

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.¹ 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.²

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.*,³ *Palsgraf v. Long Island Railroad Co.*⁴ and *Meinhard v. Salmon*.⁵ 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.⁶ Then too, twenty-first century society and science have brought our courts so many frontier issues, like the meaning of family and the very

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.⁷ Additionally, much of today's case law deals with the interpretation of statutes, as our law has grown increasingly codified.⁸

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,⁹ plus a budget of more than one billion dollars to match the judiciary's breathtaking responsibilities.¹⁰ 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.¹¹

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) (adoptions 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.¹²

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

http://www.ncsconline.org/WC/Publications/Res_CtComm_CFCLeadershipGuidePub.pdf. See, e.g., Michael D. Schruck & 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.

Courts are, after all, a mirror of society, and even in these years of declining violent crime,¹³ we have seen an explosion in misdemeanor arrests, an erosion of community support systems, and a rise in family dysfunction.¹⁴ 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

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; 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.¹⁵ 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.¹⁶ 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.¹⁷

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

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.¹⁸ Dockets mushroomed.¹⁹ 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” theory²⁰—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.²¹ Fewer than one percent of the cases actually went to trial.²² Very few defendants received jail time.²³ 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.²⁴

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 (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/Junc, 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/neigh_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.²⁵ 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.²⁶

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.²⁷ 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.²⁸ Also new in the courtroom is a Resource Coordinator, a court employee who serves as a link between the judge and the interested social

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/commert.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 I (1997) [hereinafter DISPENSING JUSTICE LOCALLY], available at 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.

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.

service agencies.²⁹

The Midtown Community Court is one of the busiest arraignment parts in the state.³⁰ As is true in the centralized criminal courts, most cases at the Midtown Community Court are disposed of at the first appearance.³¹ 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.³²

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.³³

The Midtown Court has received several recognitions for these efforts³⁴ and

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; 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. 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 courts³⁵—received an Innovations in American Government Award from the Ford Foundation and the John F. Kennedy School of Government in 1998.³⁶ Nice as they are, the public accolades are less important than the recognition we have received from other state court systems.³⁷ Building on the Midtown model, more than thirty community courts are operating or in the planning stage across the country.³⁸ We now have other community courts in operation in New York State, with several more being planned.³⁹ 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.⁴⁰

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; 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.⁴¹ 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 1989⁴²—made sense.

New York's first drug court opened in the upstate community of Rochester in 1995.⁴³ 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.⁴⁴ Today, eight years later, there are ninety-six drug courts spread across New York State and about a thousand nationwide.⁴⁵

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.⁴⁶

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

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.⁴⁷ 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.⁴⁸

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

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.⁵⁰

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.⁵¹ At least in New York, both programs have operated side-by-side with seeming success.⁵²

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

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; 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.⁵³

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.⁵⁴

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

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.

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>.