, 1997, at A23 ("New York tabloids went into a frenzy.").



behind. They also remind us that family violence knows no boundaries. It can affect the most and the least privileged among us. In both of the cases I have described, there was an alleged history of violence but—again, not atypically—the women remained with, or returned to, their abusers. And perhaps most critically from my perspective, prior to each death the parties had been in court. Indeed, we know that recidivism rates are high and that many domestic violence victims die with judicial orders of protection in their pockets.

At some point during my first months as Chief Judge, I happened to see a video of a police officer in a patrol car, on his way to answering a woman's call that her husband was assaulting her. The woman's voice over the car radio begged the officer not to come to the house: "It was all my fault." "I overreacted." "Please don't come." But he persisted. Finally, he said, "Ma'am, if everything really is OK, please say a number between one and five." A pause. Then her chilling response: "Six."<sup>63</sup>

The message was powerful. Clearly, domestic violence cases demand special skills and special training. The surface response, the ready answer, may not reflect the grim reality.<sup>64</sup> Recognizing this, our first step was to establish a Family Violence Task Force, which for the past several years has presented first-rate training sessions throughout the state for judges and court staff.<sup>65</sup> The idea is to raise awareness about the nature of domestic violence and encourage the sort of probing questions that need to be asked.<sup>66</sup>

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63. The video was entitled *Agents of Change*, produced by Victims Services Agency (now Safe Horizon). I viewed the video during one of the training sessions conducted by our Family Violence Task Force. Although that particular video is no longer in distribution, videos have become an important tool for education of the public as well as training of judges, police officers and others. See, e.g., National Resource Center on Domestic Violence, at <http://www.nrcdv.org> (containing a video list on its "Resources" page with the titles of more than 200 videos on the subject of domestic violence). Among the videos we have used in New York is the Academy-Award winning documentary *Defending Our Lives* (regarding battered women imprisoned for killing their abusers). See, e.g., Elizabeth Stull, *Court's Domestic Violence Series Continues with "Defending Our Lives": Documentary Film Features Former D.A.*, BROOK. DAILY EAGLE & BULL., Oct. 17, 2000, at 8 (describing the film's showing during Domestic Violence Awareness Month).

64. In the view of one of the leading advocates for battered women:

Domestic violence must be understood as a planned pattern of coercive control that may involve physical, sexual, or psychological abuse rising to the level of torture as understood in human rights discourse. An understanding of domestic violence and human rights paradigms shifts battered women's call for justice away from victim-blaming pathologies toward a more accurate view of the systemic oppression of women evidenced in individual relationships.

Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L.J. 217, 218-19 (2003) (footnotes omitted).

65. For a brief description of the Task Force and its programs, see JUDITH S. KAYE, THE STATE OF THE JUDICIARY 1999, at 14, available at <http://www.courts.state.ny.us/admin/stateofjudiciary/stofjudiciary/stofjud9/3%20family.pdf>. See generally Michael Dowd, *Dispelling the Myths About the "Battered Women's Defense": Towards a New Understanding*, 19 FORDHAM URB. L.J. 567 (1992) (explaining how lack of knowledge about domestic violence in the legal system diminishes the battered woman's access to a fair trial, and describing Dowd's own lack of knowledge on the topic until he represented a woman who had killed her abusive husband).

66. Though still inadequate, public sensitivity to domestic violence was aroused beginning in the

We also began an experiment with the problem-solving approach, starting in Brooklyn, at first for the most serious of these cases, domestic violence felonies. With the help of many others—prosecutors and defense, criminal justice agencies, social service agencies, victims' advocates, community groups—we put our resources to work in a new and different way, beginning with an assigned courtroom and an assigned judge to work on these cases exclusively, from arraignment through plea, trial, and post-sentence monitoring.

