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THE CULTURE OF MISDEMEANOR COURTS

*Jessica A. Roth**

I. INTRODUCTION

The national conversation about criminal justice reform increasingly, and rightly, has focused on misdemeanors.¹ Just as courts and scholars increasingly have acknowledged that our criminal justice system is overwhelmingly one of pleas, not trials,² so too have they acknowledged that our system largely is one of misdemeanors, not felonies.³ At least ten million people were charged with misdemeanors in state courts in the United States in 2015, whereas a far smaller number were charged with felonies.⁴ As one scholar has estimated, the “world of

* Associate Professor of Law, Benjamin N. Cardozo School of Law. I am grateful to Ellen Yaroshefsky for organizing the Judicial Responsibility for Justice in Criminal Courts Conference at Hofstra Law School in April 2017 which provided the occasion for this Symposium Issue, and to Peter Joy, Jenny Roberts, and Ellen Yaroshefsky for helpful comments on an earlier draft of this Article. Thanks also to the participants in the 2017 Criminal Justice Ethics Schmooze where this project was presented as a work in progress, to Judges Andra Sparks, Gayle Williams-Byers, and Victoria Pratt for sharing generously of their time, and to Rachel Karpoff for excellent research assistance.

1. There is no single definition of what constitutes a misdemeanor; it is instead whatever the legislature chooses to classify as a misdemeanor rather than a felony. *See* Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277, 290-91 (2011). In general, a misdemeanor is considered less serious than a felony and is punishable by a fine or a prison term no greater than one year. *Id.* at 290. Some jurisdictions also utilize a category of “infractions” or “violations” to describe less serious conduct that is not categorized as a crime. *Id.* at 290 n.53.

2. *See, e.g.*, *Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (“[C]riminal justice today is for the most part a system of pleas, not a system of trials.”); *see also* *Missouri v. Frye*, 566 U.S. 134, 143 (2012) (explaining the U.S. criminal justice system “is for the most part a system of pleas, not a system of trials” (quoting *Lafler*, 566 U.S. at 170)); Stephanos Bibas, *Judicial Fact-Finding and Sentence Enhancements in a World of Guilty Pleas*, 110 YALE L.J. 1097, 1148-74 (2001).

3. *See, e.g.*, Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1315 (2012) (“[T]he felony-centric view misapprehends the sprawling reality of the American criminal process. Most U.S. convictions are misdemeanors.”); Roberts, *supra* note 1, at 280 (“Contrary to popular belief . . . the vast majority of criminal cases in the United States are not felonies.”).

4. According to data provided to the National Center for State Courts (“NCSC”) by courts in thirty-three states and the District of Columbia, approximately 9.5 million people were processed for misdemeanor cases in 2015, whereas approximately 2.4 million people were processed for

misdemeanors” is “about four or five times the size of the world of felonies.”⁵

The outcomes of these misdemeanor cases are significant. Sentences for misdemeanor convictions can include imprisonment of up to one year, probation (violation of which can result in imprisonment) and fines.⁶ Persons convicted of misdemeanors frequently are subjected to severe collateral consequences impeding their ability to pursue education, employment, and housing opportunities.⁷ Even if a case is dismissed, resulting in no conviction, persons charged with misdemeanors may be jailed pending the resolution of the case, subjected to court supervision as a condition of dismissal, and burdened with the increased likelihood of additional future contact with the criminal justice system, having once been “marked” as one of its subjects.⁸ Additionally, what may be a misdemeanor the first time an offense is charged, such as stealing a loaf of bread, can be charged as a

felonies. See *2015 Criminal Caseloads—Trial Courts*, NCSC, http://www.ncsc.org/Sitecore/Content/Microsites/PopUp/Home/CSP/CSP_Intro (follow “Criminal” hyperlink; then select the data year for “2015”; then select the chart/table for “Statewide Felony Caseloads and Rates” and “Statewide Misdem. Caseloads and Rates” hyperlinks) (last visited Nov. 15, 2017). This total does not include the seventeen states that did not provide distinct misdemeanor and felony caseload data to the NCSC, such as New York, one of the most populous states. *Id.* New York separately reported 150,887 adult felony arrests and 328,090 adult misdemeanor arrests for 2016. *Adult Arrests 2007-2016*, N.Y. ST. DIVISION OF CRIM. JUST. SERV. (Feb. 17, 2017), <http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/Allcounties.pdf>.

5. Natapoff, *supra* note 3, at 1320-21. Natapoff’s estimate is consistent with the data collected by the NCSC for 2015. See *2015 Criminal Caseloads—Trial Courts*, *supra* note 4; see also NAT’L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: AN OVERVIEW OF 2015 STATE COURT CASELOADS 13 (2016) (reporting that of the thirty states reporting data by case type, roughly eighty percent of the courts’ criminal docket were misdemeanor cases compared to approximately twenty percent for felonies).

6. See Roberts, *supra* note 1, at 290-91, 292 n.66, 297 (surveying penalties authorized for misdemeanors in various states). Although one year of imprisonment is the maximum in most states, at least one state authorizes up to ten years’ imprisonment for some misdemeanors. *Id.* at 290-91.

7. See, e.g., *id.* at 297-300 (discussing formal and informal collateral consequences of misdemeanor convictions); see also Natapoff, *supra* note 3, at 1325 (same); *National Inventory of the Collateral Consequences of Conviction*, COUNCIL OF STATE GOV’TS, JUST. CTR., <https://niccc.csgjusticecenter.org> (last visited Nov. 15, 2017) (follow the “go” hyperlink; then select a specific “jurisdiction” hyperlink) (providing a searchable database of collateral consequences under federal law and in each state with triggering offenses).

8. See, e.g., Josh Bowers, *Punishing the Innocent*, 156 U. PA. L. REV. 1117, 1125-26 (2008) (discussing various reasons why those who are already known to law enforcement actors are more likely to be stopped or arrested in the future than those who are not); Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611, 643-44 (2014) (arguing that “marking” is “public credentialing” which “classifies subjects based on the statuses they have achieved through their contact with the police and courts,” which can be used within the criminal justice system to “signify what level of response is warranted and what other sorts of testing or punishments will be imposed in the context of later encounters”); see also MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 94-95 (2010).

felony the second time if the accused has the first misdemeanor conviction.⁹ The presence of a misdemeanor conviction on a person's record also may impact a prosecutor's exercise of charging or plea bargaining discretion in a future case, a judge's exercise of sentencing discretion, or a defendant's eligibility for diversionary programs.¹⁰

The lower-level state courts where misdemeanors are adjudicated (collectively what this Article refers to as "misdemeanor courts")¹¹ also are where most people have their first contact with our judicial institutions and therefore form their critical first impressions of them.¹² If courts are accessible, if staff and judges treat those who enter with dignity and convey that the courts are there to serve the community, then that is the message heard by those audiences. If courts are inhospitable, if they treat those who use them as outsiders whose interests do not matter, then that is the message that will be absorbed. Those who interact with our misdemeanor courts will carry these impressions forward, including to future contact with other courts. Similarly, the judges, prosecutors, and defense lawyers who begin their careers in misdemeanor courts will carry forward to their future endeavors the habits and work orientation developed during their training. Thus, what happens in misdemeanor courts is important in and of itself, due

9. See, e.g., 720 ILL. COMP. STAT. 5/16-1 (2012). In other jurisdictions, similar crimes can be charged as felonies if the accused has two prior misdemeanor convictions for the offense. See, e.g., MO. REV. STAT. § 565.076 (2017); OHIO REV. CODE ANN. § 2915.05 (West 2011).

10. See Kohler-Hausmann, *supra* note 8, at 681 (describing the statistical increase of convictions against individuals with prior misdemeanor convictions); *id.* at 661 (describing how prior misdemeanor convictions can alter a judge's discretion with respect to sentence length and severity); *Misdemeanor Diversion Information*, JAY COUNTY PROSECUTOR'S OFF., https://jaycountyprosecutor.com/Misdemeanor_Diversion.php (last visited Nov. 15, 2017).

11. As discussed further below, the courts that handle the bulk of misdemeanor cases in the United States have diverse names, jurisdictions, and organizational structures. See generally RON MALEGA & THOMAS H. COHEN, U.S. DEP'T OF JUSTICE, STATE COURT ORGANIZATION, 2011 (2013), <https://www.bjs.gov/content/pub/pdf/sco11.pdf> (discussing how the organization structure of the nation's trial and appellate courts have changed modestly from 1980 to 2011). For example, some are known as Municipal Courts, Town, Village, or City Courts, Criminal Courts, or Magistrate's Courts. See *id.* at 2. In addition to authority to adjudicate misdemeanors and lesser offenses like traffic violations, many also have authority to issue warrants and handle some civil matters. See, e.g., *Types of Court Cases: Misdemeanor Matters*, MICH. COURTS, <http://courts.mi.gov/self-help/center/casetype/pages/misdemeanor.aspx> (last visited Nov. 15, 2017). Some courts also have jurisdiction over early-stage proceedings in felony cases, such as first appearances and bail determinations. See *id.* at 2; see also NAT'L CTR. FOR STATE COURTS, *supra* note 5, at 12 (discussing the differences among states in processing felonies).

12. See PETER F. NARDULLI ET AL., THE TENOR OF JUSTICE: CRIMINAL COURTS AND THE GUILTY PLEA PROCESS 14 (1988) (noting that the nation's lowest state courts handle "the bulk of the nation's judicial work"); Ethan J. Lieb, *Local Judges and Local Government*, 18 N.Y.U. J. LEGIS. & PUB. POL'Y 707, 734-35 (2015) ("Local courts are the face of the law to millions who will never know about federal Supreme Court opinions, about the Appellate Division at the state level So making sure that these courts project professionalism and dignity is essential.").

to the courts' unique position as the "front porch" of our criminal justice system.¹³

Unfortunately, the practices of many misdemeanor courts leave much to be desired. There are courts where innocent people are convicted of crimes they did not commit,¹⁴ where defendants plead guilty without understanding important consequences of their conviction or without the benefit of counsel;¹⁵ and where defendants are detained because they cannot afford bail.¹⁶ In some courts, cases are routinely and repeatedly adjourned needlessly, prolonging the period of uncertainty for the accused, victims, and the affected community.¹⁷ In some courts, family and community members are unable to attend and understand proceedings because of unreliable court calendars or courtroom practices

13. The image of the misdemeanor court as the "front porch" of the criminal justice system was suggested by Judge Andra Sparks, Presiding Judge of the Birmingham, Alabama Municipal Court, a participant in the 2017 Judicial Responsibility for Justice in Criminal Courts Conference, whose innovations are highlighted in Part III.

14. Scholars have increasingly focused on the "innocence problem" in misdemeanor courts. See, e.g., Samuel R. Gross, *What We Think, What We Know and What We Think We Know About False Convictions*, 14 OHIO ST. J. CRIM. L. 753, 754, 767, 776-77 (2017) (suggesting that "thousands . . . of innocent defendants a year plead guilty to misdemeanors and low-level felonies in order to avoid prolonged pretrial detention"); Alexandra Natapoff, *Misdemeanors*, 11 ANN. REV. L. & SOC. SCI. 255, 256 (2015) ("[T]he misdemeanor system has a massive wrongful conviction problem that dwarfs the felony innocence docket" which stems from the "slapdash and coercive nature of the plea bargaining process."); Roberts, *supra* note 1, at 285-86 ("[T]he potential for wrongful convictions and the troubling phenomenon of innocent people pleading guilty is great in low-level cases.").

15. See, e.g., ROBERT C. BORUCHOWITZ ET AL., NAT'L ASS'N OF CRIMINAL DEF. LAWYERS, *MINOR CRIMES, MASSIVE WASTE: THE TERRIBLE TOLL OF AMERICA'S BROKEN MISDEMEANOR COURTS* 14-15 (2009) (discussing absence of counsel in misdemeanor cases); Robert C. Boruchowitz, *Fifty Years After Gideon: It Is Long Past Time to Provide Lawyers for Misdemeanor Defendants Who Cannot Afford to Hire Their Own*, 11 SEATTLE J. FOR SOC. JUST. 891, 896-904 (2013) (describing misdemeanor guilty pleas taken without defense counsel in a variety of jurisdictions); Roberts, *supra* note 1, at 306-13 (discussing practices in high-volume misdemeanor courts); see also ALISA SMITH & SEAN MADDAN, NAT'L ASS'N OF CRIMINAL DEF. LAWYERS, *THREE MINUTE JUSTICE: HASTE AND WASTE IN FLORIDA'S MISDEMEANOR COURTS* 14-15 (2011) (describing how in Florida misdemeanor court, most pleas lasted fewer than three minutes and defendants rarely were informed of their rights).

16. See, e.g., BORUCHOWITZ, *supra* note 15, at 36; Roberts, *supra* note 1, at 308; Nick Pinto, *The Bail Trap*, N.Y. TIMES MAG., Aug. 16, 2015, at 38, 41-42; Stuart Rabner, *Opinion, Chief Justice: Bail Reform Puts N.J. at the Forefront of Fairness*, N.J. OPINION (Jan. 9, 2017), http://www.nj.com/opinion/index.ssf/2017/01/nj_chief_justice_bail_reform_puts_nj_at_the_forefr.html (citing a 2012 study showing that one in eight people in New Jersey's county jails were there because they could not afford bail of \$2500 or less).

