

Restorative Community Justice: A Call To Action

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There is an increasing consensus that the current paradigms used by the criminal justice system are proving ineffective. Simply looking for more of the same criminal justice interventions is misleading and depressing because we are asking more of the legal system than it can provide.

-A. Robert Denton

All across the United States can be heard expressions of theoretical and practical disillusionment concerning the way society addresses issues of maintaining a just social order, of violence and its prevention, and of the victimization of its citizenry. That disillusionment is the result of twenty years of relatively stable, high crime rates, and also of the impotence of government to respond effectively to that antisocial and criminal behavior. It is a disillusionment that sees violence as a result of a breakdown in community structure and its tenets of reciprocal rights and responsibilities. It is a disillusionment that springs from the fact that most adult citizens will have become a victim of violent crime in their lifetimes, and they see little redress or remorse either from their agencies of government or from their offenders.

The consequences of this disillusionment have been manifested in disparate ways.

On the one hand, there have been efforts to get tough on violent and drug-involved offenders in ways one might call punitive, through legislation increasing sentences for certain crimes, reimposing the death penalty, imposing “three strikes and you're out” sanctions on certain repeat offenders, and paying for a huge increase in prison space.

On the other hand, there have been efforts to try less traditional approaches, ones that address criminal violence, its perpetrators, and its victims in novel, perhaps more holistic, ways:

- The last twenty years have been witness to the revolution that has established bills of rights for crime victims in all fifty states and has led to a movement to amend state constitutions to give victims the right to be informed of, present, and heard at every critical stage of the criminal justice process. The voters in seven states had adopted such amendments by 1991. In 1992, the electorates in five more states ratified such amendments. In 1993, Wisconsin joined those states. In November, 1994, six more states became part of the trend. (In addition, it should be noted that California has adopted an amendment that addresses certain victim issues, and Georgia has adopted an amendment in order to establish a victim compensation program.) Arguably, these legislative accomplishments can be seen as part of a broader “human rights” or “consumer” agenda to allow previously disenfranchised and wronged individuals greater participation in institutional decisions that affect their lives.
- For a little over fifteen years, there has been an effort to refocus the criminal justice response to offenders to address not only retribution but offender accountability. Models of “restorative justice,” as this approach is generically called, have focused on victim/offender mediation or reconciliation, dispute-resolution programs, victim restitution, the use of victim impact panels, and so forth. Such models have emphasized that the goal is for victims to feel empowered through a process

whereby offenders acknowledge the harm they have done and participate in a process to provide personal redress to their victims.

- Crime- and violence-prevention programs have increased, as illustrated by the establishment of the National Crime Prevention Council, the development of educational curricula on violence prevention and conflict resolution in schools, the development of treatment programs for perpetrators of violence within the family, the use of crime prevention through environmental design in urban settings, and the move to establish community-wide citizen task forces to address crime and violence as quality-of-life concerns.

While the “law-and-order” and “holistic” camps often argue or talk past each other, it is the position of this monograph that through the use of a new paradigm of justice - Restorative Community Justice - the primary goals of both camps can be reconciled.

For if a local community's known offenders (all of them, for a significant change) are brought to account, and if, in the process, they are both punished and required to settle accounts with the victims and community they have hurt - and if these judicial interventions, punitive and rehabilitative alike, are all executed quickly - and if, finally, all this transpires under the gaze of concerned neighbors, then “swift and certain punishment” may finally get a fair test, using less punitive sanctions than some would prefer yet with increased prospects that victim justice and offender rehabilitation will be achieved.

The purposes of this monograph are, first, to present a theoretical description of Restorative Community Justice (RCJ), contrasting its concepts to those of other models; second, to describe the program elements that would be found in a community that had implemented the model; and third, to suggest areas of legal change that might be desirable to speed the establishment of such programs.

Restorative Community Justice: Constructing A New Paradigm

1. The first principle of RCJ is that criminal justice must be conceived not only as the imposition of justice on the criminal but also as the doing of justice for the victims. This means that a violation of the social order must be seen as an offense against society generally - the traditional “social compact” view - but also as an action that harms individuals. The concern here is on any wrong, even a noncriminal offense, that contributes to the weakening of social ties or interferes with community living. The victims of such violations may be defined as the individual whom we traditionally describe as the complaining witness in a criminal prosecution, but they may, in addition, or in the alternative, include community members harmed by the wrongdoing. It should be stressed that, in this expansive concern about violations beyond those traditionally prosecuted as crimes, the model does not seek to sanction extralegal controls on individual conduct. Rather, it seeks to sanction the greater use of near-moribund civil and criminal laws dealing with trespass, nuisance, harassment, and the like.

2. The second principle is that, while governments must establish criminal laws that set the standards of behavior for the general society, the community should often be the locus of implementing those standards in order to be responsive to the cultural nuances that vary by racial, ethnic, geographic, religious, and other backgrounds - all provided that certain equal protection and due process norms are maintained.

3. Third, the “community” from this perspective is more than a cultural filter for sorting out and prioritizing crimes in its midst; the community and its justice partners are

to become engaged in defining and attacking community problems, a process that strengthens the important role of community institutions in a democratic society.

4. The fourth principle is that, by responding to crime skillfully, quickly, and locally, those administering community justice improve the chances that offenders and their victims alike will be restored to harmonious relationships with their neighbors.

5. The fifth principle is that all citizens, individually and collectively, have responsibilities for supporting peace and justice within the social order. These can be framed as reasonable expectations (not duties) that are clearly expressed in the RCJ model to three audiences:

- *Offenders should be held accountable for their actions.*

One element of accountability is retribution or “just desserts.” Such sanctions should be just and equitable. Care should be taken to fashion culturally-appropriate punishments and to ensure that punishments are proportionate to the criminal action. The perpetrator of a heinous criminal attack has certainly earned the sanction of a lengthy incarceration, and not just to prevent that offender from committing another such attack. But fines, restrictions of privileges, home confinement, temporary exiles or exclusions, work details (not to be confused with community restitution, described below) and the like may be more appropriate for minor infractions.

While accountability should include measured punishment for its own sake, it should go beyond punishment. It should include full restitution to victims. Such restitution should be mandated by law, and should involve a full accounting of damages, past and projected. It should be ordered and, once ordered, remain enforceable until fulfilled. While the courts hold to the legal fiction that restitution is a form of punishment - a designation that has pragmatic benefits to victims in the justice system - one should recognize that payment of restitution is no more a punishment than the repayment of a loan or the expungement of any other debt, however incurred.

Accountability should also involve restitution to the community as a whole. A violation of the social order through crime or other proscribed behavior very often harms a describable community wherein the wrongdoing took place, as when it tears at the social fabric of a neighborhood and drains the larger society's resources to enforce the social order and to ensure that justice prevails. Hence, offenders should be held to perform constructive actions on behalf of the community. While the law and the criminological literature calls this kind of activity “community service,” the appropriate name should be “community restitution” in order to stop confusing these activities with services voluntarily given by law-abiding citizens.

