The Rise of Problem-Solving Courts

Although Professor William Nelson of New York University Law School has argued that the roots of problem-solving courts may stretch back to the 18th century, the more immediate antecedent of this recent wave of judicial experimentation is the opening of the first "drug court" in Dade County, Florida in 1989 (Berman 2000). In an effort to address the problem of drug-fueled criminal recidivism, the Dade County court sentences addicted defendants to long-term, judicially-supervised drug treatment instead of incarceration. Participation in treatment is closely monitored by the drug court judge, who responds to progress or failure with a system of graduated rewards and sanctions, including short-term jail sentences. If a participant successfully completes treatment, the judge will reduce the charges or dismiss the case.

The results of the Dade County experiment have attracted national attention — and for good reason. A study by the National Institute of Justice revealed that Dade County drug court defendants had fewer re-arrests than comparable non-drug court defendants (U.S. Department of Justice 1993). Based on these kinds of results, drug courts have become an increasingly standard feature of the judicial landscape across the country (Feinblatt, Berman and Fox 2000). At last count, there were 500 drug courts nationwide, including one in operation or being planned in every state. An additional 281 are in the planning stages (Drug Court Clearinghouse and Technical Assistance Project 2000). In addition, several states, including New York and California, have begun to look at how some of the principles of drug courts might be institutionalized throughout a state court system (New York State Commission on Drugs and the Courts 2000).

Much of this activity (though by no means all) has been aided by federal funding decisions. In enacting the 1994 Crime Act, Congress authorized the Attorney General to make grants to establish drug courts across the country. (The office charged with administering these grants, the U.S. Department of Justice's Drug Courts Program Office, distributed $50 million in fiscal year 2000.)

This wave of judicial innovation has not been confined to drugs. In the years since the opening of the Dade County drug court, dozens of other specialized, problem-solving courts have been developed to test new approaches to difficult cases and to improve both case outcomes for parties and systemic outcomes for the community at large (Feinblatt, Berman and Denckla 2001). One example is the Midtown Community Court, which was launched in New York City in 1993. The Midtown Court targets misdemeanor "quality-of-life" crimes (prostitution, shoplifting, low-level drug possession, etc.) committed in and around Times Square. Low-level offenders are sentenced to perform community restitution — sweeping the streets, painting over graffiti, cleaning local parks — in an effort to "pay back" the community they have harmed through their criminal behavior (Feinblatt, Berman and Sviridoff 1998). The Court also mandates offenders to receive on-site social services, including health care, drug treatment and job training, in an effort to address the underlying problems that often lead to crime. At the same time, the Court has tested a variety of new mechanisms for engaging the local community in the criminal justice process,

including advisory boards, community mediation, victim-offender impact panels and townhall meetings.

In Midtown's wake have come eleven replications. An additional two dozen community courts are in the works (Lee 2000). This replication has taken place in jurisdictions big and small, rich and poor. And it has been driven by a variety of different players, including judges, prosecutors, community advocates and business leaders. As community courts have proliferated, so too have community court models. The next generation of community court innovators has not been content to simply replicate the Midtown Community Court. Rather, they have sought to push the model in new directions. This includes Portland, Oregon, which has created community courts throughout the city, in many instances holding court sessions at local community centers. It also includes Memphis, Tennessee, which is targeting problems related to neglected and abandoned property (Feinblatt and Berman 2001). As with drug courts, the U.S. Department of Justice has played a key role in community court replication, providing seed money to a number of jurisdictions and providing technical assistance and advice to dozens of others.

Similar stories can be told about the birth and expansion of domestic violence courts, mental health courts and others: an initial innovation seeks to address a recurring problem within the courts, attracts the attention of the press, elected officials and funders, and is quickly followed by a wave of replications.

Why Now?

What's going on here? Why are judges, attorneys and court administrators all over the country experimenting with new ways of doing business? A number of social and historical forces have helped set the stage for problem-solving innovation (Berman 2000). These include:

- Breakdowns among the kinds of social and community institutions (including families and churches) that have traditionally addressed problems like addiction, mental illness, quality-of-life crime and domestic violence.
- The struggles of other government efforts, whether legislative or executive, to address these problems. This includes the difficulties that probation and parole departments have faced in linking offenders to services and effectively monitoring their compliance.
- A surge in the nation's incarcerated population and the resulting prison overcrowding, which has forced many policymakers to re-think their approach to crime.
- Trends emphasizing the accountability of public institutions, along with technological innovations that have facilitated the documentation and analysis of court outcomes.
- Advances in the quality and availability of therapeutic interventions, which have given many within the criminal justice system greater confidence in using certain forms of treatment (particularly drug treatment) in an effort to solve defendants' underlying problems.

- Shifts in public policies and priorities — for example, the way the "broken windows" theory has altered perceptions of the importance of low-level crime or the way that the feminist movement has increased awareness about domestic violence.

But perhaps the most important forces that have contributed to the development of problem-solving courts are rising caseloads and increasing frustration — both among the public and among system players — with the standard approach to case processing and case outcomes in state courts.

In recent years, many state court systems have been inundated with growing caseloads. And in the eyes of many judges, attorneys and court administrators, much of this growth has been driven by the intersection of social, human and legal problems, including domestic violence, addiction and chronic low-level offending. From 1984 to 1997, for example, the number of domestic violence cases in state courts increased by seventy-seven percent (Rottman 1999). National research also suggests that as many as three out of every four defendants in major cities test positive for drugs at the time of arrest (National Institute of Justice 1998). Many jurisdictions have also experienced an explosion in quality-of-life crime. In New York City, for example, over the past decade the number of misdemeanor cases has increased by eighty-five percent (Rohde 1999).

The sheer volume of cases has placed enormous pressure on judges and attorneys to process cases as quickly as possible, with little regard to the problems of victims, communities or defendants. This has led many — victims, police officers, journalists and even judges and attorneys — to conclude that many front-line state courts are practicing "revolving door" justice. As New York State Chief Judge Judith S. Kaye has written:

> In many of today's cases, the traditional approach yields unsatisfying results. The addict arrested for drug dealing is adjudicated, does time, then goes right back to dealing on the street. The battered wife obtains a protective order, goes home and is beaten again. Every legal right of the litigants is protected, all procedures followed, yet we aren't making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts (Kaye 1999).

Chief Judge Kaye is hardly alone in her analysis; a sense of growing frustration with 'business as usual' in the state courts can be felt among the general public, among judges and among attorneys.

Public Public frustration gets expressed in many ways, most notably in declining confidence in the criminal justice system (and those who work within it) and increasing fear of crime (even as crime rates across the country fall). Michael Schrunk, the district attorney in Portland, Oregon, has said that his endorsement of problem-solv-

ing courts grows out of a concern about the gaps between communities and the justice system. According to Schrunk, "It's all well and good for us to read about the Microsoft trial or the O.J. Simpson trial, but that's a very, very small percentage of what goes on in the world of our constituents. I strongly believe we've got to work on public credibility, because a lot of citizens, quite frankly, they don't think judges are relevant" (Berman 2000).

