

# Going to Scale:

## A Conversation About the Future of Drug Courts

Aubrey Fox and Greg Berman

Perhaps no criminal justice innovation has spread as rapidly in recent years as drug courts, which offer judicially monitored treatment as an alternative to incarceration for non-violent addicts. The first drug court was launched in Dade County, Florida, in 1989. Today, there are more than 1,200 drug courts either in operation or in planning across the country. More than 226,000 defendants have participated in these programs.

Drug courts are the most prominent example of a wave of “problem-solving” innovation that has sought to change the way courts operate in this country. Alongside drug courts, domestic violence courts, community courts, family treatment courts, mental health courts, and other specialized courts are using the authority of the judicial branch in new ways—in an effort to improve outcomes for victims, communities, and defendants. These problem-solving courts employ new tools and new methods—such as requiring defendants to appear regularly before judges to report on their compliance with court orders, or adding social scientists, drug treatment counselors, and other service providers to the courtroom team.

The first generation of problem-solving courts has achieved some provocative results—none more so than drug courts. Independent research credits drug courts with reducing rates of drug use and re-arrest among participants. Also, treatment retention rates—a key indicator of long-term sobriety—are twice as high for participants in drug courts as opposed to individuals who seek out treatment voluntarily.

To date, the drug court movement has largely been a grassroots phenomenon, driven by a highly motivated cadre of judges, prosecutors, and court leaders. Based on the demonstrated success of drug courts—and the enthusiastic public attention these courts have generated—a number of states have begun to take the

next step, seeking not just to replicate pilot drug courts, but rather to test system-wide the viability of new approaches to the problem of addiction. Their focus is on building systems at a state level, either through special judicial branch-led efforts (as in New York), legislation (Indiana), or collaborative efforts that bring together the heads of statewide agencies like corrections, courts, and social services (Utah).

Clearly, drug courts are at the brink of moving into a new stage of development. Acknowledging this reality, in March 2002 the United States Department of Justice, working with the Center for Court Innovation, brought together a select group of judges, practitioners, and thinkers from around the country to discuss the future of drug courts. The goal of the roundtable was two-fold: first, to unearth some of the strategic, conceptual, and practical challenges that practitioners face in attempting to bring drug courts into the mainstream of court operations, and second, to provide a road map to drug court advocates in addressing those challenges.

Perhaps not surprisingly, the topic proved to be a complicated one. During a day-long conversation, court administrators, judges, legal scholars, and experts in other fields of social policy innovation grappled with a series of difficult questions. How do you “go to scale” with an idea like drug courts? Is the goal to promote continued replication of the drug court model? Or is the goal to advance drug court principles and strategies, making sure they take root in every courtroom? Most important, how do you institutionalize innovation? Will the drug court approach lose its effectiveness if it becomes business as usual?

Several key themes emerged from the discussion. Many, though not all, participants agreed that going to scale meant more than “hanging more signs on the door” (a phrase coined by University of Wisconsin law professor Michael Smith) or merely increasing the number of drug

courts in existence. Instead, participants seemed eager to distill the “active ingredients” or “essence” of the drug court model—and to encourage the spread of drug court principles as opposed to expanding the number of drug courts. Adele Harrell, a researcher at the Urban Institute who has written extensively about drug courts, put it best when she suggested that success for advocates might lie in drug courts fading “out of existence as their tenets become embedded in practice.”

The desire to spread elements of the drug court approach—and not replicate drug courts per se—has some important implications. First and foremost, it means that advocates must identify which elements of the model that they wish to see incorporated into the broader court system. This is a more difficult task than it might at first appear. Participants at the roundtable articulated a number of core drug court elements. For Utah state court administrator Gary Becker, the essence of drug courts is the creation of new partnerships between courts and state treatment agencies. For law professor Smith, it is “the idea that sentencing is a responsibility of the court over a long term.” San Diego Judge James Milliken and Indianapolis prosecutor Scott Newman cited concrete goals: providing judges with more comprehensive assessments and more sophisticated management information tools to guide sentencing decisions and help track offender compliance with court orders. And for New York Deputy Chief Administrative Judge Joseph Traficanti, who’s leading an ambitious statewide effort to create drug courts in each of New York’s 62 counties, the goal is to make it possible “for any defendant, in any jurisdiction, to go into treatment.” The fact that participants in the roundtable (most of them drug court proponents) were unable to reach consensus on the core elements of the drug court approach suggests that more work has to be done before advocates attempt to mainstream them.

In addition to tackling conceptual problems, participants also addressed strategy questions. Participants returned again and again to the challenge of institutionalizing the drug court model without dampening the spirit of innovation that led to their creation in the first place. “[P]eople don’t respond well to being told, ‘You have to do this,’” said Lisbeth Schorr, an expert on social policy innovation based at Harvard University. She added: “You can’t mandate belief in a program.” Indianapolis prosecutor Scott Newman agreed, arguing that key leaders must have “[t]ransformative personal experiences” if they are to buy into the drug court idea.

Roundtable participants repeatedly articulated the tension between the need to ensure quality control as an idea goes to scale and the imperative to preserve local flexibility. One way this was expressed was the effort to distinguish “institutionalization” from “bureaucratization.” “Bureaucracy creates a coercive style of leadership that forces other people to act in a certain way,” Scott Newman said, while “institutionalization is a motivational style of leadership which gets people inspired.” Many participants argued that the best way to promote institutionalization without bureaucratization was to create an intermediary entity that would provide the technical assistance and support necessary to ensure the quality of implementation at individual sites. This would help drug courts “move from a system based on charisma to one based on standards and principles,” without sacrificing local control, according to Columbia University law professor Michael Dorf.