Accountability also should involve asking the offender to demonstrate remorse. The act of saying “I'm sorry” may seem trivial in the aftermath of a violent crime, but if the act is accompanied by contrition, it can sometimes help victims begin to reconstruct their own lives. Victims often feel that somehow they have contributed to their own victimization. Demonstrations of remorse help to vitiate the victims' self-blame. Remorse may also be coupled with admissions of shame for violating the social order. Indeed, in a New Zealand model of restorative justice, shame on the offender is considered an integral part of the restorative process.

Plainly, to be ashamed of one's actions is both to acknowledge that they were blameworthy and to be sorry that they caused harm. Many offenders cannot find within themselves the sorrow needed to express genuine remorse, yet can honestly take responsibility for having broken a legitimate societal norm and are prepared to be punished for that upon entering a guilty plea. For some, the lesson learned from that punishment is to go straight; for others, it is, don't get caught again. The RCJ model would continue the long practice of accepting guilty pleas as grounds for imposing lesser sanctions, but would still hold to the principle that remorseful admissions of guilt are better for all concerned than ones delivered with a certain bravado.

- *Victims also have responsibilities to the community.*

They may not be able to assume those responsibilities due to incapacities brought on by the crime or other circumstances, but ultimately the victims' rights to participate involve parallel responsibilities for participation.

The responsibilities which we may fairly ask victims to accept are nothing more than the responsibilities of citizenship that we should all assume in the justice arena. As citizens (and victims), we should report violations of the social order to the proper authorities, at least when we believe it safe to do so; we should support legal change to improve the administration of justice in the future, if only by exercising our voting rights; we should participate in community crime prevention activities; and we should participate in the administration of justice as witnesses, jurors, and volunteers.

- *The affected communities also bear responsibilities.*

These responsibilities are of two kinds - those of the state, and those of the local community or neighborhood.

The responsibilities of the state should include ensuring that appropriate laws and policies are in place in order to effect Restorative Community Justice and to pay for its implementation. Those legal policies should include the establishment of parallel rights for victims to those available to accused and convicted offenders, notably rights according victims participatory status in the justice system.

The responsibilities of the local community should include establishing and maintaining a practical system of programs and procedures that support Restorative Community Justice. Such a system would include: community policing, community prosecution, community courts, community corrections, local programs of victim services and violence prevention, and citizen participation in all these efforts. The citizenry here, in most instances, are not just the residents of a neighborhood wherein the community justice system operates but its merchants, office workers, visitors, and friends.

6. The sixth principle of Restorative Community Justice is that justice should aspire to the restoration of both individual dignity and community bonds.

- Restoration for offenders involves an act of will on their part as well as support from society. The act of will includes their willingness to acknowledge their participation in the violation of the social order, their acceptance of sanctions, their act of contrition through remorse and shame, and their act of reparations to victims and the community.

The support from society should involve providing them with opportunity to return to their community with appropriate benefits - such as medical or substance

abuse treatment, or social or employment skills - as well as an acknowledgment of their status as a community member. It does not mean that society or victims have to forgive their past behavior or exonerate them, only that they should support opportunities for offenders to construct a new life as law-abiding citizens. Indeed, in some traditional societies where restoration is an integral part of the justice system, community members are not allowed to talk of the crime or the punishment if the offender successfully fulfills the conditions of accountability.

Again, it is not proposed that all offenders deserve an opportunity for restoration. Some may be excluded from restoration permanently through imprisonment, or a form of exile or ostracism, because the offense or pattern of offensiveness was serious enough that their return would only continue the process of community destruction.

- Restoration for the victim should involve the provision of appropriate crisis and supportive counseling, full restitution from the offender and, where that is not forthcoming or immediate, compensation from the state. It should include medical or substance abuse treatment as necessitated by the crime, as well as vocational or other forms of rehabilitation. And victim restoration should include participation rights roughly equal to those of the accused in any criminal justice proceedings (whether in the formal court process or other alternative proceedings).
- Restoration for the community should also involve participation in the decision-making processes of restorative justice and the implementation of its decisions. Groups of community members should be afforded appropriate crisis and supportive counseling, as needed, full restitution from the offender, and the establishment or reestablishment of community structures as the community adjusts to the impact of the social violations.

The purpose of Restorative Community Justice is to take into account that the well-being and integrity of communities as well as individuals are harmed by violations of the social order. The new justice paradigm would help restore the community through the restoration of all its injured individuals and groups, a process whereby they can once again contribute to the maintenance of a just social order by helping others.

Restorative Community Justice: Program Elements

While no jurisdiction has implemented a full model of Restorative Community Justice, there are examples of one or more of its program elements that have implemented over the last five years. The following review of the elements gives examples of those experimental activities, a great many of them formalized by written community partnerships. A sample partnership agreement from Portland, Oregon, is included in the appendix.

1. Community Policing

The United States is undergoing the most massive reformation of policing since the anticorruption and “professionalization” reform movements of the first half of this century. In some ways, so-called community policing might be called a “counter-reformation,” bringing back the old cop on the beat - a more-or-less permanent beat for a specific officer or deputy, on a more-or-less permanent shift - and often involving the opening of mini-stations not unlike the neighborhood precincts of an earlier time.

But the models involve more than the friendly, peacekeeping officer affectionately portrayed in black-and-white movies of the 1930s. Community policing teaches officers how to round up neighbors to form a block club, or revive a local merchants' association, or encourage students to treat their school and each other with greater respect. In the typical community policing project, there are squad cars still responding to the more urgent calls for service, and investigators still working on felony cases, but the newly assigned officers are more focused on preventing crime than “chasing crooks.” The National Institute of Justice has highlighted some of these crime- and violence-prevention efforts. Among the NIJ findings:

- Boston, Massachusetts. As part of its neighborhood policing strategy, the Boston Police Department recently announced the deployment of 10 youth service officers, 1 for each of the city's 10 police districts. All 10 officers had volunteered for the position. With 112 hours of training behind them, the officers' job is to reach out to young people by serving as positive role models, speaking against drugs in fifth-grade classes, and referring high-risk youths to public and private social services agencies. The officers are also expected to develop their own after-school and weekend programs for elementary and middle-school children. Extra hours, without overtime compensation, are considered part of the job.
- Columbia, South Carolina. The Columbia Police Department operates substations at several city housing developments. Over time, the substations have emerged as a nexus for a variety of activities that enhance the life of the community. Officers participate in youth athletic activities, make school visits, and cosponsor social activities such as camping trips, community talent shows, dances, movie matinees, and puppet shows. The officers also serve as mentors, taking special interest in the children and their school work.
- Houston, Texas. In Houston, the police department assigned four full-time officers to run a year-round Police Activities League (PAL) program for high-risk youth aged 12-17 from inner-city communities. In addition to sports, the program also features numerous educational field trips and community service projects such as neighborhood cleanups.
- Jacksonville, Florida. With its Youth Intervention Program, officers from the Jacksonville sheriff's office meet informally after school with young men aged 12 to 18 from low-income, gang-plagued neighborhoods. The emphasis is on talking and listening, with the officers working as mentors to strengthen the young men's self-esteem, increase their awareness of the consequences of violence, and provide informal guidance on a range of safety and health topics. The program also provides vocational training, with several community business partners creating work opportunities for the participants.