Judges Many state court judges have reported that the pressure of processing hundreds of cases each day has transformed their courtrooms into "plea bargain mills," which place the highest value on disposing of the maximum number of cases in the minimum amount of time (Kaye 1999). Additionally, they bemoan their lack of tools – both information and sentencing options — for responding to the complexities of drug addiction, mental illness and domestic violence cases. Chief Justice Kathleen Blatz of Minnesota neatly summarized the feelings of many judges: "Judges are very frustrated. ... 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" (Berman 2000).

Attorneys In recent years, many attorneys have begun to take a closer look at the roles they play and the outcomes they achieve. In addition to problem-solving courts, this examination has led some to advocate for new forms of lawyering, including calls for "therapeutic jurisprudence," "public safety lawyering," "client-centered counseling" and others. What all of these new approaches share is an understanding that lawyers need to employ new sets of tools — in many cases outside of the traditional adversarial model — to effectively represent the interests of their clients. According to Patrick McGrath, deputy district attorney in San Diego, California, "I think it's fair to say there's a sense of yearning out there [among attorneys]. If you grab a judge, a defense attorney and prosecutor and sat them down together and bought them a round of drinks ... they'll all complain about the same thing: 'I have all of this education and what do I do? I work on an assembly line. I don't affect case outcomes.'" While the yearning for a new way of thinking about advocacy is far from universal — there are still, after all, plenty of practitioners of win-at-all-costs advocacy — the voices of reform are now plentiful and strong enough that they can no longer be easily dismissed.

Both internal and external critics of state courts have cited a number of examples to underline their concerns with the standard approach to case processing. For instance, they have pointed to low-level criminal cases, where many offenders walk away from court without receiving any conditions at all. Researchers found that prior to the opening of the Midtown Community Court in New York, more than forty percent of the misdemeanor cases in the downtown, centralized court received no

court sanctions at all (e.g. sentences of "time served") (Sviridoff 2000: 127). This means that four out of every ten offenders walked out of court without receiving either a meaningful punishment or any kind of help for their underlying problems. Outcomes in domestic violence cases are equally problematic. High probation violation rates are one sign that court mandates are not deterring continued violence (Tsai 2000). One study showed that thirty-four percent of batterers violated orders of protection (National Center for State Courts 1997). Nor is the problem of recidivism confined to domestic violence — it is estimated that over fifty percent of offenders convicted of drug possession will recidivate within two or three years (Office of Justice Programs 1999).

In short, advocates of problem-solving justice have argued that state courts find it difficult to address the underlying problems of individual litigants, the social problems of communities or the structural and operational problems of a fractured justice system. As Ellen Schall of New York University's Wagner Graduate School of Public Service has noted, "I think we have to begin from the notion that the system from which the problem-solving courts have emerged was a failure on any count. It wasn't a legal success. It wasn't a social success. It wasn't working" (Berman 2000).

What is a Problem-Solving Court?

Problem-solving courts are a response to the frustrations engendered by overwhelmed state courts that struggle to address the problems that are fueling their rising caseloads. They are an attempt to achieve better outcomes while at the same time protecting individual rights. While drug courts, community courts, domestic violence courts, mental health courts and other problem-solving initiatives address different problems, they do share some common elements:

Case Outcomes Problem-solving courts seek to achieve tangible outcomes for victims, for offenders and for society. These include reductions in recidivism, reduced stays in foster care for children, increased sobriety for addicts and healthier communities. As Chief Judge Kaye has written, "... outcomes — not just process and precedents — matter. Protecting the rights of an addicted mother is important. So is protecting her children and getting her off drugs" (Kaye 1999).

System Change In addition to re-examining individual case outcomes, problem-solving courts also seek to re-engineer how government systems respond to problems like addiction, mental illness and child neglect. This means promoting reform outside of the courthouse as well as within. For example, family treatment courts that handle cases of child neglect have encouraged local child welfare agencies to adopt new staffing patterns and to improve case management practices.

Judicial Authority Problem-solving courts rely upon the active use of judicial authority to solve problems and to change the behavior of litigants. Instead of passing off cases — to other judges, to probation departments, to community-based treatment programs — judges at problem-solving courts stay involved with each case through-

out the post-adjudication process. Drug court judges, for example, closely supervise the performance of offenders in drug treatment, requiring them to return to court frequently for urine testing and courtroom progress reports.

Collaboration Problem-solving courts employ a collaborative approach, relying on both government and non-profit partners (criminal justice agencies, social service providers, community groups and others) to help achieve their goals. For example, many domestic violence courts have developed partnerships with batterers' programs and probation departments to help improve the monitoring of defendants.

Non-Traditional Roles Some problem-solving courts have altered the dynamics of the courtroom, including, at times, certain features of the adversarial process. For example at many drug courts, judges and attorneys (on both sides of the aisle) work together to craft systems of sanctions and rewards for offenders in drug treatment. And by using the institution's authority and prestige to coordinate the work of other agencies, problem-solving courts may engage judges in unfamiliar roles as conveners and brokers.

The cumulative impact of these changes has been significant, and not just on the judges and lawyers who staff problem-solving courts. Problem-solving courts are still relatively new, but there are signs that they have begun to have a tangible impact on thousands of victims, defendants and community residents. This includes domestic violence victims who have been linked to safe shelter, residents of high-crime areas who no longer have to avoid local parks at night, formerly-addicted mothers who have been reunited with their children, and mentally-ill defendants who have received meaningful treatment for the first time.

Results

How much is known about the results of problem-solving courts? Rigorous, independent evaluations of their impacts are just starting to emerge, but the early results have been promising. As the most well-established brand of problem-solving court, drug courts have the longest track record. The evidence shows that drug courts have achieved solid results with regard to keeping offenders in treatment, reducing drug use and recidivism and saving jail and prison costs.

The most authoritative review of drug courts is a meta-analysis by Columbia University's National Center on Addiction and Substance Abuse (CASA) that looked at fifty-nine independent evaluations covering forty-eight drug courts throughout the country (Belenko 1998). Among other findings, this study revealed that drug court participants are far more likely to successfully complete mandated substance abuse treatment than comparable participants who seek help on a voluntary basis. One-year treatment retention rates are sixty percent for drug courts, compared to ten to thirty percent among voluntary programs (Belenko 1998: 29-30). In addition, the CASA analysis found that defendant drug use and recidivism are substantially reduced during the period of drug court participation (Belenko 1998: 36). While less

conclusive, there is also evidence to suggest that the benefits of drug court participation don't end when a defendant graduates from the program. According to the CASA study, drug court participants have lower post-program re-arrest rates as well. Of nine drug court evaluations that used a comparison group, eight found positive recidivism results (Belenko 1998: 39-41).

In addition to these impacts on participants, the CASA meta-analysis found that drug courts generated significant cost savings. In general, incarceration is far more costly than either residential or outpatient treatment. As a result, drug courts save money even after accounting for administrative costs. A study of the Multnomah County, Oregon drug court found that over a two year period, the court had achieved $2.5 million in criminal justice cost savings, based on 440 participants (Belenko 1998: 34). Additional savings outside the criminal justice system — reductions in victimization, theft, public assistance and medical claims — were estimated to be an additional $10 million (Belenko 1998: 34).

