

Making court innovation work: experiences and lessons from New York

Interview with Greg Berman, director Center for Court Innovation, November 13, 2018

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To start, could you introduce the Center for Court Innovation to our Dutch readers. What does it do, what does it stand for?

Of course! I run a nongovernmental organization called the ‘Center for Court Innovation’ which is about 25 years old. We have a little over 500 employees and about a 60-million-dollar annual turnover. Our mission in life is to gently push, poke and prod the justice system to be more effective and more humane than it currently is.

I think there are lots of different ways to achieve justice reform. But our way is to work in close collaboration with government to try to reform the government from within. So that means working very closely with the courts, first and foremost, but also with prosecutors, defense attorneys, probation, police and others to try to get them to reform their practices. My organization is predicated on two things. It is predicated on a critique *of* government. If government was behaving perfectly there would be no need for the Center for Court Innovation. But at the same time, our organization is predicated on a belief *in* government as well – a belief that government can do right for people and that government has an important role to play in people’s lives.

So what do you do as far as realizing justice innovation is concerned? What are the activities you perform in order to achieve reform?

There are three principal areas of work that the Center for Court Innovation engages in. First, we are a research organization. We have more than two dozen social scientists on staff who perform original research. We try to make an interesting contribution to the international discussion about justice reform by looking at what’s happening in the justice system, both what works and what doesn’t work.

Second, we are a consulting organization. We go around the world and across the country to help reformers launch new ideas. We provide training and hands-on wisdom from our own direct experience.

Third, and this area of work is by far the largest, we run operating programs, most of which are based here in New York City. We run more than two dozen different operating programs and many, but not all, are launched with the active participation of the court system here in New York.

‘Operating programs’, that still sounds a little abstract. Could you give us some examples – what kind of programs do you run?

I will start with a small program, called the Brooklyn Mental Health Court. This court is dealing with very serious, felony level, cases – often involving violence. We link people with serious and persistent mental illness and we link them to community-based treatment instead of incarceration. Because of the intense nature of these cases, it is a relatively small program, involving approximately 80 defendants each year.

And then we have another program, called the Midtown Community Court, where we work with roughly 15,000 cases each year. Those cases involve individuals who have committed minor offenses: disorderly conduct, shoplifting, trespassing, these kinds of offenses. And we are trying to, again, reduce the use of incarceration but also reduce the use of fines, as a response to low level misbehavior.

That is quite a broad range – the two programs seem to be quite different. Is there a common or basic principle that guides your projects?

Number one is a desire to make sure that every defendant is treated with dignity and respect within the justice system. And not only every defendant, also every victim and every member of the public.

Number two is a desire to push the justice system to be more thoughtful about case outcomes. And in the American context – which is I think a little bit different from your context – we see an overuse of fines and incarceration as a response to criminal misbehavior. So we want to drastically reduce those responses to misbehavior by increasing the use of community restitution and social services.

And then finally, which might be relevant to the Netherlands too, we see very low levels of public trust in justice in many quarters of the country, particularly among disadvantaged populations, poor populations, among people of color. And so we want to push the justice system to reach out in much more aggressive ways to engage the public and to speak more plainly with the public.

From what you have told us so far, we get the impression that your Center is focused on criminal justice. Is that correct?

We also do work in the family justice and the civil justice arena but started out as a criminal justice focused organization, and that is the focus of much of our operational work.

Could you tell us a little bit more about the early years? How did the Center for Court Innovation originate?

We grew more or less organically out of a single project: the Midtown Community Court. In 1993, New York was very different from what it is today. A moment when New York was defined in many people's minds by crime and disorder. The two police precincts in midtown Manhattan were the busiest police precincts in the country in terms of misdemeanor enforcement. Businesses were fleeing Midtown, lots of theaters were dark on Broadway. We are talking about a decade in which New York had lost a little less than a million people in terms of its population. So a very different landscape than we experience today.

So we came up with the idea of creating a neighborhood based court in Manhattan that would focus on low level offending with the ambition to treat people more decently, to reduce the use of incarceration, and to engage the public in the process.

It was a success. All of New York's papers wrote about it favorably, elected officials loved it, and independent evaluators from the National Center for State Courts came in and were able to document its effects. The Midtown Community Court achieved its goals in terms of improving public safety, reducing the use of incarceration and making people feel better about the justice system.

That sounds like a winning concept?!

We felt it to be promising. And so a handful of us that had worked on the Midtown Community Court, started to get interested in seeing whether we could do similar things in other places and with other kinds of cases. Very quickly we started planning a second community court in the neighborhood called Red Hook in Brooklyn. We also started planning a court for addicted offenders called the Brooklyn Treatment Court. We started planning a domestic violence court. We were doing all of those projects under the aegis of the Midtown Community Court, even though none of them were based in Midtown.