The scope of this reform movement is enormous. Spurred on by the U.S. Department of Justice, the leaders of the American law enforcement establishment, notably the International Association of Chiefs of Police, the National Sheriffs' Association, the Police Executive Research Forum, and the Police Foundation, have separately pioneered these approaches and collectively pooled their views and experience through the “Community Policing Consortium.” The consortium's “Understanding Community Policing: A Framework for Action,” spells out the two “core components” of these hundreds, if not thousands, of projects:

- The first component, and perhaps the overarching goal, is problem-solving. Indeed, a few departments embrace a “problem-oriented” style of policing, freeing up a kind of “flying squad” to, say, tackle a rash of local burglaries rather than retool the functions of the regular patrol force. The more typical community police officer is encouraged to be problem-oriented too - often acting as a kind of ombudsman to, say, get city agencies to remove abandoned cars.
- The second component is creating community partnerships - usually in formal documents like the one in the appendix. The roles and assignments meted out between the police, a block club, a group of shops, a school, or other participants, are typically the product of many hours of meetings - ones that often identify problems that the police, on their own, might not have rated in the first tier of community concerns.

The hope of this massive social experiment - fueled by a major Congressional subsidy for new police hires in departments subscribing to community policing precepts (if the Clinton Administration's “Cops on the Beat” program retains Congressional support) - is that bonds of communication and trust will be forged between community leaders and representatives of their frontline criminal justice agencies so that an ethic of law-abiding civility may be restored to community life.

There are interesting by-products of this new style of law enforcement - the antithesis of cool, “just-the-facts-ma'am” professionalism promoted by O.W. Wilson and his admirers two generations ago - that are of interest to those seeking to establish a more ambitious Restorative Community Justice model. First, parallel to the community policing reformation is the advent of victim assistance programs within law enforcement agencies. For two decades, it was America's prosecutors who led the inclusion of such services within criminal justice, but by 1990, over one-third of America's larger law enforcement agencies had established their own victim assistance units. The process of placing these advocates (or advocates in outside, cooperative service programs) into community-policing neighborhoods involves a natural partnership that may well become a commonplace feature of community policing in the future.

Second is the somewhat novel victim assistance program housed in the Delaware State Police, many of whose victim advocates are specially-trained, sworn officers - and some of whose community police officers are graduates of that assignment, and employ the skills and insights of crisis counselors in their community policing assignments.

Third is the interesting partnership of the Redmond, Washington, police department and the state's corrections department. Volunteer police officers have significantly increased the visits to parolees' homes over what community corrections officers can do - and all of the police officers have become, in effect, eyes and ears of the corrections department so that, for example, the nighttime disturbance that the police quelled without an arrest may nonetheless inform a community corrections officer that a probationer had violated a curfew condition of his release.

As a last example, experimental programs in Native Alaskan villages expect their Public Safety Officers to function not just as law enforcement officers but also as informal judges and as welfare officers. That last role is a reminder that RCJ programs may take on governmental tasks that are seen to be supportive of community cohesion but quite distant from the operations of criminal justice.

2. Community Prosecution

Proposals and programs on community policing have been in existence for the last twenty years. It was only recently, however, that there has been an initiative to develop community prosecution programs that could work with community police and move prosecutorial functions out of a merely reactive role in prosecuting to a proactive role in preventing crime. Two examples of such programs are exemplary: the Neighborhood District Attorney's Program in Multnomah County (Portland), Oregon, and the Community Prosecution Program in Brooklyn, New York.

Michael Shrunck, Multnomah County District Attorney, chose to name his program the "Neighborhood District Attorney" to emphasize that prosecution is not the primary activity of the attorneys assigned to the program. As one of his deputies said, "We are attorneys for our districts, seeking to solve problems, and using the law only when necessary." Prosecutors elsewhere are more drawn to a title like "Community Prosecutor" to reflect its law enforcement and criminal justice function. Whatever the name of the program, the mission and mandates for the Multnomah County and Brooklyn programs are similar.

The role of the Neighborhood District Attorney is to help develop and implement long-term strategies that address problems in the community in order to enhance its quality of life. To accomplish that purpose, the following sets of activities are encouraged.

a. Problem-solving.

- Community problems must first be identified. The community prosecutors must do this based on citizen and community participation. A serious problem for one community may be objectively just as bad in another community, but not one that will motivate those community members to act. Problem identification can be done through meetings with community members, environmental observations, attendance at civic or community events, or more formal assessment procedures.
- Once problems are identified, the community, with the help of the Neighborhood District Attorney, must prioritize the problems in order to more efficiently analyze the relationship between one problem and another, mobilize resources, and establish a time-line for action.
- The Neighborhood District Attorneys may help the community maximize resources in a number of ways. They may serve as the facilitator of communications. Due to their perceived status and power, they may be able to establish communications between parties where none existed. They can serve as leaders in establishing community partnerships. They can persuade groups to work together that had previously distrusted or were unaware of each other. They can help to coordinate resource development and implementation by exercising a "global vision" in their neighborhoods. By looking at the community as a whole, not just block by block or building by building, they can suggest ways in which different social and economic groups can create synergistic solutions to existing problems.
- After problems are identified and prioritized, and resources are identified or developed, Neighborhood District Attorney can work with the community to

design and implement a plan of action to solve the problems. It is imperative that citizens be the primary force behind these plans so that neighborhoods have a long-term commitment to their success. Neighborhood District Attorneys can serve as resources for ideas, advisors with regard to the law, and law enforcers when necessary, but citizen participation is the key to community commitment to the new social order.

b. Applying the law to problem-solving.