Participants also highlighted the need for drug courts to create new partnerships or strengthen existing ones as they mature. One example cited was the need to work with state drug and alcohol agencies, which not only manage large sums of money (from federal health and human service grants) but also have responsibility for guaranteeing the quality of treatment services. Going to scale will be “next to impossible” without involving the commissioners of state alcohol and drug agencies, said Valerie Raine of the Center for Court Innovation.

A second area for potential collaboration are state legislatures, which in many places are eager to create a statutory

framework (and provide funding) for drug courts. Partnerships with state legislatures can either help or hinder drug courts, as the examples of Utah and Indiana suggest. While Utah provided a statutory framework that allowed federal treatment resources to be redirected to drug courts—clearly a positive development—in Indiana, pending legislation seeks to codify how drug courts are defined, a development that many feared would severely limit local flexibility. This suggests that drug court advocates will have to proceed cautiously in working with legislatures.

In addition to airing out conceptual and strategic challenges, participants shared their reservations about institutionalization—and in particular its potential unintended consequences. “Today’s innovation is tomorrow’s conventional wisdom,” warned Michael Smith. “I think we need to find a way to go to scale that’s open to constant change, revision and discovery. Otherwise, you just make it more difficult for the next innovator.” In that vein, Adele Harrell cautioned against “overselling the promise” of drug courts, a shortcoming of past criminal justice innovations that have come and gone.

Despite these reservations, participants were cautiously optimistic about the prospects for institutionalization, pointing out that drug courts have already made significant strides forward. Perhaps the most heartening news of the day came from Lisbeth Schorr. Schorr, who has spent the greater part of her professional life thinking about government innovation, remarked that in discussing drug court institutionalization, participants had already reached an unusual level of sophistication. “[T]his is a far better, more rigorous discussion than I am used to hearing,” she said.

What follows is an edited transcript of the discussion, which took place over six hours in a conference room in Washington, D.C.

#### **SETTING THE STAGE**

**Francis Hartmann:** Where are drug courts in the “going to scale” process?

**Greg Berman:** I want to read two quotes that I think speak directly to that question. The first is from John Goldkamp, a researcher at Temple University, speaking about drug courts: “What we have now is

## **DISCUSSION PARTICIPANTS**

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<b>Kevin Burke</b>	Judge, Hennepin County District Court, Minneapolis, Minnesota
<b>Michael Dorf</b>	Columbia University School of Law, New York, New York
<b>Chico Gallegos</b>	Staff Counsel and CFO, Native American Alliance Foundation, Tulsa, Oklahoma
<b>Adele Harrell</b>	Urban Institute, Washington, D.C.
<b>Francis Hartmann</b>	Kennedy School of Government, Cambridge, Massachusetts
<b>Eric Lane</b>	Hofstra University School of Law, New York, New York
<b>James Milliken</b>	Presiding Judge, San Diego Juvenile Court, San Diego, California
<b>Scott Newman</b>	Elected Prosecutor, Marion County, Indianapolis, Indiana
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<b>Joseph J. Traficanti, Jr.</b>	Deputy Chief Administrative Judge of the State of New York, New York, New York
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**— James Milliken**

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. The question isn't, 'Are the 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 be invented." The second is from Michael Smith, who's here with us today. He says, "It seems to me there are two different ways to go to scale. One is to use problem-solving courts as laboratories to improve the way they do business. The other is to build a new system devoted to proliferating problem-solving courts. That choice may turn out to be critical." These two statements underline the theme for today's conversation—an acknowledgment that drug courts are attempting to move from the margins of the court system to the mainstream. I think the challenge is: how do you go to scale in a way that is thoughtful and deliberate?

**Marilyn McCoy Roberts:** When the Department of Justice got into the business of supporting drug courts in 1994, there were about 30 or 40 drug courts around the country. Today we're nearly to the 800 mark and have quite a few more—400 or so—in the planning stages. What's remarkable is that drug courts, which initially didn't attract much interest from court administrators, have now been embraced by the leadership of court systems around the country.

**James Milliken:** One problem that going to scale will hopefully address is the

exclusion of populations that need our services the most. For example, federal and state grants for juveniles exclude kids who have been violent or who have gang associations. Now that we know the medicine works, we need to expand the system so that we can provide the medicine to everybody who needs it.

**Joseph Traficanti, Jr.:** I think institutionalization does mean, at least in part, the creation of more drug courts. I see it as a fundamental issue of fairness: two people arrested in different places for the same crime should have the same opportunity for treatment.

**Michael Smith:** For me, the question is: what are we taking to scale? The answer can't simply be to put more signs on the door. We have to know what the active ingredient of innovation is. Otherwise we won't be able to spread the idea.

#### **ANALOGIES**

**Hartmann:** Drug courts are not the first criminal justice innovation to attempt to go to scale. What have we learned from other efforts in the field?

**Smith:** Let me offer two examples. The first is pretrial diversion programs developed in the 1960s. Public and professional opinion supported this idea, and it quickly became the norm. But nobody had really done the research to understand whether the program had the desired effects. Ten years later, when we finally did the research, we found that the diversions made no difference in outcomes. The second example is point scales for the bail system. In the 1980s, I was visiting another state and came under attack for a point scale they'd instituted that wasn't working. I was told they'd come up with the scale based on an article I'd written about the Manhattan bail project in 1960. I said, "It's 1980. This is a different state. And we abandoned that scale in 1970 because we found it had no empirical basis. What are you doing?"