Our focus, of course, is always on fairly judging the merits of each case, but in domestic violence cases we also want to take special care to ensure victim safety and defendant accountability. To reduce victim safety risks, a Resource Coordinator ensures that the court has all information available for decisionmaking.<sup>67</sup> To promote defendant accountability, the court monitors defendants closely, requiring frequent returns to court so that the judge can ensure there is no violation of bail conditions, orders of protection, or conditions of probation. Defendants know that they will be held accountable for any errant behavior.<sup>68</sup>

Here too we have seen signs of success.<sup>69</sup> Signs of success in getting complainants to place greater trust in the justice system. Signs of success in reducing probation violation rates.<sup>70</sup> Success—and I say this always with fingers crossed, and prayer—in that there have been no fatalities in the cases before domestic violence courts.

As important as they are, the criminal domestic violence courts in New York are handling just a fraction of the cases involving family violence.<sup>71</sup> The

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early 1990s. Significantly, in February 1995, the American Bar Association launched a multi-disciplinary Commission on Domestic Violence, of which it was my privilege to be a member. See Roberta Cooper Ramo, *Ending the Violence: With Cooperation and Commitment, We Can Banish Domestic Abuse*, A.B.A. J., Feb. 1996, at 6; Steven Keeva, *Striking Out at Domestic Abuse: New ABA Commission Plans Interdisciplinary Programs to Aid Victims*, A.B.A. J., April 1995, at 115; Robert A. Stein, *Changing Attitudes About Abuse: Awareness, Education Are Linchpins of Domestic Violence-Prevention Effort*, A.B.A. J., Oct. 1996, at 106.

67. A special computer application assists the court in monitoring the case. See PAMELA YOUNG, AN INFORMED RESPONSE: AN OVERVIEW OF THE DOMESTIC VIOLENCE COURT TECHNOLOGY APPLICATION AND RESOURCE LINKS (2001), available at [http://www.courtinnovation.org/pdf/info\\_response.pdf](http://www.courtinnovation.org/pdf/info_response.pdf).

68. For a profile of the first presiding judge in the Brooklyn Felony Domestic Violence Court, Supreme Court Justice John Leventhal, see Lynda Richardson, *His Specialty and His Burden: Domestic Violence*, N.Y. TIMES, Apr. 25, 2001, at B2.

69. See Robyn Mazur & Liberty Aldrich, *What Makes A Domestic Violence Court Work? Lessons from New York*, JUDGES J., Spring 2003, at 5, 41-42 (describing the difficulty of defining and measuring success in domestic violence courts, but concluding that they play an important role in helping to eliminate family violence).

70. Probation Department statistics for the year 2000 suggested a decline in probation violation rates in Brooklyn's Felony Domestic Violence Court, although researchers found equivocal results in studying early cases for the year 1997. See LISA NEWMARK ET AL., SPECIALIZED FELONY DOMESTIC VIOLENCE COURTS: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE 69, 76 (2001), available at <http://www.urban.org/pdfs/DomViolCourts.pdf>.

71. Domestic violence cases can also be litigated civilly, and at times even concurrently with

sad truth is that families with domestic violence issues in New York can find themselves whipsawed among a variety of different courtrooms at the same time, including Family Court, a Supreme Court matrimonial part, and a criminal court. It is difficult to imagine, but as currently constructed, our fractured court system makes these families appear in separate locations in front of separate decisionmakers even though the underlying problem in each case is the same. The potential for inefficiency and redundancy is obvious. What may be less obvious is the potential for conflicting court orders and judicial decisions based on only a partial picture of the legal problems of the families before them.

In an effort to address this problem, we have created a series of Integrated Domestic Violence (or “IDV”) courts to hear all cases involving a family with domestic violence issues—for this class of cases, in effect, a unified family court. We began with a few pilots, and in January 2003 announced a comprehensive three-year plan to replicate these courts statewide.<sup>72</sup>

These courts, we believe, will better protect and assist victims, and better promote defendant accountability. IDV judges will know, for example, when an abuser sent to a court-mandated drug treatment program shows up intoxicated at supervised visitation with his children. There will be less opportunity for a defendant to slip through the cracks. More opportunity for the judge to monitor the abusers, to see that child support is paid and visitation and treatment orders are satisfied. Better linkages to social services and other resources to address family needs like housing, employment, and child care. Maybe, above all, more information that leads to better judicial decisions in individual cases, which, in a nutshell, is the goal of our integrated domestic violence courts.