Just as with community policing, the first goal of the community prosecution concept is to solve problems that contribute to the destruction of social order and community life before they become criminal in nature. However, a feature critical to the role of the community prosecutors is their ability to use their knowledge of the law - both civil and criminal - to help the community maintain the social order. There are several ways this legal knowledge and skill has proved useful in Portland:

- The Neighborhood District Attorney can assist community police officers in the enforcement of civil orders and the active prosecution of misdemeanor arrests based on the violation of social order.
- The Neighborhood District Attorney can coordinate with other criminal justice agencies, like the U.S. Attorney's office, the Federal Bureau of Investigation, and the Immigration and Naturalization Service, to ensure that expeditious and aggressive prosecution takes place when crime does occur.
- The Neighborhood District Attorney can assist community involvement in prosecutions through organizing court watches and facilitating victim advocates in informing victims and communities about case status and their rights under the law.
- The Neighborhood District Attorney can ensure that fair and accurate assessments of the impact of crime on individual victims and communities is represented in any case disposition and that full restitution is a part of plea bargains and sentencing requests.

c. A sample of results.

Problem-solving with prosecutorial authority as part of the strategy is the essence of community prosecution. Multnomah County's program has been in existence for almost five years. It has expanded from one neighborhood district attorney to five. The program has divided the County into six districts and a final district attorney for the sixth district will be assigned in the coming year. The following is a sampling of the results of the program.

• Citizen-Initiated Search Warrants

Problem: The community identified lower-level drug houses in the neighborhood as a source of irritation and a degradation of community standards.

Solution: The Neighborhood District Attorney and community police officers put together a program in which neighbors were trained to keep detailed logs of suspected activities. The police department conducted buys at the suspected house. The logs alone were enough to obtain a probable-cause search warrant from the judge. Two people were arrested. They were prosecuted and the neighbors are now willing to be "junior probation officers" to monitor future compliance to probation. The Neighborhood District Attorney is now working with the property owner to resolve the remaining problems at the house.

- **Operation No Drugs**

Problem: The community identified that the illegal drug activity that occurred on the sidewalks and streets had converted the neighborhood into an open air drug market, seriously affecting the lives of businesses, agencies, and residents.

Solution: The Neighborhood District Attorney and a broad base of partners developed and implemented the following elements of their strategy: increased lighting; increased public awareness of what could be done when illegal activities took place; expanded police patrols; enforcement of “civil exclusions” from the area; and worked with the Immigration and Naturalization Service and the U.S. Attorney's office to aggressively prosecute drug cases and to identify and initiate deportation proceedings where an undocumented alien had been convicted of a drug-related crime. The program was begun in the Spring of 1993. By October of that year, there were 200 arrests on drug abuse charges, but in October of 1994, there were only 21 such arrests - evidence of the partnership's success in closing down the open drug market.
- **Trespass Authorization Program**

Problem: The downtown business community identified the problem of trespass by vagrants and juveniles during non-business hours. The private premises were accessible because police officers have no right to be there without the owner's permission.

Solution: The Neighborhood District Attorney worked with the owners and police officers to design and implement the following strategy. The owners would designate all precinct officers as the “persons in charge of the property,” with authority to exclude people on the premises at unauthorized times or if they were engaged in destructive behaviors. A common exclusion form was developed and police officers were trained in the exclusion policy. Persons found on the premises under the specified conditions were given notice to leave. If they refused to leave, they were arrested. Even if they agreed to leave, those who were regular trespassers were given a “notice of exclusion,” as authorized by a city ordinance, and if they were seen on the premises again, they were arrested for violating the exclusion order. In both kinds of arrests, the Neighborhood District Attorney agreed to file complaints on all such arrests, and the misdemeanor staff agreed to prosecute them.
- **Unlawful Camping**

Problem: The community identified unlawful camping on public access areas as a source of neighborhood distress due to its unsightliness and the garbage that was distributed around the makeshift campsites.

Solution: The Neighborhood District Attorney worked with the individual residents, the business community, law enforcement, and others to develop a partnership agreement that involved the following. The local Sheriff's Department in conjunction with the Parks Department cleaned up the area. It was then divided up into small territories and certain individuals were identified to monitor those areas for camping activities. Large pink signs saying “no camping” were erected to help the monitoring activities. Businesses agreed to destroy all large container boxes so that they could not be used for shelter. When someone erected a campsite, citizens confronted them and asked them to leave. If they did

not or the monitors wanted assistance in the confrontation, sheriff's deputies would be summoned to effect removal or arrest. The program was one of the first ones established by a Neighborhood District Attorney. In 1989, there were 60 arrests in the area. By 1992, there was only one such arrest - the problem was effectively solved.

- Miscellaneous Results

In one area where prostitution was a problem, the Neighborhood District Attorney was able to work with local motels to persuade them to end a "one-hour" rental policy.

Where a burnt-out building was identified as a hangout for unsupervised juveniles, the prosecutor notified the Bureau of Buildings which cited the owner for a building code violation and ordered him to abate the violation.

Where trees and bushes provided a cover for drug deals and drug usage along a state highway, the Oregon Department of Transportation agreed to replant the area with ground cover that would meet standards for crime prevention through environmental design.

3. Community Courts

"Community courts" involve both new ideas and old ones merged in several ways. When judges rode circuit, most judicial proceedings had a high level of citizen participation in that a "jury of one's peers" was sometimes made up of friends or antagonists of the parties, and certainly of acquaintances. Minor disputes or crimes, heard by a local magistrate or a justice of the peace, were typically resolved around the kitchen table of the judge's house.

The gradual urbanization and centralization of the American justice system left most of the citizen litigants, witnesses, and jurors strangers to one another, which suited those who kept pressing for ever more disinterested methods of decision-making. Ours has become an antiseptic system, and our judges, largely by design, aloof and distant figures.

In many traditional cultures, the judge is expected to be knowledgeable about the parties involved. The judge may be an elder to whom wisdom is attributed and of whom is expected considerable understanding of the parties and of their family and community connections. Or the judicial function may devolve to a kinship or tribal group. Either way, the process is conducted in a manner that seeks to affirm the norms of a familiar community, not a distant society, and, often, to restore both the offender and the offended to the good graces of that community.

The new paradigm would call for integrating such community connections into the court system again. There are several ways that courts might change to accommodate such a system.

- a. The judicial system could become more responsive to community and victim interests. Today's judiciary could be trained to recognize and enforce various bills of rights for victims and their constitutional rights under the nineteen states that have established them. Some would argue that this will eventually entail the recognition of the victim as a third party with standing in the courtroom. That would seem to be the course that the State of Arizona is pursuing as it implements

its state constitutional amendment, and where victims have standing and a right to have a lawyer in the criminal justice process.

Even without express legal mandates, judges have the power to ensure victim and community participation through victim impact statements and impact statements from larger communities. The former are now commonplace, while the latter are almost unheard of. Not surprisingly, one of the Multnomah County Neighborhood District Attorneys was among the first to offer such a community impact statement (in a plea-bargained burglary case.) That the court accepted the statement is a reminder that most courts have inherent authority to receive information that may guide their sentencing decisions and may, in most jurisdictions, effect full restitution to both the victim and any other party manifestly harmed by the criminal act.