How many of you were involved in getting all of this off the ground?

There were just a few of us who worked at the Midtown Community Court, but also were dreaming up new projects. We came up with the idea of the Center for Court Innovation in 1996. John Feinblatt was the founding director of the Center for Court Innovation and I was his deputy for several years, ultimately becoming the director myself in 2002.

How do you explain the fact that the Center for Court Innovation succeeded to establish itself so firmly over time – to get institutionalized?

This required leadership within the judiciary at a very high level. We have had the benefit of several visionary chief justices here in New York. The first was Judith Kaye, who was willing to take a chance on us and willing to invest some of her institutional credibility in us. After we set up the Midtown Community Court, we went to her and told her: ‘We are on to something here. We have created one project within the courts that has gotten a lot of attention and it has had a positive impact. We are just about to roll out three or four others. We can continue to do this. We have shown you some proof of concept. Making an investment in us will enable us to create an organization that will stand above all of these projects and serve as an ongoing engine for court reform in New York.’ She was willing to listen to our ideas, willing to support us financially, and willing to protect us from people within her own organization who would look askance at us.

At the same time we went to the federal government. We went to the U.S. Department of Justice where at the time, under President Clinton, Janet Reno was the attorney general. We explained to her that the Midtown Community Court generated a lot of attention – actually we were inundated with visitors. So we asked the Department of Justice for a grant to teach other people to do what we had done here in New York.

Those two grants, from the chief justice of New York and the US Department of Justice, enabled us to create the Center for Court Innovation.

The Center for Court Innovation went from a few people in 1993 to over 500 people now. Some would say that that alone signifies success. But how would you describe the success of the Center?

I do not think that size is a proxy for success. There are lots of small organizations that are very impactful and lots of large organizations that are less than they could be. I guess that my definition of success is more complicated than just numbers. I define success by whether the ideas that we stand for spread first locally and then in the state and then nationally and then internationally. And I feel there are indications that we have made progress in this regard.

The ideas we had with the Midtown Community Court have seeped into the rest of the system. They have been increasingly embraced in New York City. They have been increasingly embraced around the country. And one of the reasons why I am having this conversation with you is that internationally as well there is an interest in this idea of court innovation. So all those things make me feel good – like we are having an impact over time.

Could you make that impact a little more concrete for us? Apart from spreading ideas, what are the more tangible impacts of your efforts?

When we started in 1993 there were over 22,000 people behind bars at Rikers Island. Now that number has been reduced to a little over 8,000. So we have seen a dramatic reduction in the use of incarceration in New York City. Also, we have seen hard line prosecutors embrace the idea that defendants are people with innate dignity and they should be treated as such. Through our projects we have been bringing case managers and social workers into the courthouse. They help to better inform judges and thereby encourage the use of alternative sentences. Today, there are five dozen social workers that work in the downtown criminal courthouse in Brooklyn for example.

I could imagine that your approach would also generate criticism. That you are 'soft' on crime or that you create 'touchy-feely justice'.

We been through four different mayors in New York City. We have been through three chief judges. We have been through four presidents of the United States. As an agency we have managed to have relationships with all those people. They all have sustained our work. I think that points to our staying power, regardless of politics.

You must have faced opposition as well?

Yes, one of the challenges we face is that the justice system is a conservative institution. And it should be. In England they still wear wigs, here they wear robes. The court system an institution that is based on process and precedent. And I think that that is appropriate. And so when I think of progress I tend to think of this as being a generational game, not a one-year campaign or something that can be done in the lifespan of the individual minister while she is in office. So I think you have to have patience. I think it is a marathon, not a sprint.

You mention the importance of spreading ideas, even abroad, but yet your projects are run locally?

Yes, so we run two dozen projects. The vast bulk of them are in New York City. By and large, we made the decision that we were only going to operate programs in our home base. Over the years, we have gotten many requests, mostly in the US, to come to other parts of the country and start projects there. But we have resisted those invitations, because we really think that court innovation has to take deep root locally.

This does not mean we ignore these requests for support. We do provide expert assistance. And so we will go and train the judge in San Francisco that wants to create a new diversion program. We will go to the state of Washington that wants to create a community court modeled after the Midtown Community Court and we will provide them with as much or as

little assistance as they want. But we really feel like the program has to be operated locally and owned locally if it's going to succeed.

Listening to your story, we were wondering to what extent justice innovation is something that can be planned, can be designed? And if so, who should take the lead? Or is it something that follows its own more organic course?