The most detailed evaluation of a community court is the National Center for State Courts's recently-published assessment of the Midtown Community Court. The National Center's team of researchers found that the Court had helped reduce low-level crime in the neighborhood: prostitution arrests dropped sixty-three percent and illegal vending dropped twenty-four percent (Sviridoff et al. 2000: 155). The compliance rates for community service at Midtown were the highest in New York City — an improvement of fifty percent. Supervised offenders performing community service contributed more than $175,000 worth of labor to the local community each year.

Just as important, preliminary findings from a telephone survey of 500 area residents suggest that the Midtown experiment had made an impression in the court of public opinion. Sixty-four percent of the respondents said that they were willing to pay additional taxes for a community court. And according to evaluators, these results have been achieved without sacrificing efficiency. In fact, by keeping defendants and police officers in the neighborhood instead of transporting them to the downtown courthouse, the Midtown Court cut the time between arrest and arraignment in 1994 by forty-five percent (Sviridoff et al. 2000: 203).

Less is known about the impacts of domestic violence courts, family treatment courts, mental health courts, re-entry courts and other newer forms of problem-solving justice. Their self-reported results are, perhaps predictably, encouraging — improved services for victims of domestic violence, reductions in probation violations, and increased numbers of defendants receiving needed services. Whether these findings will withstand the rigors of independent evaluators remains to be seen. The days ahead will see the completion of several important evaluations of problem-solving courts, including a national, multi-site review of domestic violence courts by the Urban Institute.

Tensions

The preliminary results of problem-solving courts have earned these projects high marks from many corners, including elected officials, press and funders. They have

also fueled the field's rapid expansion. Good initial results do not insulate problem-solving courts from scrutiny, however. After all, the problem-solving reform efforts of the last several years have taken place within a branch of government that is understandably cautious about innovation. Core judicial values — certainty, reliability, impartiality and fairness — have been safeguarded over many generations largely through a reliance on tradition and precedent. As a result, efforts to introduce new ways of doing justice are always subjected to careful scrutiny.

Problem-solving courts are no exception to this rule, nor should they be. Critics have questioned both their results (Hoffman 2000) and their ability to preserve the individual rights of defendants (Baar 2000). While the academic literature on problem-solving courts is still emerging, it seems clear that there are a number of areas of potential tension between this new brand of jurisprudence and standard practice in state courts:

Coercion What procedures exist to ensure that a defendant's consent to participate in a problem-solving court is fairly and freely given? Are problem-solving courts any more coercive than the current practice of plea bargaining that resolves the large majority of criminal cases in this country?

Zealous Advocacy Is advocacy in a problem-solving court more or less zealous than in a traditional court? Does problem-solving demand new definitions of effective lawyering? How should attorneys measure their effectiveness — by the case or by the person? To what extent do problem-solving courts actually help attorneys — both prosecutors and defenders — realize their professional goals?

Structure Do problem-solving courts give greater license to judges to make rulings based on their own idiosyncratic world views rather than the law? Or, with their predetermined schemes of graduated sanctions and rewards, do problem-solving courts actually limit the discretion of judges and provide more uniform justice than traditional courts?

Impartiality As judges become better informed about specialized classes of cases, is their impartiality affected? As they solicit the wisdom of social scientists, researchers and clinicians, are they more likely to become engaged in ex parte communication?

Paternalism Are problem-solving judges imposing treatment regimes on defendants without reference to the complexity of individuals' problems? Do problem-solving courts widen the net of governmental control? Or are they simply an effort by judges and attorneys to deal more constructively and humanely with the underlying problems of the people who come to court?

Separation of Powers Do problem-solving courts inappropriately blur the lines between the branches of government? As judges become involved in activities like

convening, brokering and organizing, are they infringing upon the territory of the executive branch? Are they, in effect, making policy? Or are judges simply taking advantage of the discretion they have traditionally been afforded over sentencing to craft more meaningful sanctions?

There are several important realities to keep in mind as one attempts to make sense of these tensions. The first is context. When weighing the merits of any reform effort, it's always important to ask the question: compared to what? Proponents of problem-solving courts have been adamant about not allowing critics to pick apart these new initiatives by comparing them to an idealized vision of justice that does not exist in real life. They point to the fact that the large majority of criminal, housing and family court cases today are handled in courts that Roscoe Pound and John Marshall would scarcely recognize. Judge Judy Harris Kluger, the administrative judge for New York City's criminal courts, has described standard practice in the state courts this way: "For a long time, my claim to fame was that I arraigned two hundred cases in one session. That's ridiculous. When I was arraigning cases, I'd be handed the papers, say the sentence is going to be five days, ten days, whatever, never even looking at the defendant" (Berman 2000). Under these circumstances, it is fair to question the extent to which many frontline state courts measure up to their own ideals of doing justice. While the excesses of today's "McJustice" courts do not justify any and all reform efforts, they do help explain why so many judges and attorneys have been attracted to new ways of doing business. And they do provide a valuable context for evaluating the merits of problem-solving courts.

In addition, any effort to separate the wheat from the chaff with problem-solving courts must take into account what might be called the "shoddy practice effect." Put simply, some of the concerns raised by critics of problem-solving courts are a response to the failings of individual judges, attorneys and courtrooms rather than an indictment of anything intrinsic to problem-solving courts. These issues include courts that have been created without any consultation with the local defense bar; courts that have failed to offer specialized training to the attorneys that work within them; courts in which defendants are not given a meaningful opportunity to raise factual and Fourth Amendment defenses; courts in which 'back-up' incarceration sentences for defendants who fail to comply are considerably longer than the sanctions that the defendant would have originally faced; and courts that have done little to ensure that social service interventions are effective and culturally appropriate.

While serious, these are all issues that might reasonably be resolved by better planning and the development and dissemination of best practices. In fact, there are already signs that problem-solving innovators in the field are beginning to adapt their models to address these issues. For example, problem-solving courts in Seattle and Portland have instituted structures that give defendants several weeks to test out treatment while their case is still pending. Defendants can use this period to decide whether to opt into or out of the program, while their defense attorneys can use

the time to investigate the strength of the case against their client (Feinblatt and Denckla 2001).

Fairness

Not all questions about problem-solving courts can be explained away by bad practice or the widespread problems of today's mill courts, however. The most pointed critiques have asked whether problem-solving courts' emphasis on improving case outcomes and protecting public order has come at the expense of the rights of defendants (Baar 2000). Are problem-solving courts fair? Have they fundamentally altered the rights protections typically found in today's criminal courts? Courts have traditionally relied on zealous advocacy as a bulwark against these kinds of concerns, so the role of attorneys at problem-solving courts is an issue that merits special scrutiny (Feinblatt, Berman and Denckla 2001).