17. See Ian Weinstein, *The Adjudication of Minor Offenses in New York City*, 31 FORDHAM URB. L.J. 1157, 1171-72 (2004) (describing delays in adjudication of misdemeanor cases in New York City); William Glaberson, *Even for Minor Crimes in Bronx, No Guarantee of Getting a Trial*, N.Y. TIMES, May 1, 2013, at A1; Pinto, *supra* note 16, at 43 (discussing delays and the dangers that pre-trial detention poses, including to family members, housing, and work).

that effectively shut them out.¹⁸ Many of these same problems are present in felony courts, but they are particularly salient in misdemeanor courts, where the volume is greater and resources scarcer, where defense counsel often is unavailable,¹⁹ and where procedures historically have been less formal²⁰—for example, with some courts presided over by judges who are not lawyers.²¹

And yet there also are some misdemeanor courts where things are done differently. For example, there are courts where defendants are reliably appointed counsel at the first appearance,²² and where cash bail is rarely required.²³ There are courts that emphasize customer service,

18. See, e.g., STEPHANOS BIBAS, *THE MACHINERY OF CRIMINAL JUSTICE* 34-40 (2012) (discussing the exclusion of “outsiders” from the process of criminal justice); Jocelyn Simonson, *The Criminal Court Audience in a Post-Trial World*, 127 HARV. L. REV. 2173, 2190-94 (2014) (discussing the various ways family and community members are excluded from observing misdemeanor proceedings); see also CTR. FOR COURT INNOVATION, *TO BE FAIR: CONVERSATIONS ABOUT PROCEDURAL JUSTICE* 22 (Emily LaGratta ed. 2017), http://www.courtinnovation.org/sites/default/files/documents/To_Be_Fair.pdf (discussing interview with Kevin Burke, District Judge, Hennipin County, Minnesota, noting that, in many courts, if a person looks lost the court security guard will kick them out, whereas at a Neiman Marcus store, somebody would approach them and offer help).

19. There is no federal constitutional right to counsel in misdemeanor cases, unless the resulting sentence includes a term of imprisonment, either imposed or suspended. See *Alabama v. Shelton*, 535 U.S. 654, 657, 662 (2002) (holding that a suspended sentence following uncounseled conviction violated Sixth Amendment right to counsel); *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (holding that a sentence of imprisonment for any crime violated Sixth Amendment right to counsel, absent valid waiver of that right). This ex post approach to whether a defendant has a right to counsel to defend against a misdemeanor charge has enabled some misdemeanor courts to avoid appointing counsel by, for example, eliciting a commitment from the prosecutor that no prison sentence will be sought. See Roberts, *supra* note 1, at 311. Several states guarantee a right to counsel that goes beyond this federal constitutional minimum. See John D. King, *Beyond “Life and Liberty”*: *The Evolving Right to Counsel*, 48 HARV. C.R.-C.L. L. REV. 1, 11-15 (2013) (discussing torturous case law on right to counsel in misdemeanor cases); Roberts, *supra* note 1, at 310-13 (same).

20. See, e.g., Natapoff, *supra* note 3, at 1320, 1348 (discussing the “off the record” nature of many misdemeanor proceedings); Eve Brensike Primus, *Our Broken Misdemeanor Justice System: Its Problems and Some Potential Solutions*, 85 S. CAL. L. REV. POSTSCRIPT 80, 86 & n.23 (2012) (noting that the “current practice in many jurisdictions” is not to keep verbatim transcripts of misdemeanor court proceedings).

21. See, e.g., MALEGA & COHEN, *supra* note 11, at 5 (noting that a law degree or other type of legal qualification was required for only fifty-nine percent of judgeships in limited jurisdiction courts); William Glaberson, *Delivering Small-Town Justice, with a Mix of Trial and Error*, N.Y. TIMES, Sept. 26, 2006, at A1; William Glaberson, *How a Reviled Court System Has Outlasted Many Critics*, N.Y. TIMES, Sept. 27, 2006, at A1, B8; William Glaberson, *In Tiny Courts of New York, Abuses of Law and Power*, N.Y. TIMES, Sept. 25, 2006, at A1.

22. See, e.g., Alissa Politz Worden et al., *Court Reform: Why Simple Solutions Might Not Fail? A Case Study of Implementation of Counsel at First Appearance*, 14 OHIO ST. J. CRIM. L. 521, 529-33, 537-39 (2017) (describing improvements in appointment of counsel at first appearance in New York courts).

23. See, e.g., Lisa W. Foderaro, *Debating Mercy vs. Risk as New Jersey Mostly Discards Cash Bail*, N.Y. TIMES, Feb. 7, 2017, at A1 (describing New Jersey’s ambitious overhaul of its bail

accessibility, and procedural justice.²⁴ Although they are not without their critics,²⁵ there are now thousands of “problem-solving” courts around the country dedicated to finding alternatives to criminal conviction and incarceration for lower-level offenses.²⁶ These courts may be imperfect, but they certainly represent an innovation over the traditional model that preceded them as the sole option in many jurisdictions.

system to practically eliminate cash bail, effective state-wide as of January 1, 2017); Ann E. Marimow, *When It Comes to Pretrial Release, Few Other Jurisdictions Do It D.C.'s Way*, WASH. POST (July 4, 2016), https://www.washingtonpost.com/local/public-safety/when-it-comes-to-pretrial-release-few-other-jurisdictions-do-it-dcs-way/2016/07/04/8eb52134-e7d3-11e5-b0fd-073d5930a7b7_story.html?utm_term=.45e516788a09 (recounting how the District of Columbia’s busiest courthouse releases approximately ninety percent of those who have been arrested and held overnight).

24. Marimow, *supra* note 23. The concept of procedural justice is most closely associated with Tom Tyler, who has argued that people’s perception of how they are treated by the legal system informs their perception of the legitimacy of that system and their willingness to obey its commands. *See, e.g.*, TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 125-30 (2006); Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26, 26 (2007); *see also* Brian J. Ostrom et al., *The High Performance Court Framework*, in *FUTURE TRENDS IN STATE COURTS 2010*, at 140, 142 (Carol R. Flango et al. eds., 2011) (“Perceptions that procedures are fair and understandable influence a host of outcome variables, including satisfaction with the process, respect for the court, and willingness to comply with court rulings and orders—even if individuals do not like the outcome.”).

25. For a thorough critique of problem-solving courts, *see, for example*, Steven Zeidman, *Policing the Police: The Role of the Courts and the Prosecution*, 32 FORDHAM URB. L.J. 315, 336-44 (2005) (arguing that problem-solving courts do not sufficiently safeguard defendants’ due process rights or deter overzealous law enforcement tactics); and *see also* Timothy Casey, *When Good Intentions Are Not Enough: Problem-Solving Courts and the Impending Crisis of Legitimacy*, 57 SMU L. REV. 1459, 1497-98 (2004) (discussing how problem-solving courts deteriorate the adversarial process and change the role of defense counsel); Eric J. Miller, *Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism*, 65 OHIO ST. L.J. 1479, 1551-61 (2004) (discussing “net widening” effect of drug courts); and Mae C. Quinn, “*Post-Ferguson*” *Social Engineering: Problem-Solving Justice or Just Posturing*, 59 HOW. L.J. 739, 759-64 (2015) (arguing that problem-solving courts do nothing to address the numerous local ordinances that should not be on the books or enforced, and pointing out the conflicts of interest inherent in such courts, including vis-à-vis service providers who benefit from court-ordered treatment).

26. *See, e.g.*, GREG BERMAN & JOHN FEINBLATT, *GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE* 31-33 (2005) (discussing history and evolution of “problem-solving courts” and estimating as of 2005 that there were at least 2000 such courts throughout the United States). The authors define a problem-solving court as one “working to ensure . . . the process fits the problem,” in which “judges and attorneys [] think of themselves as problem-solvers rather than as simply case processors.” *Id.* at 5. More recent estimates put the number of problem-solving courts at approximately 3000. *See, e.g.*, Allegra M. McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L.J. 1587, 1605, 1610-11 (2012) (noting the proliferation of specialized state courts since the early 1990s reaching approximately 3000 by 2010); *see also* BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *CENSUS OF PROBLEM SOLVING COURTS*, 2012 (revised Oct. 12, 2016), <https://www.bjs.gov/content/pub/pdf/cpsc12.pdf> (“In 2012, the . . . Census of Problem-Solving Courts counted 3,052 problem-solving courts in the United States . . .”).

What separates one type of court from the other? Surely, resources and the local jurisdiction's substantive laws are important factors. But, extensive literature on organizational theory suggests that organizational "culture" is a major piece of the puzzle as well.²⁷ Drawing on diverse fields including anthropology, sociology, and psychology,²⁸ academics of various backgrounds and management experts have coalesced around the notion that culture plays a key role in how public and private organizations perform.²⁹ As defined by James Q. Wilson, organizational culture is "a persistent, patterned way of thinking about the central tasks of and human relationships within an organization. Culture is to an organization what personality is to an individual."³⁰

Organizational culture theory thus explains (at least in part) why courts do things so differently from one another, and why it can be so difficult to transform one court so that it behaves like another. According to organizational culture theory, a reformer may have a worthy idea for how to change some aspect of an organization's work, but if that change is incompatible with the organizational culture, the idea is unlikely to achieve its desired goal or to endure.³¹ In short, organizational culture can be a significant barrier to meaningful change and sometimes must be modified before other reforms, even those mandated by law, can succeed.³² But changing culture is difficult. Culture takes time to

27. See NARDULLI ET AL., *supra* note 12, at 14 ("While the law acts as a constraint upon what [lower courts] can do, it is only one of many constraints. Often it is not the most important . . .").

28. See EDGAR H. SCHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP, at ix (4th ed. 2010) [hereinafter SCHEIN, ORGANIZATIONAL CULTURE] (describing the various disciplines that have been brought to bear on the emerging field of "organizational culture" studies).

29. See, e.g., KIM S. CAMERON & ROBERT E. QUINN, DIAGNOSING AND CHANGING ORGANIZATIONAL CULTURE 5 (3d ed. 2011) (arguing that the "major distinguishing feature" of many of the most successful companies "is their organizational culture"); JOHN P. KOTTER & JAMES L. HESKETT, CORPORATE CULTURE AND PERFORMANCE 8-9 (1992); EDGAR H. SCHEIN, THE CORPORATE CULTURE SURVIVAL GUIDE 3-7 (1999); SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 13-14. Although some scholars have viewed private and public institutions as so unlike that research on the former is irrelevant to the latter, more scholars have taken a contrary view, acknowledging the different missions and context of the two types but still finding commonalities that make scholarship on private institutions useful in thinking about the problems facing public institutions. See, e.g., BRIAN J. OSTROM ET AL., TRIAL COURTS AS ORGANIZATIONS 25-26 (2007) (quoting Wallace Sayre's famous claim that "public and private organizations are 'fundamentally alike in all unimportant respects'").

30. JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT 91 (1989).

31. See CAMERON & QUINN, *supra* note 29, at 163 ("Most changes attempted in organizations . . . do not succeed because of cultural incompatibility.").

32. See *id.* ("Culture change therefore is a crucial requirement for success in many organizations.").

develop; once it is established, “like human culture generally, it is passed on from one generation to the next. It changes slowly, if at all.”³³

The central question of this Article is how one shapes organizational culture—in particular, the culture of a misdemeanor court—if culture is getting in the way of desired reforms. The emphasis thus is not on which specific goals or policies courts should pursue, but instead on how reformers can ensure that culture does not impede the progress of whatever goals they select—or at least how they can minimize its drag. Part II introduces the concept of organizational culture in greater detail, including its application to courts.³⁴ After discussing briefly how culture is formed in new organizations, it turns to the challenge of modifying culture in existing institutions and identifies certain factors that appear to be key to success.³⁵ Part III then discusses features of misdemeanor courts that make them particularly challenging places to pursue cultural change.³⁶ Finally, Part IV describes the experiences of selected misdemeanor courts where innovative judges are championing significant changes to the conventional way of doing things.³⁷ These courts are highlighted as “stories of innovation.”³⁸ Because these innovations are relatively recent, it is difficult to draw any conclusions about their long-term staying power and whether in fact they are altering the culture of their courts. Nevertheless, these stories lend credence to the significance of the factors identified in Part II, many of which are present in these innovative courts.³⁹ Their experiences also attest to the salience of the factors identified in Part II, many of which can be seen at work as well.⁴⁰

33. WILSON, *supra* note 30, at 91; *see* CAMERON & QUINN, *supra* note 29, at 20; KOTTER & HESKETT, *supra* note 29, at 78-79; SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 16; Edgar H. Schein, *Organizational Psychology Then and Now: Some Observations*, ANN. REV. ORGANIZATIONAL PSYCHOL. AND ORGANIZATIONAL BEHAV., Jan. 22, 2015, at 1, 9 (“[C]ultures as a whole don’t change; they evolve slowly as bits and pieces of them are changed by systematic change interventions.”).

34. *See infra* Part II.A.

35. *See infra* Part II.B.

36. *See infra* Part III.

37. *See infra* Part IV.

38. *See infra* p. 238.

39. *See infra* Parts II.B, IV.

40. *See infra* Parts II.B, IV.

II. DEFINING AND SHAPING ORGANIZATIONAL CULTURE

A. *The Concept of Organizational Culture*

As noted above, an organization's culture has been likened to an individual's personality.⁴¹ This personality, however, can be described at various levels. On the most superficial level, there is observable behavior—for example, the routines and practices that would be most immediately apparent to an outsider.⁴² These are the most easily changed aspects of the organizational culture.⁴³ However, this first level is often linked to and reinforces a deeper aspect of the organization's personality, which includes the underlying values that “tend to persist over time even when group membership changes.”⁴⁴ These assumptions can be so deeply engrained as to be practically invisible even to group members.⁴⁵ Nevertheless, they often severely constrain what behavior and goals seem possible.⁴⁶ Organizations also sometimes have an intermediate level of culture, consisting of “espoused beliefs.”⁴⁷ The larger and more complex an organization is, the more likely it is to have subcultures within it—for example, in units responsible for discrete tasks,⁴⁸ or among workers of shared professional backgrounds.⁴⁹ These units have much in common with the overall organization, but also hold additional assumptions “usually reflecting their functional tasks, the occupations of their members, or their unique experiences.”⁵⁰

41. See *supra* note 30 and accompanying text.

42. See SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 23; see also KOTTER & HESKETT, *supra* note 29, at 4 (discussing examples of this kind of observable behavior would include not only specific practices, but being “very friendly” or “hard-workers”).

43. KOTTER & HESKETT, *supra* note 29, at 4.

44. *Id.*

45. See SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 28.

46. *Id.* (noting these shared assumptions can make “behavior based on any other premise inconceivable”).

47. *Id.* at 23-24, 320-21 (explaining that artifacts describe “what is going on” in an organization; espoused values describe the “why” for those behaviors—for example, the espoused value of having a non-hierarchical organization may explain the artifact of there being few status symbols like corner offices).

48. See, e.g., WILSON, *supra* note 30, at 93; see also SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 55 (discussing emergence of sub-cultures that “most often form around the functional units of the organization”).