**John Stuart:** As a defender, I can tell you that my clients were being denied bail based on that point scale all through the 1980s in Minnesota. It's unfortunate that we didn't have this conversation 20 years earlier!

**Smith:** The lesson I'm trying to highlight here is the danger of replicating a specific model to another context. If you want to go to scale, you've got to know why, and you've got to be very careful to avoid harm creation.

**Hartmann:** Mike Scott, what can you tell us about your experience with problem-oriented policing?

**Michael Scott:** We've had some success in getting police officers to do beat-level problem-solving, using street savvy, common sense, and some rudimentary statistical analysis to target local concerns. We've had less success with higher-level problem-solving, applying more rigorous research methods to study a class of problems experienced across a whole jurisdiction. A police agency's enthusiasm for problem-solving tends to wax and wane with the arrival and departure of individual champions within the department—when the champions leave, the innovation disappears as well. Many people still cling to fairly simple notions of what police departments can do, with no sense of what a broad range of responses could really be possible. Problem-oriented policing remains optional; it has not been institutionalized. One reason this is so is that there is no external constituency saying, "Give us more of that problem-solving stuff."

**Hartmann:** Is there a tension between trying to turn each police officer into a mini-problem-solving unit unto himself versus trying to arm departments with better analytical and research tools to problem-solve on a higher level?

**Scott:** So far, the funding has been geared toward line officers who want to go forth, do good, and interact with the community. Unfortunately, that's a heck of a lot more politically appealing than the idea of hiring a bunch of research analysts who work back at headquarters to study community problems. And I think it's fair to say that line-level cops have held up their end of the problem-oriented policing bargain a lot better than the police executives have. In fact, we have line officers to thank for much of the replication that we have seen. Policing is a profession that relies heavily on oral tradition, cops learn from talking to one

another. We've come to the conclusion that stories are the best training tool—so at our annual conferences, cops spend the bulk of their time sharing examples of what they're doing. If you can get enough of the individual stories out, you can build a critical mass of support for a new idea like problem-oriented policing—or drug courts, for that matter.

**Hartmann:** Are there other criminal justice analogies out there?

**Stuart:** To me, the inescapable historical analogy is the juvenile court movement, which succeeded spectacularly in going to scale. The first juvenile court opened in 1899; every state had one within about twenty years. The most prominent problems with juvenile courts—as they became widespread and institutionalized—were lack of due process, poor fact finding, indefinite jurisdiction over people based on a small offense, and idiosyncratic judging. It was a lawless court. As we develop drug courts, we need to keep this experience in mind.

**Smith:** It might also be useful to bear in mind that in its earlier days, the juvenile court was a mechanism thought to be useful in controlling immigrant populations. It was a strategy for dealing with groups that were marginalized, and making sure they stayed that way. If drug courts are falling into that part of the pattern, we may want to be very careful to leave this form of social control behind when we take them to scale. One way to avoid that problem is to bring drug courts to white university towns and suburbs, thereby legitimizing a system which is currently so pointed at African-American youth.

**Scott Newman:** I have a different take on the issue of race. What we've found is that young African-American males are opting *out* of drug court at a disproportionate rate; they are more likely to say, "I'll do my time instead." They simply aren't as fearful of the conventional system.

**Hartmann:** We've brought some outsiders to this discussion—experts who have been involved in taking innovative programs to scale in fields other than criminal justice. What have you heard so far? What lessons can you draw out for us?

**Lisbeth Schorr:** I see five key lessons regarding how to go to scale. The first is the need to distill the essence of an innovation. Unless you spell out what you're doing with some specificity, you can't spread the model. Another lesson is attention to those elements that don't travel easily from site to site. In many programs I've looked at, one of the essential components is the practitioners' belief in what they're doing. You can't mandate belief in a program when you replicate or systematize it, but you must take belief into account through training. The third point is recognizing the importance of context. In my experience, the biggest mistake of replicators is thinking that because their program is wonderful, the surroundings won't destroy it when they plunk it down in a new place. But the surroundings *do* destroy the program unless you provide high-quality training. The context is the most likely saboteur of the spread of good innovations. Part of the context that can undermine innovation is the demand for evidence, and what that demand does to the innovation itself. The demand for proof by funders, elected officials, and others has led practitioners to look for outcomes that are easy to measure rather than the outcomes they're really after. The fourth point is that practitioners should arm themselves to look for patterns rather than proof. As you begin to notice patterns that reappear when you have success, and as those observations accumulate, you can start to offer some very persuasive evidence, if not "proof," of what works. Finally, almost all successful scale-up efforts I've seen have had an intermediary organization to provide legitimization and to articulate the essence of the program to be replicated. The importance of an intermediary cannot be underestimated.

**Bernardine Watson:** At Public/Private Ventures, we're very interested in alternative strategies for working with high-risk youth. We've developed three kinds of criteria for determining whether a program is ready for replication. The first is the program itself, and whether it actually addresses the recognized need or problem. Clearly this isn't an issue for drug courts. The second is whether it does so through methods that are considered credible by the field. Finally—and this is the thorny area that Lee Schorr talked

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**— Lisbeth Schorr**

about—we ask whether the program has proof of success and measurable results. The social service field has set a very high bar for how to prove that a program works: often the field requires a random assignment study to determine success. But very few programs can muster this kind of data. We were able to do it in the case of Big Brothers, Big Sisters, an organization with a well-defined model, a name brand, and funders willing to invest the money necessary for long-term and very expensive research.