#### IV. EFFECTIVENESS

Having described the origins and operations of problem-solving courts, I want to return to the questions posed at the outset of this essay: Do they work, and are they fair?

A generation ago, in 1974, Robert Martinson wrote an article for *The Public Interest* that examined prison-based rehabilitation programs and

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criminal matters. New York’s Family Courts have jurisdiction over “family offense” petitions in specified situations. In 2001, Family Courts had close to 60,000 family offense filings. TWENTY-FOURTH ANNUAL REPORT OF THE CHIEF ADMINISTRATOR, *supra* note 9, at 21. In addition, domestic violence matters can arise in divorce cases pending in New York Supreme Court.

72. JUDITH S. KAYE, THE STATE OF THE JUDICIARY 2003 6-7 (2003), available at <http://www.courts.state.ny.us/admin/stateofjudiciary/soj2003.pdf>. See New York State Unified Court System, *Integrated Domestic Violence Courts*, at <http://www.courts.state.ny.us/ip/domesticviolence/index.shtml> (providing information about the plan and courts that are already in operation).

concluded that they had no significant effect on recidivism.<sup>73</sup> Although subsequent researchers successfully challenged his conclusions on methodological grounds,<sup>74</sup> his bleak assessment that nothing works in many respects “cast a pall” over the criminal justice community that lingers to this day.<sup>75</sup>

Looking back on three decades of debate about criminal justice reform, I think we have learned two important lessons. The first is the need to be realistic about our expectations—about what we can achieve as we take on complicated and deeply entrenched social problems like addiction, domestic violence, mental illness, and child neglect. We need to acknowledge that, despite our best efforts, problem-solving courts are not going to change every offender’s life. Some people will fail. Some people belong in prison. The innovations discussed here—enhanced treatment, special staffing, and judicial monitoring—can accomplish only so much in an individual’s life. They are not going to make up for problems like chronic poverty, substandard education, shoddy housing, and inferior health care.

Hand in hand with the need for realistic expectations is the need for solid research. Almost all of the experiments launched in New York State have rigorous evaluation plans.<sup>76</sup> We want to know not just whether they work, but why and for which populations.

It is still too early to offer definitive conclusions about the problem-solving approach. Some of our projects, like the IDV and mental health courts, are just months old. It takes years to track recidivism. It takes years to weigh program costs and benefits. It takes years to compare new practices to traditional ones.

73. Robert Martinson, *What Works? Questions and Answers About Prison Reform*, THE PUBLIC INTEREST, Spring 1974, at 22-54.

74. One of the researchers whose work was summarized in Martinson’s article recently wrote: [F]ew people who espoused the view that nothing works questioned the validity of the research on which it was based or understood the problems inherent in the design of most treatment programs and in the methodologies used to evaluate them. They also did not recognize the difference between the pessimistic viewpoint of the summary article [by Martinson] and the more guarded conclusion, arrived at by my colleagues and me, which left open the possibility that rehabilitation could work.

DOUGLAS S. LIPTON, U.S. DEP’T OF JUSTICE, THE EFFECTIVENESS OF TREATMENT FOR DRUG ABUSERS UNDER CRIMINAL JUSTICE SUPERVISION (1995), at <http://www.ncjrs.org/txtfiles/drugsupr.txt>. Lipton also notes that Martinson himself later acknowledged that “some treatment programs do have an appreciable effect on recidivism.” *Id.*