- b. Another model for an RCJ approach to judicial decision-making can be derived from New Zealand's "Children, Young Persons and Their Families Act of 1989." The goals of youth justice in that country are described as follows:

"(1) Achieving justice

"Accountability - emphasizing the importance of young people paying an appropriate penalty for their crime and making good the wrong they have done to others.

"Reducing time frames - making time frames realistic given the age of the child or young person.

"Protecting rights - emphasizing the protection of young people's rights.

"Diversion - keeping young people out of Courts and preventing the use of labels that make it difficult for young people to put early offending behind them.

"(2) Responding to needs

"Enhancing well-being and strengthening families - making available services that will assist the young person and their family.

"(3) Providing for participation

"Family involvement - including families and young people in making the decisions for themselves and taking charge of their lives.

"Victim involvement - involving victims in the decisions about what will happen.

"Consensus decision making - arriving at decisions which are agreed to by the family, the young person, police and victims.

"(4) Being culturally appropriate

"Culturally appropriate ways of resolving matters - allowing families to choose their own procedures and their time and place of meetings."

(Judge M.J.A. Brown, Principal Youth Court Judge, New Zealand)

It is notable that Judge Brown went on to write, "The philosophies and principles which are being used in the Youth Justice field in New Zealand are, I believe, inextricably based on the communitarian concept. With a greater involvement of families and wider families we have seen a recognition of the strength of interdependencies - attachments which evoke personal obligation to others within a community of concern. These attachments are not perceived as isolated relationships of convenience but as matters of profound group obligation."

This perspective is unabashedly in harmony with the Maori culture in which Judge Brown was raised. But the statute he drafted and Parliament enacted has been applied to New Zealand's young descendants of Polynesian and European immigrants alike. In the first instance, it has successfully affirmed the legitimacy of the Maori “marae” - a council of one's extended family which, among other things, seeks through consensus to vindicate its victims and bring its transgressors, repentant, back into the fold.

The system has also worked well with young New Zealanders of European descent, sometimes with the effect of bringing into productive service an extended family that had previously gathered together only to celebrate holidays, not to take collective responsibility for one of their members. In any event, since the law does not impose a definition of the “family group” to whom the sanctioning and reconciliation is delegated, it can be a nuclear family of three or a marae of over a hundred kinfolk.

The procedures for the resolution of justice under these principles involves the following features.

- When a young person is charged with an offence, the case must be referred by the prosecutor to a Youth Justice Coordinator who must investigate the case and arrange for a family group conference before any further action is taken. A family group conference must be convened in cases where a young person has been arrested prior to any plea, although an exception is made when the young person indicates a non-guilty plea due to legal advice or on certain specific offenses. Similarly, if a child is alleged to have been abused or neglected, the child may be assigned a Care and Protection Coordinator who must convene a family group conference to address the issue.
- There are three stages to the family group conference: the information-giving stage, the family meeting, and the decision stage. At the first stage, the Coordinator provides the background information and may be questioned by the family. At stage two, the family group is entitled to meet in private to decide what must be done, but the victim or representative of the victim is entitled to be present, and there is currently legislation before the New Zealand Parliament proposing an amendment to allow the victim to be accompanied by any reasonable number of persons for the purpose of support. The family arrives at a proposed decision and a plan of action which then must be discussed with the designated officials. In cases of a youthful offender, the plan should be an alternative to prosecution. In the case of a youthful victim, the plan should be a solution to protecting the child from abuse in the future. If there is not agreement on the plan, the matter will go to court for further adjudication. Even at adjudication, the family has a role in advising the court on its wishes or appropriate sanctions.
- The court must approve and monitor any eventual plan of action or sentence. Community or family members are also responsible for any alternative sentencing or action plan.

While there have been problems in the implementation of youth justice, more remarkable have been its successes. Judge Brown reports, “I would be the first to acknowledge that ours is a very young system. There have been all the teething

problems and we will never achieve the level of perfection which theorists would like to see. Perhaps the most satisfactory response to date, however, has been the complaint expressed by such bodies as the New Zealand Police Association that the system is only working in 90 percent of cases.”

While the New Zealanders' culturally-flexible use of “family” might serve some applications of the Restorative Community Justice model, so might an equally-flexible use of “community,” which might also borrow from the experience of other kinds of courts, discussed below, operated in, of, or by a community of whatever description.

As will be seen, the primary theme in most of these models is on the sanctioning dimensions of the judiciary, not its fact-finding duties. It is assumed that any case wherein a criminal defendant persists in pleading not guilty will continue to be wrapped up in procedural protections that may demand access to the “efficiencies” of a centralized court system. Yet the fact that the vast majority of prosecutions in the U.S. are resolved with guilty pleas should be taken into account, as this seems to be the foundation on which localized adjudicative systems are being built.

- c. A third model for community courts can be derived from the experiments in using youth or teen courts as alternatives to judicial processing of juvenile cases. These courts address the goal of using peer community members as participants in the decision-making process. There are over 70 such courts in the United States and, while their procedures differ, some of the guidelines are very similar.
- They are based on a philosophy that young offenders are less likely to recidivate if peers are involved in deciding the appropriate consequences of their acts.
 - They are activated after a plea of guilty so that peers in the judicial process do not face as much likelihood of retaliation from the adjudicated offender.
 - They attempt to dispense swift and sure sanctions. In order to effect that, they meet often and usually work under predetermined sentencing guidelines. Such guidelines usually include some mandatory community restitution hours, substance abuse testing and treatment, educational or counseling hours, and restitution to the victim.
 - If the sentence is successfully completed, the charges are dropped, but if it is not completed, prosecution is resumed in court or through the school administrative process.
 - Peers may serve in roles of defense attorney, prosecuting attorney, or the jury. Usually an adult serves in the role of the judge in order to insure neutrality and fairness but there are models in which youth serve in that role as well.
- d. Another model of community oriented restorative justice decision-making is that found in victim/offender mediation programs or dispute-resolution programs. There are three general kinds that can inform the model of Restorative Community Justice more generally and offer alternatives for dealing with violations of the social order and criminal violence.
- School-based violence prevention and conflict resolution programs.
One of the more successful programs in this area is the Resolving Conflict Creatively Program (RCCP) started in the New York City Public Schools in 1985.

RCCP is in place in 250 elementary, junior high, and high schools in the nation, with 4,000 teachers and 120,000 students participating.

The goal of RCCP is to create school change such that there are “peaceable schools” which are characterized by community cooperation and communication and shared decision-making. While much of RCCP is devoted to implementing special curricula at all grade levels, teacher training and support, and parent training, it is the student mediation component which is particularly relevant for Restorative Community Justice. This component attempts to use peers in the mediation process and nonviolent conflict resolution under the supervision of trained faculty coordinators. It also relies upon strong school discipline policies to act as a final deterrent to actual violence. This tends to mirror the community prosecutor approach to enhancing the quality of life in a community through problem-solving but utilizing swift and sure prosecution to enforce the social order when violations of it are criminal.

