

Fordham Urban Law Journal

Volume 34, Number 2

2006

Article 9

Achieving Better Outcomes for Litigants in the New York State Courts

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Abstract

Remarks at the Inaugural Fordham Dispute Resolution Society Symposium “ADR as a Tool for Achieving Social Justice.”

ACHIEVING BETTER OUTCOMES FOR LITIGANTS IN THE NEW YORK STATE COURTS

*Chief Administrative Judge Jonathan Lippman**

REMARKS

Good afternoon. I want to thank Dean Treanor and John Feerick for this wonderful opportunity to be a part of the John Feerick Center's first symposium. We are very fortunate in New York to have a law school so clearly committed to promoting the public good and to training lawyers to serve the public interest.

I couldn't be more excited about the creation of the new Feerick Center for Social Justice and Dispute Resolution. It is a wonderful tribute to a pillar of the New York legal community, a true servant of the public interest and a person of tremendous integrity and humanity. I have little doubt that, like its namesake, the Feerick Center will make a valuable contribution to our City for years to come, providing new ideas, new research, and new training for those of us who believe in the power of lawyers to effect positive change.

A single phrase caught my eye in the press release announcing the new Center. In it, Dean Feerick said that the Center had "great potential for good works."¹ I like to think that we in the New York State Court System have this same potential. The challenge we face every day is how best to fulfill this potential in the face of enormous obstacles.

Those of you who follow the courts know that the challenges come at us from all angles these days. Judges are justifiably frustrated because they haven't had a pay increase in seven and a half years. The Second Circuit Court of Appeals has affirmed a decision scrapping the system by which we have, for generations,

* Jonathan Lippman was appointed the Chief Administrative Judge of all New York State Courts in January 1996, by Chief Judge Judith S. Kaye. He oversees the administration and operation of a court system with a \$2.4 billion budget, 3,600 state and locally paid judges and 16,000 non-judicial employees in over 350 locations around the State. Judge Lippman has played a central role in many far-reaching reforms of the judicial system, including the introduction of problem-solving community courts, drug courts, and domestic violence courts throughout the State.

1. Inside Fordham Online, Fordham University, http://www.fordham.edu/campus_resources/public_affairs/inside_Fordham/august_24_2006/news/Feerick_center_for_s_23738.asp (last visited Jan. 17, 2007).

elected Supreme Court Justices in New York.² More recently, the *New York Times* has urged structural reform of the hundreds of town and village courts located throughout our State—courts over which we have almost no direct administrative or fiscal authority.³ I could go on, but you get the picture. As the Chief Administrative Judge responsible for overseeing a \$2.4 billion organization that handles four million new cases each and every year, there is never a shortage of compelling challenges to be addressed.

But I'm not here today to talk about the stresses of my job. What I want to talk about instead are the efforts that we have made to re-engineer the courts in New York. And I want to highlight some of the intellectual links that connect my world, the world of the New York Court system, to the world of the Feerick Center, the world of alternative dispute resolution. There is a great deal of overlap between the ADR movement and some of the "problem-solving justice" reforms that New York State Chief Judge Judith S. Kaye and I have championed over the past decade, and which provide innovative solutions for litigants in our civil and criminal courts. The ills of society—whether they be excessive litigiousness or certain criminal defendants whose difficulties cry out for a helping hand rather than incarceration—are so vividly reflected in our courts in New York.

The problems and challenges that we face today in using ADR methods transcend the boundaries between criminal and civil matters in a New York court system that looks to effective outcomes for people rather than merely counting filings and dispositions. Indeed, we have long used ADR in a variety of ways, including: our community dispute resolution centers, which in the last fiscal year resolved 36,000 primarily civil and family cases;⁴ court-annexed ADR in our small claims courts; court-annexed ADR in the Commercial Division of the Supreme Court; and statewide attorney-client fee dispute resolution program.

One area where ADR has proven especially effective has been in matrimonial matters involving children. Delay, expense, and trauma to children are too often part and parcel of the divorce pro-

2. *Lopez Torres v. N.Y. State Bd. of Elections*, 462 F.3d 161 (2d Cir. 2006), *cert. granted*, 127 S. Ct. 1325 (2007).

3. William Glaberson, *Justice Courts in Small Towns to Be Upgraded*, N.Y. TIMES, Nov. 22, 2006, at A1.

4. OFFICE OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS, THE NEW YORK STATE COURT SYSTEM DIV. OF COURT OPERATIONS, 2005-2006 ANNUAL REPORT app. at B2 tbl. 1 (2006), available at http://www.nycourts.gov/ip/adr/Publications/Annual_Reports/AR05-06.pdf.

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cess, particularly with respect to custody, visitation, and child support. Mediation, when used appropriately and with due regard to the potential for power imbalances between the parties, has a proven track record of dealing with these problems.⁵ Mediation provides a safe, structured forum in which parents can meet face to face to discuss what their aspirations are for their children and what kind of relationship they will have moving forward in order to promote the children's best interests. Significant independent research points to the effectiveness of mediation in resolving parenting issues. Parents report increased satisfaction with the outcome—you will hear that word, “outcome,” again and again today—and increased compliance with settlement agreements.⁶ We have been utilizing mediation for parenting disputes with great success in Family Courts throughout the State since the 1980s. More recently, we have successfully employed it in matrimonial matters in Manhattan, under the leadership of Administrative Judge Jacqueline Silbermann, and in the Eighth Judicial District, covering Buffalo and the Western part of the State.