49. See SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 55 (“Much of what goes on inside an organization that has existed for some time can best be understood as a set of interactions of subcultures operating within the larger context of the organizational culture.”); Schein, *supra* note 33, at 7.

50. SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 55.

For several decades, scholars have observed that courts, like other institutions, have engrained cultures and subcultures. For example, writing in 1978, Thomas Church and several collaborators used the term “local legal culture” to describe the “established expectations, practices and informal rules of behavior” of different courthouses.⁵¹ In the 1980s and 1990s, Eisenstein, Fleming, and Nardulli published a series of studies of courts, in which they used the terms “work orientations” and “rationalizing principles” to denote a similar concept to court culture.⁵² Both sets of scholars agreed that these aspects of the courts they studied played a significant role in how the courts performed on measures like speed of case disposition that could not be explained by other factors including courthouse size or docket, resources, or internal structure.⁵³ Nardulli et al. also coined the term “court community,” to describe the constellation of actors regularly working together in a court—some employed by the court but others not, such as prosecutors and defense lawyers—who collectively created its culture.⁵⁴ In his seminal study of criminal courts, first published in 1983, Malcolm Feeley also warned against well-intentioned reform efforts that failed to recognize that “[i]nformal practices and procedures [within a court] are not idiosyncratic accidents but are usually the result of perceived necessities,” and encouraged reformers to view court practices not in isolation, but in their “historical and functional context.”⁵⁵

More recently, Brian Ostrom, Roger Hanson, and various collaborators focused on the study of court culture, which they define as “the beliefs and behaviors shaping ‘the way things get done’ by the individuals—judges, managers, and staff members” who work in the courthouse.⁵⁶ As they summarized the importance of culture to reform efforts:

Many court reform efforts are based on the belief that any policy can be put in place in any court at any time. In reality, court practices are slow to change. They are conditioned on the past and reflect

51. THOMAS CHURCH, JR. ET AL., NAT’L CTR. FOR STATE COURTS, JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN COURTS 54 (1978), <https://cdm16501.contentdm.oclc.org/digital/collection/ctadmin/id/41/rec/1>.

52. NARDULLI ET AL., *supra* note 12, at 126. *See generally* JAMES EISENSTEIN ET AL., THE CONTOURS OF JUSTICE: COMMUNITIES AND THEIR COURTS (1988); ROY B. FLEMMING ET AL., THE CRAFT OF JUSTICE: POLITICS AND WORK IN CRIMINAL COURT COMMUNITIES (1992).

53. *See* CHURCH, *supra* note 51, at 54; NARDULLI ET AL., *supra* note 12, at 126.

54. FLEMMING ET AL., *supra* note 52, at 123-24; NARDULLI ET AL., *supra* note 12, at 126.

55. MALCOLM M. FEELEY, COURT REFORM ON TRIAL: WHY SIMPLE SOLUTIONS FAIL, at xiii (1983).

56. Brian J. Ostrom & Roger A. Hanson, *Understanding Court Culture Is Key to Successful Court Reform*, in FUTURE TRENDS IN STATE COURTS 2010, at 55 (Carol F. Flango et al. eds., 2010).

the influence of informal norms and well-established ways of doing business.⁵⁷

Ostrom and Hanson warn that when reformers fail to account for the established culture of a court, they may encounter opposition ranging from a “lack of engagement” to not-subtle resistance.⁵⁸

B. *Shaping Organizational Culture*

In new organizations, the founding leadership usually plays an outsized role in determining the organizational culture.⁵⁹ The first leaders select the organization’s structure, mission, and values, and make key hiring decisions.⁶⁰ Eventually from these initial decisions flow day-to-day routines and practices that help implement the founders’ vision.⁶¹ Even once the leadership has turned over, the founders’ legacy often remains in the norms and assumptions about the organization’s mission and possibilities that constitute the deeper level of the organization’s culture, and in the observable behavior and policies that are the “artifacts” of the organization’s initial choices.⁶² Absent deliberate efforts at change, the organization’s culture at both levels often persists as “the result of the embedding of what a founder or leader has imposed on a group that has worked out.”⁶³

Once an organization and its culture are well-established, modifying that culture, especially at the deeper level, can be quite difficult.⁶⁴ However, organizational theorists have identified several factors that are associated with successful cultural change. The first and most important factor is the presence of strong leaders who voice the “need for change” and point the institution in a new direction.⁶⁵ As John Kotter and James Heskett have observed, the leadership required “is

57. *Id.*

58. *Id.*

59. See SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 274 (“[During the] founding and early growth of a new organization—the main cultural thrust comes from the founders and their assumptions.”).

60. *See id.* at 274, 280.

61. *See id.* at 252, 275.

62. *See id.* at 282.

63. *Id.*

64. *See id.* at 274, 276, 281-83 (discussing the challenges to cultural change at different stages of an organization); *see also* KOTTER & HESKETT, *supra* note 29, at 4.

65. KOTTER & HESKETT, *supra* note 29, at 144-46; *see also* Paul J. De Muniz, *Overturning Precedent: The Case for Judicial Activism in Reengineering State Courts*, 87 N.Y.U. L. REV. 1, 18-19 (2012) (“[O]ne factor essential to successful organization-wide reengineering is the presence of a dynamic leadership espousing a dynamic vision.” (citing Michael Hammer, *Reengineering Work: Don’t Automate, Obliterate*, HARV. BUS. REV., July–Aug. 1990, at 104, 112)).

something quite different from even excellent management.”⁶⁶ Schein similarly has emphasized this “unique function of leadership that distinguishes it from management and administration.”⁶⁷ A team can exercise the leadership function by distributing it among several individuals.⁶⁸ It can come from within the organization, or be brought in from the outside, but it must have both sufficient objectivity to be able to see clearly what needs to be changed and sufficient understanding of the organization’s existing culture to appreciate the obstacles and the best way forward.⁶⁹

The traits required of those exercising leadership depend on the tasks to be performed and the surrounding circumstances. Although there is no single set of “personal characteristics [that] distinguish a leader from the rest of humanity,” research supports three types as being particularly likely to be effective leaders: (1) those who derive their influence from “their total command of a subject matter and demonstrated competence”; (2) those who are particularly supportive of subordinates, helping them to learn and treating them as human beings; and (3) those who exude charisma—“a level of confidence and emotional potency that gives . . . (subordinates) a blind confidence to agree and go along with whatever the leader wants.”⁷⁰ In addition to defining “the values or norms” through which the organization “develop[s] a sense of identity,” the leadership also has a “unique obligation to manage the relationship between a system and its environment.”⁷¹ Thus, the leadership function “must be fulfilled by those members [of the organization] who are in contact with the organization-environment boundary.”⁷²

66. KOTTER & HESKETT, *supra* note 29, at 12.

67. SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 195; *see also* OSTROM ET AL., *supra* note 29, at 139 (“Success in trial court management requires purposeful and deliberative leadership rather than forceful tactics or combative reactions.”); Schein, *supra* note 33, at 9 (suggesting leaders must define “values and norms, turning these into shared rules for behavior,” which is “de facto creating and managing culture”).

68. Schein, *supra* note 33, at 8.

69. *See* SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 376 (suggesting leaders capable of managing cultural change within mature organizations must have “objectivity” and “be able to perceive and think about ways of doing things different from what the current assumptions imply” but also must “diagnose accurately what the culture of the organization is, which elements are well adapted, which elements are problematic for future adaption, and how to change that which needs changing”); *see also* FEELEY, *supra* note 55, at 197 (“While outsiders may be able to transcend the limited perspectives and incentives of those who work daily in the criminal courts, their remoteness from the courts prevents them from understanding the byzantine realities of the criminal justice process, and, as a result, their efforts are often misdirected.”).

70. Schein, *supra* note 33, at 8.

71. *Id.*

72. *Id.*

Second, this requisite leadership must be of sufficient duration to develop a plan and see it through until the desired changes become embedded. Successful cultural change requires multiple steps—including “unfreezing” or destabilizing old assumptions about the way things are done, learning new ways of doing them, and then “refreezing,” or internalizing the new ways.⁷³ It takes time to determine the best way forward, and to educate those within the organization about the problems with the old ways of proceeding and the superiority of the new ways.⁷⁴ If those within the organization do not eventually internalize the rationale for the new behavior, they will revert to old behaviors when the leadership changes.⁷⁵

Third, the agency of employees and other stakeholders in the organization should be respected to the extent possible. When those actors do not feel that their concerns have been heard, they can resort to various measures—including “avoidance, evasion, and delay”—to avoid change.⁷⁶ But if they are made to feel part of the process, they are more likely to cooperate.⁷⁷ In the development stage, the leadership ideally should solicit feedback from employees and other stakeholders before formulating a plan of action.⁷⁸ As those charged with implementing the institution’s mission, or most affected by it, these individuals may have valuable ideas to contribute to the reform process.⁷⁹ Even if their ideas ultimately do not shape the organization’s agenda, at a minimum, reformers should understand the contrary points of view and how structural incentives currently operate.⁸⁰ Where minds cannot be changed initially, reformers must “alter the incentives of those whose behavior” must be changed to accomplish the desired result.⁸¹ Moreover,

73. See SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 300-11.

74. See *id.* at 301.

75. See *id.* at 310. As one example of this phenomenon, Hennepin County, Minnesota, was once considered a national model of procedural justice, under the leadership of Judge Kevin Burke. But when Judge Burke reached the end of his term-limited tenure as Chief Judge in 2004 and many of the judges he trained left the bench, the practices he advocated fell out of use in many courtrooms. See Tina Rosenberg, *The Simple Idea that Could Transform U.S. Criminal Justice*, GUARDIAN (June 23, 2015), <https://www.theguardian.com/us-news/2015/jun/23/procedural-justice-transform-us-criminal-courts>.

76. FEELEY, *supra* note 55, at 36.

77. See *id.* at 196-97.

78. See SCHEIN, ORGANIZATIONAL CULTURE, *supra* note 28, at 279; SAMHSA, U.S. DEP’T OF HEALTH AND HUMAN SERV., IMPROVING CULTURAL COMPETENCE 84 (2014), <https://www.ncbi.nlm.nih.gov/books/NBK248428>.

79. See WILSON, *supra* note 30, at 229 (“[E]xecutives lack the detailed and specialized knowledge possessed by operators and lower-level managers . . .”).

80. FEELEY, *supra* note 55, at 198-99.

81. *Id.*; see also OSTROM ET AL., *supra* note 29, at 139 (noting the importance of steps to “promote involvement and minimize resistance, to clarify what the new cultural emphases will be,

giving employees agency in the details of implementation—even if they initially disagree with the goal—still is worthwhile. As Schein has observed, even where the ultimate object is “nonnegotiable,” the method of getting there can be “highly individualized.”⁸²

Fourth, reform should be pursued through incremental measures that are problem-focused and attuned to local context.⁸³ Rarely will every aspect of an organization’s culture stand in the way of a desired policy goal; there may in fact be aspects of the culture that will aid the desired changes.⁸⁴ The key is to identify which if any cultural assumptions and artifacts are hindering the desired change, and focus on those.⁸⁵ Symbols can be a powerful tool in pursuing such incremental reform. They cannot define culture or single-handedly change it, but they can “reinforce” cultural assumptions and be enlisted as part of an effort to reshape them.⁸⁶ Change at the deeper level of an organization’s culture flows from concrete, strategic changes at the more superficial levels.⁸⁷

and to establish a plan of action to initiate and encourage momentum for change” to an “organizational culture change effort”).

82. SCHEIN, *ORGANIZATIONAL CULTURE*, *supra* note 28, at 306; *see also* Gordon M. Griller, *Governing Loosely Coupled Courts in Times of Economic Stress*, in *FUTURE TRENDS IN STATE COURTS 2010*, at 48, 52 (Carol F. Flango et al. eds., 2010) (discussing how empowering others by giving them “responsibility for outcomes where they can design a final product or task with only general direction” is key to building trust within an organization and fulfilling goals initiated at the top).

83. *See* Schein, *supra* note 33, at 9 (“[I]nterventions work only when the culture changes are clearly tied to the fixing of some organizational problems linked to performance.”).

84. SCHEIN, *ORGANIZATIONAL CULTURE* *supra* note 28, at 312.

85. *See* FEELEY, *supra* note 55, at 187-88; WILSON, *supra* note 30, at 375 (“[P]ublic management is not an arena in which to find Big Answers; it is a world of settled institutions designed to allow imperfect people to use flawed procedures to cope with insoluble problems.”); Griller, *supra* note 82, at 50 (“People are comfortable with what they know and understand, and uncomfortable with changes that pull them too fast and too far from the familiar.”); *see also* FEELEY, *supra* note 55, at 194-95 (suggesting that reformers eschew formalism in favor of a “pragmatist” view, insisting that “principles be examined only in relation to concrete settings,” and embracing an “experimental approach to change, tentatively moving away from what is inadequate in the hope of making incremental improvement”).

86. *See* SCHEIN, *supra* note 28, at 138; *see also* FEELEY, *supra* note 55, at 222-23 (observing that if the courtroom is in disrepair, the language of the courts is “incomprehensible,” and officials are “uncommunicative,” then the “appearance of injustice” is “almost ensure[d]”). Recently, New York’s Chief Judge sought to leverage the power of symbols when she focused on the repair of a prominent clock in the Manhattan courthouse, which had been broken for decades, as part of the “Excellence” Initiative for the courts. *See* James C. McKinley Jr., *Top Judge Goes Where Flaws Are Acute to Address State of Courts*, *N.Y. TIMES*, Feb. 23, 2017, at A20.

87. *See* DAVID C. STEELMAN & GORDON M. GRILLER, *NAT’L. CTR. FOR STATE COURTS, RETHINKING FELONY CASEFLOW MANAGEMENT TO CREATE A CULTURE OF HIGH PERFORMANCE 37* (2013), <http://nacmconference.org/wp-content/uploads/2014/05/BJA-Rethinking-Felony-CFM-Draft-Nov-2013.pdf> (“Cultural change comes last, not first.”).