- The second kind of dispute resolution model is the Neighborhood Justice Centers and Community Board programs begun in the late 1970s and continuing today. The essential goals of these programs have been to encourage community members to resolve disputes themselves through problem-solving techniques and to discourage disputes from escalating from community conflict resolution to formal judicial or law enforcement institutions.
- The third kind of program is the Victim-Offender Reconciliation Project - known by its unlovely acronym “VORP” - that embodies what such proponents as Albert Eglash, Dan Van Ness, and Howard Zehr call “restorative justice.” The first of the pioneering VORP projects was started in Kitchener, Ontario, in 1974, followed by one in Elkhart, Indiana, in 1978, and many dozens of others were established thereafter. The early programs were inspired by the teachings of the Mennonite Church and other Christian denominations, and are meant to help the victim to understand the offender's motivation and the offender to understand the victim's losses. VORP programs, with their stress on restoration, not punishment, have been used as a diversion from the adversarial system, or as part of the court's sentencing process, or even after the outlines of a sentence are set. In their form as a diversion program, they serve to mediate “disputes.” In cases where the court retains its sentencing authority, the VORP process has been used to further the understanding of the victim and offender as to the meaning of the violation, and to provide the court additional information as to appropriate sanctions, including restitution.

All of the programs that borrow the techniques of mediation to fashion a sentence have their critics in the victims' movement. It begins with language: to say that two strangers whose only interaction was the criminal violation of one by the other have a “relationship” seems bizarre, and then to say that the relationship suffers from a “conflict” or a “dispute” can sound deeply offensive to victims.

It often doesn't help matters when the parties do have a previous or even an ongoing relationship with one another. Victim advocates almost universally insist on calling the violence committed by one intimate on another a crime, not a “domestic dispute” or some other palliative.

This is not just a question of semantics. Victim advocates cite many cases in which the mediating agency clearly (if unwittingly) manipulated reluctant victims into cooperating, and then turned a blind eye to the fact that the victim came in - and left - the mediation process in a position subservient to the offender.

Thus, Ms. Smith, a gentle woman who lives by herself, is asked if she would be willing to have mediated the case against the thirteen-year-old whom she caught leaving her apartment with her television; her religious faith silently compels her to agree to the session, and since her property had already been returned, she raised no objections to the suggestion that the offender's sentence be limited to forty hours of unspecified community service. At no time in the session did she reveal that she is plagued with nightmares of her offender sneaking into her apartment and attacking her, or that her constant fear has caused her to abandon all evening activities at her church, once her favorite pastime.

Though a hypothetical composite, "Ms. Smith" represents actual victims erroneously brought into - or clumsily misused by - well-meaning mediation programs. Likewise, there have been too many schoolyard bullies, abusive spouses, and other chronic predators who have bent a mediation forum to their own ends, defeating the interests of their victims and of justice.

Nonetheless, it has been shown that less formal means of intervention may offer a legitimate method of resolving a public offense when the mediator, judicial officer, or community board is able to balance the process such that all parties are able to make their case with equal force and with an understanding of what their options are (including the option of returning the case to the court). Mediation-type programs which are more selective in the cases they seek to handle and have the knowledge and skill to fortify all the parties to the task ahead have often produced very gratifying results for victims and their advocates as well as for offenders and *their* advocates.

From the Restorative Community Justice perspective, the salient question is not whether mediation models have applicability to the RCJ model but whether they can be used to go beyond the legal facts of a law violation to address issues of social order and its violation.

The Delaware Criminal Justice Council is seeking to do just that in a pilot project it hopes to establish in Kent County. As it is being developed, the plan is that cases would be referred by the prosecutor to the mediation process as a form of "prosecutor's probation." Defendants interested in entering the mediation process must waive their right to a speedy trial. The victim must agree to the process as well, and be screened by trained staff prior to the mediation. If either the victim or defendant is perceived to be inappropriate for the process, the case will go back to the prosecutor for normal processing.

The mediation process will focus on the harm done to the victim and on the victim's questions of the offender. The mediator will work to design an agreement that restitutes the victim, restores something to the community from the offender, and provides the offender with appropriate treatment if necessary. Project staff will monitor the agreement and its progress. Most referrals will come from the prosecutor, although the plan allows for some cases to come after conviction, from inside a prison, or from self-referrals if mediation is sought to resolve civil disputes

before they become a criminal case. A partnership of criminal justice agencies, community groups, and victim representatives has been formed to assist with the program.

e. A final model for community decision-making is that established in two experiments in New York: the Midtown Community Court in Manhattan, which was opened in October, 1993, and the Red Hook Community Justice Center which is currently being developed. These experiments have been inspired by such phenomena as drug courts, the victims' movement, and community policing, and are demonstrating the efficacy of the judiciary's contribution to Restorative Community Justice. The following precepts guide the New York experiments:

- By arresting, arraigning, and sentencing offenders all in the same neighborhood, justice is swift.
- By paying back the community through community restitution projects, justice is visible.
- By placing drug treatment, health care, education, and court processing under one roof, justice is constructive.
- And by improving communication between the court and the community, the energies of the local police, residents, and businesses are harnessed to improve the delivery of justice.

The goals of the New York courts are to offer community restitution, help steer offenders from further involvement with the criminal justice system, solve community problems, and increase the level of public involvement in court proceedings. John Feinblatt, administrator of the Midtown Community Court, has expanded on the philosophy behind these goals. His views may be summarized as follows:

- **Community Restitution**

Community courts recognize that individuals are often victims of crime, but it is equally important that communities be considered victims as well. A priority is placed on having offenders perform needed community-oriented work as part of the sentencing process. Community restitution is ordered to be performed immediately. Such restitution makes a significant contribution to the quality of life in the community. The public performance of the work assures community members that there is a swift response to crime. In its first year, the Midtown Community Court arraigned over 9,000 defendants and nearly 80 percent received sentences of community restitution, social services, or both. Court hearings were held within 17 hours of arrest, and most sentences began within 24 hours of arraignment. Seventy-five percent of the offenders complied with the conditions of their sentences. Community restitution activities included scrubbing graffiti off the walls of 200 businesses and residences, stuffing and sorting over 700,000 pieces of mail for local non-profits, clearing and replacing 6,000 "tree pits" along neighborhood sidewalks, working in soup kitchens, assisting with recycling efforts, and cleaning the court and police precinct.