75. Greg Berman & Anne Gulick, *Just the (Unwieldy, Hard to Gather but Nonetheless Essential) Facts, Ma’am: What We Know and Don’t Know About Problem-Solving Courts*, 30 FORDHAM URB. L.J. 1027, 1027-28 (2003); see John S. Goldkamp, *The Drug Court Response: Issues and Implications for Justice Change*, 63 ALB. L. REV. 923, 926 & n.17, 960-61 (2000); Rick Sarre, Beyond “What Works?”: A 25 Years Jubilee Retrospective of Robert Martinson 5 (Dec. 1999), available at <http://www.aic.gov.au/conferences/hcpp/sarre.pdf>; Jerome Miller, *Criminology: Is Rehabilitation a Waste of Time?*, WASH. POST, Apr. 23, 1989, at C3.

76. See Berman & Gulick, *supra* note 75, at 1035, 1038-40, 1041-48 (discussing studies of the New York family treatment courts, Midtown Community Court, and domestic violence courts); N.Y. STATE COMM’N ON DRUGS & THE COURTS, *supra* note 18 (studying drug court pilot programs).

## Delivering Justice Today

Yet our experience has taught us quite a bit about the impact of problem-solving courts, and most of what we know is positive and encouraging. I want to highlight findings in five principal areas, beginning with recidivism.

### A. *Recidivism*

In a recent review of drug court evaluations from across the country, researchers found that thirty-five of the forty-one studies showed reductions in recidivism among drug court participants compared to control groups.<sup>77</sup> In October 2003, the Center for Court Innovation released its evaluation of New York's drug courts in a report that I believe will be important not just to New York, but also to the field of criminal justice research.<sup>78</sup> It is the first multisite study that evaluates the impact of drug courts on recidivism by participants both while they are in a drug court program and after they leave. It also details the backgrounds of drug court participants, retention rates (how long participants stay in treatment), and predictors of successful treatment. Examining data from half a dozen drug courts, the Center found an average decline in recidivism of thirty-two percent in the year following program completion.<sup>79</sup> The impact of a reduction of this size is far-reaching—both for the future of the drug court participants and their families, and for the safety of communities and the functioning of our criminal justice system. It also has the potential for saving substantial amounts of money for the state.<sup>80</sup>

### B. *Street Conditions*

Independent evaluators from the National Center for State Courts spent three years investigating the Midtown Community Court and its effect on the

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77. See REMPEL ET AL., *supra* note 46, at 118 (citing David B. Wilson et al., A Systematic Review of Drug Court Effects on Recidivism, Paper Presented at the Annual Meeting of the American Society of Criminology, at 11 & 23, March 2002).

78. The report, REMPEL ET AL., *supra* note 46, is among the first large-scale evaluations of whether drug courts have a long-lasting impact on criminal behavior. *Id.* at ix. Only Ohio has done a statewide study, and only a handful of studies addressed long-term impacts of drug courts beyond the first one or two years after entry into program participation. *Id.* at 13. Previous studies had been criticized “for failing to establish the long-term impacts of drug court participation—especially over a *post-program* period when participants are no longer under court supervision.” *Id.* at 9. See also *id.* at 117-24 (reviewing prior recidivism studies).

79. *Id.* at x. Among the study's conclusions are that drug courts “reduce recidivism when compared with conventional prosecution,” *id.* at 288, that their “impacts extend beyond the period of program participation,” *id.*, and that “[t]he exact magnitude of [their] impact varies across different sites,” *id.* at 289. The study also suggests that “while statewide institutionalization efforts will presumably want to promote statewide accountability and training, as well as some uniformity of key policy principles, it appears sound to promote a measure of local innovation, diversity, and adaptation to the available community-based resources.” *Id.* at 290. Questions about “best practices,” however, will persist, since “we do not adequately understand *how* and *why* drug courts work, and which approaches are most cost-effective.” *Id.*

80. See N.Y. STATE COMM'N ON DRUGS & THE COURTS, *supra* note 18, at 25-30 (outlining the financial benefits of treatment instead of jail).

streets of Manhattan.<sup>81</sup> Street prostitution arrests dropped by fifty-six percent. Illegal vending dropped by twenty-four percent.<sup>82</sup> Just as important, supervised work crews from the Court each year contribute tens of thousands of dollars worth of labor to the local community, repairing conditions of disorder like graffiti-marred buildings and trash-strewn parks.

