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HOW ONE STATE REDUCED BOTH CRIME AND INCARCERATION

*Hon. Jonathan Lippman**

I. INTRODUCTION†

Franklin Zimring, author of *The Great American Crime Decline*, has described the dramatic reductions in New York's crime and incarceration rates over the last two decades as "one of the most remarkable stories in the history of urban crime."[1] One aspect of this story is perhaps not as well known: how the state court system's pioneering reliance on drug treatment as an alternative to prison or jail for many non-violent criminal offenders contributed to improved public safety and a smaller prison population.

At the American Bar Association's ("ABA") 2009 annual meeting, Attorney General Eric Holder spoke of his vision for the future of the Justice Department.[2] When he turned his attention to innovative approaches to fighting crime, he had this to say:

> New York has been a leader . . . diverting some non-violent offenders into drug court programs and away from prison, and extending early release to other non-violent offenders who participate in treatment programs. And while national prison populations have consistently increased, in New York the state prison population has dropped steadily in the past decade and has 12,000 fewer inmates now than it did in 1999. And since 1999, the overall crime rate in New York has dropped 27%.[3]

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† An earlier version of this Article was presented as the 2010 Howard and Iris Kaplan Memorial Lecture.

1. FRANKLIN E. ZIMRING, THE GREAT AMERICAN CRIME DECLINE 168 (2007).

2. Att'y Gen. Eric Holder, Remarks at the 2009 ABA Convention (Aug. 20, 2009), http://www.abanet.org/legalservices/sclaid/defender/downloads/Attorney_General_Eric_Holder_2009_ABA_HOD.pdf.

3. *Id.*

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Although the Attorney General began his analysis in 1999, the decline in crime is even more striking if we turn the clock back to 1990, when New York City experienced a record high 2245 murders.[4] Two decades later, in 2009, there were 461 murders, the lowest number since comparable record keeping began in 1963, a year in which there were 548 homicides.[5] Since 1990, crime is down steeply across the board in New York City: rape down 69%; robbery down 91%; burglary down 86%; and car theft down 95%.[6] The story around the state is similar.[7]

Attorney General Holder's observations are particularly timely today when so many states are desperately seeking ways to cut spending in response to the ongoing recession and shrinking state revenues.[8] The financial costs of incarceration are prohibitive. According to the Council of State Governments, over the past twenty years, spending on corrections has grown at a faster rate than every other state expenditure except Medicaid.[9] In 2008, states collectively spent more than fifty billion dollars on corrections.[10] As for the human costs, research consistently demonstrates that incarceration is ineffective at reducing recidivism, with fully two-thirds of those incarcerated going on to become repeat offenders who cause further harm to already struggling families and communities.[11]

While many other states have enjoyed declining crime rates, New York is the only state to have significantly reduced its prison population at the same time.[12] In California, for example, violent crime and property crime rates fell by 46% and 38%, respectively, from 1995 to 2005, but its prison population increased by 31% over that period.[13] By contrast, New York reduced its prison population by 9% while its violent

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4. Henry J. Stern, *Tabloids Pursue Governor, They Say He Should Resign, But Paterson Likes the Job*, N.Y. CIVIC (Feb. 26, 2010), http://www.nycivic.org/articles10/100226.html.

5. *Id.*

6. NYPD COMPSTAT UNIT, COMPSTAT—CITYWIDE, VOL. 17, NO. 31, http://www.nyc.gov/html/nypd/downloads/pdf/crime_statistics/cscity.pdf (report covering the week of Aug. 2-8, 2010).

7. Press Release, N.Y. State Div. of Criminal Justice Servs., Crime Down Dramatically in New York State (May 4, 2010), http://criminaljustice.state.ny.us/pio/press_releases/2010-5-4_press release.html.

8. *See* Holder, *supra* note 2.

9. Press Release, The Pew Ctr. on the States, Leaders Take on Recidivism and Corrections Spending (Jan. 27, 2010), http://www.pewcenteronthestates.org/news_room_detail.aspx?id=56979.