LESSONS FROM ADR

It might seem ironic that the court system would look to the world of ADR for lessons, given that ADR is premised on some fundamental critiques of traditional court processes—too lengthy, too expensive and, dare I say it, too adversarial and legalistic. Many advocates of ADR have come to believe that the “you win, I lose” culture of litigation makes it difficult for judges and lawyers to see the forest for the trees and to craft resolutions that truly address the issues and problems that bring litigants to court.

It is true, however, that the New York courts have taken to heart some very basic ADR principles,⁷ such as: 1) a commitment to rethinking business as usual; 2) an understanding of the importance of cases that are often dismissed as “minor”; and 3) an emphasis on restoring public trust and engaging citizens in doing justice. I'd like to take just a minute to explore each of these.

5. MATRIMONIAL COMM'N, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 26-28 (2006), available at <http://www.courts.state.ny.us/reports/matrimonialcommissionreport.pdf>.

6. See generally Joan B. Kelly & Robert E. Emery, *Children's Adjustment Following Divorce: Risk and Resilience Perspectives*, 52 FAM. REL. 352 (2003).

7. GREG BERMAN, JOHN FEINBLATT & SARAH GLAZER, GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE 39-42 (2005) [hereinafter GOOD COURTS].

RETHINKING BUSINESS AS USUAL

The most significant contribution that ADR has made to the courts is a simple one—driving home the notion that change is in fact possible. Courts are, at heart, conservative institutions that rely on the slow and painstaking accumulation of precedent to guide decision making and on an adversarial contest between two advocates who argue in front of an objective third party. These approaches make good sense and are effective in many contexts—but not always. ADR pointed out that in many cases—a dispute between neighbors, a juvenile accused of vandalism, a small claims case between two local businesses—the traditional approach served no one’s interests: not the parties, not the attorneys, and not the courts. No one denies this wisdom today, but a generation ago this was radical thinking.

The ADR movement got us in the mode of asking some very basic questions—like why can’t we test new approaches to make justice swifter, more comprehensible, and more meaningful?

This is a question that we in the courts now ask ourselves as part of our standard operating procedure. This doesn’t mean that we’re giving license to judges to abandon the Constitution or make up the law as they see fit. But it does mean that our courts can and should adapt to changing times and changing conditions on the ground. It also means that we should constantly be engaged in self-reflection, examining the outcomes we achieve and asking ourselves if there are better, simpler, and faster ways to achieve our goals. All of this is straight out of the ADR playbook.

SO-CALLED “MINOR” CASES

Another lesson we have learned from ADR is that there is no such thing as a minor case. Many ADR programs were created for the very reason that courts were not paying enough attention to civil and criminal cases involving neighbors, relatives, and acquaintances—charges of harrassment, minor assaults, business disputes, and the like. When I first started working as an entry-level court attorney in the early 1970s, I quickly learned the realities of life in the New York City criminal courts. Every day, without fail, hundreds, if not thousands, of cases would pour into the system—cases that, by law, must proceed from arrest to arraignment within twenty-four hours. In the context of the overwhelming caseloads of the 1980s and 1990s, it was only natural that the courts adopted what some have called a triage approach. The more serious the

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crime, the more time and energy that prosecutors, defense attorneys, and judges would devote to it. It sounds reasonable enough, but the problem with the triage approach, particularly as to quality of life crimes and neighborhood disorder, is that it sent an unintentional message to the public that certain kinds of cases simply didn't matter. But of course we know that they *do* matter—and they matter *a lot* to the people and the communities who bear the brunt of these offenses.

I'm happy to report that we have learned our lesson. There is no greater evidence of this than our pioneering community courts, including the Midtown Community Court, located just blocks away on 54th Street, which I will get to in just a moment.

PUBLIC TRUST

At the end of the day, courts exist to serve the public. Unfortunately, we've seen a massive erosion of public trust in justice over the past generation. In fairness, many citizen complaints about the courts are based on a lack of knowledge or, even worse, sensationalized television shows and partisan political attacks. But many complaints are based on something else: direct, first-hand experience of the courts either as litigants, victims, witnesses, or jurors. When members of the public come away from these experiences feeling like they have been mistreated or, in the case of some victims, re-victimized, we've got a very real problem indeed. ADR advocates were among the first to recognize this, and their search for new ways of resolving disputes, as well as their efforts to engage local residents as mediators, community board members, and volunteers, was all driven by a desire to reconnect the justice system to the public and improve the delivery of justice.