Fifth, the leadership must ensure that there is both “performance measurement” (for example, collection of relevant data) and “performance management.”⁸⁸ The former evaluates how the organization is faring in meeting predetermined goals.⁸⁹ The latter “adds value to measurement results” by modifying the organization’s practices and holding accountable those who are “slowing the achievement of desired objectives.”⁹⁰ The leadership can use the data collected to communicate to internal and external actors the merits of recent adjustments to its practices in helping the organization meet its stated goals⁹¹—which can be critical to winning over those constituencies (if they were not already convinced) and securing the longevity of the reform.⁹² If the data show that some internal actors persist in behaviors that are inconsistent with the desired reform, then either the reform plan must be adjusted or eventually those actors must be dismissed.⁹³

III. THE CHALLENGE OF SHAPING MISDEMEANOR COURT CULTURE

Once the key factors in shaping organizational culture are identified, it becomes clear why courts are such a challenging environment in which to pursue cultural change. Although some “problem-solving” courts effectively have been created as fresh stand-alone institutions,⁹⁴ more often—and to bring such efforts to scale—

88. Roger A. Hanson & Brian J. Ostrom, *Introduction: Achieving Better Court Management Through Better Data*, 15 J. APPL. PRAC. & PROCESS 19, 23 (2014).

89. *Id.*

90. BRIAN J. OSTROM & ROGER A. HANSON, NAT’L. CTR. FOR STATE COURTS, *ACHIEVING HIGH PERFORMANCE: A FRAMEWORK FOR COURTS* 51 (2010), <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1874>. As one example of the importance of accountability, researchers in New York found that the willingness of a county’s supervising judge to invoke the threat of disciplinary sanctions against non-compliant judges was critical to implementation of the State’s initiative to improve appointment of counsel at first appearances. *See* Worden et al., *supra* note 22, at 544.

91. *See* STEELMAN & GRILLER, *supra* note 87, at 37 (noting the importance to cultural change of its proponent being able “to prove that the new way is superior to the old” and that this success “must be visible and well communicated”).

92. FEELEY, *supra* note 55, at 37 (noting that “[u]nless a program is intended to be temporary or a single-shot effort, sooner or later” the organization must commit the funding and physical base of operations to keep it going on a regular basis); *see also* SCHEIN, *ORGANIZATIONAL CULTURE* *supra* note 28, at 312 (“A leader can impose new ways of doing things, can articulate new goals and means, and can change reward and control systems, but none of those changes will produce *culture* change unless the new ways of doing things actually works better.”).

93. SCHEIN, *ORGANIZATIONAL CULTURE*, *supra* note 28, at 311-12.

94. *See, e.g.*, BERMAN & FEINBLATT, *supra* note 26, at 61-66, 76-79 (describing evolution of Midtown Community Court in Manhattan and Red Hook Community Court).

reformers must work within courts that are mature institutions with engrained cultures and subcultures.⁹⁵

Establishing the requisite leadership to initiate and implement reform within courts is one of the greatest challenges.⁹⁶ Although the idea for reform can start with policy advocates on the outside, or higher level judges within the state judiciary, the idea is unlikely to succeed without the commitment of leadership within each courthouse.⁹⁷ The most powerful actors within the courthouse are the judges (although, as discussed further below, the judges' power is limited).⁹⁸ As lawyers, judges are part of an inherently conservative profession.⁹⁹ And in many jurisdictions, there are more specific disincentives to judge-led innovation. Trial judges often are elected,¹⁰⁰ and therefore (if they seek longevity on the court) must consider the ramifications of their actions on their chances for reelection. Thus, judges who “rock the boat” by pushing change on those constituencies likely to care most about judicial elections may find themselves voted out. And judges who pursue policies that might be perceived as “soft on crime”—or who actively seek more funds for new initiatives—also risk opposition from the public or local political actors.¹⁰¹

95. See Kevin S. Burke, *Leadership Without Fear*, in *FUTURE TRENDS IN STATE COURTS* 2012 at 14, 16 (Carol R. Flango et al. eds., 2012) (“[N]o court starts from scratch. There is a history in every courthouse.”).

96. See *id.* at 17.

97. See FEELEY, *supra* note 55, at 36 (suggesting that court reform may be initiated by appellate courts or legislators, but “eventually institutions close to the court must assume responsibility” for their implementation).

98. See Burke, *supra* note 95, at 15 (discussing the power relationship between judges and the rest of the courthouse staff).

99. See *id.* (noting “[t]he training for lawyers, which is steeped in a commitment to precedent, does not help” develop risk-taking judicial leaders); see also BERMAN & FEINBLATT, *supra* note 26, at 104 (2005) (noting the importance of “stability and continuity” to the judiciary, and describing it as the branch of government “slowest to change” because of its reliance on precedent); *id.* (quoting Judith Kaye, the long-time Chief Judge of New York, as observing that judges’ uniforms and courthouse design had remained unchanged for centuries: “You don’t need a degree in semiotics to conclude that ours is a profession that values formal stability and continuity.”).

100. See *Judicial Selection: An Interactive Map*, BRENNAN CTR. FOR JUST., <http://judicialselectionmap.brennancenter.org/?court=Trial> (last visited Nov. 15, 2017) (reporting that twenty-nine states use some form of election to select trial court judges); see also *Methods of Judicial Selection: Selection of Judges*, NAT’L CTR. FOR ST. CTS., http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state= (last visited Nov. 15, 2017) (listing method of selection and retention of the judges at every level in each state as well as the length of their terms in particular states).

101. See AMY BACH, *ORDINARY INJUSTICE: HOW AMERICA HOLDS COURT* 27 (2009) (noting various incentives for judges to “preserve the status quo”—even when they are elected and usually run unopposed—including the possibility that powerful local actors like the sheriff and county commission with control over the court’s budget “might support an opponent in the next election”); Burke, *supra* note 95, at 15 (noting that courts “desperately need risk-taking leaders” but “fear that a

Similarly, judges who seek promotion within the judiciary may shy away from innovation. In many courthouses, the position of presiding judge is awarded by a vote of the entire bench.¹⁰² Those who seek to become the presiding judge to advance a reform agenda may find that this very quality, if known to the other judges, is a disqualifier.¹⁰³ Judges who seek further advancement within the judiciary—for example, to higher-level courts—similarly may find that their ambitions thwarted if they become known as innovators. Since many judges start their judicial careers on the misdemeanor courts, this is particularly a concern at the misdemeanor level. Accordingly, although these new judges potentially offer a fresh set of ideas, those with an eye on promotion may shy away from controversy for fear of risking the public and political support (including that of their fellow judges) necessary for election to the position of presiding judge or higher judicial office.

The tenure of presiding judges also is an impediment to effective cultural change. In many misdemeanor courts, the presiding judgeship is a position of one or two years' duration.¹⁰⁴ Even if it is renewable,¹⁰⁵ that means the judge must be re-elected or re-appointed every year or two, making it difficult to implement a reform plan than rankles one's fellow judges.¹⁰⁶ It also takes time to meet with affected employees and constituencies to solicit their input and “buy-in,” to develop performance measurements, to train personnel on new policies, and to manage

failed initiative will generate bad news coverage or, worse yet, public criticism from the other branches of government is chilling”).

102. See, e.g., Christine Hanley, *New Presiding Judge Elected*, L.A. TIMES (June 14, 2008), <http://articles.latimes.com/2008/jun/14/local/me-briefs14.S5>. The other common methods are seniority or rotation, neither of which is conducive to promoting dedicated reformers. See CHRISTINE M. DURHAM & DANIEL J. BECKER, NAT'L CTR. FOR STATE COURTS, A CASE FOR COURT GOVERNANCE PRINCIPLES COURTS 3 (2012), https://www.bja.gov/Publications/HarvardExecSession_CourtGovernance.pdf.

103. See *id.* at 3 (noting that selecting the presiding judge by majority vote, or even by seniority, can result in the choice of “judges who are least likely to challenge individual judicial autonomy”).

104. See OSTROM ET AL., *supra* note 29, at 17, 144 (“In the twelve courts [studied], and likely in many others, the position of presiding judge is one of limited tenure.”); Griller, *supra* note 82, at 49 (noting that a two-year term is “one of the more prevalent terms of office for top administrative judges nationwide”).

105. Griller, *supra* note 82, at 54 n.2 (noting that an increasing number of courts are now allowing presiding judges to be re-elected by their peers to a second-year term).

106. According to one former administrative judge in the Bronx criminal courts, when he asked for more resources, state court administrators told him they were not needed. William Glaberson, *Waiting Years for Day in Court*, N.Y. TIMES, Apr. 14, 2013, at A1. In 2009, after years of complaints, he was asked to step down. *Id.* Another former administrative judge in the Bronx also was removed by court officials from his position after giving an interview in which he said more resources were needed. *Id.* He was replaced by a judge with no prior experience in criminal court. *Id.*

performance. All the foregoing also takes resources, which generally are not available without additional, time-consuming efforts to obtain outside funding.¹⁰⁷ Thus, the brief tenure of presiding judges can doom reform before it ever gets off the ground.¹⁰⁸

The limited authority of presiding judges, even while they are in office, presents additional obstacles to effective cultural change. The presiding judge typically is not a “boss” over her fellow judges so much as “first among equals,” whose influence depends on “creating consensus” or “building winning coalitions” rather than formal authority.¹⁰⁹ Despite a shift in recent decades toward greater centralization of state courts, most courts today still are what sociologists describe as “loosely coupled organizations,” meaning the “individual elements [within them] display a relatively high level of autonomy vis-à-vis the larger system within which they” operate.¹¹⁰ Individual judges have a great deal of discretion as to how to run their courtrooms and their chambers and the matters handled therein.¹¹¹ In fact, such autonomy tends to be one of the features that attract certain personalities to the job.¹¹² This increases the leadership challenge for presiding judges who attempt to steer their fellow judges in a unified fashion toward reform.

Moreover, although the entire courthouse nominally is usually under the supervision of the presiding judge—often aided by a chief

107. See De Muniz, *supra* note 65, at 4, 9-10 (suggesting that we are in a “decade of deficits” in state court government); John A. Martin & Brenda J. Wagenknecht-Ivey, *It’s a New Day: Future Trends Require Revolutionary Changes in Courts*, in FUTURE TRENDS IN STATE COURTS 2011, at 135, 137-38 (Carol R. Flango et al. eds., 2011) (predicting “perpetual federal, state, and local funding challenges” even when fiscal times improve).

108. DURHAM & BECKER, *supra* note 102, at 3 (the practice of rotating chief judges “frequently results in tenures too short to permit effective engagement or accomplishment”).

109. FLEMMING ET AL., *supra* note 52, at 79-80; see also Ostrom et al., *supra* note 24, at 141 (“[J]udges see themselves as a group of equals. At best, presiding judges are viewed as a first among equals—or an equal among firsts.”).

110. Griller, *supra* note 82, at 48; see also FLEMMING ET AL., *supra* note 52, at 106 (“Trial courts are often congeries of single-member law firms located in the judges’ chambers and courtrooms with the judges working as solo practitioners.”); NARDULLI ET AL., *supra* note 12, at 42 (noting that judges who hear criminal cases “are subject to very few bureaucratic controls in their conduct of day-to-day affairs” and are “the most loosely organized segment of the court community” after the private defense bar); De Muniz, *supra* note 65, at 19 (noting that most state court systems are examples of the “loosely coupled organizational form”).

111. See Griller, *supra* note 82, at 48.

112. See *id.* (“It is no secret that some judges believe the traditional definitions of judicial independence—freedom from control by other branches of government and freedom from interference in case-related decisions—should include freedom from control by leadership judges and managers responsible for the day-to-day operations of the court system.”); see also Burke, *supra* note 95, at 14-15 (noting some judges’ hostility to “rules, regulations, and policy initiatives that are foreign to what type of institution the judiciary should be”).

court executive—in fact, the presiding judge has limited authority over much of the court staff.¹¹³ As in many public agencies, court personnel frequently enjoy protections under civil service laws and union contracts regarding hiring and firing decisions.¹¹⁴ And some of the most important actors within the courthouse—including prosecutors, police, and defense lawyers—are not formally under the presiding judge’s control at all, except when appearing in individual cases.¹¹⁵ Taken together, these constraints make it that much harder for a presiding judge (as contrasted with the executive of a private sector organization) to engage in several of the steps necessary to cultural reform. For example, the presiding judge may have a difficult time enlisting staff, prosecutors, and defense lawyers in the process of designing and implementing a reform plan. The presiding judge also may find that her ability to “manage performance” is hindered by the limits on her authority to terminate non-compliant employees and a lack of funds (and authority) to reward those who excel. Thus, as with her fellow judges, the reform-minded leader must be adept in deploying soft power. This is a rare quality in general, and it is not one that law schools traditionally have focused on or that we have otherwise devised a systematic mechanism for developing in judges.¹¹⁶

The number of competing interests that judges must satisfy also poses an impediment to reform. Unlike a private organization, which is subject to a clear “bottom line” imperative, a court—like many other public agencies—must serve a number of goals.¹¹⁷ The court may have a primary goal, however vague—e.g., to dispense justice—but it also must

113. In some states, the chief clerk of the court is an elected position, further complicating the presiding judge’s authority. *See* Griller, *supra* note 82, at 49.

114. *See* John J. Dilulio, Jr., *Measuring Performance When There Is No Bottom Line*, in PERFORMANCE MEASURES FOR THE CRIMINAL JUSTICE SYSTEM 143, 144 (1993) (“Relative to private managers, public managers in civil service bureaucracies have little discretion in hiring, firing, and promotion decisions.”).

115. *See, e.g.*, FEELEY, *supra* note 55, at 11-16 (discussing “fragmentation” in courthouses, as the different institutional actors pursue their own agendas); Worden et al., *supra* note 22, at 525-26 (describing that although “in theory these actors might work together with the courts to provide satisfactory criminal justice process outcomes, in practice they [are accountable to different authorities and] operate along independent trajectories”).

116. Compare Steven Zeidman, *Careful What You Wish For: Tough Questions, Honest Answers, and Innovative Approaches to Appointive Judicial Selection*, 34 *FORDHAM URB. L.J.* 473, 481-82 (2007), with DURHAM & BECKER, *supra* note 102, at 5 (“The complexity of modern court administration demands a set of skills not part of traditional judicial selection and training.”). In general, the United States is a bit of an international anomaly in not treating judging as a specialized profession requiring a separate course of study. *See, e.g.*, Zeidman, *supra*, at 482 (noting how most other countries have specialized training programs for judges).