**Schorr:** In the last 20 years, the rhetoric in the field has really improved. Everyone knows what they're supposed to say about their program. But that doesn't mean they're actually doing it. Another function that an intermediary can play is to go beyond rhetoric in analyzing what makes a program work.

#### **ASSETS**

**Hartmann:** Are there reasons to be optimistic about the prospects of drug court institutionalization? Do courts bring any particular assets to the business of going to scale?

**Eric Lane:** The evolution of unified state court systems is one important asset, because it has allowed the judiciary to become a real branch of government in the sense that it can assign resources, delegate responsibilities, and make things like drug courts happen that never would have been possible 25 years ago.

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**— Greg Berman**

**Hartmann:** I would nominate a few more assets. One is that the judicial system is independent. Unlike police departments, the courts don’t have mayors or the city council looking over their shoulders. They have much more freedom and power than almost any part of the executive branch. A second asset is that judges think in terms of precedent; they’re willing to be guided. Finally, drug courts have received a lot of support and encouragement from the federal government.

**Kevin Burke:** Another asset, I think, is the willingness of drug courts to be evaluated. People are no longer prone to make policy by anecdote.

**Stuart:** I think drug courts appeal to people’s desire to have hope. We have seen an awful lot of criminal justice programs in recent years that have not worked and have become more and more punitive. With drug courts, people see that we’re not using leeches to cure disease: we’re switching to antibiotics. The mainstream judicial system is still using leeches.

**Newman:** I would point to the favorable political climate as an asset. The public is much more receptive to this thing than it used to be.

**Roberts:** This is true. You can talk to almost any drug court professional in the country, and be told that there have been favorable newspaper articles and widespread community support for their drug courts.

**Berman:** We also know from public opinion surveys that while citizens may not be aware of what a drug court is per se, they do approve of the model’s basic elements. In very high numbers, they like the idea

of judges reaching out to clinicians and asking their advice on drug cases and they approve of court-mandated treatment as opposed to incarceration.

#### **SPREADING THE WORD**

**Hartmann:** Last summer I visited the Red Hook Community Justice Center, where it’s easy to see that all the people who work at the court are true believers in what they’re doing. My question is what happens when the true believers leave? Can we talk about how to create and perpetuate local buy-in?

**Berman:** Whether it’s a community court like Red Hook or a drug court or some other kind of innovation, I think it’s possible to embed the new values we’re talking about today in architecture, technology, and research benchmarks—all kinds of things other than personnel. You’ve got to try to inoculate yourself against the inevitability of the first generation leaving.

**Valerie Raine:** Until recently, drug courts have been created from the grassroots up, thanks to entrepreneurial judges and attorneys. When drug courts are imposed from the top down, how will that change things? As you go to scale, do you take drug courts and make lots of them, thereby retaining some control over the process? Or is what we’re seeking a new approach to judicial conduct? In which case, shouldn’t our efforts be focused on inculcating this approach into judicial decision-making in every courtroom? Of course, the risk is losing control and having what was once an innovative approach become just another case-processing mill. These are difficult questions that don’t have any easy answers.

**Schorr:** You’re right to be aware that people don’t respond well to being told, “You have to do this.” I would be very leery of trying to impose the idea of drug courts on people who don’t want to implement them. But it’s a very different thing to say, “You have to do what is necessary to implement an idea you’ve already endorsed.” You always have to invent some part of the innovation on site. You can’t manufacture the desire to create something like a drug court from above. That’s a recipe for disaster.

**Newman:** I wonder whether concepts like problem-solving courts can only be carried out if you’re directly involved in building them yourself. Can you create a successful drug court—one that incorporates a process of mutual trust and buy-in among such diverse parties as judges, prosecutors, and defense attorneys—without having everyone build it from the beginning?

**Roberts:** I think it all goes back to training. It can be done. The Department of Justice assembles training programs to help people plan drug courts, and we’ve seen the different stakeholders arrive and shake hands with each other because it’s the first time they’ve met. Some are long-time enemies. We watch them go through a process of learning to appreciate each other’s point of view, and developing the rudimentary skills of behaving like a team when they go back home.

**Newman:** I was part of one of those training teams several years ago. I was the hard-hearted prosecutor; our presiding judge was the hidebound traditionalist. I bonded with our drug court judge when I found out he snores very loudly on airplanes. Even workshop travel was part of the bonding process! I think transformative personal experiences among key figures are essential to institutionalization.

**Watson:** All the training in the world won’t make a difference if the site you’ve chosen can’t operate the program. In trying to spread drug courts, I think you have to be careful to pick places where the capacity exists to implement a new program.

**Schorr:** I’m not sure I agree with you on this point. I think you start by looking at places that really need the innovation and then try to create the infrastructure to support it. I would choose a place that’s needy over a place that’s ready to innovate.

#### **CONCERNS AND OBSTACLES**

**Hartmann:** We’ve talked a lot about how you go to scale and how you spread the word about drug courts. Before we go any further, I want to make sure everybody’s had a chance to air their concerns about the institutionalization of drug courts. What makes you nervous here?