PROBLEM-SOLVING JUSTICE

We have actively sought to translate the lessons of the ADR movement into new court processes that better serve the public.⁸

8. Problem-solving courts also owe a debt to the victim's movement, which introduced concepts of "restorative justice" or victim-centered responses such as enhancing the safety of crime victims and community restitution programs. The movement's emphasis on collaborating with multiple justice system stakeholders was also an important foundational principle. At the same time, there also arose a new "broken windows" theory of law enforcement and of dealing with crime which hypothesized that tolerance of so-called petty crime ultimately led to an epidemic of more serious crime because of a societal culture that did not take criminal conduct seriously enough, particularly lower level offenses. These and other innovative approaches that were percolating up in the 1970s and 80s encouraged judges and lawyers to start

Chief Judge Kaye, who has made New York the national leader in this regard, has named this effort “problem-solving justice.” What is problem-solving justice? Not surprisingly, I think the concept was best articulated by Chief Judge Kaye when she said “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.”⁹

In other words, it’s not that process and precedent don’t matter. But judges and lawyers should see the forest for the trees. Going to court shouldn’t be a series of empty procedural gestures—a lot of sound and fury that achieves nothing lasting or meaningful in terms of solving the problems of victims, defendants, and crime-plagued communities.

This is the central insight of problem-solving justice. And it is one that many of us working in the courts arrived at the hard way, after years of dealing with the fallout from meaningless court appearances in too many of our courts, and after too many years of addressing the epidemic of misdemeanor crimes via short, plea-bargained sentences or even outright dismissals—dispositions that accomplished relatively little, because so much of this court activity was being driven by people who were addicted, mentally ill, homeless, or suffering from other difficulties. We began to look with fresh eyes at court processes that focused solely on punishing their *past* behavior while doing little or nothing to change their *future* behavior. We began to ask ourselves a rather essential question: What can the justice system do to stop this destructive cycle?

MIDTOWN COMMUNITY COURT¹⁰

New York’s commitment to problem solving justice dates back to 1993—not coincidentally the year Judith Kaye became Chief Judge—with the creation of the Midtown Community Court, which quickly became the flagship of the early problem-solving movement.

In the past, judges confronting drug possession, prostitution, shoplifting, and vandalism were forced to choose between a few

thinking outside the box of their conventional legal training and to start looking for creative and multidisciplinary alternatives to resolving legal disputes and problems.

9. Judith S. Kaye, *Making the Case for Hands-On Courts*, NEWSWEEK, Oct. 11, 1999, at 13.

10. For more information on the Midtown Community Court, see Center for Court Innovation Home Page, <http://www.courtinnovation.org> (follow “Demonstration Projects” hyperlink; then follow “Midtown Community Court” hyperlink) (last visited Apr. 2, 2007).

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days of jail time or nothing at all—sentences that failed to impress upon the victim, the community, or the defendant that these offenses were being taken seriously by the justice system. By contrast, Midtown ushered in a new paradigm that combined punishment with help by swiftly sentencing these offenders to pay back the neighborhood they harmed through visible community service projects like sweeping streets, painting over graffiti, and cleaning local parks. At the same time, offenders were provided with on-site services—drug treatment, mental health counseling, GED classes, job training—that might help them avoid recidivism and all kinds of litigation in our family, housing, and other civil courts that arise from lives and families broken apart by underlying dysfunctions like addiction.

This double-barreled approach—visible restitution combined with a helping hand—quickly made an impact. According to an independent evaluation by the National Center for State Courts, Midtown’s compliance rate of seventy-five percent for community service orders was the highest in the City.¹¹ It also contributed to a significant decrease in neighborhood crime, with prostitution arrests dropping by fifty-six percent.¹²

RED HOOK COMMUNITY JUSTICE CENTER¹³

Given these results, it was only natural that we sought to test the community court idea in another setting. We chose Red Hook, Brooklyn—about as far removed from Times Square as you can get in New York City—a physically isolated neighborhood dominated by one of New York’s oldest public housing developments. And we went to the same team that developed the Midtown Community Court: our independent research and development arm, the Center for Court Innovation. The Red Hook Community Justice Center opened in 2000 in a refurbished Catholic school.¹⁴

Red Hook works closely with community residents, businesses, and religious and civic institutions to identify and focus on the problems of greatest concern to their neighborhood—in this case, drugs, housing, and juvenile delinquency.¹⁵ The goal is to offer a

11. *See id.*

12. *See id.*

13. For more information on the Red Hook Community Justice Center, see Center for Court Innovation Home Page, <http://www.courtinnovation.org> (follow “Demonstration Projects” hyperlink; then follow “Red Hook Community Justice Center” hyperlink) (last visited Apr. 2, 2007).