10. *Id.*

11. *See* MARY E. GILFUS, NAT'L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN, WOMEN'S EXPERIENCES OF ABUSE AS A RISK FACTOR FOR INCARCERATION 7 (2002), http://www.vawnet.org/Assoc_Files_VAWnet/AR_Incarceration.pdf.

12. MALCOLM C. YOUNG, NW. SCH. OF L., CONTROLLING CORRECTIONS COSTS IN ILLINOIS: LESSONS FROM THE COASTS 9-10 (2009), http://standdown.typepad.com/SCHOLARSHIP-FINAL%20Controlling%20Corrections%20Costs%203%20June%202009.pdf.

13. *Id.* at 2, 9.

and property crime rates fell by 47% and 43%, respectively, from 1995 to 2007.[14]

Incarceration is often both necessary and effective. Many criminal offenders, particularly violent offenders, need to be incapacitated and put behind bars for the sake of public safety.[15] To believe otherwise would be naïve and dangerous. However, where non-violent offenders are concerned, I believe there are more effective approaches to reducing crime, approaches that are less destructive to the well-being of individuals, families, distressed neighborhoods, and state and local budgets. I believe New York's recent history is highly instructive in this regard.

It has been my good fortune to have been one of the many participants in that history, to have grappled personally with the challenge of reforming the state courts to enable them to deal more effectively with the millions of new criminal cases that flooded into our system during the 1990s. It is from that perspective that I want to highlight the lessons that I have learned while overseeing statewide court operations from 1996 to 2007 as the state's Chief Administrative Judge, and, now, as the Chief Judge and CEO of New York's judicial branch of government. I believe the dramatic reductions in crime and incarceration we have enjoyed in New York are the result of a unique alchemy of factors: (1) innovative policing, (2) public-private collaboration, (3) a vibrant infrastructure of alternative-to-incarceration programs, and (4) a major philosophical shift in the judicial role and mindset.

II. POLICING

Before the 1980s, police were focused on responding promptly to individual incidents and solving individual crimes.[16] There was less emphasis on trying to prevent crime before it happened.[17] A number of innovations changed the nature of policing. Two of these ideas are particularly worth mentioning. The first is broken-windows policing. Originally articulated by James Q. Wilson and George Kelling, the broken-windows theory encouraged police to focus on low-level offending as a means of preventing more serious crime.[18] The idea was based on a common sense assumption that visible signs of disorder—

14. *Id.*

15. *Id.* at 9.

16. *See* ZIMRING, *supra* note 1, at 34.

17. *See id.*

18. *Id.* at 35-36; George L. Kelling & James Q. Wilson, *Broken Windows*, ATLANTIC, Mar. 1982, at 29, 38, *available at* http://www.theatlantic.com/magazine/print/1982/03/broken-windows/4465/.

broken windows, public drunkenness, vandalism—create an environment that encourages lawlessness and signals to more serious criminals that they can operate with relative impunity in those areas.[19] "Broken windows" highlighted that there was value in making arrests for lower-level offenses, and not just murders, rapes, and robbery.[20] Police departments around the world have embraced the broken-windows theory, renewing their commitment to low-level law enforcement.[21] New York City was at the forefront of this movement.[22]

Another far-reaching innovation was Compstat. Initially created by the City of New York Police Department ("NYPD"), Compstat is a management approach that uses computer data to map crime, identify emerging problems, and promote accountability up and down the hierarchy.[23] NYPD executives would meet regularly to review crime-mapping data and encourage local precinct commanders to improve the performance of their precincts.[24]

These and other innovations were augmented by major increases in the number of officers on the streets. Thanks in part to the 1994 crime bill, which called for an additional 100,000 police officers across the country, the number of officers on the beat in New York increased from 39,000 to 53,000 over the course of the 1990s—a 35% increase.[25]

Taken together, these changes in philosophy, management, strategy, and resources enabled the police to be more active and creative than ever in combating crime.[26] Of course, these changes also had a huge impact on the state courts. Over the course of the 1990s, annual criminal filings in New York doubled, from 495,000 in 1990 to 989,000

19. Kelling & Wilson, *supra* note 18, at 31, 34.

20. *Id.* at 35.

21. Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 412 (2001); *Broken Window Theory*, SOCIOLOGY INDEX, http://sociologyindex.com/broken_window_theory.htm (last visited Sept. 24, 2010).

22. *See* George L. Kelling, *The Mounting Evidence That Broken Windows Work, in How New York Became Safe: The Full Story*, CITY JOURNAL, July 17, 2009, at 93, 94-95, *available at* http://www.city-journal.org/2009/nytom_ny-crime-decline.html; *see also Broken Window Theory*, *supra* note 21.

23. Vincent E. Henry, *Compstat Management in the NYPD: Reducing Crime and Improving Quality of Life in New York City*, *in* U.N. ASIA & FAR E. INST. FOR THE PREVENTION OF CRIME & THE TREATMENT OF OFFENDERS, RESOURCE MATERIAL SERIES NO. 68, at 100, 102-03 (2006), *available at* http://www.unafei.or.jp/english/pdf/PDF_rms_all/no68.pdf.

24. *Id.* at 103.

25. ZIMRING, *supra* note 1, at 149-50; William J. Stuntz, *Unequal Justice*, 121 HARV. L. REV. 1969, 2033-34 (2008).

26. *See supra* notes 16-25 and accompanying text.

in 2000,[27] with quality of life crimes tripling over that same period, from 198,000 in 1990 to 604,000 in 2000.[28]

III. COLLABORATION

Another key factor in the New York experience was increased collaboration between the public and private sectors.[29] Police cannot stop crime by themselves. Obviously, they need political support. And they need the support of the community. That means businesses, civic groups, faith-based organizations—everyone—has a role to play in preserving public safety.

No two communities are exactly alike, of course. The character of a neighborhood—housing stock, ethnicity, religion, employment levels—can change from block to block. And when you widen your lens to take in the whole state, the diversity is staggering—sixty-two counties, each with its own unique culture and approach to governance. But while every place is different, all safe communities share some common features: residents who feel a connection to each other and their government, people who take pride in local achievements, and businesses that take pains to keep up appearances around commercial corridors—sweeping the streets, painting over graffiti and, yes, repairing broken windows.

During the crime-ridden days of the 1970s and 1980s, many New Yorkers felt as if their neighborhoods had lost the connective tissue so crucial to public safety.[30] Over the last generation, however, a significant collection of public and private institutions came together to repair the damage.[31] Business improvement districts made desperately-needed investments in neighborhood beautification, non-profit groups tested new crime prevention ideas focused on reducing disorderly behavior, and government agencies outside the criminal justice system began cooperating closely with law enforcement and sharing essential information.[32] The lesson is clear: when the public and private sectors act in concert to achieve shared goals, real change is possible.

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27. Jonathan Lippman, Remarks at a N.Y. Citizens Crime Commission Breakfast Forum (Mar. 16, 2010), http://www.nycrimecommission.org/pdfs/lippman100316.pdf.

28. N.Y. STATE UNIFIED COURT SYS., CRIMINAL FILINGS: 1990–2000 (2010) (on file with the Hofstra Law Review).

29. Kelling, *supra* note 22, at 95.

30. *See id.*

31. *Id.*

32. *Id.* at 95, 97.

