

# Reflections of Problem-Court Justices

**D**uring its annual judicial seminar at the end of 1999, the Unified Court System convened a roundtable of problem-solving judges to discuss how their courts operate and how they affect the roles that judges play inside and outside the courtroom.

John Feinblatt, director of the Center for Court Innovation, moderated the panel. The participants were Jo Ann Ferdinand, presiding judge of the Brooklyn Treatment Court; Judy Harris Kluger, administrative judge for the New York City Criminal Court and a former judge of the Midtown Community Court; John Leventhal, presiding judge of the Brooklyn Domestic Violence Court; Rosalyn Richter, an acting Supreme Court justice and a former judge of the Midtown Community Court; and Joseph Valentino, presiding judge of the Rochester Drug Court.

## **Contrast With Traditional Courts**

**JOHN FEINBLATT:** Each of you has presided over both traditional courts and problem-solving courts. What's the difference?

**JUDGE FERDINAND:** Problem-solving courts broaden their scope and deal with the larger issues—for example, the problem of addiction that often leads to crime. They take the approach that courts should address people's underlying problems and that judges have an important role to play in that. And problem-solving courts allow judges to develop a substantive expertise in a particular area. When I was in Criminal Court, I used to give defendants one chance at drug treatment, and if they messed up, I would give them a harsher sentence or disposition. But since presiding at the Brooklyn Treat-

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## Judicial Roundtable

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ment Court, I've learned that recovery is not an event; it's a process. It's not all or nothing. Giving them just one shot at rehabilitation is not helpful. At the Treatment Court, I follow defendants' progress in treatment and try to maximize their chances for success.

JUDGE VALENTINO: There's accountability and immediacy. I was really skeptical about drug courts at first, thinking that they were one of those liberal touchy-feely programs where you just pat somebody on the back, get them on probation and get them out of the courtroom. But after watching the drug treatment court in Rochester a couple of times, I realized that it was not a social worker type of court. It was the first time that I saw defendants having to take responsibility for their actions. Defendants were immediately accountable. The judge knew whether they were following their program within a couple of days, not months later.

JUDGE RICHTER: Rather than just focusing on what's the minimum sentence and the maximum sentence, problem-solving courts have broadened the judicial horizon and really asked the question, "What's the solution? What's the right remedy?" Judges have been doing this all along, and problem-solving courts are allowing us to have that discussion, not back in our offices and not on the phone, but in the courtroom with information and resources. Problem-solving courts are just giving judges more choices than we have ever had.

JUDGE FERDINAND: Another major difference is the role of attorneys. In the Brooklyn Treatment Court, the traditional adversarial process is very much intact when it comes to working out the disposition of the case. But once a defendant pleads guilty, everybody shares the same goal: to help the defendant stop using drugs and have the case dismissed. My D.A. stands up in dismissal ceremonies and says that she feels terrific as the prosecutor dismissing 20 felonies. There aren't too many prosecutors who could say that. The D.A. is successful because Treatment Court graduates have become law-abiding and responsible for their own behavior.

### "Real" Judging

JOHN FEINBLATT: Have these courts changed your role in the courtroom?

JUDGE LEVENTHAL: There is a whole set of basically common sense things that I didn't do before but I now do as a matter of routine. For example, I bring the defendants back regularly for observation, supervision and monitoring. I let them know that the same judge who arraigns them is the same judge who is going to watch them. All defendants who are out on bail come back before my court every two to three weeks, even if nothing is going on. The ones on probation or with a

split sentence come back to my court every two to three months for the first year and a half of their probation.

JUDGE FERDINAND: It's funny, I get asked a lot, "When are you going to go back to being a real judge?" I really believe that what I'm doing now is the "realest" bit of judging that I've ever done. I don't simply sentence people; I make sure that the sentence makes sense, that it is something they can do. I work with them and provide the tools they need to complete the process.

JUDGE RICHTER: I've found that we as judges have enormous psychological power over the people in front of us. It's not even coercive power. It's really the power of an authority figure and a role model. You have power not only over that person, but over their family in the audience, over all of the people sitting in that courtroom.

JUDGE KLUGER: I think that's definitely true. One of the lessons that I have learned is that you can't just place a defendant in treatment and expect the process alone to work. You need the oversight of the court. I once attended a meeting at the Midtown Community Court where defendants said that having a judge monitor what they were doing affected them almost as much as having a sentence over their heads.

### Cultural Change

JOHN FEINBLATT: It seems to me that one of the principal themes that unites drug courts, domestic violence courts and community courts is partnership. They all rely on outside agencies—to provide social services, to monitor offenders, to supervise community service sentences. How do you make inter-agency partnership work?