14. *See id.*

15. *See id.*

multidisciplinary, coordinated approach to the community's problems, with a single judge hearing neighborhood cases that ordinarily would have been heard in several different courts—civil court, family court, and criminal court. The presiding judge, Alex Calabrese—a graduate of Fordham Law School, I might add—is armed with an impressive arsenal of sanctions and services, including restitution projects developed with the community's input, drug treatment, mental health counseling, on-site educational workshops, GED classes, mediation, and even a youth court, in which teenagers resolve actual cases involving their peers.¹⁶

Red Hook is nothing less than a grand experiment that tests the extent to which a court can engage residents in solving their own problems and serve as the catalyst for an entire community's revitalization. Six years in, how are we doing? There is evidence of significant progress:

Caseload: Red Hook is a busy court handling more than 17,000 cases each year, including criminal cases, housing cases, summonses, and juvenile delinquency cases;

Compliance: Like Midtown, Red Hook has achieved a seventy-five percent compliance rate with alternative sanctions, compared to the fifty percent standard for urban courts nationwide;

Public Trust: Approval ratings for police, prosecutors, and the courts more than doubled from the period just prior to opening to one year after the opening;

Community Restitution: The Justice Center contributes approximately 70,000 hours of community service to Red Hook each year—or \$470,000 worth of labor at the minimum wage; and

Procedural Fairness: More than eighty-five percent of criminal defendants reported that their cases were handled fairly, and ninety-three percent agreed that the judge treated them fairly—results that did not change based on race or on the outcome of the case.¹⁷

These statistics tell only part of the story. As anyone who has recently set foot in Red Hook can attest, the neighborhood is a very different place than it was back in the late 1990s. Gunshots are no longer a daily fact of life. Red Hook recently went two

16. See Center for Court Innovation Home Page, <http://www.courtinnovation.org> (follow "Demonstration Projects" hyperlink; then follow "Red Hook Youth Court" hyperlink) (last visited Apr. 2, 2007).

17. See CENTER FOR COURT INNOVATION, THE IMPACT OF THE COMMUNITY COURT MODEL ON DEFENDANT PERCEPTIONS OF FAIRNESS 14-15 (2006), available at http://www.courtinnovation.org/_uploads/documents/Procedural_Fairness.pdf.

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straight years without a single homicide—the first time this had happened in more than thirty years. In fact, Red Hook’s local precinct was recently named the third safest precinct in the City. As safety has improved in Red Hook, fear has gone down for local residents and businesses. Once a retail wasteland, Red Hook is starting to enjoy the kinds of services—restaurants, coffee shops, supermarkets—that everyone else takes for granted.

OTHER EXAMPLES

The Midtown and Red Hook stories have attracted the attention of justice innovators across the country and around the globe. If imitation is the sincerest form of flattery, consider that New York’s community courts have been replicated in dozens of cities in the United States and around the world, including the United Kingdom, Canada, South Africa, Australia, and Ireland, among others. As impressive as these international replications are, I’m just as proud of the local efforts to adapt the Midtown and Red Hook models. From Babylon, Long Island to Syracuse and back down to Harlem, jurisdictions across the State are attempting to implement elements of the community court approach.

Harlem Community Justice Center¹⁸

The Harlem Community Justice Center is a multi-jurisdictional civil and family court that focuses on youth crime, landlord-tenant disputes, and the challenges faced by parolees in the low-income areas of East and Central Harlem. The Justice Center tries to solve housing conflicts before they escalate into litigation by linking landlords and tenants to mediation, benefits assistance, social services, and loan-assistance programs.¹⁹ The community setting encourages more informed decision-making by the judge as she develops an understanding of the neighborhood’s problem areas and eyesores. The Justice Center works intensively with young people, intervening at the first signs of delinquent behavior to avoid further offenses by connecting young, nonviolent offenders to drug treatment, counseling and education, and nontraditional services

18. For more information on the Harlem Community Justice Center, see Center for Court Innovation Home Page, <http://www.courtinnovation.org> (follow “Demonstration Projects” hyperlink; then follow “Harlem Community Justice Center” hyperlink) (last visited Apr. 2, 2007).

19. *See id.*

like parent-teen mediation, family counseling, mentoring, career training, and youth courts.²⁰

Babylon Community Court

This past June, we announced the opening of the Babylon Community Court, in Suffolk County, Long Island.²¹ The project seeks to move the community court approach first pioneered in urban areas to a suburban jurisdiction and a civil court context. The court will handle all quality of life cases, both civil and criminal, brought by the Town of Babylon. A single judge will preside over the court, which will be dedicated to handling violations of town ordinances that affect the quality of life of local residents in many suburban communities: cases involving nuisance properties, such as untended yards and abandoned cars, and violations of zoning restrictions such as unlicensed subdivisions of single family homes and businesses operating out of residential locations. The Babylon Community Court has the potential to be a national model for how to respond to the kinds of blighted, nuisance properties that mar too many neighborhoods across the country.

Bronx Community Solutions

Bronx Community Solutions represents our recent attempt to go to scale with the community court approach: instead of targeting a single neighborhood or utilizing a single judge, Bronx Community Solutions brings the community court approach—more informed decision making, greater use of community-based sanctions, active outreach to the local community—to *every courtroom* in the Bronx.²² There are about four dozen judges handling a caseload of about 50,000 misdemeanors each year, from weighty criminal conduct to the lower-level quality of life issues that confront all New Yorkers in their daily lives.

These judges are provided with a broad set of sentencing options, from drug treatment, to job training, to mental health coun-

20. See MICHELE SVIRIDOFF, ET AL., DISPENSING JUSTICE LOCALLY: THE IMPLEMENTATION AND EFFECTS OF THE MIDTOWN COMMUNITY COURT, http://www.communityjustice.org/pdf/disp_just_loc.pdf (last visited Apr. 2, 2007).