### C. *Improved Accountability*

One of the hallmarks of the problem-solving approach is accountability—ensuring, to the extent we can, that court orders are followed. Researchers tell us that compliance rates for community service at New York’s community courts are consistently fifty percent higher than in traditional courts.<sup>83</sup> Meanwhile, the study of several New York drug courts shows that drug courts in the Bronx, Queens, Manhattan, and Tonawanda County have one-year retention rates exceeding seventy percent.<sup>84</sup> By way of contrast, addict stays in voluntary treatment programs over three-month periods range only from thirty to sixty percent.<sup>85</sup> These statistics support what common sense suggests: that judicial monitoring keeps addicts in treatment.

### D. *Stronger Families*

The data shows that New York’s family treatment courts are having a profound impact on the permanency planning process. Prior to the creation of these courts, children languished in the city’s child welfare system for an average of more than four years while their parents’ cases wended their way through the courts. By giving parents an immediate and realistic chance to get clean and sober, family treatment courts have reduced the average foster-care stay for these children to about a year.<sup>86</sup>

### E. *Public Confidence*

Last, increasing evidence suggests that problem-solving courts can help counter the erosion of public trust and confidence in justice that we have experienced in recent generations. In Red Hook, Brooklyn, for example, a poor,

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81. See DISPENSING JUSTICE LOCALLY, *supra* note 26.

82. *Id.* at 7.

83. *Id.* at 7 (initial results showed fifty percent better compliance than traditional Manhattan courts); EXECUTIVE SUMMARY, *supra* note 32, at 2, 4 (compliance rate essentially sustained over three years).

84. REMPEL ET AL., *supra* note 46, 85-86 & tbl.8.1 (reporting retention rates, respectively, of seventy-two, eighty-one, seventy-three and eighty-two percent).

85. *Id.* at 85 (“Since attrition always increases over time, one-year retention rates across these same programs, if they were available, would presumably drop much lower than the 30-60% three-month range.”).

86. N.Y. STATE COMM’N ON DRUGS & THE COURTS, *supra* note 18, at 67.

predominantly minority neighborhood with high levels of crime, seventy-two percent of local residents surveyed were aware of the Red Hook Community Justice Center and seventy-one percent of them viewed it favorably.<sup>87</sup> This contrasts sharply with a survey conducted before the community court opened, in which only twelve percent approved of the job that courts were doing in Brooklyn.<sup>88</sup>

We have learned a lot from the first generation of research into problem-solving courts and undoubtedly we will learn more in the days ahead. Among the questions that researchers are currently studying in New York are these: Which is a more effective response to misdemeanor domestic violence—judicial monitoring or batterers' intervention programs? Are rewards more important than sanctions in motivating behavioral change among drug court participants?

There is one answer, however, that I do know: while the challenges of a contemporary urban criminal court or family court docket may be fierce, we can unquestionably find ways to meet them and do better. I am simply unwilling to adopt a despairing and defeatist attitude that "nothing works," or—put another way—"everything stinks, but don't change a thing."

#### V. FAIRNESS

Measuring the effectiveness of problem-solving courts is no easy matter, but at least we have recourse to studies, statistics, and surveys. Gauging the fairness of problem-solving courts is a far more challenging task. Does this new approach tilt the scales of justice? Does it shake the foundation of the adversarial system or compromise courts' ability to make fair and impartial decisions?

Any serious effort to address these questions must take place not in the world of abstraction but in the real world. It is crucial to remember the context out of which problem-solving courts emerged.