Michael Smith of the University of Wisconsin Law School has been particularly vocal in articulating the importance of advocates to problem-solving courts: "One of the things that judges and courts are particularly useful at when they're not just milling people is fact-finding. But a fact-finding court is heavily reliant on advocates if its any good. ... If we don't figure out a way to take advantage of that, then we're not going to have very good problem-solving courts. The courts will be no better than the social service clinics, which have failed to address these problems. So the adversary system and the presence of defense counsel are of enormous value in problem-solving" (Berman 2000).

The nature of advocacy in problem-solving courts is the subject of some debate. Some look at the "team approach" of drug courts, where all of the courtroom players work together to support defendant's participation in treatment, and declare that defense attorneys have abdicated their role as forceful advocates on behalf of their clients. Others argue that adversarialism is alive and well in problem-solving courts. They point to the fact that throughout the adjudication process — up until a defendant decides, by virtue of pleading to reduced charges, to enter treatment — prosecutors and defenders in problem-solving courts typically relate to one another as they always have: as adversaries. In addition to contesting the merits of each case, advocates in drug courts also argue about eligibility criteria, the length of treatment sentences and appropriate treatment modalities (Feinblatt, Berman and Denckla 2001).

In general, what's different about problem-solving courts are the activities that take place after adjudication, as judges and attorneys become engaged in the ongoing monitoring of defendants instead of leaving this job to probation departments or community-based organizations (or, in all too many cases, to no one at all). (It is worth noting that some drug courts and community courts — and many domestic violence courts — depart from the standard problem-solving model, mandating defendants to pre-trial rather than post-disposition interventions. These courts may raise additional questions from those concerned with due process protections.) As John Goldkamp of Temple University has observed, "Generally, adversarial procedures are employed at the screening and admission stage and at the conclusion of drug court, when participants are terminated and face legal consequences or gradu-

ate. During the drug court process, however, formal adversarial rules generally do not apply" (Goldkamp 2000: 952). As Goldkamp's formulation makes plain, by and large, problem-solving courts seem to emphasize traditional due process protections during the adjudication phase of a case and the achievement of tangible, constructive outcomes post-adjudication. In doing so, problem-solving courts have sought to balance fairness and effectiveness, the protection of individual rights and the preservation of public order (Feinblatt, Berman and Denckla 2001).

To what extent have problem-solving courts achieved this delicate balancing act? It varies from jurisdiction to jurisdiction. And it depends upon the perspective of the person asking the question. Conversations about the fairness of problem-solving courts often spark a Rashomon effect, with judges having one response, prosecutors another and defenders yet a third (Feinblatt and Denckla 2001).

There is little doubt that the tensions between problem-solving courts and conventional state courts are felt particularly acutely by defenders. There is an almost palpable sense of ambivalence on the part of many defenders towards problem-solving courts. After all, defense attorneys have been arguing for years that courts should make more aggressive use of drug treatment, mental health counseling and other alternative sanctions. Problem-solving courts have begun to deliver on this expectation, but at the cost of greater state involvement in the lives of their clients. Are there any historical antecedents that might guide defenders as they wrestle with competing professional demands? What are their ethical obligations to their clients, given the changing judicial landscape? Is there a need for new standards of effective lawyering at problem-solving courts? These are issues that merit deeper investigation and additional scholarship.

Conclusion

Now is an important moment to begin to look at the questions raised by problem-solving courts. Problem-solving courts have achieved a kind of critical mass. They are no longer just a set of isolated experiments driven by entrepreneurial judges and administrators. According to John Goldkamp, "What we have now is not a bunch of little hobbies that judges have in isolated jurisdictions, but rather a paradigm shift that larger court systems are trying to come to grips with. They're at your door step. The question isn't: Gosh, are courts supposed to be doing this? It's: What are you going to do about it? How does it fit in? It's no longer a question of whether this should have been invented. They're here" (Berman 2000).

Problem-solving courts have begun to spark the interest of not just front-line practitioners, but the chief judges and administrators who make decisions about court policies and court operations. The signs are unmistakable. Problem-solving courts continue to multiply. California and New York are overhauling the way that their courts handle drug cases. And the Conference of Chief Justices and the Conference of State Court Administrators has passed a joint resolution that pledges to "encourage the broad integration, over the next decade, of the principles and methods employed in problem solving courts into the administration of justice."

Formal institutionalization of any new idea does not come easy, however. If

problem- solving courts are to accomplish this goal — if they truly hope to infiltrate the mainstream of thinking about law and justice in this country – they must begin to preach to the unconverted. This means reaching out to the skeptics and the uninitiated within state courts — defenders concerned about due process protections, administrators worried about the allocation of limited resources, and prosecutors and judges who see nothing wrong with the way they've been doing their jobs for years. And it means reaching outside of the system as well — to law schools and bar associations and elected officials. In the process, advocates of problem-solving courts must tackle some of the policy and procedural concerns that have been outlined in this paper. And they must begin to think through the problems of going to scale, of how small-scale experiments can be translated into system-wide reform.

These are not insignificant challenges, to be sure. But given the tangible results that the first generation of problem-solving courts have achieved — reduced recidivism among drug-addicted offenders, reduced probation violation and dismissal rates in domestic violence cases, and improved public safety (and confidence in justice) in communities harmed by crime — they are challenges well worth pursuing.

FOREWORD

*Honorable Judith S. Kaye**

A longstanding tradition on the Court of Appeals is that the writing of Opinions is assigned randomly. Typically, after a day's oral arguments at Court of Appeals Hall in Albany, the seven Judges retire to the Red Room (directly behind the courtroom) where, on a round table, there are index cards, each bearing the name of a case just argued, turned face down. In order of seniority, each Judge selects one card, which becomes that Judge's responsibility for reporting the next morning at the Court's Conference and later Opinion writing, assuming the Reporting Judge garners a majority. It has been the tradition for at least the 42 years Chief Judges Lippman, Wachtler and I have spanned service on the Court, and has proved itself an effective way to achieve fairness and efficiency in writing assignments.

Authorship of this Introduction is a variation on that theme. Which of the three of us—Judge Lippman (Chief Judge 2009—), Judge Kaye (Court of Appeals 1983-2008, Chief Judge 1993-2008) or Judge Wachtler (Court of Appeals 1973-1992, Chief Judge 1985-1992)—would have the privilege of writing the Introduction to this extraordinary issue of the *Touro Law Review*? A certain randomness again prevailed: Judge Wachtler emailed me that he had shuffled the deck and I "drew the card." Happily so.

I am delighted to write "per curiam," on behalf of the three of us, touching on another role of the Chief Judge. In New York, the Chief Judge of the Court of Appeals gets not only the center seat on the bench but also an additional box of stationery (and responsibility): Chief Judge of the State of New York—in other words, Chief

* Judith S. Kaye, former Chief Judge of the New York Court of Appeals, was born in Monticello, New York. She was appointed Chief Judge by Governor Mario M. Cuomo on February 22, 1993, confirmed by the State Senate on March 17, and sworn in on March 23, 1993. She is the first woman to occupy the State Judiciary's highest office. She became the first woman to serve on New York State's highest court after Governor Cuomo appointed her Associate Judge of the Court of Appeals on September 12, 1983.