IV. ALTERNATIVES TO INCARCERATION

Civic leaders, elected officials, and police chiefs have received the lion's share of attention for New York's decline in crime—and rightly so.[33] What is less documented is the role of the state courts. In the 1990s, changes in policing practices, particularly the new focus on quality of life crimes, led to massive increases in our criminal dockets.[34] Many of these offenders ended up being incarcerated.[35] Yet, most of them were not serious felons or criminal masterminds, but non-violent offenders with chronic problems like drug addiction, joblessness, mental illness, and homelessness.[36] They typically served short jail sentences before returning to the streets to be arrested yet again.[37] It did not take long before our traditional way of doing business—jail, prison, probation—reached the breaking point.[38] Faced with this reality, we chose to look for new ways to respond to our changing dockets.

In fairness, we did not start from scratch. New York has long been blessed with a vibrant network of alternative-to-incarceration programs like the Women's Prison Association and the Fortune Society.[39] These and other non-profits had been working with offenders and formerly incarcerated people for years—providing substance abuse treatment, counseling, career development, education, housing, and other services—so that they could rebuild their lives and avoid further criminal behavior.[40] It was a limited example, but it still suggested to us in the courts that alternatives to incarceration, if implemented correctly, were not just get-out-of-jail-free cards—they could be good policy. But the consensus among judges and prosecutors in the early 1990s was that we could not do it effectively on the massive scale required.[41]

Fortunately, many of us in the courts believed otherwise. We began with a handful of small, targeted investments. The first was the Midtown Community Court in New York City, located just blocks from Times

33. *Id.* at 98.

34. Todd W. Daloz, *The Challenges of Tough Love: Examining San Francisco's Community Justice Center and Evaluating Its Prospects for Success*, 6 HASTINGS RACE & POVERTY L.J. 55, 58-60 (2009).

35. *Id.* at 60-61.

36. *See* Bruce Western, *Reentry: Reversing Mass Imprisonment*, BOS. REV. (July-Aug. 2008), http://bostonreview.net/BR33.4/western.php.

37. *See* RACHEL PORTER ET AL., VERA INST. OF JUSTICE, BALANCING PUNISHMENT AND TREATMENT: ALTERNATIVE TO INCARCERATION IN NEW YORK CITY 4 (2002), *available at* http://www.vera.org/download?file=75/Balancing%2BATI.pdf.

38. *See id.* at 4-6.

39. *Id.* at 4-5, app. at v, vii.

40. *See id.* app. at ii-v, vii-ix.

41. Lippman, *supra* note 27.

Square, the symbolic heart of New York's quality of life crime problem, and miles away from the main criminal court complex in downtown Manhattan. The Midtown Court focused exclusively on the same low-level offenders that the NYPD had recently decided were a top priority.[42] Rather than relying on jail as the default outcome, Midtown sought to combine punishment and help, sentencing offenders to perform visible community restitution and to receive social services such as drug treatment, job training, and counseling.[43] The results of this experiment were unambiguous: independent evaluators documented reductions in crime and significant improvements in local attitudes towards justice.[44]

Our next key investment was made upstate in Rochester, where we created a special court devoted to linking non-violent, felony-level defendants to drug treatment as an alternative to incarceration. The judge adopted a hands-on, tough-love approach, using the threat of prison and the discipline of regular court appearances to promote success in treatment. Here again, the results were impressive on three fronts: reducing substance abuse, incarceration, and recidivism.[45]

These early experiments led to others: a community court in Red Hook that helped turn around one of the most drug-infested neighborhoods in the country;[46] a mental health court in Brooklyn that is helping reduce hospitalizations and re-arrests among mentally-ill offenders;[47] family treatment courts that combine child safety issues

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42. JIM CLEARY, MINN. HOUSE OF REPS. RESEARCH DEP'T, COMMUNITY COURTS AND QUALITY-OF-LIFE CRIME: THE MIDTOWN MANHATTAN COMMUNITY COURT AS A MODEL 14 (1999), *available at* http://www.house.leg.state.mn.us/hrd/pubs/commcrts.pdf; *see* Kelling, *supra* note 22, at 94-95.

43. *Midtown Community Court*, CENTER FOR CT. INNOVATION, http://www.courtinnovation.org/index.cfm?fuseaction=Page.ViewPage&PageID=591&currentTopTier2=true (last visited Sept. 24, 2010).