**Smith:** I'd be concerned about an over-reliance on arrests as a way of addressing drug abuse. There's an infinite supply of addicted persons out there. The more capacity you create, the more cases you're going to have. There may be no way to get ahead of demand. I worry that in creating drug courts, we may be holding ourselves back from coming up with other solutions to the problem.

**Newman:** I don't really share your concern. The idea that a judge in a drug court would recruit the police into gathering up fodder for his treatment program and get them to abandon opportunity deprivation or some other strategy doesn't strike me as real. In Indianapolis, we do both.

**Adele Harrell:** My big concern is that drug courts don't fall into the trap of overselling their promise, something I think we have to guard against very carefully.

**Michael Dorf:** I agree. What makes us think a court can solve a complicated social problem like drug abuse? The 1960s and '70s were the high water mark of optimism in the judiciary's ability to address problems like prison overcrowding, school segregation, and a lack of mental health treatment services. What we've seen in the last 20 years or so is growing skepticism in judges' ability to address broad social issues.

**Roberts:** I think we have enough drug courts. What we need are more drug court clients. Most drug courts are fairly small experiments. Are they dealing with all the people they could be?

**Newman:** I have a public safety concern about allowing more serious criminals to be eligible for drug court. I get letters from inmates asking that I let them out early so they can continue their walk with Jesus. My feeling is that Jesus can walk in a reformatory just as well as outside, and so too can drug treatment.

**Burke:** I think there's a need to continue to explain to the 25,000 trial judges around the country that a drug court is an enjoyable assignment. Without that buy-in, you won't be able to build momentum to expand drug courts. Judges also need

cover, because this is a profession that doesn't encourage risk-taking and falling flat on your face.

**Dorf:** Another potential problem with going to scale is that drug courts today operate by penalty default—they use the threat of incarceration to get people to enter the program. If you go to scale, you take away that option. Entering drug court would no longer be voluntary.

**Smith:** I have a slightly different take on this question. Today's innovation is tomorrow's conventional wisdom—the standard operational procedure that's desperately in need of change. I think we need to find a way to go to scale that's open to constant change, revision, and discovery. Otherwise, you just make it more difficult for the next innovator.

**Lane:** That's a very important point. I think drug courts are going to fail at some point. The question is how much good we do within that time frame and whether we're preparing an end game for the next innovation to come forward.

#### **TREATMENT**

**Hartmann:** Expanding the drug court approach will inevitably require new connections with the treatment community. What kind of challenges are presented by partnerships with treatment providers?

**Burke:** Accountability is one challenge. Drug courts hold the defendants accountable, but don't always do a good job of holding the treatment provider accountable.

**Harrell:** I agree. I think we have a real issue of quality control. When you start dealing with several thousand people instead of several hundred, you have to figure out how the courts can set up the right mechanisms to ensure treatment quality, and that treatment programs are holding offenders accountable. We're facing a serious problem with drug treatment capacity right now; some programs have a staff turnover rate of 50% each year.

**Chico Gallegos:** One major problem with ensuring effective drug treatment is that many assessment tools don't take into

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**— Eric Lane**

account the specific cultures and populations drug courts are dealing with. Cultural competence is important among both treatment providers and court personnel.

**Roberts:** Another issue is the question of where treatment begins and ends. Drug courts have expanded the concept of treatment beyond its traditional definition. With drug courts the goal is not simply to get participants sober, as it might be in a straight-up treatment program, because then you just end up with a sober criminal. The idea is to work on the behavior that is problematic to the community. So for drug courts the goal is not just sobriety but also law-abiding behavior.

**Harrell:** Flexible thinking about treatment is key. Over the next few years, our ideas are going to change as knowledge in the field grows. The process of being able to react to and incorporate these changes in the definition of effective treatment should be part of how we think about taking drug courts to scale.

#### **LEADERSHIP**

**Hartmann:** Where is the leadership going to come from to expand drug court programs? Can the judiciary do it by itself?

**Daniel Becker:** In Utah the leadership for drug courts originates from a judicial council that first put in place certain broad definitions—one being that our drug courts would be post-plea, and another being that treatment would remain an executive branch function. Those definitions helped transform the

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**— Joseph Traficanti, Jr.**

drug court judge from rogue status to legitimacy. More and more judges have since begun to express interest in drug courts. We are now reaching a critical mass. We have enough people engaged in the programs that we need much more intensive resources than what we've been working with up to this point. In our state, that need has meant bringing the legislature into play—and as the state becomes more involved in the administration of drug courts, a tension has developed between accountability and real innovation.

**Hartmann:** How valuable is something like the endorsement of problem-solving courts by all 50 state court chief judges and court administrators in convincing more people that the model is worth the investment?

**Burke:** The fact of the matter is that the Conference of Chief Justices is a pretty conservative group. This may be the first time they've passed an endorsement that is pro-active in nature, and it has been a great help in getting people's attention. As soon as it was passed, I went back to our judicial council in Minnesota and was able to argue that it was time to move our drug courts away from “pilot” status.

**Stuart:** Judicial support is obviously key, but it seems inevitable that state court systems will have to devise a strategy for approaching the state legislature. Federal grant money alone won't bring drug courts to scale over the next five years.

**William Vickrey:** In California, we have been fortunate to get the legislature to fund a separate committee to serve as the

institutional voice on the planning, advocacy, and guidance of drug courts. We also have legislation, initiated by the courts, that created a joint committee of the Department of Alcohol and Drugs and the judiciary to oversee drug court funding.