Executive Officer of the entire state court system. Problem-solving courts are an example of the responsibility, and the opportunity, the Chief Judge of the State of New York has to improve the operation of the Third Branch of state government. Two points bear special emphasis.

First, of course, is the very existence of "problem-solving" courts. In fact, the range is breathtaking, as the articles exemplify: human trafficking courts, youth courts, mental health courts, veterans courts, and more. These are not necessarily separate courthouses but rather specialized parts within our giant state court system, where the assigned Judge and additional resources have been directed particularly to the problem underlying the case that has brought the parties into court.

With annual case filings in the millions in the New York State court system, it should be immediately evident that generally mixing, say, domestic violence prosecutions into the huge, varied daily docket of a Criminal Court Judge represents a singularly different picture from assigning such cases to a Judge with specialized training in the subject as well as resources and jurisdiction that can focus on the whole picture, including needs of victims and the families. It is a better approach than simply focusing on prosecuting the batterer.

The success of this problem-solving approach is evident not only in daily stories throughout New York, but also in the number of jurisdictions—federal as well as state courts—that have followed our example around the world. When you read on throughout the ensuing articles, you will see the good sense that underlies, and propels, the idea of problem-solving courts. Where courts are able not only to resolve the dispute before them but also to reroute the parties—including recidivist batterers and drug offenders—onto a positive, constructive life course, why not seize that opportunity?

My second point goes to why three Chiefs, in their CEO role, are appropriate introducers of a law review issue dedicated to problem-solving courts.

In part the answer relates to the progress of our society. It is amazing to think of the change that has taken place over the 42 years spanning our service on the Court of Appeals. In a system focused on human behavior, and misbehavior, shouldn't a Chief Executive Officer charged with oversight of the entire court system be attentive to profound societal change that might perhaps be better addressed by

systemic adjustments? Shouldn't a Chief Judge be attentive to suggestions from colleagues, court system users, advocacy groups, academics, and the public as to how the courts might better serve the objective of assuring justice in a changing world? I cannot begin to number the task forces, commissions and committees the three of us have established, or continued, to help us stay equal to, and ahead of, the challenges of a changing society.

Integral as well is how much each Chief Judge builds on the work of our predecessors. My own best example is the widely replicated Community Court, an idea Chief Judge Wachtler nurtured with the Midtown business community in Manhattan. I remember the controversy and the difficulty he encountered, but then I had the pleasure, as his successor, of opening our first Community Court on West 54th Street, which continues to reroute repeat low-level offenders from lives of increasingly violent crime, and contributes as well to improvement of the community. And it was Chief Judge Wachtler who insisted that I take over as Chair of his Permanent Judicial Commission on Justice for Children—a supporter of our fabulous Youth Courts—a role I continue to hold, with pride and passion, a full 25 years later. An inviting buy-in from a wide community assures that our initiatives have good, solid foundations.

Chief Judge Lippman, Chief Judge Wachtler and I end this welcome with thanks to all those who conceived and produced this very special law review issue, and to all those who contribute to the success of New York State's problem-solving courts.

Justice Barbara R. Kapnick received her bachelor's degree cum laude from Barnard College and her juris doctor from Boston University School of Law. Between 1980 and 1991, Justice Kapnick worked as a Law Clerk to both the Hon. Ethel B. Danzig and the Hon. Michael J. Dontzin in Supreme Court, New York County. Justice Kapnick was elected to the Civil Court in 1991, appointed an Acting Supreme Court Justice in April1994, and was elected to the Supreme Court, New York County in 2001. She was assigned to the Commercial Division in 2008, where she handled many high profile cases, and was appointed to the Appellate Division, First Department by Governor Andrew M. Cuomo in January 2014. She has been a member of the Advisory Committee on Judicial Ethics since 2008 and also served as Chairperson of the Board of Trustees of the New York County Public Access Law Library from 2008 to 2014. She is an active member of the New York State Bar Association: Judicial, and commercial and Federal Litigation Sections, and the New York City Bar Association, where she has served on numerous committees. Justice Kapnick is a Master of the New York American Inn of Court and past president of the Jewish Lawyers Guild, where she remains active as a member of the Board of Governors. She is also a longstanding member of the New York Women's Bar Association, where she served as Co-Chair of the Litigation Committee. She sat on the Board of Directors of the Judges and Lawyers Breast Cancer Alert for over a decade, and continues to sit on the Board of the New York State Association of Women Judges. She is also active in the Supreme Court Justices Associations in New York, having served as President of the Citywide Association from 2013-2014, and is a member of the Executive Committee of the Statewide Association. A frequent lecturer for many Bar Associations, Justice Kapnick has also received numerous awards, including the Benjamin N. Cardozo Award from the Jewish Lawyers Guild, the Harlan Fiske Stone Memorial Award from the New York City Trial Lawyers Association, the Women's History Month Flor de Maga Award from the Puerto Rican Bar Association and the Distinguished Jurist Award from the Defense Association of New York.

Judge Colleen McMahon was appointed to the bench of the Southern District of New York by President William Jefferson Clinton; she was confirmed on October 21, 1998. A native of Columbus, Ohio, Judge McMahon graduated from The Ohio State University in 1973, summa cum laude and with distinction in Political Science. She attended Harvard Law School from 1973-1976, graduating cum laude. She spent all but one of the next nineteen years at Paul Weiss Rifkind Wharton & Garrison, where in 1984 she became the first woman litigator elected to partnership. A litigation generalist, she had extensive experience with general commercial lawsuits, securities and takeover work, and employment discrimination cases. She tried a number of cases to verdict and argued appeals in the New York Court of Appeals, the Appellate Divisions, and the United States Court of Appeals for the Second Circuit. During 1979-80, Judge McMahon took a ten month leave of absence from the firm to serve as the Speechwriter/Special Assistant to Donald McHenry, the Permanent Representative of the United States to the United Nations. During her years in private practice, Judge McMahon chaired the Committees on State Courts of Superior Jurisdiction and Women in the Profession of the Association of the Bar of the City of New York, and served as a member of other Association committees, including the Committee on the

Judiciary. For three years, Judge McMahon was an ABCNY representative to the House of Delegates of the New York State Bar Association. She also served in various civic capacities and as Vice Chancellor of the Episcopal Diocese of New York. In 1993, Judge McMahon was asked by Chief Judge Judith Kaye to chair a commission to reform New York's jury system (The Jury Project). The group's report, which Judge McMahon wrote, was praised by The New York Times as "making a persuasive case for serious attention in Albany," and nearly all of its 82 substantive recommendations for reform were eventually implemented. In June 1995, Governor George Pataki nominated Judge McMahon to the New York Court of Claims. Designated as an Acting Justice of the State Supreme Court, she conducted felony trials in Manhattan until her appointment to the federal bench three years later.