21. For information about the announcement on the opening of the Babylon Community Court, see Town of Babylon, *First of Its Kind Suburban Community Court to Open in Babylon* (June 14, 2006), <http://www.townofbabylon.com/whatsnew.cfm?id=142&searchDate=6/1/2006>.

22. For up-to-date information on Bronx Community Solutions, see Center for Court Innovation, *Changing the Court Weblog*, <http://changingthecourt.blogspot.com> (last visited Apr. 2, 2007).

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selling, so that they can simultaneously hold offenders accountable while offering them the assistance they need to change their behavior. Court staff work closely with residents and neighborhood groups to create community service options throughout the Bronx that actually respond to the local hot spots and eyesores that residents are most concerned about. By quickly assigning offenders to social service and community service sentences and rigorously monitoring their compliance, we send the message that community-based sanctions are taken seriously. Bronx Community Solutions was recognized recently by the U.S. Department of Justice, which named it one of the top ten innovative justice projects in the country.²³

All of our community courts make extensive use of ADR.²⁴ For example, each has an active on-site mediation program that handles hundreds of disputes each year involving noise, landlord-tenant, families, and small claims. In addition, Midtown also hosts “community impact panels” that bring together low-level offenders and community residents for facilitated face-to-face conversations.²⁵

I believe that all our community courts are doing something that rarely happens in government today—sending a strong message to historically marginalized neighborhoods that our justice system and institutions of government care about them and their problems. Judges, lawyers, and government agencies are working together to reassert the relevance of the courts to the lives of these residents and communities, so many of whom feel disenfranchised from our judicial and political systems.

PUTTING PROBLEM-SOLVING JUSTICE IN CONTEXT²⁶

Let me take a moment here to put problem-solving courts in greater context. Problem-solving justice is about modifying court

23. See Bureau of Justice Assistance, U.S. Dep’t of Justice, Community-Based Problem-Solving Criminal Justice Initiative, http://www.ojp.usdoj.gov/BJA/grant/cb_problem_solving.html (last visited Jan. 21, 2007).

24. For information about the New York State Unified Court System’s use of ADR, see New York State Unified Court System, Alternative Dispute Resolution: Community Dispute Resolution Centers, <http://www.courts.state.ny.us/ip/adr/cdrc.shtml> (last visited Jan. 21, 2007).

25. For more information about the Midtown Community Court, see Center for Court Innovation Home Page, <http://www.courtinnovation.org> (follow “Community Court” hyperlink; then follow “Midtown Community Court” link) (last visited Jan. 21, 2007).

26. See generally SUSAN K. KNIPPS & GREG BERMAN, NEW YORK’S PROBLEM-SOLVING COURTS PROVIDE MEANINGFUL ALTERNATIVES TO TRADITIONAL

processes to fit the trends that are driving caseload activity. It is about courts putting the individual front and center, and fashioning individualized responses designed to change future behavior. The process and rules are still there, but they form the context of the proceeding, not the focus. In the problem-solving model, the judge is not just a detached and distant arbiter who manages the process and then makes a final decision or pronounces guilt or innocence and, perhaps, imposes a sentence. Rather, the judge is a proactive, hands-on agent for change who views his or her role as an opportunity for the entire justice system to *intervene* and not only punish the individual but, just as critically, achieve a better outcome for that litigant and her family, and for our communities and public safety.

There is a danger when talking about problem-solving courts that the uninitiated will perceive them to be performing social services work—unbecoming for courts of law. Let's be clear: the reason these courts work so well is because they emphasize offender accountability and compliance with court orders. Is it less adversarial? Yes. Is it re-thinking and re-engineering the way we do business to better serve the public? Yes. Is it social work? No.

Offenders' participation in drug treatment and other mandated services is rigorously monitored by the judge through regular court appearances, and noncompliance is punished swiftly to reinforce the importance of meeting the conditions set by the court and to drive home notions of individual responsibility. Problem-solving courts do help people, and that is not a bad thing. Problem-solving courts do facilitate social services for people who need them, and that is not a bad thing. And problem-solving courts do change the traditionally passive role of the judge to be more proactive and engaged with the people appearing in their courts, and that is proving to be a very wise thing.

DRUG TREATMENT COURTS²⁷

Take the case of the typical offender arrested for drug possession—not the kingpin with the violent history but the nonviolent drug addict who repeatedly engages in low-level crime to feed an addiction. The standard choices used to be jail, probation, or dismissal, none of which tackled the root cause of the criminal behavior: the offender's habit. In a drug court, the offender's addiction

REMEDIES (June 2002), available at http://www.courtinnovation.org/_uploads/documents/NYProblemSolvingCourts.pdf.