**Becker:** In Utah, we've passed a statute allocating 13% of every dollar of state funding dedicated to drug court to general court operations—to be spent by the judiciary, and 87% to testing, treatment, and case management—to be spent by the Department of Human Services. I predict that states that successfully redirect federal money for substance abuse and treatment into the drug court arena will be the frontrunners in drug court institutionalization.

**Raine:** That's a critical issue. Health and Human Services block grants bring huge amounts of funding to state alcohol and drug agencies. Going to scale will be next to impossible without involving the commissioners of these agencies.

**Hartmann:** Scott, if you were the czar of drug courts in Indiana, what would you want from your state legislature?

**Newman:** I think it's important to be careful how you define what's being taken to scale. A bill in Indiana has proposed codifying the ten components of drug courts into law. While I understand the urge, I don't think it's appropriate. I would instead structure the law to create an intermediary body that would help certify drug courts as well as provide incentives for their implementation. When Indiana created public defender commissions, for example, we allowed counties to tap into additional state funds if they had established a legitimate program. We preserved for each county the ability to create, within broad parameters, qualify for matching funds, and work with an intermediary that was responsible for articulating standards. This approach avoids some of the problems of bureaucracy.

**Dorf:** On that note, I think one of the central challenges of going to scale is to have “bigness” and coordination without bureaucracy—and that's where the idea of an intermediary comes from. An intermediary can assess what's happening in

the field; gather detailed, accurate information from local players; develop some sense of what the best practices are; and relay that information back to the players. This is the kind of institutional architecture I think you need if you want to move from a system based on charisma to one based on standards and principles.

**Hartmann:** Lee, let me put you on the spot. Institutionalization versus bureaucratization. What's the difference?

**Schorr:** If I knew, I would have written another book about it! That's a very hard question to answer. The term bureaucracy carries a negative connotation today that it didn't have in the Progressive Era. I think when we use a word like institutionalize, what we're suggesting is that we find the time and opportunity to allow for local variation and to move away from excessive rigidity.

**Newman:** To me, bureaucracy creates a coercive style of leadership that forces other people to act in a certain way. Institutionalization is a motivational style of leadership, which gets people inspired and allows them to build their own teams and create programs with some flexibility. You have to move beyond that to a system less dependent on leadership, or you'll end up with a coercive situation in which other people feel they have to act a certain way. I think we all favor the kind of leadership that allows people some flexibility.

## **LOOKING AHEAD**

**Hartmann:** Where do you want drug courts to be in five years, and what single significant investment would you make to get them there?

**Traficanti:** In New York, my goal is to disappear by 2003, leaving in place the resources and infrastructure necessary for local sites to carry the drug court idea forward. In five years, I would like to see—in every state and across the country—the resources available for any defendant, in any jurisdiction, to go into treatment. This can be achieved by making it possible for judges to electronically access information from the bench, including available program slots and available beds.

**Milliken:** My goal is for every sentencing judge to have access to an assessment of the defendant that allows him to decide whether to make treatment a part of the sentence. In order for that to happen, we need state funding for treatment for the adult criminal population.

**Smith:** I would like to see the idea that sentencing is a responsibility of the court over a prolonged period of time gain wider currency.

**Newman:** The single most important investment that drug courts could make is in management information systems. Building more uniform operating systems for drug treatment courts would really advance the ball on institutionalization.

**Becker:** I'd like to see less emphasis placed on drug courts per se, and more emphasis on making treatment a mainstream enterprise by developing partnerships between courts and state agencies that oversee treatment.

**Lane:** I'd like to find a way to define success, figure out how to measure it, and then invest in the tools to measure it. We would then have an opportunity to really find out what it means for a drug court to "work."

**Scott:** I would love criminal justice practitioners to understand their roles more broadly than they currently do. Prosecutors should see themselves as more than just the chief law enforcement officers, but also chief lawyers who help us think about community standards and public safety. Judges should see themselves not just as decision-makers but as concerned leaders of the community.

**Gallegos:** I'd like to see evidence that drug courts have made inroads in the broader, loftier goal of rebuilding communities.

**Stuart:** I would like to see every court in my state thinking of itself as a substance abuse court, and operating with the kind of consciousness about these issues that we've been talking about today. The investment to be made is in the time needed to talk about what the justice system is really doing and whether it's working.

**Harrell:** I share the vision of making this a way of doing business across the justice system, and maybe even fading drug courts out of existence as their tenets become embedded in practice.

**Schorr:** I feel very envious of all of you because this is a far better, more rigorous discussion that I am used to hearing. And as I walk away from this table, I think what's most exciting is the idea that drug courts open doors for the court system in general to become more problem-solving, in terms of thinking more broadly about problems and solutions.