Justice Saliann Scarpulla is a graduate of Boston University and Brooklyn Law School, cum laude. After law school, Justice Scarpulla became Principal Court Attorney to the Hon. Alvin F. Klein. Justice. Scarpulla then worked at Proskauer Rose Goetz & Mendelsohn as a litigation associate from 1988 to 1993. At Proskauer, she gained extensive experience in commercial litigation, accountants' liability, securities regulations, real estate, contracts and commercial torts. In 1993, Justice Scarpulla joined the Federal Deposit Insurance Corporation as Senior Counsel in the New York Legal Services Office. While there, she represented the FDIC as receiver for numerous failed banks and litigated cases on banking and commercial issues, including ERISA and FIRREA. Justice Scarpulla then became Senior Vice Present and Bank Counsel to Hudson United Bank, where she was responsible for all litigation involving the bank, and also oversaw the banks' compliance with state and federal banking regulations. Justice Scarpulla returned to the New York State court system in 1999, as Principal Court Attorney to the Hon. Eileen Bransten. She was elected to the Civil Court in 2001. While in Civil Court Justice Scarpulla presided over civil, commercial landlord-tenant, no-fault, pro se and small claims actions. In 2009, Justice Scarpulla was appointed an Acting Justice of the Supreme Court, and initially presided over a City Part, handling civil litigation involving the City of New York as a party. Justice Scarpulla was then assigned to an lAS Part, in which she handled a wide variety of civil cases.Justice Scarpulla was elected to the Supreme Court in 2012, and was assigned to an lAS part with an emphasis on complex asbestos litigation. In addition to her asbestos caseioad, Justice Scarpulla handled construction injury/property damage cases, insurance coverage cases and general commercial litigation. Justice Scarpulla also presided over actions commenced pursuant to Mental Hygiene Law Article 9. Justice Scarpulla was assigned to the Commercial Division in February 2014. Justice Scarpulla is a member of the Association of the Bar of the City of New York, Catholic Lawyers Guild, Columbian Lawyers Association, Jewish Lawyers Guild, Judges and Lawyers Breast Cancer Alert, the National Association of Italian American Women, the National Association of Women Judges, the New York County Lawyer Association, the New York State Bar Association and the New York Women's Bar Association. Justice Scarpulla is also a frequent lecturer at the Judicial Institute.

Judge Richard J. Sullivan was sworn in as a United States District Judge for the Southern District of New York in August 2007. Prior to becoming a judge, he served as the General Counsel and Managing Director of Marsh Inc., the world's leading risk and insurance services firm. From 1994 to 2005, he served as an Assistant United States Attorney in the Southern District of New York, where he was Chief of the International Narcotics Trafficking Unit and Director of the New York/New Jersey Organized Crime Drug Enforcement Task Force. In 2003, he was awarded the Henry L. Stimson Medal from the Association of the Bar of the City of New York. In 1998, he was named the Federal Law Enforcement Association's Prosecutor of the Year. Prior to joining the U.S. Attorney's Office, he was a litigation associate at Wachtell, Lipton, Rosen & Katz in New York and a law clerk to the Honorable David M. Ebel of the United States Court of Appeals for the 10th Circuit. He is a graduate of Yale Law School, the College of William & Mary, and Chaminade High School on Long Island. From 1986 to 1987, he served as a New York City Urban Fellow under New York City Police Commissioner Benjamin Ward. Currently, Judge Sullivan is an adjunct professor at Columbia Law School, where he teaches a course on sentencing; he also serves on the executive board of the New York American Inn of Court and on the board of the Center for Law and Religion at St. John's University School of Law.

Yana Britan is an associate at Gusrae Kaplan Nusbaum PLLC, where she focuses her practice in the litigation and arbitration of disputes involving commercial, contract, corporate, securities and other business related law. Prior to joining Gusrae Kaplan, Yana was an associate at a prominent international law firm, Berwin Leighton Paisner LLP, where her practice focused on corporate and financial transactions, particularly mergers and acquisitions, joint ventures, corporate restructurings and asset finance. Yana received her LL.M. with concentration in business law from Duke University School of Law, and she received her Specialist in Law (J.D. equivalent), *summa cum laude,* from Saratov State Academy of Law (Russia).

Thomas A. Brown has over 20 years of complex commercial, financial, employment and trusts & estates litigation experience. He has handled a broad range of commercial, financial and employment cases, involving allegations of fraud, breach of fiduciary duty, breach of contract, breach of employment covenants, theft of trade secrets, discrimination and more. Tom has also represented executors, trustees and beneficiaries in numerous trust disputes and will contests. Tom has successfully litigated multiple cases to verdict before juries, judges and arbitrators. He has also argued appeals in both state and federal courts. He has handled all aspects of pre-trial strategy and discovery, including taking depositions throughout the Unites States and abroad. Tom Regularly advises corporations and individuals on litigation and litigation avoidance strategy. He has also conducted a Foreign Corrupt Practices Act

investigation in central America and the United States. Prior to joining Morea Schwartz Bradham Friedman & Brown LLP, Tom was a clerk for a judge on the United States Court of Appeals for the Third Circuit, a Partner at Fensterstock & Partners LLP and a partner at Orans, Elsen, Lupert & Brown LLP.Tom received his law degree from Cornell University (magna cum laude) in 1994, where he was an Editor of the law review and a member of the Order of the Coif. He graduated from Colgate University (cum laude) in 1988 with a bachelor's degree in history. Tom has been named as a "New York Super Lawyer" every year since 2009 and has been recognized as an AV (Preeminent) peer rated attorney by Martindale-Hubbell.

Daniel Graber is the managing partner of Graber PLLC and a seasoned business litigator who regularly represents clients in Federal Court as well as New York's Commercial Division. He is a graduate of Fordham Law School and was named a Super Lawyers Rising Star in 2014, 2015, and 2016.

Vilia B. Hayes is a litigation partner at Hughes Hubbard & Reed LLP, and her practice concentrates on counseling and litigation in the areas of employment law, product liability, insurance and commercial litigation. She is also Co-Chair of the Pro Bono Committee, and supervises a wide range of cases in state, federal and immigration court. Ms. Hayes graduated from Marymount College with a B.A. degree (Psychology, with Honors) in 1972. She received her law degree in 1980 from Fordham University School of Law (*cum laude*), where she served as Associate Editor on the *Fordham Law Review*. Prior to joining Hughes Hubbard, Ms. Hayes served as Law Clerk to the Honorable Charles L. Brieant, United States District Judge for the Southern District of New York (1980-1981). She has been active in various professional associations, and is presently the President of the Federal Bar Council, and a member of the Board of VOLS, and Legal Services - NYC and Lawyers Committee for Civil Rights Under Law.