44. *Id.* It is important to recognize the key role played by the Center for Court Innovation, which serves as the court system's statewide independent research and development arm, creating demonstration projects and testing new ideas. The Center grew out of a small number of criminal justice entrepreneurs who helped develop the Midtown Court and thereby demonstrated the potential of alternatives to incarceration. *See id.*; CLEARY, *supra* note 42, at 12-13.

45. *See* MICHAEL REMPEL ET AL., CTR. FOR COURT INNOVATION, THE NEW YORK STATE ADULT DRUG COURT EVALUATION: POLICIES, PARTICIPANTS, AND IMPACTS 2, 4, 6 (2003), *available* at http://www.courtinnovation.org/_uploads/documents/drug_court_eval_exec_sum.pdf; U.S. GOV'T ACCOUNTABILITY OFFICE, ADULT DRUG COURTS: EVIDENCE INDICATES RECIDIVISM REDUCTIONS AND MIXED RESULTS FOR OTHER OUTCOMES 48 tbl.8, 53 tbl.9 (2005), *available at* http://www.gao.gov/new.items/d05219.pdf.

46. Lippman, *supra* note 27.

47. *Mental Health Court Links Eligible Offenders with Treatment and Monitoring, Reducing Recidivism, and Improving Outcomes*, AHRQ HEALTH CARE INNOVATIONS EXCH., http://www.innovations.ahrq.gov/popup.aspx?id=1742&type=1&name=print (last visited Sept. 24, 2010).

with a focus on parental sobriety;[48] and Integrated Domestic Violence courts that enable one judge to hear multiple case types—criminal, family, and matrimonial—relating to a single family where the underlying cause is domestic violence.[49] More recently, veterans' courts are addressing the special problems of veterans returning from active duty in Iraq and Afghanistan—1.8 million of them nationally and 70,000 here in New York—men and women who deserve our gratitude, respect, and assistance, but who, unfortunately, are ending up in our criminal justice system in great numbers.[50]

In addition to dozens of problem-solving courts like these, there are nearly two hundred drug treatment courts in New York today, more than any other state.[51] They have given more than 56,000 offenders the opportunity to get clean and avoid prison time.[52] Research has shown that these drug court participants are almost one-third less likely to commit another crime than similar defendants whose cases went through traditional court processes.[53] The consequent reductions in addiction and recidivism have had far-reaching effects, including, in human terms, hundreds of babies born to drug-free mothers, and thousands of families reunited after being torn apart by addiction.[54] In financial terms, the state has reaped the savings of nearly two million days of averted incarceration.[55] When you consider that it costs an estimated $35,000 annually to keep someone in prison, New York's drug courts have saved the state more than $200 million in prison costs.[56]

Other states have documented similar impacts over the years. A Washington State report revealed $131,918 in criminal justice cost

48. *See* NAT'L DRUG COURT INST. & CTR. FOR SUBSTANCE ABUSE TREATMENT, FAMILY DEPENDENCY TREATMENT COURTS: ADDRESSING CHILD ABUSE AND NEGLECT CASES USING THE DRUG COURT MODEL 7 (2004), *available at* http://www.ncjrs.gov/pdffiles1/bja/206809.pdf.

49. Supreme Court 12th Judicial Dist. Bronx Cnty., N.Y., *Help Center*, N.Y. ST. UNIFIED CT. SYS., http://www.courts.state.ny.us/courts/12jd/civil/selfrep.shtml (last visited Sept. 24, 2010).

50. *See* Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563, 565-66, 571-72 (2010); Press Release, Schumer Introduces Groundbreaking Veteran's Health Bill; Will Affect Over 150,000 Iraq and Afghanistan Veterans Who Have Yet to Be Treated for Post Traumatic Stress Disorder (Mar. 18, 2009), http://schumer.senate.gov/new_website/record.cfm?id=309985.