I wish I could tell you that our misdemeanor and family courthouses resemble the pristine temples of law you find in books. If you come to these courthouses looking for meaty motions and trials, you will be gravely disappointed. On a typical day in a New York City arraignment part, there are eighty or more cases before the court, which means that the judge and attorneys can devote just minutes to each.<sup>89</sup> Most of the cases, as I have discussed,

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87. Greg Berman & Aubrey Fox, *Justice in Red Hook: An Experiment in Government-Community Collaboration 2* (2003) (unpublished manuscript, on file with the author).

88. *Id.*

89. This simple arithmetic assumes a judge can spend the entire day on the daily calendar of appearances, which does not even account for other activities, like studying written submissions, researching and writing opinions, conducting trials, performing ordinary administrative tasks, etc. In 1989, my predecessor Chief Judge pointed out that the typical court calendar in New York City Criminal

involve quality-of-life offenses or minor drug possession. The vast majority are disposed of at arraignment, many by plea to reduced charges and community service. Very few will ultimately go to trial. The rest will be settled in plea negotiations between the prosecution and defense.<sup>90</sup> The picture is no different in Family Court: scores of new cases on the calendar each day; little time for more than brief appearances before a judge; difficulty in finding counsel to appoint; frequent delays and adjournments; bargains often negotiated in hallway conferences.<sup>91</sup>

Lest you think this is a New York phenomenon, I offer this quotation from Chief Justice Kathleen Blatz, speaking about Minnesota's busy trial courts. In her words:

[J]udges are very frustrated. . . . I think the innovation that we're seeing now is a result of judges processing cases like a vegetable factory. Instead of cans of peas, you've got cases. You just move 'em, move 'em, move 'em. One of my colleagues on the bench said: "You know, I feel like I work for McJustice: we sure aren't good for you, but we are fast."<sup>92</sup>

Clearly, compared to McJustice, carefully planned, well-operated problem-solving courts offer a far better opportunity for both prosecutors and defendants. That, I presume, is why District Attorneys, the Legal Aid Society, and other respected public defenders work cooperatively with us in these new initiatives.<sup>93</sup> That is why defendants choose to participate in, rather than challenge, these courts. What is the alternative is a question that needs to be answered by critics of a problem-solving approach.<sup>94</sup>

Court consisted of 250 cases a day, leaving judges "at most two to three minutes to take meaningful action in each case." WACHTLER, *supra* note 14, at 5.

90. See TWENTY-FOURTH ANNUAL REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS, *supra* note 9, at 17 (stating that in 2001, forty-two percent of arrest cases in New York City Criminal Court were concluded by plea, thirty percent by dismissal, twenty-two percent by "other means"). Only two-tenths of one percent of the cases were resolved by verdict. *Id.*

91. See Charlie LeDuff, *Handling Sinners and Victims of Domestic Hell: Sad Hallways and Broken Lives in an Overburdened Family Court System*, N.Y. TIMES, May 28, 2000, at B1; Stephen J. Bogacz, *Family Court Faces Funding Crisis*, NEWSDAY (N.Y.), Mar. 14, 2001, at A24; Laura Mansnerus, *For Lawyers in Family Court, Preparing for Cases is Luxury*, N.Y. TIMES, Mar. 10, 2001, at B3.

92. Greg Berman, *What Is a Traditional Judge Anyway? Problem Solving in the State Courts*, 84 JUDICATURE 78, 80 (2000), available at [http://www.courtinnovation.org/traditional\\_judge.pdf](http://www.courtinnovation.org/traditional_judge.pdf).

93. A variety of perspectives on problem-solving courts (from judges, prosecutors, defense attorneys, academicians, and researchers) were expressed at the Eleventh Annual Symposium in Contemporary Legal Challenges at Fordham Law School on February 28, 2002. The proceedings of this Symposium were published in the *Fordham Urban Law Journal*. See Symposium, *Problem Solving Courts: From Adversarial Litigation to Innovative Jurisprudence*, 29 FORDHAM URB. L.J. 1751 (2002).