- **Offender Treatment**

Treatment efforts are based on the premise that an arrest creates a crisis in an offender's life, and that such crises make most people vulnerable to change - for better or worse, depending upon other circumstances in the defendant's life. The

community court views the arrest as a potential turning point should the defendant want to take advantage of related services. The Midtown Community Court provides opportunities for drug counseling, education, job training, and health care - all on site. More than a dozen city agencies and local non-profit organizations teach English, provide counseling, provide substance abuse treatment, help locate housing, help defendants get jobs, and test for diseases. One mark of success of the court in the first year was that over 1,000 defendants voluntarily returned to the court for further assistance after they had completed their sentences.

- Problem Solving

Just as the Neighborhood District Attorney focuses on solving noncriminal problems that affect the quality of life in a neighborhood, the community court addresses problems that erode community pride and safety. Court mediators facilitate communication and dispute resolution to restore and build community spirit, as when a bar owner agrees to take steps to keep the noise level down in the late hours.

- Public Involvement

Often members of the judiciary and court administrators eschew involvement in community activities because they feel such activities would impair the impartiality and neutrality of the court processes. Community courts are designed to mobilize public interest and to provide leadership in developing new partnerships to enhance community life. The Midtown Community Court encourages residents to visit the court, watch proceedings, and participate in designing community restitution opportunities. Information is disseminated through community advisors, a court newsletter, and even a visible wide-screen video-display of the daily court schedule.

f. It is suggested that a Restorative Community Justice model of community courts or decision-making processes would be an amalgam of the examples above. It might include the following elements.

- Location in the community.
- Swift justice with community and victim participation in the process. (Representatives of the Midtown Community Court emphasize that the immediacy of sanctions has far more impact on offenders than severity of sanctions.)
- Community and victim participation in the selection of sanctions and in the determination of victim and community restitution.
- Twenty-four accessibility.
- Alternative methods of decision-making, including traditional adjudication, community consensus-building, and peer adjudication, plus dispute resolution, mediation, or victim offender reconciliation. The alternatives would be matched to the type of violation of social order or crime that occurred, the age of the victim or offender, and the advice of the community or victim.

The Red Hook Community Justice Center will attempt to take the idea of a community court to its logical conclusion. The community in question is on the Brooklyn side of the New York waterfront, home to some 12,000 people -two-thirds African-American and Hispanic public housing tenants, the rest white and

Puerto Rican residents, mostly blue-collar workers. As the Center's mission statement summarized:

“The vision is ambitious: once completed, the Justice Center will be a multifaceted, multi-service facility, breaking down the walls of distrust, fear and misunderstanding that have traditionally divided courts from low-income communities. By hosting community meetings, mediating quality-of-life problems, offering a variety of social services and attracting new resources to the community, the Justice Center hopes to transform the nature of a court. In the years ahead, the Justice Center will be an important community resource, a responsible institutional citizen, and a force for positive change in Red Hook.”

4. Community Corrections

The concept of “community corrections” originally embraced the normal work of probation and parole supervision. The term has taken on new meaning when it is used to describe new initiatives in non-incarceration sentencing. The “goals and objectives” of the Model Adult Community Corrections Act show how certain ideas of restorative justice are already found in modern correctional thinking:

“1) To enhance public safety and achieve economies by encouraging the development and implementation of community sanction as a sentencing option;

“2) To enhance the value of criminal sanctions and ensure that the criminal penalties imposed are the most appropriate ones by encouraging the development of a wider array of criminal sanctions;

“3) To increase the community's awareness of, participation in, and responsibility for the administration of the corrections system;

“4) To ensure that the offender is punished in the least restrictive setting consistent with public safety and the gravity of the crime;

“5) To provide offenders with education, training and treatment to enable them to become fully functional members of the community upon release from criminal justice supervision;

“6) To make offenders accountable to the community for their criminal behavior, through community service programs, restitution programs, and a range of locally developed sanctions; and

“7) To foster the development of policies and funding for programs that encourage jurisdictions to minimize the use of incarceration where other sanctions are appropriate.”

While most “community corrections” agencies supervise just probationers, at least some also supervise parolees or those who have completed a determinate prison term. Typically, community corrections officers have extensive powers of search and seizure, and can issue their own arrest warrants for violations.

Under the Model Act, a statewide community corrections plan would be developed and monitored by a State Criminal Justice Council made up of criminal justice officials and members of the public. Communities would also establish a local Community Corrections Board with responsibilities for developing and implementing a community corrections plans. That Board would be composed of local criminal justice officials and members of the public. Over a dozen states have instituted community corrections in the manner envisaged by the Model Act.

Its suggested sentencing alternatives include supervised probation, community restitution (or “community service” in the Model Act), home confinement, electronic surveillance, treatment and counseling (either through residential or outpatient facilities), vocational training or mandatory employment, restitution to the victim, fines, and victim-offender education or reconciliation programs.

While the concept of community corrections has been successfully implemented in some jurisdictions, implementation in others has been impeded by structural problems. Community corrections agencies are often understaffed. They do not have formal patrol duties or twenty-four hour on-scene capabilities. While a community corrections officer may supervise offenders who are placed in a community, the officer may not be based there, and in most cases community members are not actively involved in the supervision or monitoring. Victim participation is also minimal. It is significant that the kind of State Criminal Justice Council or local Community Corrections Board proposed by the Model Act does not designate a role for victim participants. Finally, community service and restitution to individual victims are suggested sanctions rather than debts that the courts must order to be repaid. From the RCJ perspective, this confuses the ideas of restitution, restoration, and retribution.

In the Restorative Community Justice model under review, community corrections can have a much larger role than the Model Act would suggest. Communities and victims can participate in the corrections process in several meaningful ways:

a. Community corrections officers can develop partnerships with community members and other criminal justice agencies to develop community-wide monitoring and reporting of suspicious activities. The Volunteer Community Corrections Monitor Program described in the community policing section above could itself be expanded to have not only police officers monitor those under community corrections supervision but also trained citizens. That idea was again suggested in Portland's Neighborhood District Attorney Program in the guise of citizen volunteer “junior probation officers.”

b. Community boards comprised of citizens, including victims, can be used in violation hearings as well as in the establishment of appropriate sentences. Community residents often know far more about the day-to-day activities of people on probation or under community custody status than do community corrections officers.

c. Community members can also be used to support offenders as they move through the process of providing restitution to the community and the restoration of their own status as a member of that community. A 1991 Public Agenda Foundation study of public attitudes in Delaware revealed strong public support of community restitution because it was a way for offenders to improve job skills, do productive work, and be held accountable by giving something back to the community. It is important to recognize that community restitution in a restorative sense is more than simply doing a designated task. It is critical that the restitution be work that is constructive and restorative in nature for the community, the victim, and the offender. This means that sanctioners need to be creative in their restitution plans.

d. Finally, community members and victims can be involved in community corrections efforts by participating and supporting victim impact panels and other kinds of victim education programs for offenders. These programs contribute to offenders' understanding the harm done to their victims and to their understanding of the wounds they too have suffered at the hands of others. One of the merits of bringing up an

offender's own history of victimization in an educational or treatment setting is that, properly managed, the issue can be addressed without offering the slightest sense of exoneration for their own criminal conduct.