117. WILSON, *supra* note 30, at 115. For this reason, some have argued that studies of private sector businesses have little bearing on the study of public agencies, including courts. *See, e.g.*, OSTROM ET AL., *supra* note 29, at 25-26 (quoting Wallace Sayre’s famous quip that public and private organizations are “fundamentally alike in all unimportant respects”).

serve “a large number of contextual goals—that is, descriptions of desired states of affairs other than the one the agency was brought into being to create.”¹¹⁸ For courts, these contextual goals may include protecting defendant’s rights, the prompt disposition of cases, and safeguarding the public fisc.¹¹⁹ As Wilson explained, these “other goals define the context within which the primary goals can be sought.”¹²⁰ Moreover, unlike a private business, a court has limited authority to raise additional funds, reorganize, or adjust the volume of its work to meet these various demands.¹²¹ This context makes the reformer’s task that much trickier and requires skill in persuading external constituencies (e.g. legislators and law enforcement) of the merits or necessity of reform plans.

The sheer variability in the organizational structure and daily operations of courts also hinders reform. Most courts may be “loosely coupled organizations,” as discussed above, but each is loosely coupled in its own unique way, and each operates in its own local context.¹²² This makes rigorous research on the efficacy of new policies extremely difficult, given the challenges that researchers confront in understanding how each court works¹²³ and in obtaining an adequate sample size and control group for study.¹²⁴ But it also means that reform-minded presiding judges cannot simply borrow ideas from other courts. As Ostrom et al. have observed, “most suggested solutions will not simply plug-and-play in the court environment.”¹²⁵ Because of courts’ decentralization and variation, “one size cannot fit all.”¹²⁶ Thus, even if a reform has been shown to be effective in one courthouse that does not mean it will work in another.

118. WILSON, *supra* note 30, at 129.

119. As discussed further below, municipal courts, which adjudicate misdemeanors in many jurisdictions, have become revenue streams that fund government services in many communities. *See infra* note 131 and accompanying text.

120. WILSON, *supra* note 30, at 129.

121. *See, e.g.*, Kevin S. Burke, *A Vision for Enhancing Public Confidence in the Judiciary*, 95 JUDICATURE 251, 253 (2012) (unlike firms in the private sector, courts “neither control the influx of cases nor the laws that create them, and due process can occasionally be inefficient”).

122. *See* OSTROM ET AL., *supra* note 29, at 12-17 (“[T]he institutional aegis under which the judges work in the three states [studied herein] is different in terms of source of funding, method of selection of court professionals, and the assignment and handling of cases, although the type and amount of work they face is strikingly similar.”).

123. *See, e.g.*, FLEMMING ET AL., *supra* note 52, at 13 (noting that “[d]iversity in the craft of justice is a major obstacle to understanding America’s criminal courts”).

124. *Id.*

125. Ostrom, et al., *supra* note 24, at 140.

126. *Id.*; *see also* GREG BERMAN & AUBREY FOX, TRIAL AND ERROR IN CRIMINAL JUSTICE REFORM: LEARNING FROM FAILURE 8 (2010) (quoting Lisbeth Schorr, “Context is the most likely saboteur of innovations.”).

In sum, courts are particularly challenging organizations in which to pursue cultural reform. Most courts are mature institutions with a diversity of subcultures, with engrained assumptions about the organization's mission and values. Reform-minded leadership is difficult to establish at all and even more so on a long-term basis. Even if such leadership can be established, it often lacks critical authority and resources to incentivize employees and other necessary actors to participate in the reform process or to measure and manage performance. The scarcity of resources places a premium on leveraging successful ideas from other jurisdictions, but the diversity in the organizational structure of courts and their contexts makes such borrowing particularly risky. Courts are subject to a variety of demands, often in tension with one another, which make it difficult for leaders to chart a path of reform without engendering significant opposition from an important constituency.

Misdemeanor courts exhibit many of these features to an even greater degree than do felony courts. Nowhere are the structural disincentives and barriers to innovation and effective judicial leadership more daunting. For example, as noted above, the judges themselves often are the least experienced judges in the criminal judge system.¹²⁷ Yet frequently they must manage the largest caseloads with the fewest resources. At no other level of our state criminal courts is there such variety in organizational structure and jurisdiction.¹²⁸ Accountability for individual actors within the court is at its nadir, because not only do presiding judges and court executives lack resources to monitor what is happening throughout their courthouses, but they also cannot count on assistance in that task from the lawyers practicing therein—either because there are no lawyers or the lawyers are too inexperienced to realistically perform that function.¹²⁹ Appeals from misdemeanor courts

127. At least one commentator has suggested that the quality of misdemeanor judges overall is less than that of felony court judges, because the relatively lower status and salary of the position attracts lesser applicants. See Primus, *supra* note 20, at 81. Regardless of whether that is true, because they occupy the lowest rank in the court system, the judges on misdemeanor courts may be particularly interested in moving up and therefore risk-averse; alternatively, they may lack the confidence to innovate that often comes with experience. As Judge Victoria Pratt, now Chief Judge of Newark's Municipal Court, told a crowd at Rutgers Law School, most judges do not view working in the lowest level criminal court as "a desirable assignment." *Judge Victoria Pratt '98 Requires Dignity and Justice in Her Courtroom*, RUTGERS L. (Aug. 9, 2016), <https://law.rutgers.edu/news/judge-victoria-pratt-98-requires-dignity-and-justice-her-courtroom>. Instead, they "see it as a punishment, or as something to be endured." *Id.*

128. See *Methods of Judicial Selection: Limited Jurisdiction Courts*, *supra* note 100 (listing diverse organizational structures, methods of selection, and jurisdiction of limited jurisdiction courts).

129. See Roberts, *supra* note 1, at 294-96 (discussing the impact of lawyers' lack of experience

are rare,¹³⁰ further insulating what happens therein from review. Moreover, the demand that judges serve the economic interests of their communities is most acute at the misdemeanor court level, especially in communities that have come to rely on the fines and fees imposed by municipal courts to supplement their budgets.¹³¹ Taken altogether, the obstacles to reform in these courts—the “front porch” of our judicial system—are so great that one wonders if effective cultural change could ever occur there.

Notwithstanding all the foregoing obstacles, there are presiding judges around the country who are innovating in ways that hint at significant cultural reform. The following section highlights three of them, each in a very different setting: one from a small suburban municipality in the Midwest, one from a medium-sized city in the South, and one from the urban Northeast. It is too soon to say whether the reforms these judges are pursuing will have long-term staying power and in fact result in changes to the culture of their courts. However, at a minimum, these judges represent the necessary first step to cultural change: the emergence of strong leadership, capable of voicing the need for change and pointing the organization in a new direction.¹³² In these stories, one also finds evidence of several other factors identified in Part I as key to successful cultural change, as well as several of the

on their confidence to intervene or report disturbing conduct). *See generally* Irene Oritseweyinmi Joe, *Rethinking Misdemeanor Neglect*, 64 UCLA L. REV. 738 (2017) (discussing how public defender offices routinely assign less experienced attorneys to handle misdemeanors).

130. For a variety of reasons—including the relative brevity of most sentences imposed—very few defendants convicted of misdemeanors file an appeal or seek collateral review of their convictions. *See* Roberts, *supra* note 1, at 319-20, 320 n.184, 337-40; *see also* Primus, *supra* note 20, at 81 (noting that “misdemeanor court judges are relatively insulated from higher court feedback and do not learn of their mistakes in the same way that felony trial court judges do”).

131. *See, e.g.*, CIVIL RIGHTS DIVISION, U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 3, 42 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (concluding that the Ferguson, Missouri, Municipal Court handles most charges brought by the police department “not with the primary goal of administering justice or protecting the rights of the accused, but of maximizing revenue”); Radley Balko, *New Report Details the Disastrous Municipal Court System in St. Louis County*, WASH. POST (Oct. 28, 2014), https://www.washingtonpost.com/news/the-watch/wp/2014/10/28/new-report-details-the-disastrous-municipal-court-system-in-st-louis-county/?utm_term=.4f4301caa7c7 (reporting on how various Missouri municipalities rely on court fines and fees to supplement their budgets); *see also* Peter A. Joy, *Lawyers Serving as Judges, Prosecutors, and Defense Lawyers at the Same Time: Legal Ethics and Municipal Courts*, 51 WASH. U. J.L. & POL’Y 23, 43 (2016) (suggesting that it is an “unrealistic expectation” that “a municipality, which is dependent on court fines and fees, will not pressure its judge to focus on generating fines and fees” rather than on the administration of justice); Tyler Whitson & Joy Diaz, *Why Your Speeding Ticket Doesn’t Pay for What You Think It Does*, KUT NEWS (Apr. 22, 2015), <http://kut.org/post/why-your-speeding-ticket-doesn-t-pay-what-you-think-it-does> (reporting on how fees collected by municipal courts in Texas revert to the state).

132. *See infra* Part IV.

factors identified in Part II as obstacles. Even if their endings are uncertain, these stories provide reason for optimism about the possibility of innovation as well as cautionary lessons for other reformers, subject to all the caveats discussed above regarding the transferability of experiences between courts.

IV. STORIES OF INNOVATION

This section highlights three misdemeanor courts wherein judges are re-imagining their roles and the court's position in the community. They come from three different states in distinct parts of the country. As discussed further below, each has challenged fundamental assumptions about the mission of their courts.

A. *Midwestern Court of One: South Euclid, Ohio*

The first story of innovation comes from South Euclid, Ohio, where Judge Gayle Williams-Byers is the Administrative, Presiding, and only Judge of the South Euclid Municipal Court.¹³³ First elected in 2011 by the citizens of South Euclid, a suburban municipality of approximately 21,000 residents that is ten miles from downtown Cleveland,¹³⁴ Judge Williams-Byers is the first African-American to hold her present position.¹³⁵ She graduated from Case Western Reserve School of Law in 2000 and also earned a master's degree in non-profit management.¹³⁶ Before becoming a judge, she worked as a prosecutor for approximately ten years in the Cuyahoga County Prosecutor's Office, including in its drug court unit.¹³⁷ She also worked as the manager of state affairs for a highway safety advocacy organization, and as a legislative aide in the United States Senate.¹³⁸

133. JUDGE GAYLE F. WILLIAMS-BYERS, SOUTH EUCLID MUNICIPAL COURT, CUYAHOGA COUNTY, OHIO, 2015 ANNUAL REPORT (2016), <http://southeuclidcourt.com/wp-content/uploads/2016/10/SEMC-2015-ANN-REP.pdf> [hereinafter SOUTH EUCLID 2015 ANN. REP.]. The South Euclid Municipal Court was established by an act of the Ohio State Legislature in 1952. *See* GOLDEN JUBILEE 1917—1967 SOUTH EUCLID 31 (1967), https://www.cityofsoutheuclid.com/about-south-euclid-images/golden_jubilee_se4.pdf. However, it has only had its own full-time judge for about two decades. *See Feb. 6, 2017 Meeting*, SOUTH EUCLID CENTENNIAL 1917–2017 (Feb. 6, 2017), <https://www.cityofsoutheuclid.com/wp-content/uploads/2017/06/South-Euclid-Municipal-Court-Analysis.pdf>.

134. Czarina Powell, *Alumni Spotlight: Judge Gayle Williams-Byers '00*, DOCKET, Feb. 20, 2012, at 1; *see* JAMES G. ZUPKA, CITY OF SOUTH EUCLID CUYAHOGA COUNTY, OHIO, AUDIT REP. FOR THE YEAR ENDED DEC. 31, 2013, at v (2014), https://ohioauditor.gov/auditsearch/Reports/2014/City_South_Euclid_13-Cuyahga.pdf.

135. Powell, *supra* note 134.

136. SOUTH EUCLID 2015 ANN. REP., *supra* note 133; Powell, *supra* note 134, at 4.

137. Powell, *supra* note 134, at 4.

138. SOUTH EUCLID 2015 ANN. REP., *supra* note 133.

The South Euclid Municipal Court presently has fourteen employees, including Judge Williams-Byers.¹³⁹ It has full jurisdiction over misdemeanor cases and limited jurisdiction over the preliminary stages of felony cases.¹⁴⁰ It also handles traffic cases, evictions, and civil cases with relatively small amounts in dispute.¹⁴¹ In 2015, the court processed approximately 765 new misdemeanor cases and seventy-three new felony cases.¹⁴²

Since she began her first six-year term in January 2012, Judge Williams-Byers has spearheaded several initiatives that challenge the traditional court model. For example, she helped create Ohio's first suburban drug court in 2012.¹⁴³ Assisted by a federal grant of close to \$1 million,¹⁴⁴ the program allows participating suburban courts to refer cases to the Cleveland Municipal Drug Court, which then sends them back to the originating court upon an individual's successful completion of treatment.¹⁴⁵ In 2015, working with local prosecutors, defense lawyers, and mental health professionals, Judge Williams-Byers helped establish the first suburban specialized mental health docket in Cuyahoga County.¹⁴⁶ The program was supported by a grant of more than \$20,000 from the Ohio Mental Health Addiction Services Board¹⁴⁷ and was recently extended by the Ohio Supreme Court through December 2019.¹⁴⁸ In her courtroom, Judge Williams-Byers engages directly with the accused, often explaining in plain terms why conduct

139. Telephone Interview with Hon. Judge Gayle Williams-Byers, Administrative and Presiding Judge, S. Euclid Mun. Court (July 31, 2017).

140. OHIO REV. CODE ANN. § 1901.20 (West 2017).

141. *Id.* §§ 1901.17–20.

142. SOUTH EUCLID 2015 ANN. REP., *supra* note 133.

143. *Judge Gayle Gets Results!*, FRIENDS OF JUDGE GAYLE, <http://www.friendsofjudgegayle.com/about> (last visited Nov. 15, 2017).

144. See Stan Donaldson, *Greater Cleveland Drug Court Receives \$975,000 Grant to Expand Outreach Program*, CLEVELAND.COM (Oct. 2, 2012, 5:36 PM), http://www.cleveland.com/metro/index.ssf/2012/10/greater_cleveland_drug_court_r.html.

145. JUDGE GAYLE F. WILLIAMS-BYERS, SOUTH EUCLID MUNICIPAL COURT, CUYAHOGA COUNTY, OHIO, 2014 ANNUAL REPORT (2015), <http://southeuclidcourt.com/wp-content/uploads/2016/02/SEMC-2014-ANN-REPORT.pdf>.