94. For a more detailed critique of problem-solving courts, see, for example, JAMES L. NOLAN, JR., REINVENTING JUSTICE: THE AMERICAN DRUG COURT MOVEMENT (2001); Hoffman, *supra* note 15; Morris B. Hoffman, *The Drug Court Scandal*, 78 N.C.L. REV. 1437 (2000); Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL'Y 63 (2002). It is worth noting that the first article by Judge Hoffman cited above relies on data on "Drug Court Recidivism" in New York City in 1993, Hoffman, *supra* note 15, at 2070 n.29. However, in 1993, New York's first drug treatment court had not even begun operations, see *supra* note 43 and accompanying text. Hoffman's source, see Hoffman, *supra* note 15, at 2070 n.29, was STEVEN BELENKO & TAMARA DUMANOVSKY, PROGRAM BRIEF: SPECIAL DRUG COURTS (1993), at <http://www.ncjrs.org/txtfiles/spdc.txt> (reporting that "53.5 percent of the 'N Part' cases and 50.9 percent



But “compared to what?” and “what’s the alternative?” are not the end of my answer. Indeed, I think it is worth lingering for a moment on the roles of the judge and defender in a problem-solving court.

Drug courts, for example, until the treatment phase, can look very much like conventional courts before a plea is entered. Lawyers argue about eligibility criteria, the length of treatment mandates, and appropriate treatment methods, like whether a defendant merits residential or out-patient treatment. Judge, prosecutor, and defender perform their roles much as they do in any court.

In the next phase, however, when the focus is on defendant’s success in treatment, there is an understandable concern about ethical obligations and a need for heightened sensitivity both in the design of these courts and in daily practice. Serious questions may arise, such as sanctions for relapses and possibly even failure. It should be clear that a judge’s engagement with drug court defendants in no way diminishes or obscures the court’s responsibility at all times to retain the role of impartial, independent decisionmaker and guardian of legal rights. Nor do defense counsel cease being their clients’ advocates. In the words of one problem-solving judge, counsel always have “to take care that cooperation does not turn into capitulation.”<sup>95</sup>

While I cannot deny that there may be bad practice in some problem-solving courts,<sup>96</sup> just as there may be bad practice anywhere, these courts have been planned to avoid unfairness by assiduously including both prosecutor and defense among the planners and implementers, and by closely overseeing these courts in daily practice. That there may be issues, moreover, is not a condemnation of the problem-solving idea, but rather a signal, or reminder, of

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of those processed through other parts were rearrested”). In 1993, New York City operated Narcotics Parts (“N Parts”), which were not treatment courts. Those parts were intended to facilitate prosecution of felony narcotics cases so as “to remove more narcotics peddlers from our streets, deter professional drug traffickers and stem the flow of drugs into our communities.” Memorandum from Nelson A. Rockefeller, Governor, New York State (June 17, 1971), in 1971 N.Y. LAWS 2614. *See also* N.Y. JUD. CT. ACTS LAW §§ 177-a to 177-e (McKinney 1983 & 2003 Supp.) (establishing and governing Narcotics Parts); BELENKO & DUMANOVSKY, *supra* (noting that the Narcotics Parts were intended solely to reduce disposition time). As for the recidivism impact of New York’s drug courts, see REMPEL ET AL., *supra* note 46, at 274-81.

95. Judy H. Kluger, *The Impact of Problem Solving on the Lawyer’s Role and Ethics*, 29 FORDHAM URB. L.J. 1892, 1894 (2002). Kluger was a former presiding judge of the Midtown Community Court, and is currently responsible for overseeing the expansion of New York’s Integrated Domestic Violence Courts.