51. Lippman, *supra* note 27; Judy Harris Kluger, *Welcome to the Drug Treatment Courts Website*, DRUG TREATMENT COURTS, http://www.nycourts.gov/courts/problem_solving/drugcourts/index.shtml (last visited Sept. 24, 2010).

52. Lippman, *supra* note 27.

53. REMPEL ET AL., *supra* note 45, at 2.

54. *See Overview*, DRUG TREATMENT COURTS, http://www.nycourts.gov/courts/problem_solving/drugcourts/overview.shtml (last visited Sept. 24, 2010).

55. Lippman, *supra* note 27.

56. *Id.*

savings for every drug court participant.[57] A California study found that every dollar invested in drug courts yielded $3.50 in savings.[58] And these studies do not even take into account the ancillary savings from reduced victimization, fewer emergency room visits, and so many other benefits to society.[59]

The success of judicially-monitored drug treatment has not been lost on the federal government or the rest of state government. Presidents Clinton, Bush, and Obama have voiced strong support for drug courts.[60] In 2009, Congress allocated more than sixty-three million dollars to support drug courts nationally.[61] When Governor Paterson and the legislature reformed the Rockefeller Drug Laws in New York in 2009, they explicitly relied on the success of our drug courts.[62] As a result, the number of defendants linked to judicially-monitored drug treatment in the last three months of 2009 was up by 45% over the same three-month period the year before.[63]

This is the third crucial ingredient that deserves greater recognition for its part in the New York miracle: a judicially-created, statewide architecture of meaningful alternatives to incarceration that both criminal justice officials and the public can rely on—drug courts, community courts, mental health courts, and many others.

V. CHANGING THE JUDICIAL ROLE AND MINDSET

The final lesson I wish to highlight is perhaps the most interesting factor in the New York experience—how the judicial role and mindset have changed dramatically in a relatively short period of time. It is a lesson that many judges and court administrators of my generation had to learn the hard way. Back in the 1980s and 1990s, we watched

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57. STEVE AOS ET AL.,WASH. STATE INST. FOR PUB. POLICY, THE COMPARATIVE COSTS AND BENEFITS OF PROGRAMS TO REDUCE CRIME: VERSION 4.0, at 17-18 (2001).

58. Shannon M. Carey et al., *California Drug Courts: Outcomes, Costs and Promising Practices: An Overview of Phase II in a Statewide Study*, J. PSYCHOACTIVE DRUGS, Nov. 2006, at 345, 352 (2006).

59. *See id.* at 352-55.

60. *See, e.g.*, Ariz. Supreme Court, *Drug Courts*, AZCASA.ORG, 3 (2007), http://www.supreme.state.az.us/casa/prepare/drugcourts.pdf; *The Clinton Presidency: Lowest Crime Rates in a Generation*, THE WHITE HOUSE, http://clinton5.nara.gov/WH/Accomplishments/eightyears-06.html (last visited Sept. 24, 2010); The White House, *Civil Rights*, WHITEHOUSE.GOV, http://www.whitehouse.gov/issues/civil-rights (last visited Sept. 24, 2010).

61. *See* David McKeeby, *Obama Boosts U.S.–Mexico Cooperation Against Drug Cartels*, AMERICA.GOV (Mar. 25, 2009), http://www.america.gov/st/peacesec-english/2009/March/20090324165507idybeekcm0.1491815.html.

62. Press Release, Governor Paterson Signs Rockefeller Drug Reforms into Law (Apr. 24, 2010), http://www.state.ny.us/governor/press/press_0424091.html.

63. Lippman, *supra* note 27.

thousands of cases pour into the criminal courts every day without fail. In the context of these overwhelming caseloads, it was only natural that judges would adopt a "triage" approach. The more serious the crime, the more time and energy that judges, prosecutors, and defense attorneys devoted to it. While this approach seemed reasonable enough, the problem was, that for quality of life crimes, it sent the wrong message to offenders and the public—that certain kinds of offenses mattered very little. We now understand how wrong we were. These crimes matter greatly to the lives of the people and the fabric of the communities who bear the brunt of them.