146. *Mental Health Docket Comes to South Euclid Court*, S. EUCLID MUN. CT., <http://southeuclidcourt.com/mental-health-docket> (last visited Nov. 15, 2017).

147. Letter from Judge Gayle Williams-Byers, S. Euclid Mun. Court to Mayor Georgine Welo and Members, S. Euclid City Council (Mar. 17, 2016), in SOUTH EUCLID MUNICIPAL COURT, CUYAHOGA COUNTY, OHIO, 2015 ANNUAL REPORT (2016), <http://southeuclidcourt.com/wp-content/uploads/2016/10/SEMC-2015-ANN-REP.pdf> [hereinafter Letter from Judge Gayle Williams-Byers 2016]; *Specialized Docket Programs*, OHIO.GOV, <http://mha.ohio.gov/Default.aspx?tabid=770> (last visited Nov. 15, 2017).

148. See *South Euclid Mental Health Docket Receives State Re-Certification*, S. EUCLID MUN. CT. (June 28, 2017), <http://southeuclidcourt.com/wp-content/uploads/2014/04/FREE-Recertification-Press-Release.pdf>.

that may appear victimless in fact is harmful to the community.¹⁴⁹ She also employs non-traditional sanctions, such as essay or short video assignments, in which defendants must explain their understanding of the harm caused by their offense.¹⁵⁰

Some of her innovations are geared toward making court more “user-friendly” to working people and the other “good folks” whom Judge Williams-Byers recognizes she often meets “on their worst days.”¹⁵¹ For example, since 2012, she has conducted monthly night court sessions at the Municipal Court so that litigants can come to court without missing work.¹⁵² (She has shortened the court’s hours the day following each of these sessions to compensate employees for these additional evening hours). And litigants in both day and evening sessions can obtain an appointment time for their appearance, keyed to when they get out of work, to minimize the disruption to their lives.¹⁵³

Judge Williams-Byers has also focused on technological improvements to her court. When she arrived in 2012, court employees still used floppy-disk drives and did not have work emails.¹⁵⁴ The court is now primarily paperless, utilizing an email notification system for attorneys and online docketing.¹⁵⁵ In 2014, with a grant from the Ohio Supreme Court’s technology fund, Judge Williams-Byers launched a program to livestream court proceedings so that the community could

149. See Powell, *supra* note 134, at 4.

150. Telephone Interview with Hon. Judge Gayle Williams-Byers, *supra* note 139.

151. See Judge Gayle Williams-Byers Responds About Her Work Presiding over the South Euclid Municipal Court, CLEVELAND.COM: LYNDNHURST AND S. EUCLID CMTY. BLOG (Dec. 28, 2015), http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2015/12/judge_gayle_williams-byers_res.html; Telephone Interview with Hon. Judge Gayle Williams-Byers, *supra* note 139.

152. See Letter from Judge Gayle Williams-Byers, South Euclid Mun. Court to Mayor Georgine Welo and Members, South Euclid City Council (Sept. 1, 2013), in SOUTH EUCLID MUNICIPAL COURT, CUYAHOGA COUNTY, OHIO, 2013 ANNUAL REPORT (2014), <http://southeuclidcourt.com/wp-content/uploads/2014/11/annualReport2014.pdf> [hereinafter Letter from Judge Gayle Williams-Byers 2013]; Jeff Piorkowski, *South Euclid Municipal Court to Conduct Night Court Dockets on Third Thursday of Each Month*, CLEVELAND.COM (May 11, 2012, 10:50 AM), http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2012/05/south_euclid_municipal_court_t.html. The night court meets on the fourth Thursday of each month from 5:30 p.m. to 8:30 p.m. *Night Court*, S. EUCLID MUN. CT., <http://southeuclidcourt.com/night-court> (last visited Nov. 15, 2017). The schedule of upcoming night court sessions is posted on the court website. *Id.*

153. See Judge Gayle Williams-Byers Responds About Her Work Presiding over the South Euclid Municipal Court, *supra* note 151; *Night Court*, *supra* note 152.

154. See Adam Ferrise, *South Euclid Municipal Court Will Become First Area Court to Offer Online Live-Streaming*, CLEVELAND.COM (Feb. 18, 2014, 8:10 AM), http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2014/02/south_euclid_municipal_court_w.html.

155. See Letter from Judge Gayle Williams-Byers 2013, *supra* note 152 (reporting on technological improvements initiated in 2012).

view court proceedings at its convenience.¹⁵⁶ The South Euclid City Council, which uses the Municipal courtroom to hold its meetings, also makes use of this technology.¹⁵⁷

Judge Williams-Byers is active in the community, including serving on the board of an organization that provides treatment to substance-dependent youth and their families.¹⁵⁸ Under her leadership, the court also sponsors activities that bring the community into the courthouse, including “Democracy Days” for local students to sit in on proceedings and discuss them with the judge;¹⁵⁹ speakers and film screenings; canned food drives; and free car washes in the summer, in which Judge Williams-Byers participates alongside those required to do so as part of their court-ordered community service.¹⁶⁰ Judge Williams-Byers maintains an active media presence, including regular press interviews, Facebook pages, and other online accounts,¹⁶¹ and is a regular participant in judicial conferences.¹⁶² The court website prominently

156. Letter from Judge Gayle Williams-Byers 2016, *supra* note 147.

157. *Id.* (describing grant received from Ohio Supreme Court’s technology fund to improve live-streaming capabilities).

158. *See, e.g., Judge Williams-Byers Visits ArcTech Students*, S. EUCLID LYNDHURST SCHS., <http://www.sel.k12.oh.us/protected/articleView.aspx?iid=6G32AA2&dasi=3PI2> (last visited Nov. 15, 2017); Telephone Interview with Hon. Judge Gayle Williams-Byers, *supra* note 139.

159. Letter from Judge Gayle Williams-Byers 2016., *supra* note 147.

160. Letter from Judge Gayle Williams-Byers, S. Euclid Mun. Court to Mayor Georgine Welo and Members, South Euclid City Council (Dec. 23, 2015), in SOUTH EUCLID MUNICIPAL COURT, CUYAHOGA COUNTY, OHIO, 2014 ANNUAL REPORT (2015), <http://southeuclidcourt.com/wp-content/uploads/2016/02/SEMC-2014-ANN-REPORT.pdf> [hereinafter Letter from Judge Gayle Williams-Byers 2015].

161. *See, e.g., Judge Gayle Williams-Byers Discusses Grand Juries and Public Distrust*, WOUB DIGITAL (Dec. 8, 2014), <https://woub.org/2014/12/08/judge-gayle-williams-byers-discusses-grand-juries-and-public-distrust>; *Judge Williams-Byers Explains Domestic Violence Issues*, WOUB DIGITAL (Sept. 29, 2014), <https://woub.org/2014/09/29/judge-williams-byers-explains-domestic-violence-issues>; *Judge Gayle Williams-Byers Talks Technological Revolution in the Courts*, WOUB DIGITAL (Nov. 19, 2013), <https://woub.org/2013/11/19/judge-gayle-williams-byers-talks-technological-revolution-courts>; Judge Gayle Williams-Byers (@JudgeGayle), FACEBOOK, <https://www.facebook.com/JudgeGayle> (last visited Nov. 15, 2017); *Reelect Judge Gayle*, FRIENDS OF JUDGE GAYLE, <http://www.friendsofjudgegayle.com> (last visited Nov. 15, 2017) (providing dedication to reelection effort); South Euclid Municipal Court (@SouthEuclidMunicipalCourt), FACEBOOK, <https://www.facebook.com/SouthEuclidMunicipalCourt> (last visited Nov. 15, 2017); South Euclid Municipal Court (@SE_Court), TWITTER, https://twitter.com/se_court (last visited Nov. 15, 2017).

162. *See* Sara Dorn, *South Euclid Judge Gayle Williams-Byers Spent \$9,800 on Travel: Frequent Flyers*, CLEVELAND.COM: LYNDHURST & S. EUCLID CMTY. BLOG (Dec. 28, 2015, 8:37 AM), http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2015/08/south_euclid_judge_gayle_willi_2.html [hereinafter Dorn, *Frequent Flyers*] (noting that Judge Williams-Byers attended eleven conferences in her first three years in office).

displays the motto, “Justice, Service, Community”¹⁶³ and a logo selected by local students.¹⁶⁴

Judge Williams-Byers has invested in the development of her staff at the court, all of whom are “at will” employees, and in their commitment to her objectives.¹⁶⁵ Most employees reside in South Euclid, the community served by the court.¹⁶⁶ At the beginning of her tenure, Judge Williams-Byers met with every hold-over member of the court staff and discussed what she hoped to accomplish together.¹⁶⁷ She also asked each employee to pick two out of the five points from Judge Williams-Byers’s election platform that most interested the employee, and to suggest ideas for how the court could best achieve those objectives.¹⁶⁸ She has instituted weekly “lunch and learn” programs, at which staff and outside experts are invited to present about topics identified by staff as being of interest to them.¹⁶⁹ Using funds from a Special Projects Fund authorized by the Ohio legislature as a percentage of court fees, she has twice taken the court staff on day-long retreats to focus on topics including customer service, professionalism, and technology.¹⁷⁰ Because court employees are “at will,” Judge Williams-Byers enjoys more latitude to discipline them than many other judges do in courthouses staffed with civil service employees.¹⁷¹ She also enjoys the discretion to provide incentives, such as the forty paid hours per year she offers all court employees to perform volunteer service with any organization of their choice.¹⁷²

Judge Williams-Byers was re-elected in November 2017, in “what was arguably the most closely watched judicial race in Cuyahoga

163. See S. EUCLID MUN. CT., <http://southeuclidcourt.com> (last visited Nov. 15, 2017).

164. Letter from Judge Gayle Williams-Byers 2015, *supra* note 160.

165. Telephone Interview with Hon. Judge Gayle Williams-Byers, *supra* note 139.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. See Sara Dorn, *South Euclid Municipal Court Closed, Spent \$507 for Training Day at Dave & Buster’s*, CLEVELAND.COM: LYNDHURST & S. EUCLID CMTY. BLOG, http://www.cleveland.com/lyndhurst-south_euclid/index.ssf/2015/05/south_euclid_municipal_court_c_1.html (last updated May 1, 2015, 8:09 AM).

171. For example, the Clerk of the Court has been disciplined for closing the court early without permission, refusing to retrieve a document for a prosecutor, and failing to train a fellow employee. See Sara Dorn, *South Euclid Municipal Court Clerk Absent for More Than a Month Following Suspensions*, CLEVELAND.COM: LYNDHURST & S. EUCLID CMTY. BLOG, http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2015/05/south_euclid_municipal_court_c_3.html (last updated May 5, 2015, 8:06 AM). The Clerk was required to complete a customer service, professionalism and work-flow management course. *Id.*

172. Telephone Interview with Hon. Judge Gayle Williams-Byers, *supra* note 139.

County this year.”¹⁷³ South Euclid’s Mayor (who has served in that office since 2003) and the City Council have both called for the abolition of the municipal court,¹⁷⁴ arguing that South Euclid can no longer afford to maintain its own court given its declining population and tax base.¹⁷⁵ However, they also have cited the court’s low case clearance rate relative to other Ohio cities under Judge Williams-Byers’s leadership, and the fact that it has not returned money to the city’s coffers.¹⁷⁶ On the latter point, the council has compared Judge Williams-Byers’s track record to that of her predecessor,¹⁷⁷ even though the difference in fee generation is largely attributable to the city council having transferred responsibility for collection of parking tickets from the Municipal Court to the police department during Judge Williams-Byers’s tenure.¹⁷⁸ The mayor and police chief also have opposed some of her drug policy initiatives, with the police for a time refusing to refer cases to the suburban drug court she helped establish.¹⁷⁹ The City Council also has opposed providing mental health benefits to non-residents of South Euclid.¹⁸⁰ Her travel to judicial conferences also has drawn negative attention, with comparisons drawn to her predecessor, who in eighteen

173. Peter Krouse, *Judge Gayle Williams-Byers Keeps South Euclid Municipal Courts Seat*, CLEVELAND.COM (Nov. 8, 2017 6:59 PM), http://www.cleveland.com/metro/index.ssf/2017/11/judge_gayle_williams-byers_kee.html

174. See Sara Dorn, *South Euclid Charter Review Commission, Municipal Court Judge Gayle Williams-Byers Pays Attorneys to Argue Charter Proposals*, http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2015/03/south_euclid_charter_review_co.html (last updated Mar. 5, 2015 8:40 PM) [hereinafter Dorn, *South Euclid Charter Review Commission*]; Sara Dorn, *South Euclid Judge Gayle Williams-Byers Pays Lawyers Public Money to Review Charter Proposals*, CLEVELAND.COM: LYNDHURST & S. EUCLID CMTY. BLOG, http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2015/01/south_euclid_judge_gayle_willi.html (last updated Jan. 29, 2015, 5:13 PM).

175. See Sara Dorn, *South Euclid Charter Review Commission*, *supra* note 174.

176. See Jeff Piorkowski, *Council Tables Talks about South Euclid Municipal Court Merger; Will Discuss Ways to Increase Revenues*, CLEVELAND.COM: LYNDHURST & S. EUCLID CMTY. BLOG, http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2016/04/south_euclid_municipal_court.html (last updated Apr. 4, 2016, 11:39 AM).

177. See *id.*

178. See *id.*

179. See Sara Dorn, *South Euclid Judge Accuses Mayor of Not Making Drug Enforcement a Priority*, CLEVELAND.COM: LYNDHURST & S. EUCLID CMTY. BLOG, http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2015/05/south_euclid_judgebyers_lashes.html (last updated May 26, 2015, 12:52 PM). For a review of the email and letters exchanged between Judge Williams-Byers and the Mayor see *South Euclid Judge Scrutinizes Mayor Georgine Welo*, SCRIBD, <https://www.scribd.com/document/265916881/South-Euclid-Judge-scrutinizes-Mayor-Georgine-Welo> (last visited Nov. 15, 2017). The South Euclid Police Chief claimed that the city was not experiencing a significant heroin problem and that his department had not referred any cases to the suburban drug court because charges would have to be reduced to misdemeanors. Dorn, *supra*.