27. See generally *id.*

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isn't a background issue, it's at the very heart of the process. Everyone—the judge, the D.A., the defense lawyer—is on board with changing the defendant's behavior through treatment, counseling, and training. Offenders return to court frequently, sometimes weekly, to submit to urine tests and demonstrate their compliance with the judge's orders—a kind of “tough love” regimen. The judge rewards progress and eventually publicly recognizes successes in very moving graduation ceremonies, and the charges are dropped. Failures are incarcerated, no questions asked, pursuant to a predetermined jail sentence.²⁸

So far, with over 13,000 offenders having graduated from our drug courts and another 7,500 presently enrolled,²⁹ it is clear that drug courts work much better and cost far less than traditional approaches. Research tells us that offenders in court-ordered drug treatment succeed at twice the rate of those who voluntarily enter treatment. This means that we don't have to waste scarce resources prosecuting, defending, and incarcerating the same people over and over again. In fact, one Oregon study has concluded that every dollar we invest in drug treatment courts ultimately yields ten dollars in savings from reduced incarceration, victimization, and crime.³⁰ It means that our communities and streets are safer. It means that these men and women can return to their families and be around to raise and provide for their children. It means

28. See generally AMANDA B. CISSNER AND MICHAEL REMPEL, CENTER FOR COURT INNOVATION, THE STATE OF DRUG COURT RESEARCH: MOVING BEYOND ‘DO THEY WORK?’, (2005), available at http://www.courtinnovation.org/_uploads/documents/state%20of%20dc%20research.pdf (last visited Apr. 2, 2007).

29. Information obtained from the Office of Hon. Judy Harris Kluger, Deputy Chief Administrative Judge for Court Operations and Planning (as of June 2006). For detailed accounts of the New York City Drug Court Initiative, see Criminal Court of the City of New York, Drug Court Initiative Annual Report 2005 (2006), available at <http://www.courts.state.ny.us/courts/nyc/criminal/2005%20FINAL%20Annual%20Report%20091406.pdf>.

30. A growing body of research indicates that treatment, rather than incarceration, is more effective at addressing drug abuse. An investment in drug treatment can save billions of taxpayer dollars a year in prison, health care, child care, transportation, and public safety costs. An analysis of California's diversion program—which offers treatment instead of prison to nonviolent drug offenders—showed that for each dollar spent, the state enjoyed seven dollars in savings on future costs. A study of Multnomah County, Oregon found that the drug court there saved \$5,071 per participant per month—more than \$1.5 million in annual savings for taxpayers. See NPC RESEARCH, INC., A DETAILED COST ANALYSIS IN A MATURE DRUG COURT SETTING: A COST-BENEFIT EVALUATION OF THE MULTNOMAH COUNTY DRUG COURT 57 (2003), available at <http://www.npcresearch.com/Files/NIJ%20Multnomah%20County%20Drug%20Court%20Cost%20Analysis%20Revised%20%2008-26-03%20final.pdf>.

that we have fewer children growing up in at-risk, unstable homes or in foster care—among the surest predictors of negative life outcomes. In fact, one of our Manhattan drug courts reduced foster care stays from an average of four years to less than twelve months.

OTHER PROBLEM-SOLVING INITIATIVES

Mental Health Courts: The well-documented closings of so many mental hospitals in the 1980s and the release of thousands of patients into the general population have created new burdens for the courts in the form of thousands of mentally-ill offenders. As lawyers and judges, what are we to do with these defendants? Remain wedded to a tradition-bound system that just continues to lock them up? We've learned that these offenders do not do well in prison. They stay longer than other inmates and their illnesses just get worse. And what happens when they are released without having received effective treatment? They get recycled right back into the system. Everyone loses.

Beginning in Brooklyn with a pilot launched by the Center for Court Innovation, we have attempted to re-engineer how courts respond to mental illness by linking defendants with serious and persistent mental illnesses—schizophrenia or bipolar disorder, for example—to long-term treatment as an alternative to incarceration.³¹ On-site clinical experts perform detailed psycho-social assessments of each defendant. This information enables the judge to make informed decisions about the nature of the defendant's illness, the risks to public safety posed by that condition, and the kind of individualized treatment plan most appropriate for that defendant.

Defendants must return to court regularly to meet with case managers and appear before the judge to report on progress. The judge stays engaged with the defendant for the life of the case, personally highlighting for her the seriousness of the process and the fact that she is being held accountable. Defendants who comply with all treatment mandates have their criminal charges dismissed or reduced. Because most defendants with mental illness are also dealing with one or more other problems like homelessness, unemployment, or substance abuse, the court process is of necessity highly collaborative, with the court serving as the hub of a broad

31. See Jennifer Gonnerman, *Where Justice and Mercy Meet: In Brooklyn's Mental Health Court, Compassion Is the Rule*, VILLAGE VOICE, July 27, 2004, at 36, available at <http://www.villagevoice.com/news/0430.gonnerman,55415,1.html>.

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network of government and nonprofit service providers.³² While our mental health courts are still new, preliminary results from Brooklyn suggest that participants experience fewer hospitalizations, reduced substance abuse, and, most importantly, fewer re-arrests.