***I don't simply sentence people; I make sure that the sentence makes sense, that it is something they can do.***

JUDGE FERDINAND: The foundation of the Brooklyn Treatment Court is the partnership between service providers and the courts. Treatment providers are often distrustful of courts because they fear that judges will make irrational judgments about their clients. We had to articulate the advantages of partnership for them. By working together, the treatment providers can tell judges what's happening in treatment and courts can assist providers in keeping a defendant on track. It allows both to do their jobs better. We've also formed an unexpected partnership with the Police Department's

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warrant squad. In the early days of the Treatment Court, warrant officers discovered that they could find our defendants relatively easily because they tended to return to the same street corner or drug location. So the officers started coming to court day after day and asking the D.A. to give them a list of people on warrants. To give you a sense of context, this is New York City where there are literally hundreds of thousands of warrants issued each year. At the Treatment Court, warrant officers would actually come into court and say, "I brought back so-and-so last week. How's she doing?" And we'd say, "Oh, she's out on a warrant again." And sure enough, they'd go out, they'd pick her up, they'd be back that afternoon. It's a partnership that we really wouldn't have thought about forming but it has made their job better and our job more effective.

***It has made me look at everybody on the other side of the bench—both defendants and lawyers—not as adversaries but as people who bring their own life experiences to the table.***

JUDGE RICHTER: I think that the kind of collaboration that Judge Ferdinand is describing amounts to a real cultural change within the criminal justice system. To give another example, a couple of months ago I was at a panel organized by a social service agency on domestic violence when a police officer, just a regular precinct officer, came up to me and said, "I was at a meeting in my precinct and they're all over us about recording the injuries in police reports. Are you getting them? Are they helpful? Because if they're not helpful, what would be helpful?" I was really surprised that he cared if his paperwork was actually being used. The change from the police not caring to this officer asking about his paperwork was really quite significant.

JUDGE VALENTINO: I remember the police thinking that the Drug Court was one of those goofy programs that spring up every once in a while, but now we've got a policeman in court every day. A sergeant assists us with warrants, new arrests, things of that nature, and we invite the police officers to come to the graduations. They are highly impressed when they see that a defendant is a year clean with a GED and a job. They clap; they hug him. I was in the D.A.'s office for eight and a half years and I never thought I'd ever see that.

JUDGE LEVENTHAL: At the Domestic Violence Court, Judge Matthew D'Emic and I convene monthly meetings with police, probation, prosecutors, defense counsel and others to look at how the project is doing. It has been a wonderful tool. It keeps everyone's eye on the ball. We can anticipate problems before they come up. As a result, we've resolved some very crucial issues. For example, we found out offhand from the Police Department that if a defendant wants to get his belongings from the house, he can't just go to the precinct any more. The judge has to put it in the order of protection that on a specific date and time he is to go to the house with the police and pick up his belongings. At another meeting, we looked at immigration issues. If the complainant has a status derivative of the defendant, then she might not want to prosecute because she's worried about getting deported. So we had immigration lawyers come in to talk about the issue. We've had similar meetings on dealing with mentally ill defendants.

JUDGE KLUGER: Service providers and the police are obviously two important partners, but I don't think we should lose sight of the community. Community courts in particular rely on partnerships with local residents, merchants and community groups. In the early days of the Midtown Community Court, there were many judges—and I must say that I was one of them—who worried that by meeting with the community we would be opening the court up to criticism. It was something I was very concerned about initially. But I realized that we are public officials and there is nothing improper or incorrect with us speaking to members of the public. I had been afraid that people would talk about particular cases and would try to influence me in some way, but I realized after the first advisory board meeting that I attended that they just wanted to express their appreciation for the court and have an interaction with the judge. The meetings created a spirit of partnership and collaboration that allowed community members to embrace ideas such as having defendants perform community service in their neighborhoods. They even volunteered ideas for where to send defendants and what they should do. The meetings resolved any distrust between the court and the community and were beneficial in helping the court grow.

### **Making a Difference**

JOHN FEINBLATT: What has happened on a more personal level? What has it meant to be presiding at one of these courts?

JUDGE RICHTER: I think it has changed my view of what a court can do. It has made me look at everybody on the other side of the bench—both defendants and lawyers—not as adversaries but as people who bring

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their own life experiences to the table. In a world where caseload volume demands that judges move cases quickly, it is incredibly rewarding to have an opportunity to step back and ask how can we work together as a team to achieve better outcomes.

JUDGE LEVENTHAL: A lot of judges and lawyers want to help people and the society at large, but it's rare to get a case that actually means something to humanity. At the Domestic Violence Court, I feel like I'm doing meaningful work every day. But there's a down side, too. I live with my cases all the time, which can interfere with my time outside of the court. On weekends and when I'm on vacation, I watch the news and I want to see if there is a homicide. I want to know if it's in Brooklyn and I want to know if it involves my court.

JUDGE VALENTINO: Judges see a lot of failure and not many successes, but since I've been at the Drug Court, I've seen quite a few successes and that spurs me on.

Here is an example of what I find most rewarding. This guy graduates from Drug Court who had been a thief in our community for about 20 years. He came up to me the other day and introduced me to his fiancée, who herself had been an addict but now has a drug-free baby. He asked me to marry the two of them. That was probably the most gratifying thing.

JUDGE FERDINAND: It's an incredible feeling to know that I played a part in the success of these people coming out of the Treatment Court—people that probably would never have achieved this if it weren't for the court's intervention. I have watched people go through the process of recovery. I have watched them become drug-free and come to court dressed beautifully, bring their children, bring their mothers, bring their wives. It really is an incredible experience.

JUDGE KLUGER: The bottom line is that judges can experiment with something new. And if we're given the right tools, it can work. We can make a difference.