## **PARTICIPANT BIOGRAPHIES**

*Daniel Becker has been Utah's state court administrator since September 1995. He previously served in various positions in the North Carolina Administrative Office of the Courts from 1985 to 1995. Becker is a member of the board of directors of the Conference of State Court Administrators and received a Distinguished Service Award from the National Center for State Courts in 2001.*

*Greg Berman is the director of the Center for Court Innovation, a public-private partnership in New York dedicated to enhancing the performance of courts. The Center functions as the New York state court's research arm, while also disseminating information about court innovations nationally. One of the Center's founding members, Berman has overseen the planning of several problem-solving initiatives, including a community court, youth court, community service program, and community mediation center. He is currently working on a book about problem-solving justice, to be published by the New Press.*

*Kevin Burke is the chief judge of Hennepin County, Minnesota, the largest judicial district in the state, and an adjunct professor of law at the University of Minnesota. Before becoming a trial court judge, he worked in private practice and as an assistant public defender. For many years he chaired the Minnesota State Board of Public Defense, where he was one of the leaders in the effort to improve and expand the state's public defender system. He received the National Center for State Courts' Distinguished Service Award in 2002 in recognition of his*

*work with chemically dependent defendants, corrections, and the public defender system.*

*Michael C. Dorf is vice dean and professor of law at Columbia University School of Law. With Laurence H. Tribe, he is the co-author of *On Reading the Constitution* (Harvard University Press, 1991). With Charles F. Sabel, he is currently working on *Democratic Experimentalism*, also to be published by Harvard University Press. A graduate of Harvard College and Harvard Law School, he served as a law clerk to Judge Stephen Reinhardt of the United States Court of Appeals for the Ninth Circuit and to Justice Anthony M. Kennedy of the United States Supreme Court. After his clerkships, he joined the law faculty of Rutgers University (Camden) in 1992, where he remained until 1995, when he moved to Columbia.*

*Chico Gallegos has traded his trial practice in New Mexico for a position as staff counsel and chief financial officer of the Native American Alliance Foundation, a nonprofit organization that promotes and advocates for the establishment, development, and enhancement of tribal justice systems and tribal programs that serve as important expressions of sovereign, self-governing nations. In a nationally publicized case, Gallegos appeared before the Supreme Court of New Mexico in January 2000, successfully arguing the right of non-English-speaking citizens of New Mexico to sit upon juries. He has served on the executive board of the New Mexico Association of Drug Court Professionals and the board of the National Association of Drug Court Professionals.*

*Adele Harrell, Ph.D., is director of the program on law and behavior at the Urban Institute. She has been actively engaged in studies of drug abuse since 1975. She is currently evaluating *Breaking the Cycle*, a program linking court and treatment services for drug-involved defendants and testing the validity of a risk prediction instrument for use by pretrial services; she recently completed an evaluation of the Brooklyn Treatment Court services for female offenders; she previously studied the impact of the Children at Risk Program, a comprehensive drug prevention program for youth 11 to 13 and conducted a five-year experimental evaluation of the District of Columbia drug court.*



**Francis X. Hartmann** is executive director and senior research fellow of the program in Criminal Justice Policy and Management at the John F. Kennedy School of Government at Harvard University. His current research focuses on how criminal justice agencies and communities work together to produce public safety and on partnerships between communities and police that have produced tangible results. His Kennedy School courses focus on criminal justice policy. Previously, Hartmann was director of research and evaluation for New York City's Addiction Services Agency, director of the Hartford Institute of Criminal and Social Justice, and a program officer at the Ford Foundation.

**Eric Lane** is the Eric J. Schmertz Distinguished Professor of Public Law and Public Service at Hofstra University School of Law, where he has been on the faculty since 1976. In addition to teaching and writing in the areas of legislative process, civil procedure, statutory interpretation, and state and local government, Lane has a long history of involvement in government reform and public service. From 1993 to 1995, he served as counsel to the New York State Temporary Commission on Constitutional Revision, and from 1987 to 1989, he was the executive director and counsel of the New York City Charter Revision Commission. Lane is a trustee of the Vera Institute of Justice and the Neighborhood Defender Service of Harlem.

**James R. Milliken** has served since 1996 as presiding judge of the Juvenile Court of San Diego County, where he has spearheaded a number of reforms to improve the operations and outcomes of the juvenile delinquency and juvenile dependency (child abuse and neglect) systems. One of the key elements of the reforms addresses the pervasive influence of alcohol and drug abuse on the children and families who are the subject of the court's jurisdiction. He was presiding judge of the San Diego Superior Court in 1994 and 1995. A graduate of Occidental College (B.A., 1965) and the California Western School of Law (J.D., 1970), Milliken's legal practice included service as a deputy city attorney and as a civil trial attorney in private practice with the San Diego law firm of McInnis, Fitzgerald, Rees, Sharkey & McIntyre. He was appointed to the Superior Court in 1988.

**Scott C. Newman** served as the elected prosecutor for Marion County, Indiana for eight years beginning in 1995. While in office, he took an aggressive stance toward crime, resulting in sharply curtailed plea bargaining and a record number of jury trials and convictions. In addition, Newman initiated many new services for crime victims, including the creation of the "Center of Hope" program at four area hospitals. This program addresses the emotional, medical, and legal needs of sexual assault victims outside the chaotic atmosphere of the emergency room. Before taking office as prosecutor, Mr. Newman served as an assistant U.S. attorney for the Southern District, Indiana. He is now in private practice in Indianapolis.

**Valerie Raine** is the director of drug treatment programs at the Center for Court Innovation. She assists the Honorable Joseph J. Trafficanti, Jr., in developing drug courts across New York State, and serves as the chairperson of Judge Trafficanti's Curriculum and Training Committee for the New York State Courts Drug Treatment Program. She also oversees numerous national technical assistance projects that are supported by the Department of Justice. From 1996 to 2000, she was project director of the Brooklyn Treatment Court, where she helped develop and manage New York City's first drug treatment court. Previously, she worked for the Legal Aid Society, Criminal Defense Division, in Kings County, where she was appointed attorney-in-charge in 1994. She is a member of the Association of the Bar of the City of New York, where she sits on the Council on Criminal Justice. Raine received a B.A. from Hunter College in 1977 and a J.D. from the University of Virginia in 1982.