In those days, judges confronting drug possession, prostitution, shoplifting, and vandalism had few tools at their disposal. Take the case of the typical offender arrested for drug possession—not the kingpin with the violent history, but the non-violent drug addict who repeatedly engages in low-level crime to feed an addiction. The standard choices used to be jail, probation, or dismissal, none of which tackled the root cause of the criminal behavior—the offender's habit.[64] We began to look with fresh eyes at court processes that focused solely on punishing *past* behavior while doing little or nothing to change *future* behavior. We began to ask ourselves if we had a responsibility to do more than serve as a revolving door between the streets and the jailhouse.

Of course, judges and lawyers are trained to respect precedent and tradition, and to regard the adversarial system as the great engine of truth, so it was not easy to convince them that traditional court processes had to be re-evaluated and revamped. It was not easy to convince traditionalists that an offender's underlying problems and needs are more than background issues in the prosecution—that they should, in fact, be put at the center of the court process. Everyone—judge, prosecutor, public defender—should work together to change the offender's behavior through punishment as well as treatment and other needed services.

The first converts, not surprisingly, were the judges on the front lines, because they knew the bitter truth—that they were accomplishing very little of lasting import by doling out short jail sentences, dismissing cases for "time served," or simply passing offenders off to equally overwhelmed probation departments. Whether you called it "assembly line justice" or "McJustice," the sad reality was that judges were working hard, applying the law, getting through huge calendars, but

64. Richard S. Gebelein, *The Rebirth of Rehabilitation: Promise and Perils of Drug Courts*, SENTENCING & CORRECTIONS, (U.S. Dep't Just.), May 2000, at 2-3, http://www.ncjrs.gov/pdffiles1/nij/181412.pdf.

making very little difference in the lives of defendants, victims and neighborhoods. We were counting cases rather than making every case count.

By contrast, in our drug courts and community courts, the judge's role has evolved well beyond the distant, detached arbiter who managed the legal process, pronounced guilt or innocence, imposed a sentence, and then moved on to the next case. Rather, the modern drug court judge is a proactive, hands-on agent for change who views his or her role as an opportunity for the entire justice system to intervene—not only to punish the individual but, just as importantly, to achieve a better outcome for that offender and his family, and for our communities and public safety.[65] The judge is asked to look at each case and each litigant as a problem to be solved, not just another case to be processed.[66]

In the problem-solving model, the court acts as the hub of the criminal justice process, linking defendants to service providers, staying involved with each case over the long haul, and using the judge's authority to promote compliance with treatment plans.[67] Lawyers on both sides of the aisle have also assumed new roles, because problem-solving courts require the different parts of the system to come together to agree on who is eligible to participate in treatment, the most effective system of sanctions and rewards, and the best way to encourage offenders to succeed in treatment.[68]

When it comes to non-violent crime, we have changed how judges and lawyers measure success—no longer by the number of dispositions, convictions, or acquittals but by whether we are able to break the cycle of addiction and crime and improve public safety.

VI. JUVENILE JUSTICE

The New York State courts have made important contributions to the striking declines in crime and incarceration rates in the Empire State. We must now apply the lessons we have learned to new problems as they emerge. For example, it is crystal clear that New York is failing in the area of juvenile justice. In August 2009, the Justice Department issued a report that revealed widespread violence and abuse in four of

65. *See* Edward G. Armstrong, *The Drug Court as Post Modern Justice*, 16 CRITICAL CRIMINOLOGY 271, 279 (2008), *available at* http://www.springerlink.com/content/6786r4672m06j565/fulltext.pdf.

66. *See id.*

67. RANDY MONCHICK ET AL., NAT'L DRUG COURT INST., DRUG COURT CASE MANAGEMENT: ROLE, FUNCTION, AND UTILITY, 1-2 (2006), *available at* http://www.ojp.usdoj.gov/BJA/pdf/Drug_Court_Case_Management.pdf.