Roberta Kaplan is a partner in the Paul, Weiss Litigation Department, Roberta (Robbie) Kaplan has been described as a "litigation superstar," a "powerhouse corporate litigator" and a "pressure junkie" who "thrives on looking at the big picture" whether "in the gay-marriage legal fight or high-profile corporate scandals." The *ABA Journal* has explained that Robbie "could be described as a specialist in emerging law. She litigates cases that shape the legal structure within which Americans live, love, work and hail cabs." Describing a 2015 oral argument at the Fifth Circuit, one legal commentator noted that Robbie "deserves special recognition for her argument at the hearing. An accomplished attorney long before she came to represent Edith Windsor, Ms. Kaplan offered concise, smart and well-reasoned responses to the judge's questions." In addition to receiving a Lifetime Achievement Award from the *New York Law Journal,* Robbie has also been selected by *The National Law Journal* as one of "The 100 Most Influential Lawyers" in the United States, as "Litigator of the Year" by *The American Lawyer,* as "Lawyer of the Year" by Above the Law, and as the "Most Innovative Lawyer of The Year" by *The Financial Times. The Financial Times* noted that "the judges had little trouble picking just one of them to win the award for most

innovative individual – itself an innovation for the report this year. Robbie Kaplan has been involved in some of the most important legal developments of recent years." Robbie currently serves as the co-chair of the Board of Directors of the Gay Men's Health Crisis (GMHC) and is on the Board of Eye to Eye, whose mission is to develop mentoring programs for students with learning differences. Robbie serves as a subcommittee chair of New York's Commercial Division Advisory Council. She also is an adjunct professor of law at Columbia Law School, where she teaches a seminar on Advanced Civil Procedure.

Helen O'Reilly is an associate in the firm's litigation department. From 2012 to 2013, Ms. O'Reilly served as a law clerk to the Han. John Gleeson of the United States District Court for the Eastern District of New York, and from 2011 to 2012, she served as a law clerk to the Han. Barrington Parker of the United States Court of Appeals for the Second Circuit.

Steven W. Perlstein is an experienced trial lawyer at Kobre & Kim, a global law firm focused exclusively on disputes and investigations. He practices in the area of complex civil litigation, focusing on litigation related to complex commercial transactions (such as CDO and MBS transactions), business break-up disputes and securities-related litigation. Mr. Perlstein also conducts litigation related to data security, particularly with regard to civil remedies available to prevent the wide-spread dissemination of proprietary information. In addition, Mr. Perlstein regularly represents clients in white-collar criminal defense matters and regulatory investigations. Mr. Perlstein has participated in a variety of civil and criminal proceedings including, ICC, FINRA and AAA arbitrations, litigations in New York and Delaware state courts, federal district court, and the bankruptcy court. Prior to joining Kobre & Kim, Mr. Perlstein practiced at Schulte Roth & Zabel LLP, where he focused on complex commercial and securities litigation, and bankruptcy litigation. Mr. Perlstein served as a judicial clerk to the Honorable John D. Butzner, Jr. of the U.S. Court of Appeals for the Fourth Circuit.

Walter Ricciardi has extensive experience defending a broad variety of investigations conducted by the U.S. Securities and Exchange Commission, the Public Company Accounting Oversight Board and other regulatory authorities. Additionally, he has conducted several internal investigations for public companies and audit committees, including investigations related to allegations of accounting and financial fraud. Prior to joining Paul, Weiss in June 2008, Walter was the Deputy Director of the SEC's Division of Enforcement, where he supervised many of the Commission's most significant investigations related to financial fraud, insider trading, investment advisers, and broker-dealers. Prior to joining the SEC, Walter spent 20 years with PricewaterhouseCoopers and its predecessor, Coopers & Lybrand, where he was in charge of defending the firm's litigation and regulatory matters. While at PwC, he was elected by his partners to serve on the firm's board, which is responsible for overseeing the management of the firm. He was also elected by the partners to serve on the Global Oversight Board of the PwC global organization. Since joining Paul, Weiss,

Walter was appointed and served a three-year term from 2012 to 2014, on the Public Company Accounting Oversight Board's Standing Advisory Group ("SAG"). The role of the SAG is to assist the Board in reviewing existing auditing and related professional practice standards and evaluating proposed standards, and to recommend to the Board new or amended standards. Walter is a member of the Independent Standards Council of the Sustainability Accounting Standards Board ("SASB") which oversees the development of SASB's sustainability accounting standards. Walter lectures and writes extensively on securities litigation and regulatory issues. As an adjunct Professor at New York University School of Law, he teaches a seminar on issues in SEC enforcement. Walter is recognized as a leading individual for (Nationwide) Securities: Regulation: Enforcement in *Chambers USA* (2013-2015), for Securities: Shareholder Litigation in *The Legalsoo* (2012), recognized by his peers in *U.S. News & World Report/"Best Lawyers"* (2011-2016)for Corporate Governance Law, Litigation- Securities and Securities Regulation and was selected to *Securities Docket's* 2013 "Enforcement 40" list, a list of the best and brightest securities enforcement defense lawyers. He served as a note and comment editor of the *New York University Law Review.*

Jay G. Safer is a partner in Locke Lord's New York office and has experience handling complex litigation and arbitration in the United States and abroad. Mr. Safer represents clients in matters concerning contracts, antitrust, securities, RICO, qui tam, international litigation and arbitration, including application of New York Convention and enforcement of foreign judgments and arbitration awards, insurance, construction, real estate, employment, media, product liability, health care, professional ethics, financial, constitutional and regulatory issues. He also counsels clients on commercial matters, including protection and preventive measures, creation of risk litigation plans, e-signature, e-discovery and e-readiness, and pre-litigation analysis. Jay was appointed by the Chief Judge of the State of New York, the Hon. Jonathan Lippman, to the newly created permanent Commercial Division Advisory Council that will advise the Chief Judge and the Judiciary on all matters involving the Commercial Division of the State of New York. Jay was appointed to serve on the Planning Committee for the Judicial Conference of the U.S. Court of Appeals for the Second Circuit, which he attended. Jay was appointed by Chief Judge Judith S. Kaye to serve on a Special Commission on the Future of the New York State Courts. The Commission is composed of lawyers, civic leaders, government and private sector representatives, academicians, and sitting and former trial and appellate court judges. The Commission’s charge is to redesign the state’s trial court structure. Jay is the Past Chair of the 2,000 member Federal & Commercial Litigation Section of the New York State Bar Association and is the Co-Chair of its Federal Judiciary Committee. He was named a member of the Lawyers Committee of the National Center for State Courts. Jay also served as a Federal Judiciary Chair representing the Commercial and Federal Litigation Section of the New York State Bar Association for the 225th Anniversary of the Unite States District Court for the Southern District of New York and the 150th Anniversary of the United States District Court for the Eastern District of New York. He also coordinated creation of a

Bibliography of United States District Court Judges of the Southern District of New York and presentations for the 225th and 150th Anniversaries of the Southern District of New York and the Eastern District of New York. Jay has served as a lecturer on panels, bench-bar forums, and is a member of committees with judges and attorneys discussing a wide range of civil litigation issues, international arbitration and litigation skills, including cross examination for the National Institute for Trial Advocacy, professional ethics, and e-discovery. He is a Fellow to the Chartered Institute of Arbitrators. Jay has been a member of The Sedona Conference Working Group on Electronic Document Retention and Production (WG1) and The Sedona Conference Working Group on International Electronic Information Management, Discovery and Disclosure (WG6). He has been a member of the Advisory Board of the Institute for Transnational Arbitration (ITA).