**Marilyn McCoy Roberts** is special advisor to the administrator of the Office of Juvenile Justice and Delinquency Prevention. Before that, she served as director of the Drug Courts Program Office at the United States Department of Justice. Under her direction, that office administered a drug court grant program and provided financial and technical assistance to drug courts. Roberts has staffed and directed national scope research projects and has written on a number of court administration topics, including legislative relations, and substance abuse and gender bias in the courts. She is a fellow of the Court Executive Development Program of the Institute for Court Management of the National Center for State Courts.

**Lisbeth Schorr** is a lecturer in social medicine at Harvard University and director of the Harvard University Project on Effective Interventions. She is also the author of two books—*Common Purpose: Strengthening Families and Communities to Rebuild America* (1997) and *Within Our Reach: Breaking the Cycle of Disadvantage* (1988)—related to improving the lives of at-risk children. Through her many experiences with social policy and human service programs and leadership with national efforts on behalf of children and youth, she has become an authority on "what works" to improve the future of disadvantaged children, their families, and their communities.

**Michael Scott** is an independent police research and management consultant based in Savannah, Georgia. He was recently a visiting fellow with the United States Department of Justice, Office of Community Oriented Police Services. Scott was formerly the police chief in Lauderhill, Florida, where he founded its municipal police department in 1994. Prior to that, he was a special assistant to the police chief for the St. Louis Metropolitan Police Department, where he guided the implementation of problem-oriented policing. He has also served as a senior researcher at the Police Executive Research Forum, as a legal assistant to the New York City Police Commissioner, and as a police officer in Madison, Wisconsin.

**Michael Smith** has been a law professor at the University of Wisconsin since 1995. He was director of the Vera Institute of Justice from 1978 to 1994; in 1974, he had established a Vera office in London and served as its director until 1977. Previously, he was a journalist for *Time-Life*, a freelance writer, and a litigator. Recently he served on the National Commission on the Future of DNA Evidence (chairing its working group on legal issues), the editorial board of *Crime and Justice*, and the advisory board of the *Federal Sentencing Reporter*. His recent research and writing have been concerned with the law and practice of sentencing and corrections.

**John Stuart** is the Minnesota state public defender, supervising public defense throughout Minnesota. Prior to assuming this post, he was assistant public defender for Hennepin County, Minnesota, representing approximately 400 clients a year in adult felony and juvenile court cases, and

trying roughly 200 cases over a 12-year period. He has served in various capacities to improve the criminal justice system in Minnesota, including on the Supreme Court Racial Bias in the Courts Task Force, the Supreme Court Juvenile Justice Task Force, and the Juvenile Code Revision Task Force. Stuart is a past vice president of the National Legal Aid & Defender Association, and he is active in the both national and Minnesota associations of criminal defense attorneys. Stuart is coauthor of *Felony Sentencing* in Minnesota and has written several articles on criminal procedure and juvenile justice.

**Joseph J. Traficanti, Jr.** has served as deputy chief administrative judge of the State of New York since 1991. In October 2000, he was appointed the court system's first director of court drug treatment programs, in which capacity he oversees the implementation of the judiciary's comprehensive substance abuse treatment initiative with the creation of specialized courts to

exclusively target addicted offenders. Additionally, Traficanti serves as Ulster County surrogate and an acting supreme court justice in the Third Judicial Department. He has also served as acting Presiding Judge, New York State of Claims, and chief assistant district attorney in Ulster County. Traficanti is a graduate of Siena College and the New York Law School and has attended the National Judicial College in Reno, Nevada.

**William C. Vickrey** is the administrative director of the California State court system, a position he has held since 1992. Prior to that, he was the state court administrator for the Utah court system and the executive director for the Utah State Division of Youth Corrections. A past president of the Conference of State Court Administrators, Vickrey received a Leadership 2000 Award from the National Association of Drug Court Professionals for his vision and leadership in the development of drug court programs in California.

In 1995, he received the Warren E. Burger Award, one of the highest honors from the National Center for State Courts, for his significant contributions to the field of court administration. He also received the James Larson Award from the Utah Corrections Association in 1984 for outstanding contributions to that field.

**Bernardine H. Watson** is executive vice president and director of civil sector programs at Public/Private Ventures, a national, nonprofit, policy research organization based in Philadelphia, Pennsylvania. She is responsible there for developing, funding, implementing, and overseeing projects in the youth development and community building fields. Her work has spanned a number of project areas, including mentoring, young fathers, national service, juvenile justice, youth employment, and faith-based initiatives. For six years, she served as the director of Public/Private Venture's Community Change for Youth Development initiative.

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*Court Review*, the quarterly journal of the American Judges Association, invites the submission of unsolicited, original articles, essays, and book reviews. *Court Review* seeks to provide practical, useful information to the working judges of the United States. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court, or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work.

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**Essays:** Essays should be submitted in the same format as articles. Suggested length is between 6 and 12 pages of double-spaced text (including any footnotes).

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**Pre-commitment:** For previously published authors, we will consider making a tentative publication commitment based upon an article outline. In addition to the outline, a comment about the specific ways in which the submission will be useful to judges and/or advance scholarly discourse on the subject matter would be appreciated. Final acceptance for publication cannot be given until a completed article, essay, or book review has been received and reviewed by the *Court Review* editor or board of editors.

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