68. Armstrong, *supra* note 65, at 279; Gebelein, *supra* note 64, at 3.

New York's youth prisons.[69] This grim reality was confirmed by a recent statewide task force, which also found that 89% of boys placed in New York State youth prisons go on to commit further crimes.[70] This statistic is even more astonishing considering that it costs over $200,000 a year to confine a young person in a state residential facility, roughly ten times the cost of the most expensive community-based alternatives to incarceration.[71] Sadly, most of the young people in these facilities are there not for felonies, but for misdemeanor-level offenses.[72] They are being incarcerated not because of the severity of their offenses but because of the chaos in their home lives—addiction, mental illness, and family dysfunction—and because of the lack of alternatives to detention in their communities.

While the news coming out of the juvenile justice system has been grim, I am optimistic we can turn things around. Those of us involved in court reform in New York over the past several decades know that we can turn crisis into opportunity by making deeper investments in alternatives to incarceration.[73]

In this regard, the judiciary recently submitted a legislative proposal that would allow us to assume the executive branch's current responsibilities for statewide oversight and budgeting of juvenile probation.[74] While the bill was pushed aside because of the State's fiscal difficulties during budget negotiations between the Governor and legislative leaders, it received broad support in the legislature and there is reason to be optimistic about its future passage.[75] Our bill would not only give the judiciary authority to set statewide standards governing the delivery of probation services in Family Court, but would enable us to provide county probation departments with the resources they need to provide intensive services and close monitoring of troubled young

69. TASK FORCE ON TRANSFORMING JUVENILE JUSTICE, CHARTING A NEW COURSE: A BLUEPRINT FOR TRANSFORMING JUVENILE JUSTICE IN NEW YORK STATE 8, 10, 15 (2009), *available at* http://www.vera.org/download?file=2944/Charting-a-new-course-A-blueprint-for-transforming-juvenile-justice-in-New-York-State.pdf.

70. *Id.* at 14.

71. *Id.*

72. *See id.* at 14, 23, 36.

73. *See supra* notes 42-59 and accompanying text.

74. Press Release, Governor Paterson Submits Legislation to Begin Implementation of Juvenile Justice Task Force Recommendations (June 2, 2010), http://www.state.ny.us/governor/press/060210Juvenile_Justice.html; *Professors Back Top Judge's Efforts to Divert Juvenile Offenders from Life Behind Bars*, COLUM. L. SCH. (May 7, 2010), http://www.law.columbia.edu/media_inquiries/news_events/2010/May2010/juvenileprobation [hereinafter *Professors*].

75. Jeff Storey, *Court's Bill to Supervise Juvenile Probation Is Set Aside*, N.Y. L.J., July 13, 2010, at 1.

people.[76] Among other features, our bill proposes a supplemental grant program that would allow localities to apply for additional state assistance in return for a greater commitment to their juvenile probation systems, particularly in establishing more alternative-to-incarceration programs and providing for more substance abuse treatment, mental health treatment, and educational and other essential services.[77]

The New York courts' pioneering commitment in the 1990s to linking non-violent adult offenders to community-based drug and mental health treatment has made us a national model for how to hold offenders accountable for their actions while reducing recidivism, incarceration, and correctional spending. The time has come to apply this approach to our failing juvenile justice system.

VII. CONCLUSION

Much attention has been devoted to analyzing the causes underlying the dramatic reductions in New York's crime and incarceration rates over the last two decades. I believe no such analysis can be complete without an understanding of how the New York State court system's early commitment to alternatives to incarceration, including court-supervised drug and mental health treatment, helped the criminal justice system cut crime and improve public safety while reducing the use of jail and prison.

76. Lippman, *supra* note 27; *see Professors*, *supra* note 74.
77. Lippman, *supra* note 27.

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