I think it is a false choice that you present. I think it is both. You have to be open to serendipity. But it is a skill you can develop. It is hard for public institutions to innovate.

At the Center for Court Innovation, we wake up every day and think about innovation in a way that government officials do not have that luxury because they have to keep the wheels of justice turning. We had the arrogance to put innovation in our name. That has given us a very clear institutional mandate. Everyone who works here is very clear that their job involves not just doing the same thing that they did yesterday but to think of new ways to improve the justice system.

I think giving people the mandate to generate new ideas and come up with new ways of doing business is one of the preconditions for creating a culture of innovation over the long haul.

Another precondition might be having the necessary resources. Resources such as the people that work for your organization and a workable budget. Let's start with the people. What kind of people make up your organization?

So we have, as you might imagine, a lot of lawyers that work here. But one of the things that I think has contributed to our success is that we have never been an organization that has been dominated by lawyers. We have explicitly tried to bring victim advocates, researchers, social scientists, journalists, technologists, educators, people from a variety of different backgrounds to the business of justice reform. I think that makes for a richer and more interesting work environment.

Diversity is important, including ethnic diversity, and we try to be politically diverse as well, which in the American context is increasingly hard to do. But when it works it brings a lot of different perspectives to the table. There is a famous quote by a former chief justice here in the United States, who said that 'the law is too important to leave to lawyers'. I believe that is true. I believe that at the end of the day the justice system has to be responsive not just to judges and not just to the lawyers and clerks who staff it but to the average people and the general public. We are trying to bring a little bit of that perspective to our work at the Center for Court Innovation.

So let's talk about money now.

We have roughly a 60 million dollar annual budget, about 80 percent coming from government. The 80 percent is split among three levels of American government: city, state and federal. And the remaining 20 percent we raise from foundations and wealthy individuals.

Could we go back to one of the subjects we were talking about before: the connection with the Center for Court Innovation with the community, as this seems to be a very important aspect of the way you work. How have you been able to get the confidence of the people, of the communities that you work in and with?

It has been in this area where our ability to hire diverse staff has been enormously helpful. We hire community outreach specialists to help ensure that our projects are truly responsive to local concerns. One issue that came up a lot in the early days, less so now, was a concern about vigilante justice and the independence of the judiciary. Critics worried that if you welcomed the community into the courthouse, they would want to have very punitive responses to crime. We have found that not to be the case. We have made it clear that what happens in the courtroom itself is kind of sacrosanct and we do not impinge upon the judge's impartiality or independence. We have made a distinction between the *courtroom* and the *courthouse* as it were.

The business of the courthouse is more than just holding trials. We wanted to leverage the symbolic power of the courts in the community and go beyond just what happens in the courtroom. We have argued that the judiciary should not take judicial independence for granted, that they have to earn it at some level and they earn it by showing their work to the public.

So how did you involve the community in what you call the business of the courthouse?

For us that has meant a few things. In many of our projects we have created neighborhood advisory boards to get local residents' opinion about problems in their neighborhood and to brainstorm on the ways that the courts can be better institutional neighbors.

Secondly, we have tried to communicate out to the world: What is the business of the court? What are the cases that we are seeing? What are some success stories? In the American context courts generally do not do a good job in providing this kind of information. So communicating to the public in a way that uses plain language and not jargon has been something that we have been very much focused on.

The third thing that I think has won us the most credibility and the most goodwill at the neighborhood level is the fact that many of our projects involve community restitution projects. We send defendants who have been adjudicated guilty of some offense out into the neighborhood to repair conditions of disorder, to paint over graffiti, to clean a local park, to serve food at a soup kitchen, to create sleeping bags for homeless individuals, all sorts of different service projects working with local nonprofits. And so people in the neighborhoods can see justice in action. Justice is no longer an abstraction. Justice is something that they see happening on a daily basis. I think that is a very powerful message of public accountability for the courts to send.

The fact that your reform agenda focuses on the courthouse and not on the courtroom – does it mean you did not have the ambition to change things in the courtroom?

Judicial independence and the commitment to due process are sacrosanct. But within that framework it is fair to say that we have tried to change what happens within the courtroom. I think that there are a couple of things that we have tried to do. One is to reduce the adversarialism between the defense bar and the prosecution. We have tried to get them to take a step back from just protecting their interests, and to come up with dispositions that make more sense. We have facilitated that by greatly expanding the range of options that are available to them.