Domestic Violence: Domestic violence cases are among the most difficult, heart-wrenching cases that any judge handles. The chronic nature of abuse, the targeted victim, and the realities of children and family finances make a domestic violence case an extremely complicated web to untangle. In response, we have created dozens of specialized courts devoted to domestic violence, which offer special training for judges and other courtroom actors as well as intensive services for victims. We have also opened a series of what we call “integrated domestic violence courts” in an effort to streamline the court process. Rather than send domestic violence victims to several different trial courts—Family Court for child custody/visitation, Criminal Court for assault, Supreme Court for divorce—we have grouped all of these cases together before a single judge. Our integrated courts offer a coordinated response, ensuring that no one falls between the cracks. At the same time, in all of our work on domestic violence, we seek to improve offender accountability and increase victim safety. We still have a lot of work to do; domestic violence is a scourge that is still very much with us. But I think we can say that we have made real strides in improving both the process and the outcomes in these cases.³³

Child Welfare Permanency Planning Mediation: Like domestic violence cases, child welfare cases are extremely complex, raising difficult issues of child safety and family preservation. Research has repeatedly found that children in foster care are highly vulnerable to a host of negative life outcomes, including serious long-term health problems and developmental delays. This is why finding permanent loving homes for these children as quickly as possible is so critical. Since 2003, the court system’s ADR Office and

32. See Center for Court Innovation Home Page, <http://www.courtinnovation.org> (last visited Jan. 21, 2007); see also DEREK DENCKLA AND GREG BERMAN, CENTER FOR COURT INNOVATION, *RETHINKING THE REVOLVING DOOR: A LOOK AT MENTAL ILLNESS IN THE COURTS* (2001), available at http://www.courtinnovation.org/_uploads/documents/rethinkingtherevolvingdoor.pdf.

33. See Center for Court Innovation Home Page, <http://www.courtinnovation.org> (follow “Demonstration Projects” hyperlink; then follow “Integrated Domestic Violence Courts” hyperlink) (last visited Jan. 21, 2007); see also generally Robyn Mazur and Liberty Aldrich, *What Makes a Domestic Violence Court Work?: Lessons from New York*, 42 *JUDGES J.* 2 (2003).

our Permanent Judicial Commission on Justice for Children have been working with the State Office of Children and Family Services to pilot child permanency mediation throughout New York City and many other areas of the State. The goal of these pilots is to use mediation to resolve conflicts that so often delay permanency. We in the courts have learned that many child protection issues can be resolved more effectively in a non-adversarial atmosphere that stresses good communication and working relationships among all the parties.³⁴

Reentry Courts: In our Harlem Community Justice Center, in collaboration with the New York State Division of Parole and the Office of Children and Family Services, we are piloting a new approach to individuals returning to the neighborhood after incarceration.³⁵ The goal is to prevent residents of Harlem, both adults and juveniles,³⁶ from re-offending by giving them the tools they need to make the transition to responsible citizenship.³⁷ On the adult side,

34. See generally NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, INTRODUCING CHILD PERMANENCY MEDIATION IN NEW YORK STATE: PLANNING AND IMPLEMENTING A MULTI-SITE PILOT PROJECT (2006), available at <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/nysmediationbrief.pdf>.

35. Throughout the 1980s and 1990s, our nation incarcerated people in record numbers, even as we gave less and less attention to rehabilitating them. America's inmate population quadrupled from 500,000 in 1980 to 2 million in 2001, while prison spending rose from \$7 billion to \$45 billion. See GOOD COURTS, *supra* note 7, at 20. These inmates are now returning to our communities in record numbers—over 500,000 of them annually across the country. See JEREMY TRAVIS, BUT THEY ALL CAME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 1 (2002), available at <http://www.ncjrs.gov/pdffiles1/nij/181413.pdf>.

36. This is a particularly daunting challenge. Data compiled by the Office of Children and Family Services found that eighty-one percent of returning boys commit new offenses within three years of release. The goal of juvenile reentry is to prevent future delinquent behavior by targeting families and home life. Staff members meet regularly with family members to create family-strengthening plans and ensure a positive environment for returning youth. At the time of release, the participant is presented with a plan covering school enrollment and attendance, participation in assigned activities, service referrals, curfews, and mandatory court attendance on a weekly or biweekly basis to review progress in meeting established behavioral and program goals. Both the juvenile and parent are given a clear understanding of what is expected of them and of the consequences of noncompliance, which include a return to state placement. Parents participate in bimonthly court appearances with an aftercare team. Staff and partner agencies provide services and assistance, such as helping families navigate the school system and re-enroll juveniles. Once again, collaboration and partnerships are essential. In this case, our partners include the Office of Children and Family Services, the Boys and Girls Club, Center for Alternative Sentencing and Employment Services, the Children's Aid Society and Phoenix House.