96. Compare Morris B. Hoffman, *The Denver Drug Court and Its Unintended Consequences*, in DRUG COURTS IN THEORY AND PRACTICE 67, 87 (James J. Nolan, Jr., ed. 2002) (judge who participated in the decision to open the Denver Drug Court describing its many failures), with N.Y. STATE COMM’N ON DRUGS & THE COURTS, *supra* note 18, at 105 (blue-ribbon commission recommending statewide expansion of New York’s drug court program). *See also* MICHAEL REMPEL ET AL., *supra* note 46, at 274-81 (finding, inter alia, that drug court participants had lower recidivism than comparable defendants not entering drug court); Steven Belenko, *What the Data Shows*, 29 FORDHAM URB. L.J. 1827, 1839 (2002) (noting that although the majority of drug courts achieved a reduction in recidivism, Denver is one of a few that did not).

the need for care in the planning and operation of these courts.<sup>97</sup> Attempting to stop the cycle of drug addiction and domestic violence as cases come before us not only is no perversion of our roles as lawyers and judges but indeed represents an effort to fulfill the highest values of our profession.

## VI. CONCLUSION

I conclude with the observation that New York has made a significant commitment to problem-solving, but we are not alone in our enthusiasm for this new approach. In 2000, the Conference of Chief Justices and the Conference of State Court Administrators passed a joint resolution endorsing the concept of problem-solving courts. The resolution encouraged the broad integration of the principles and methods used in those courts into the administration of justice, in order “to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and community.”<sup>98</sup> The American Bar Association adopted a similar resolution the following year.<sup>99</sup>

I think the next step is to take up the challenge presented by these resolutions, to explore incorporating the strategies and technologies we have tested in problem-solving courts into the broader administration of justice.

This means asking some hard questions. How do we make the current problem-solving courts better? Should we consider additional problem-solving parts, or should we—can we—systemize these efforts and encourage every courtroom to adopt the underlying principles? How do we help lawyers and judges think about more effective outcomes? How do we incorporate these principles into legal education?

These are just a few of the challenges that confront us in the days ahead. They are not insignificant, but given the current size and state of our dockets, as well as the tangible evidence of success with our innovations, I believe this approach is well worth pursuing.

I close by returning full circle to Chief Judge Cardozo. To be sure, the subject of this essay is a far cry from the novel common law issues that

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97. For example, Professor Eric Lane reviewed three case studies—of the Stanford Drug Treatment Court, the Brownsberg Community Court, and the West Jackson Domestic Violence Court—to examine “whether problem-solving courts can be effectively maintained without damage to the individual protections afforded defendants under the due process mantle” of federal and state constitutions. Eric Lane, *Due Process and Problem-Solving Courts*, 30 FORDHAM URB. L.J. 955-57 (2003). He concluded that “with certain cautions, problem-solving judging and lawyering, as described by the case studies and other available material, need not be in conflict with due process standards.” *Id.* at 958.

98. Conference of Chief Justices, Resolution 22, & Conference of State Court Administrators, Resolution 4, In Support of Problem-Solving Courts (2000), available at [http://www.communityjustice.org/ccj\\_cosca\\_resolution.html](http://www.communityjustice.org/ccj_cosca_resolution.html).

99. A.B.A. HOUSE OF DELEGATES REP. NO. 117, cited in DAILY JOURNAL, 2001 ANNUAL MEETING, A.B.A. HOUSE OF DELEGATES, Aug. 6-7, 2001, at 13, 25, <http://www.abanet.org/ftp/pub/leadership/2001journal.doc> (last visited Aug. 12, 2003).

## Delivering Justice Today

captivated Chief Judge Cardozo. But the spirit that motivates us is much the same: using our best skills and best judgment, we try to fit the law to the new challenges an evolving society leaves at our courthouse doors—whether a newfangled Buick automobile with a defective wooden wheel,<sup>100</sup> or a recycling docket of drug-driven behavior. The process of testing and retesting new ideas, retaining and refining what is good and rejecting what is not, keeps the law relevant and responsive to a changing world. It is a great privilege for me, as Chief Judge, to be part of that process.

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100. *MacPherson v. Buick Motor Co.*, 111 N.E. 1050 (1916).