In the US, the options in a criminal case often boil down to jail or nothing. The prosecutor stands up and says: 'This is a serious crime, I want jail or prison.' And the defense attorney gets up and says: 'Because of extenuating circumstances in my client's life, he deserves nothing essentially.' We have created a range of intermediate sanctions in between jail and nothing, that I think facilitate better dispositions. That includes community restitution, drug treatment, job training, and mental health counseling. We are not trying to turn prosecutors into defense attorneys or defense attorneys into prosecutors. They reserve the right to be combative when they need to. But we have tried to increase the sense of teamwork among those actors.

The other thing that we have done quite deliberately, is change the way communication happens in the courtroom. So much of what happens in the courtroom in an American context is incomprehensible, unless you are a lawyer. The jargon is impenetrable to a defendant and incomprehensible to the public that is sitting and watching. So we have quite deliberately tried to get people to speak in plain language.

We have also tried to get judges to look up from the papers that are in front of them and actually make eye contact with defendants. We have tried to create space for defendants to speak in open court to tell their side of the story. This is all in pursuit of a greater sense of procedural fairness. There is some research to suggest that if people are treated with dignity and respect and get a chance to tell their side of the story they are more likely to comply with court orders.

In an earlier keynote speech¹ you shared eight lessons with the audience, seven lessons flowing from more than 20 years of justice innovation. You mentioned the following lessons: 1. the importance of training, 2. architecture matters, 3. mission and messaging, 4. measuring results, 5. respect the frontlines, 6. don't overpromise, 7. failure is part of the process, and 8. the case for radical incrementalism.

I think all those things are still true!

¹ This refers to the key note speech 'Courts, Communities and Justice Reform: Lessons from New York' given on June 7 2018 at the conference organized by the Dutch judiciary on court innovation in the Netherlands.

But which ones of these lessons are the most important? Can you prioritize them?

I don't know that I feel comfortable choosing. But I might start with training. Training is not sexy to the general public or to high ranking public officials. But people will not depart from their standard way of doing business unless you give them the tools to do so. Training can also help break down the silos that exist between judges, attorneys, clerks, social workers and probation officers. I think it is important to set a common agenda. So we have tried to do mixed trainings as well as role specific trainings. To truly create the kind of justice system that we want to see – that is responsive to public concerns, that is humane, that is fair and effective – that is going to take a generation. And I see training as planting seeds that will flower, maybe not tomorrow but months down the line.

Another lesson that I want to underline is the reality of failure. I think that there is this glamorization of innovation right now. But people want innovation without the mess. They want to just go from idea to a successful evaluation and a glowing article about them on the front page of the paper. And yes, we all want that, right? We all want our new ideas to have an impact on the world and lead to public acclaim. But if you are going to innovate, the reality is: some ideas are not going to succeed as you want them to. An honest acknowledgement of that upfront is important.

Finally, I'd call attention to the importance of research and measuring results. Research is not sexy, takes years to bear fruit and does not always turn out the way you like. But we need to measure results to see whether we are having the impact we intend. And then if we do not, we should let go of ideas, if they do not work.

To conclude, can you explain why it is important, as you say, to respect the front lines?

I think a lot of justice reformers, particularly those of us who come from outside the system, tend to want to impose solutions on system actors. I have some skepticism about how well that will succeed in the long haul. It is very important to engage system actors – whether they are judges, prosecutors, correction officers, probation officials – as early as possible. I believe in involving them in the process of identifying problems and coming up with solutions, because we have to win the hearts and minds of the people that actually operate the justice system if we want innovation and reforms to take deep root.

At the Center for Court Innovation, we have been able to sustain our projects because we have true respect for the people that operate the system and aggressively reach out to them and engage them in the process of envisioning a new justice system.

We would like to wrap up with ‘A message for the Netherlands’. Last summer you spent a week in the Netherlands. You spoke with judges, the minister of Justice and Security, the chair of the Council for the Judiciary. Could you tell us what struck you? What would be your message to them, to us?

The thing that struck me, and frankly took me by surprise, was the appetite for new ideas. I heard this expressed by multiple people in the short time that I was there. So I left feeling like the Netherlands was on the brink of some exciting justice reforms.

I think the countervailing force that also came up was the financial limitations that the courts are experiencing right now. My hope is that the financial situation does not block the reform agenda. At the risk of being naïve, I think financial constraints can sometimes be a positive rather than a negative. It can encourage reformers to really think deeply about what they want to achieve and justify why public expenditure is necessary. I hope that whatever reforms come out – in the next 12 months, 16 months, 18 months, 24 months – will really be well thought through ideas that stand up to scrutiny and that people have a deep investment in. I am hugely encouraged by the fact that the minister came to New York with a team to see what we’re doing here [minister Dekker paid a visit at the end of November 2018]. So I am very optimistic and hopeful about what is going on in the Netherlands!