37. Travis points to research showing that the time of greatest failure for parolees is in the first weeks and months following release. See TRAVIS, *supra* note 35. Thus, the key to reentry courts is to identify, as soon as possible, the parolee's needs and

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this means helping parolees conquer drug problems, find jobs, and assume familial and personal responsibility. On the juvenile side, this means linking young people to counseling and helping them reconnect with schools. The Harlem Community Justice Center provides both adults and juveniles with individualized service plans. Where appropriate, services are also offered to family members to help increase stability in the home and promote the chances of success. As in other problem-solving courts, compliance is rigorously monitored through regular court appearances. Missed appointments and failed drug tests result in curfews, increased court appearances, and, if serious, reincarceration.³⁸

Crown Heights Community Mediation Center: The Crown Heights Community Mediation Center, another creation of our Center for Court Innovation, was started in 1998 to improve inter-group relations, promote non-violent conflict resolution, and encourage positive youth development. It provides a wide range of community services, mediating consumer-merchant disputes, co-worker disputes, multi-cultural disputes, employer-employee conflicts, landlord-tenant disputes, noise complaints, and small claims. There is a special focus on addressing youth conflicts within families and in schools. The Mediation Center also serves as a resource center for local residents, providing job and housing assistance and referrals for counseling, drug treatment, shelters, and health care.³⁹

LESSONS

One of the most interesting and significant lessons of the problem-solving movement relates to how the judicial role and mindset have changed. Judges and lawyers are trained to respect precedent and tradition and to regard the adversarial system as the great engine of truth, so it has not always been easy to convince them that the structures of the justice system and longstanding judicial

vulnerabilities and link her to appropriate on-site and community-based treatment and other services. Accordingly, Justice Center staff work closely with parole staff to do a pre-release assessment and develop detailed profiles of the inmates upon which customized treatment and supervision plans are prepared. Court staff meet with parole officers and service providers regularly, and parole officers and reentry court staff will even meet with family members of parolees beforehand to address problems and encourage their assistance and support.

38. See DONALD FAROLE, JR., *THE HARLEM PAROLE REENTRY COURT EVALUATION: IMPLEMENTATION AND PRELIMINARY IMPACT* (2003), available at http://www.courtinnovation.org/_uploads/documents/harlemreentryeval.pdf.

39. For more information on the Crown Heights Community Mediation Center, see Center for Court Innovation Home Page, <http://www.courtinnovation.org> (follow "Mediation" hyperlink) (last visited Apr. 2, 2007).

processes had to be changed. Some of the easiest converts were judges on the front lines, who understood first-hand the sad truth that they were accomplishing very little of lasting import by dispensing short jail sentences, dismissing cases for “time served,” or simply passing offenders off to equally overwhelmed probation departments. Some people called it “assembly line justice”; others called it “McJustice.” Judges were working hard, getting through huge calendars, and making little difference in the lives of victims, defendants, and neighborhoods.

In contrast, consider what problem-solving judges are asked to do:

Look at each case and each litigant as a problem to be solved and not just another case to be processed;

Look beyond the immediate case in front of them and think about the big picture and larger patterns of behavior;

Serve as conveners who collaborate with social service providers and bring them into the process in the service of achieving better outcomes for defendants, victims, and communities;

Serve as brokers who coordinate relationships among stakeholders and who monitor the work of social service providers; and

Stay involved with each case over the long haul and use their judicial authority to promote compliance with treatment plans and stronger supervision of the individuals involved.

Lawyers on both sides of the aisle have had to assume new roles as well. This may sound revolutionary, but problem-solving courts actually require that prosecutors and defense counsel work together on certain cases, agreeing on who is eligible to participate in the court, coming up with mutually agreeable systems of sanctions and rewards, and figuring out the best way to encourage offenders to succeed in treatment. In the process, we have changed how many lawyers measure success: not by the number of convictions and acquittals or by which side wins or loses the case, but by whether we were able to change behavior and improve public safety.

This recasting is not without dangers, particularly as to the judicial role. Some see the specter of well-meaning but misguided “touchy-feely” judges intent on pursuing rehabilitation and their own personal conceptions of social justice at the expense of punishment and accountability. On the other side of the spectrum is the fear that, without the constraints of the adversarial system, paternalistic judges will use their enormous powers to engage in intrusive and lengthy interventions and effectively manage the lives of

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poor and powerless citizens for their own good. We must always be conscious of these concerns as we go forward, but the bottom line is that these courts are proving to be both effective and fair, and they are using the skills of lawyers and judges in ways that are meaningful and positive for our society.

CONCLUSION

I am honored by the invitation to speak at this, the first symposium sponsored by the Feerick Center for Social Justice and Dispute Resolution. Our society is crying out for more John Feericks, for more lawyers who see themselves as consensus builders, problem-solvers, preventive peacemakers, and dispute settlers. The legal academy and the legal profession have an obligation to reexamine how lawyers are being trained to deal with the great issues of our time, including the deterioration of our social infrastructure through crime, poverty, and family dysfunction, just as we in the courts have begun reexamining how well we are fulfilling our constitutional mission in the face of these plagues of modern-day life. If we are to remain relevant and responsive to the public's needs and expectations, we have to engage these cases and the societal problems they reflect, with all the complexities and nontraditional challenges they present.

The lesson of the problem-solving revolution is that the judiciary's accountability to the public extends beyond counting how many cases we've disposed of and how quickly we've processed them. Rather, it is clear that our communities expect much *more* from the courts. They know that what happens in our courts truly matters. By helping to solve the problems that we confront in our courthouses, we help to solve the problems we face as a society. Fortunately, with each passing year, the evidence grows stronger that these nontraditional legal and judicial approaches are producing better outcomes and helping to break the cycle of hopelessness that ravages countless lives, families, and communities.

Thank you very much.