180. Telephone Interview with Hon. Judge Gayle Williams-Byers, *supra* note 139.

years on the bench never traveled out of state.¹⁸¹ Judge Williams-Byers regularly appears before the City Council and corresponds with its members to discuss their concerns about the court, which appear to pose the greatest obstacle to the longevity of her reform agenda.¹⁸²

B. *A Southern Court of Nine: Birmingham, Alabama*

The second story of innovation comes from the Municipal Court of Birmingham, Alabama, the state's largest city with approximately 212,000 residents.¹⁸³ Judge Andra D. Sparks is the Presiding Judge of the Court, which presently has five full-time judges, four part-time judges and over one hundred employees in total.¹⁸⁴ The Birmingham Municipal Court has jurisdiction over misdemeanor criminal and traffic cases.¹⁸⁵ In 2015, it handled approximately 12,000 non-traffic related cases,¹⁸⁶ of which over 10,000 were misdemeanor cases.¹⁸⁷ Per Alabama law, the term of any full-time municipal judge is four years.¹⁸⁸ In 2008, the Birmingham City Council first appointed Judge Sparks to a seat on the Municipal Court to preside over its specialty drug and gun courts.¹⁸⁹

181. See Dorn, *Frequent Flyers*, *supra* note 162. After Judge Williams-Byers defended her travel, the publication clarified that it did not mean to imply any wrongdoing. See *Judge Gayle Williams-Byers Responds About Her Work Presiding over the South Euclid Municipal Court*, CLEVELAND.COM: LYNDHURST & S. EUCLID CMTY. BLOG, http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2015/12/judge_gayle_williams-byers_res.html (last updated Dec. 28, 2015, 12:38 PM); see also Dorn, *Frequent Flyers*, *supra* note 162 (updating post after Judge Williams-Byers provided response).

182. See, e.g., Jeff Piorkowski, *Lyndhurst, South Euclid to Hold Heroin Crisis Forums*, CLEVELAND.COM: LYNDHURST & S. EUCLID CMTY. BLOG, <http://www.cleveland.com/lyndhurst-south-euclid/index.ssf/2017/03/heroin.html> (last updated Mar. 7, 2017, 5:57 PM).

183. See *Quickfacts: Birmingham City, Alabama*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/birminghamcityalabama/PST045216> (last visited Nov. 15, 2017) (showing population census for 2010 and estimate for 2016). Birmingham is the largest city in Alabama. See MAYOR WILLIAM A. BELL, SR., BIRMINGHAM FORWARD, MAYOR'S PROPOSED OPERATING BUDGET FOR FISCAL YEAR JULY 1, 2016–JUNE 30, 2017, at 3 (2017) (on file with the *Hofstra Law Review*) [hereinafter BIRMINGHAM MAYOR'S PROPOSED BUDGET FY 2017].

184. Telephone Interview with Judge Andra D. Sparks, Presiding Judge, Birmingham Mun. Court (July 25, 2017). For slightly less up-to-date statistics, see MAYOR WILLIAM A. BELL, SR., BIRMINGHAM FORWARD, MAYOR'S PROPOSED OPERATING BUDGET FOR FISCAL YEAR JULY 1, 2015—JUNE 30, 2016, at 75-76 (2016) (on file with the *Hofstra Law Review*) (listing Municipal Court personnel).

185. See *Birmingham Municipal Court*, BIRMINGHAM FORWARD, <https://www.birminghamal.gov/municipal-court> (last visited Nov. 15, 2017) (citing ALA. CODE § 12-14-1 (1975); and then citing BIRMINGHAM, ALA. CODE § 8 (1944)).

186. See MAYOR WILLIAM A. BELL, SR., BIRMINGHAM FORWARD, COMPREHENSIVE ANNUAL FINANCIAL REPORT: CITY OF BIRMINGHAM, ALABAMA FOR THE YEAR ENDED JUNE 30, 2016, at 145 tbl.E-6 (2016) (on file with the *Hofstra Law Review*).

187. Telephone Interview with Judge Andra D. Sparks, *supra* note 184.

188. See ALA. CODE § 12-14-30(b). Part time judges are appointed for two-year terms. *Id.*

189. *Leadership*, 45TH STREET BAPTIST CHURCH, <http://45bc.org/about-us/leadership> (last

In 2010, the Mayor of Birmingham, who has sole authority to appoint the Presiding Judge, named Judge Sparks to that post.¹⁹⁰ In 2012 and again in 2017, the City Council re-appointed Judge Sparks to his judgeship on the Municipal Court.¹⁹¹ He continues to serve as Presiding Judge, at the pleasure of the Mayor.¹⁹²

A 1988 graduate of the University of Alabama School of Law, Judge Sparks served in the military before he became a judge, including four years in the United States Army Judge Advocate General Corps.¹⁹³ He also spent several years in private practice.¹⁹⁴ He started his judicial career in 1995 on the Family Court of Jefferson County, where he served for twelve years.¹⁹⁵ For over ten years, Judge Sparks also has served as a pastor at a local Baptist Church, and he is actively involved in numerous community organizations.¹⁹⁶ He regularly sees the people who appear before him in court in Church and in the supermarket where he shops.¹⁹⁷ During his tenure on the Municipal Court, Judge Sparks has established numerous specialty dockets—in addition to the drug and gun courts—including a bilingual court to consolidate cases requiring interpreters;¹⁹⁸ a veteran's court,¹⁹⁹ and a homeless court, which connects defendants with needed services, shelter, and employment.²⁰⁰ He also has started several other innovative programs, such as an initiative enabling inmates at the city jail to work toward their General Education Degree (“GED”),

visited Nov. 15, 2017).

190. *Id.* Per Alabama law, although the city council, as the governing body of the municipality, appoints municipal court judges, the mayor has authority to designate the presiding judge whenever a municipality has more than one judge. ALA. CODE § 12-14-30(a), (c). He took over from Raymond Chambliss. See Madison Underwood, *Chambliss Beats Huff for Jefferson County Juvenile Court Seat*, AL.COM, http://blog.al.com/spotnews/2012/11/chambliss_beats_huff_for_jeffe.html (last updated Nov. 6, 2012, 11:12 PM).

191. See *Leadership*, *supra* note 189; Andra Sparks, LINKEDIN, <https://www.linkedin.com/in/andra-sparks-b033117> (last visited Nov. 15, 2017).

192. See *Birmingham Municipal Court*, *supra* note 185.

193. Chandra Sparks Splond, *Meet Our First-Ever Daddy of the Month: Andra D. Sparks*, CHANDRA SPARKS SPLOND BLOG (June 6, 2016), <http://chandrasparkssplond.com/blog/andra-d-sparks>; *Leadership*, *supra* note 189.

194. Splond, *supra* note 193.

195. *Id.*

196. See *Leadership*, *supra* note 189; Splond, *supra* note 193.

197. Telephone Interview with Judge Andra D. Sparks, *supra* note 184.

198. See CTR. FOR CT. INNOVATION, *supra* note 18, at 186.

199. *History of Veterans Courts*, ALA. B. ASS'N (Apr. 30, 2014), <https://www.alabar.org/assets/uploads/2014/11/History-of-Veterans-Courts.pdf>.

200. See, e.g., *Specialty Courts*, BIRMINGHAM FORWARD, <https://www.birminghamal.gov/municipal-court/specialty-courts> (last visited Nov. 15, 2017); *'Turning Point Court' Helps Birmingham's Homeless Get Back on Their Feet*, WBRC, <http://www.wbrc.com/story/30049615/turning-point-court-helps-birmingham-homeless-get-back-on-their-feet> (last visited Nov. 15, 2015, 8:04 PM) (describing “Turning Point Court” for the homeless).

take classes on domestic violence or sex education, or participate in Alcoholics Anonymous or Narcotics Anonymous.²⁰¹ Defendants who complete a GED are rewarded with a decrease in their fines, and those who wish to continue the program after their release can do so at the courthouse or at the campus of a local community college.²⁰² Judge Sparks has also established a program to help people obtain or clear their drivers' licenses.²⁰³ Most recently, in 2017, Judge Sparks established a new pretrial services division within the court, staffed by social workers and new part-time judges, to expedite initial appearances and to put individuals in touch with needed mental health or substance abuse treatment more quickly.²⁰⁴ Judge Sparks explained the need for the new division to the City Council, "People think [municipal court] is all about tickets and jail . . . but really a lot of our job is to try to keep people out of jail, [such as] people with mental health issues. That is why we are hiring social workers."²⁰⁵

Judge Sparks has also focused on the customer service aspects of the court, for example establishing online payment and payment by credit card for court fees and fines.²⁰⁶ He has established a late afternoon docket, available from 4:00 p.m. to 7:00 p.m. every day of the week except Friday, so people do not have to miss work to appear in court.²⁰⁷ As in South Euclid, appointments are available for a precise date and time so that litigants need not wait around indefinitely for their cases to be called.²⁰⁸

Judge Sparks has enlisted the rest of his court in these projects. For example, the other judges in his court—all of whom joined the court after Judge Sparks was appointed—participate in the specialty dockets, and Judge Sparks has required all new judges to attend training sessions

201. See Melanie Posey, *New Educational Program Offered to Birmingham Inmates*, WTVM (2013), <http://www.wtvm.com/story/23707364/new-educational-program-offered-to-birmingham-inmates>.

202. *Id.*

203. See *Birmingham Municipal Court Helps over 600 Citizens Receive Driver's Licenses via RENEW Program*, BIRMINGHAM FORWARD, <https://www.birminghamal.gov/2017/03/28/birmingham-municipal-court-helps-over-600-citizens-receive-drivers-licenses-via-renew-program> (last visited Nov. 15, 2017) (noting that the program, launched in 2014, had helped more 600 people reinstate their licenses).

204. See Erin Edgemon, *Birmingham Appoints 2 Special Judges for New Municipal Court Division*, AL.COM, http://www.al.com/news/birmingham/index.ssf/2017/02/birmingham_hires_2_special_jud.html (last updated Feb. 11, 2017, 8:04 AM).

205. *Id.*

206. See CTR. FOR CT. INNOVATION, *supra* note 18, at 184.; *Information and Payment Options*, BIRMINGHAM FORWARD, <https://www.birminghamal.gov/wp-content/uploads/2015/06/Information-and-Payment-Options2.pdf> (last visited Nov. 15, 2017).

207. Telephone Interview with Judge Andra D. Sparks, *supra* note 184.

208. *Id.*

at the National Judicial College on topics like procedural justice.²⁰⁹ While the court's other employees are civil servants, Judge Sparks has obtained their "buy in" for his reform efforts by focusing on training and employees' sense of professional fulfillment. For example, using a court-training fund authorized by state law (and funded, as in Ohio, by a portion of court fees), Judge Sparks has made training opportunities available to employees at every level of the court.²¹⁰ Judge Sparks has taken the entire courthouse staff on a full-day retreat each year, dedicated to a single issue.²¹¹ Past topics have included implicit bias and customer service.²¹² He also encourages employees to take exams to advance their civil service level.²¹³ In some cases, employees have then left the Municipal Court for higher paying positions elsewhere at their new level.²¹⁴ But in other cases, Judge Sparks has successfully lobbied the City Council for additional funds to retain those employees at higher salaries, having made the case that their retention is worthwhile.²¹⁵

Judge Sparks also manages the organization-environment boundary by inviting members of the City Council and other prominent officials into his court. For example, he regularly invites local politicians to graduation ceremonies for his specialty courts—often as the featured speaker—so that they will be exposed to the benefits of the programs.²¹⁶ His court also helps bar associations put on annual conferences, offering free CLE credit to local prosecutors and defense lawyers, to educate them about the newest programs offered by the court and their benefits.²¹⁷ In addition, like Judge Williams-Byers, Judge Sparks maintains a significant online presence,²¹⁸ is a regular public speaker,²¹⁹

209. *Id.*

210. CTR. FOR CT. INNOVATION, *supra* note 18, at 184.

211. *Id.*; *see also* COUNCIL OF THE CITY OF BIRMINGHAM, REGULAR MEETING OF THE COUNCIL OF THE CITY OF BIRMINGHAM 9 (2015), http://bhamal.granicus.com/DocumentViewer.php?file=bhamal_25e4a76eac133c6d98d2ef49aba2dde2.pdf&view=1 (providing city council resolution approving nearly \$9000 for Municipal Court Department staff retreat).

212. CTR. FOR CT. INNOVATION, *supra* note 18, at 184; Telephone Interview with Judge Andra D. Sparks, *supra* note 184.

213. Telephone Interview with Judge Andra D. Sparks, *supra* note 184.

214. *Id.*

215. *Id.*

216. *Id.*

217. *See Volunteer Lawyers Program CLE*, BIRMINGHAM BAR ASS'N, <http://birminghambar.org/events/EventDetails.aspx?id=863576> (last visited Nov. 15, 2016).

218. *See, e.g.*, Andra Sparks, *supra* note 191; Andra Sparks (@revdocdra), TWITTER, <https://twitter.com/revdocdra?lang=en> (last visited Nov. 15, 2017).

219. *See, e.g.*, Tab Bowling, *From Mayor Bowling—Alabama League of Municipalities Annual Convention*, OFFICIAL BLOG OF DECATUR, AL (May 23, 2017), <http://blog.decaturlabamausea.com/mayor-bowling-alabama-league-municipalities-annual-convention> (recounting Judge Sparks' speech at the 2017 Alabama League of Municipalities Annual Convention); *Volunteer Lawyers Program CLE*, *supra* note 217 (announcing October 2016 program to train lawyers to

and participates in numerous judicial conferences.²²⁰ He has become a proficient grant-writer, having researched and obtained a variety of grants from the federal government and the state courts.²²¹

Judge Sparks also has made judicious use of symbols. For example, each year, he has purchased shirts with the municipal court logo for every member of the courthouse staff to reinforce that they are part of a single team.²²² Although not required to, many regularly wear these shirts—in part because they satisfy the requirements of the courthouse dress code, applicable to all participating in or attending proceedings in the courtrooms, adopted to “maintain the dignity, integrity, decorum, seriousness and professional atmosphere of the Court and the administration of justice.”²²³ The dress code, which is posted on the court’s website, prohibits, among other things, eating, chewing gum, cellphone use, reading, or sleeping in the courtroom.²²⁴ The courthouse website also prominently features the courthouse motto, “Where Accountability Meets Compassion,”²²⁵ reflecting the judicial philosophy Judge Sparks developed during his years working in the family court. Specifically, he believes that those appearing on the “front porch” of the criminal justice system should be treated compassionately but with sufficient firmness that they will be discouraged from returning to, or advancing further within, the house of justice.²²⁶

C. *A Northeastern Court of Eleven: Newark, New Jersey*

The third story of innovation comes from the Newark, New Jersey, Municipal Court where Victoria Pratt until November 2017 was the Chief Judge and ran the community court. A 1998 graduate of Rutgers Law School, Judge Pratt is the first person of Dominican descent to serve as Municipal Court Judge in Newark.²²⁷ Then-Mayor Cory Booker

represent the homeless, with Judge Sparks as featured speaker).