Harry Sandick is a member of the firm's White Collar Defense and Investigations Team, the Structured Finance Litigation Team, and Complex Commercial Actions Team. A former Assistant U.S. Attorney for the Southern District of New York, Mr. Sandick focuses his practice on white collar criminal defense, securities fraud, internal investigations, complex civil litigation and appellate litigation. Mr. Sandick represents organizations and individuals in internal investigations and prosecutions brought by the U.S. Attorney's Office for the Southern District of New York, the U.S. Department of Justice and the U.S. Securities and Exchange Commission. He has significant experience in matters related to the Foreign Corrupt Practices Act (FCPA) and the regulations promulgated by the Office of Foreign Asset Controls (OFAC). His recent work also includes the representation of several individuals in connection with the ongoing investigation into LIBOR and ther benchmark rates, the representation of a taxpayer who was prosecuted in federal and state court for having an undisclosed offshore bank account, the representation of claimants in a multi-million dollar civil forfeiture action, and the representation of a major investor in Bernard L. Madoff Investment Securities LLC in the recent investigation conducted by prosecutors and regulators. Mr. Sandick also represents clients, both as plaintiffs and defendants, in complex securities and business fraud litigation, including matters involving residential mortgage-backed securities transactions. For almost six years, Mr. Sandick served as an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney's Office for the Southern District of New York, where he prosecuted a wide range of federal crimes, including financial fraud cases, acting as lead counsel in 12 trials and more than 20 appeals. He served as Deputy Chief for Criminal Appeals, supervising more than 80 appeals before the United States Court of Appeals for the Second Circuit, and as Acting Chief ofthe Violent Crimes Unit. Mr. Sandick oversaw matters involving securities fraud, business crimes, obstruction of justice, RICO, drug trafficking and terrorism issues. He successfully argued 19 appeals before the Second Circuit. A frequent speaker and writer on white collar and financial fraud topics, Mr. Sandick has contributed articles to Forbes.com, New York Law Journal and industry publications. He is also co-author of a chapter on pretrial representation in a leading treatise, "Defending Federal Criminal Cases." Mr. Sandick is often called on for commentary in

high-profile white collar cases and his quotes have appeared in the Associated Press, The Wall Street Journal, Sports Illustrated, ESPN and BNA White Collar Crime Report, among others. Following law school graduation, Mr. Sandick clerked for the Hon. Richard J. Cardamone of the U.S. Court of Appeals for the Second Circuit.

Justin M. Sher is a partner and co-founder of Sher Tremonte LLP. Mr. Sher represents executives, entrepreneurs, professionals and businesses in complex commercial disputes and in white collar regulatory and criminal investigations. Mr. Sher has obtained favorable results for clients in high-stakes litigation relating to complex contract disputes, business break-ups, professional liability, claims of breach of fiduciary duty, trust and estate controversies and allegations of securities fraud. He has successfully defended clients in matters involving allegations of insider trading, market manipulation, government corruption, accounting fraud, antitrust violations and tax fraud. Mr. Sher has served as lead counsel in multiple trials and regularly represents clients in federal and state courts, in arbitration proceedings, and before regulatory bodies and governmental agencies, such as the U.S. Attorney's Office, the Securities and Exchange Commission, the Financial Industry Regulatory Authority and the Internal Revenue Service. Mr. Sher graduated from Harvard College with honors with a degree in Social Studies. Following graduation, he worked for the Frauds Bureau of the New York County District Attorney's Office, where he assisted with high-profile white collar grand jury investigations and criminal prosecutions. Mr. Sher received his law degree, also with honors, from New York University School of Law, where he served as Staff Editor for the Journal of Legislation and Public Policy and as a member of the Federal Defender Clinic.Mr. Sher clerked for the Honorable George B. Daniels in the United States District Court for the Southern District of New York. Following his clerkship, Mr. Sher practiced at Davis Polk & Wardwell LLP and Kobre & Kim LLP, where he represented Fortune 500 companies in high-profile white collar criminal prosecutions, regulatory inquiries, antitrust investigations and securities litigation. While at Davis Polk, Mr. Sher served as a Special Assistant District Attorney for the Kings County District Attorney's Office. Mr. Sher is admitted to practice in New York State, the United States District Courts for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second Circuit and the U.S. Supreme Court. Mr. Sher has also appeared on behalf of clients in courts throughout the country, including California, New Jersey, Oklahoma and Louisiana. Mr. Sher is an active member of various professional organizations, including the Committee on White Collar Criminal Litigation of the New York State Bar Association and the New York Chapter of the American Inns of Court.

Kerry J. Ward, Esq. has served as Chief of Staff in the New York State Courts' Office of Policy and Planning (OPP), since April2015. OPP is responsible for the creation, implementation and review of statewide initiatives and policies for the Unified Court System, provides support for the Problem Solving Courts statewide, oversees case processing for the mortgage foreclosure inventory, and manages special projects. Kerry has worked for the Unified Court System since 1989, as a Principal

Law Clerk in a high-volume Supreme Court Criminal Term trial part for over twenty years handling high profile and complex criminal matters, and for over five years assisting the Administrative Judges for Supreme Court in the Civil and Criminal terms. Kerry graduated from Syracuse University College of Law and Pace University.

Jamie Wine is a partner in the New York office of Latham & Watkins and global Chair of the firm's Litigation & Trial Department. Recognized as a leading securities lawyer by several top legal publications, Ms. Wine has significant trial and arbitration experience, with a particular focus on complex business litigation, securities and class action litigation, and SEC and other regulatory investigations. Ms. Wine has represented all of the major accounting firms and a number of financial institutions in a variety of matters, many emanating from the financial crisis. She currently represents Ernst & Young in all civil and regulatory matters related to its role as auditor of Lehman Brothers and represents Deutsche Bank in a number of actions regarding its RMBS business. Ms. Wine is widely acknowledged for her excellence. *The American Lawyer* named Ms. Wine one of the “45 Under 45” top female lawyers in the AmLaw 200, and she has been included in several editions of *Lawdragon 500*, a list of leading lawyers in America, where it was noted that she “has emerged as one of the top practitioners in complex business and securities litigation.” She also has been listed as a leading securities litigator by *The Legal 500 US*, as a “Legal Superstar” by *SecuritiesLaw360*, and by *The Daily Journal* as one of California's "Top Women Litigators." In 2015, the National Organization for Women honored Ms. Wine with its “Women & Power of Influence” award. Ms. Wine is a former member of Latham's Executive Committee and prior to that was the Deputy Office Managing Partner of the New York office. She previously Co-chaired the firm's Securities Litigation & Professional Liability Practice and the Litigation & Trial Department in Los Angeles. She also is a former member of Latham’s Associates Committee and its Training and Career Enhancement Committee. Ms. Wine regularly speaks on law firm management and the role of women in the legal profession.