220. See, e.g., *Center for Court Innovation Hosts Community Justice 2016*, CTR. FOR CT. INNOVATION (Apr. 15, 2016), <http://www.courtinnovation.org/center-court-innovation-hosts-community-justice-2016>.

221. See Jeremy Gray, *Ceremony Honors Graduates of Birmingham Drug, Gun Courts*, AL.COM, http://blog.al.com/spotnews/2010/06/ceremony_honors_graduates_of_b.html (last updated June 15, 2010, 9:07 PM) (describing \$350,000 grant from the U.S. Department of Justice).

222. See BIRMINGHAM MAYOR’S PROPOSED BUDGET FY 2017, *supra* note 183, at 99 (showing no proposed budget for special events in the coming year, but \$5000 for clothing for city personnel); Telephone Interview with Judge Andra D. Sparks, *supra* note 184.

223. See CITY OF BIRMINGHAM MUN. COURT, ADMINISTRATIVE ORDER. 2013-1, DRESS CODE POLICY (2013) [hereinafter ADMINISTRATIVE ORDER].

224. *Id.*

225. See BIRMINGHAM MUNICIPAL COURT, *supra* note 185.

226. Telephone Interview with Judge Andra D. Sparks, *supra* note 184.

227. See Chanta L. Jackson, *Scenes from Swearing in Ceremony for Judge Victoria F. Pratt*,

appointed her to the court in November 2009.²²⁸ Previously, she worked as counsel for two state governors, as a compliance officer for the Camden school district, and as counsel to the President of the Newark Municipal Council.²²⁹ The Newark Municipal Court has approximately eleven judges, serving a city with approximately 280,000 people,²³⁰ and a docket three times the size of the next largest city in New Jersey.²³¹ It has jurisdiction over misdemeanors and lower-level offenses, housing matters, and traffic violations.²³² Per New Jersey law, the Newark Mayor, with the advice and consent of the City Council, appoints each judge, for a term of three years.²³³ In 2014, Judge Pratt was elevated to Chief Judge of the court.²³⁴

Pratt is a protégé of Judge Alex Calabrese, the founding judge of the Red Hook Community Court in Brooklyn, New York, which was a pioneer in the “problem-solving” court movement.²³⁵ Pratt first learned about the Red Hook court while working for the Newark City Council, when Newark was considering creating a similar court.²³⁶ Intrigued by the idea, she went to visit the Red Hook Court and endorsed the creation of a similar court in Newark.²³⁷ A few years later, she was appointed to the Newark Municipal Court and—after eight months in traffic court—in 2010 was tasked with running the new court for Newark based on the Red Hook model.²³⁸ By 2011, that court was up and running, with a range of counseling services and alternative sanctions like community

NJ.COM, http://www.nj.com/newark/index.ssf/2009/11/scenes_from_swearing_in_ceremo.html (last updated Nov. 6, 2009, 9:42 PM).

228. *Id.*

229. David Giambusso, *Litigator Who Uncovered Corruption Is Sworn in As First Dominican Judge in Newark*, NJ.COM, http://www.nj.com/news/index.ssf/2009/11/litigator_who_uncovered_corrup.html (last updated Nov. 7, 2009, 10:31 AM); Rosenberg, *supra* note 75.

230. Giambusso, *supra* note 229; *Quickfacts: Newark, New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/newarkcitynewjersey/PST045216> (last visited Nov. 15, 2017) (reporting the Newark population estimate as of July 1, 2016).

231. *See* Giambusso, *supra* note 229.

232. N.J. STAT. ANN. §§ 2B:12-17, -20 (West 2017).

233. *See id.* § 2B:12-4.

234. *See* Allan Wolper, *Newark Chief Municipal Judge Victoria F. Pratt: Reforming the Criminal Justice System*, WBGO (June 22, 2017), <http://wbgo.org/post/newark-chief-municipal-judge-victoria-f-pratt-reforming-criminal-justice-system#stream/0> (March 2015 radio interview with Judge Pratt).

235. *See* Rosenberg, *supra* note 75.

236. *Id.*

237. *Id.*

238. *Id.*; *see also* Abram Brown, *Newark Introduces Court Program to Offer Community Service for Minor Offenses*, NJ.COM (June 17, 2011, 7:00 AM), http://www.nj.com/news/index.ssf/2011/06/newark_officials_announce_new.html (discussing an innovative Newark court program under the leadership of Judge Pratt).

service provided though a non-profit partner.²³⁹ However, even before those services were in place, Judge Pratt started running her courtroom differently than most other judges, incorporating the procedural justice practices she had observed in Red Hook. For example, she emphasizes using comprehensible, courteous language; making eye contact; providing those appearing before her an opportunity to be heard; and engaging with them as individuals, including applauding their accomplishments.²⁴⁰ She has described her mission as nothing less than transforming the culture of the courtroom, hoping that her example of treating others with respect will inspire those appearing in her courtroom to respond in kind.²⁴¹

Judge Pratt also has been a vocal public advocate for her approach to criminal justice to those at the organizational-environmental boundary—for example, giving a TED talk and making other media appearances,²⁴² speaking at academic, bar and other events,²⁴³ and maintaining an active online profile.²⁴⁴ The court website prominently displays its mission statement, an important symbol, which it represents as “the fair and just resolution of disputes in order to preserve the rule of

239. Brown, *supra* note 238.

240. Rosenberg, *supra* note 75.

241. See Judge Victoria Pratt ‘98 Requires Dignity and Justice in Her Courtroom, *supra* note 127 (describing remarks delivered by Judge Victoria Pratt at Rutgers Law School).

242. See Victoria Pratt, *How Judges Can Show Respect*, TED, https://www.ted.com/talks/victoria_pratt_how_judges_can_show_respect (last visited Nov. 15, 2017); see also *Community Court: A Kinder, Gentler Way?*, PBS, <http://www.pbs.org/video/du-process-community-court-kinder-gentler-way> (last visited Nov. 15, 2017) (interviewing Judge Pratt with MSNBC online host Sandra King regarding the Newark Community Court); Melissa Harris-Perry, *Meet the Judge Who Assigns Essays in Court*, MSNBC (July 11, 2015), <http://www.msnbc.com/melissa-harris-perry/watch/meet-the-judge-who-assigns-essays-in-court-482752067786> (interviewing Judge Pratt with MSNBC host Melissa Harris-Perry); Allan Wolper, *Newark Chief Municipal Judge Victoria F. Pratt: Reforming the Criminal Justice System*, WBGO (June 22, 2017), <http://wbgo.org/post/newark-chief-municipal-judge-victoria-f-pratt-reforming-criminal-justice-system#stream/0> (radio interview with Judge Pratt); *Writing Goal-Driven Essays Will Change Your Life*, MSNBC: THE DOCKET (Aug. 25, 2015), <http://www.msnbc.com/the-docket/watch/writing-goal-driven-essays-will-change-your-life-512763459944> (interviewing Judge Pratt with MSNBC host Seema Iyer).

243. See *Her Legacy Conference Speakers*, Women Everywhere Believe <http://webelieve.nyc/wp-content/uploads/2016/12/Speakers-Bio-Headshots.pdf> (last visited Nov. 15, 2017) (providing a biography for Judge Pratt, listing her many conferences and speeches, including at a White House conference, the American Judges Association Annual Conference, and the International Community Courts Conference, as well as numerous law schools); Kelly Tait, *Conference Spotlight: Keynote Speaker Judge Victoria Pratt on Procedural Fairness*, NAT’L ASS’N ST. JUD. EDUCATORS (Aug. 29, 2016), <http://nasje.org/conference-spotlight-keynote-speaker-judge-victoria-pratt-on-procedural-fairness> (announcing that Judge Pratt would give keynote speech at 2016 Annual Conference).

244. See, e.g., Victoria Pratt, LINKEDIN, <https://www.linkedin.com/in/victoria-pratt-153588b> (last visited Nov. 15, 2017); Victoria Pratt (@JudgeVPratt), TWITTER, <https://twitter.com/judgevpratt?lang=en> (last visited Nov. 15, 2017).

law and to protect the rights and liberties guaranteed by the Constitution and the laws of the United States and this State.”²⁴⁵

In November 2017, Judge Pratt stepped down from the bench to pursue criminal justice reform full time.²⁴⁶ The Newark community court continues, presided over by a different judge. It is too soon to assess the impact of Judge Pratt’s departure on the court. However, her example remains important, particularly for those who question whether innovation is possible in busy urban courts and despair even of cultivating the requisite leadership. It may be harder to accomplish lasting reform in large urban areas with crushing caseloads, but the challenge is not necessarily insurmountable.

V. CONCLUSION

The misdemeanor courts that preside over most criminal cases in the United States vary in myriad ways such as size, structure, jurisdiction, and method of appointment. Each also has its own legal culture, a settled way of doing things that reflects deeper assumptions about the court’s mission and its role in the community. Changing the way that courts do business often requires adjustments not only to their superficial routines, but also to the more fundamental norms and shared beliefs of those who constitute the courthouse community. It also requires conversion, or at least management, of the expectations of external actors like legislators and police who wield influence over the court—for example, to its budget, personnel, and flow of cases. Without change at this deeper level, any change at the superficial level is bound to be just that and is unlikely to achieve its substantive objectives or to endure.

However, enduring change is possible when reformers grasp the challenges before them and draw upon the insights of organizational culture theory for guidance. That literature suggests that reform in mature organizations like courts is possible when it is championed by effective leaders who are skilled not only in articulating a new vision and direction for the organization, but also in promoting it with the internal and external actors whose behavior and beliefs must be modified for the reform to succeed. The leaders must involve their subordinates in

245. *Municipal Court*, CITY OF NEWARK, <https://www.newarknj.gov/departments/municipalcourt> (last visited Nov. 15, 2017).

246. *See Professor Victoria Pratt Launches a Ted Talk to Advocate for Criminal Justice Reform*, RUTGERS LAW (Nov. 28, 2017), <https://law.rutgers.edu/news/professor-victoria-pratt-launches-ted-talk-advocate-criminal-justice-reform>.

the reform process, educate the courthouse community and those touching upon it, and focus on granular, problem-centered solutions that are tailored to the local context. They must be savvy in leveraging community resources and partnerships and in accessing various sources of funds. And they must manage to hang on long enough to see their plans through to the point where they can be evaluated and—if they show promise—become embedded in the culture of the court.

These are not easy tasks in our nation’s misdemeanor courts. While all criminal courts are challenging environments in which to pursue reform, some challenges are not present to the same degree in felony courts. Misdemeanor court judges often are less experienced and more-resource constrained than their felony court counterparts. They also are most likely to feel pressure to protect the economic interests of their communities, which have come to expect revenue from fines and fees collected by their municipal courts, not innovation that moves in the other direction.²⁴⁷ Judges who wish to advance to a higher level in the judiciary thus have ample incentive to avoid taking on these formidable burdens.

And yet there also are reasons to be optimistic about the possibility of meaningful reform in misdemeanor courts. There is a growing bipartisan consensus that we cannot afford the social and economic costs of incarcerating low-level, non-violent offenders to the extent that we have in the past.²⁴⁸ The tragic events in Ferguson, Missouri, and the ensuing Department of Justice report have exposed the disturbing truth about municipalities’ reliance on their courts to support government services and its corrosive effects.²⁴⁹ Over time, communities will have to accept that they cannot rely on their courts to supplement their budgets.²⁵⁰ Advances in technology and the tools available to courts also

247. See *supra* note 131 and accompanying text.

248. See, e.g., SHARON DOLOVICH & ALEXANDRA NATAPOFF, *Introduction: Mapping the New Criminal Justice Thinking*, in *THE NEW CRIMINAL JUSTICE THINKING 1* (Dolovich and Natapoff, eds. 2017) (“Liberals and conservatives alike condemn the enormous economic costs and questionable public safety benefits of the current system.”); Justin George, *Can Bipartisan Criminal-Justice Reform Survive in the Trump Era?*, *NEW YORKER*, June 6, 2017 (describing “unlikely alliance” to “end America’s status as the world’s most prolific jailer” between “liberals who find the criminal-justice system racist, inequitable, and inhumane” and conservatives “who find it wasteful, harmful to families, and heavy-handed”).

249. See *supra* note 131.

250. See, e.g., Letter from Maureen O’Connor, Chief Justice of the Supreme Court of Ohio to Ohio State Auditor, Dave Jost (July 12, 2017) (expressing concern about the tone of the audit report, which reflected “underlying assumption that court fines and fees are merely opportunities for revenue enhancement” and explaining that “[f]ines and fees are about bad behavior modification; they are not about improving city, county or state finances”).

make possible new ways of operating that are more consumer-friendly and less onerous than the ways of the past.

Taken altogether, these developments have created conditions ripe for a major re-think of the purposes of misdemeanor courts and the methods available to accomplish their aims. The recent academic, judicial, and public attention to misdemeanor offenses and their consequences has also created venues for judges to share ideas and experiences, making it more likely that judges even in isolated areas will be exposed to new models. The increased focus on misdemeanors also provides an important source of professional recognition for innovative judges, some of whom may have foreclosed further advancement within the judiciary because of their reform efforts. Some may not seek such advancement, having found their calling in serving on the “front porch” of the criminal justice system. But the increased opportunities to recognize these judges is all for the better—for it may fortify those already on the front porch to stay and redouble their efforts and encourage still others to join them.