Two examples serve to illustrate creative uses of communities involved in correctional functions.

- In Detroit, Save Our Sons and Daughters (SOSAD) was initially established to help surviving relatives of homicide victims. But soon after its inception, its goals were broadened to address both young victims and offenders involved in inner-city violence. Staff and volunteers work with survivors of violence as they deal with the trauma of victimization. They also work in prisons to encourage offenders to return to the community in good standing after serving their sentences. SOSAD has been successful in promoting the use of Peace Zones in which violence prevention is a priority and reintegrating or restoring young offenders back to their neighborhoods is a major objective.

- In El Paso, Texas, Judge Phillip Martinez handles all juvenile offenses in the court system. When a first-time juvenile offender comes before him, he works with a community organizer to bring together the offender, his family, and representatives of the community and the victim to establish an appropriate sentence. Under this “Conference Committee Program,” a probation officer is assigned to each school in his or her district to monitor the implementation of the sentences developed in this way. The community members, school officials, and other students are all involved in holding the juvenile accountable. This has resulted in an 80 percent success rate in handling first-time juvenile offenders (plus a few re-offending property offenders) and has been in operation for almost six years.

5. Victim Service Programs in the Restorative Community Justice Model.

There are three primary roles for victim service programs in the RCJ model. The first is to help victims and communities address the immediate and long-term trauma of victimization; the second is to help victims and communities access and participate in opportunities to restore justice; and the third is to establish and maintain training and education programs for all agencies and members of the community on victim issues.

- a. When victims and communities are afflicted by crime, emotional trauma is a likely result. It may be greatly exacerbated by financial losses, physical injury, or the death of a loved one, but the impact of sudden, random arbitrary violence, is, in itself, crisis-inducing. Victim advocates play an initial role at the community level in providing immediate practical aid to victims and their families and assisting them with filing for compensation or other forms of financial aid. They also may play a role in connecting them to sources of additional forms of assistance, such as transportation, alternate shelter, document replacement, and the like. But in the course of any other kind of help, the victim advocate's primary goal is to help defuse the psychological crises that face those traumatized by crime.
- b. For victims and communities involved in the restorative justice process, and hence involved in the criminal justice system, perhaps a summary of the victim advocate's role is to “explain, reassure, and support” the victim and community member at every stage of the justice proceedings. This may mean working with law enforcement to defuse victims at the scene of a crime; it may mean working with

prosecutors to ensure that there is court accompaniment to individual victims as well as court watchers; it may mean working with victims to translate their thoughts and reactions into a victim impact statement that effectively states their case to a court or decision-making body; it may mean providing accompaniment to victims appearing on victim impact panels or notification of an offender's status upon release.

- c. Finally, victim service programs must be engaged in constant training and education of their allied professionals in current victim needs and rights as well as the training of communities in violence prevention and public awareness of victim assistance. This training and education should be done in collaboration with other agencies but the victim service provider is uniquely placed to continue to ensure that the refocusing of justice from the offender in the courts to the victim and victims in the community takes place.

In fact, it may not too broad a statement to say that the role of the victim advocate can be the glue that makes all the components of the RCJ model hold together. By continuing to express the concerns of the individuals and groups who have been harmed by crime, the advocate can keep the model's principles of responsibility and accountability at the forefront of the day-to-day operations of the cooperative enterprise.

6. Community Participation in the Restorative Community Justice Model

The sixth program element in the implementation of Restorative Community Justice is the involvement of community citizenry through volunteer work and partnerships. This element has been integrated in the earlier discussions of the five more formalized roles and functions.

However, there are two concerns to which community members should pay special attention.

- a. There is a need to establish as priorities for all community justice agencies a focus on the quality of life, on violence prevention, and on victim assistance issues. Those priorities should be the ultimate goals of every community action plan. If those are priorities and a global vision is maintained, it is easy to see why planting and maintaining a public garden (for example) may improve the aesthetics of the area, prevent the development of an open air drug market, and provide healing opportunities for victims to join with other community members to reconstruct their lives.
- b. In order to maintain those priorities, communities should establish a permanent task force (with rotating memberships) to coordinate specific partnerships in conjunction with their Restorative Community Justice agencies, and also help forge partnership agreements that address specific problems. Such coordination and agreements assist in ensuring accountability of the community as well as individual agencies and people.

Restorative Community Justice: Policy Initiatives

To establish a system of Restorative Community Justice, it is probable that a number of changes in legislation might be required at the state or local level. Two immediate changes are called for.

First, there is a need to change the legislative terminology of “community service” as a sanction to “community restitution”. Community restitution should be defined as activities done by offenders that contribute to the quality of life of a community and that “pay back” the community for the harm done. It should not be used or confused with retribution or punishment on the one hand or voluntary service on the other.

And second, in all legislation addressing elements of Restorative Community Justice such as community policing, community prosecution, community courts, or community corrections, an explicit role for victims - as individual and collective consumers of the justice system - should be defined and provided for.

In addition, the following are some policy issues to be considered.

1. Are there violations of social order that should be sanctioned through ordinances or civil processes such that there are legal methods to give notice and establish grounds for more serious arrests and prosecution if those violations occur?

Portland established “drug-free zones” in 1992 as a part of its ordinances to secure public peace, safety, and morals. In 1994, the ordinance was amended to provide for “civil exclusions” for certain crimes or infractions. If these exclusion orders are violated, wrongdoers are subject to immediate arrest for criminal trespass in the second degree under Oregon law. This provides community police and prosecutors with a potent tool to “hassle” individuals consistently contributing to community disorder. The use of the vernacular here is a reminder that communities should have the ability to respond appropriately to those who crudely despoil community life. But the vernacular is also a reminder that communities and their agents of justice have in the past used such authority to infringe on the rights of individuals whose appearance or conduct may not conform to community norms but whose misconduct does not properly rise to a police matter.

2. What types of crimes or criminals should be processed through alternative courts or decision-making processes with community involvement?

Some have suggested that alternative courts and their like should primarily be used in cases involving first offenders, juveniles or misdemeanants. However, Judge F.W.M. McElrea, in reviewing the Youth Justice system in New Zealand, has a more ambitious view:

“My conclusion therefore is that we indeed do have a new paradigm of justice. It is not simply an old model with modifications . . . It is a spirit which I would characterise as responsible reconciliation. The term 'reconciliation' connotes a positive, growing process where strength is derived from the interaction of victim, offender and family in a supportive environment. It is a 'responsible' process in that those most directly affected take responsibility for what has happened and for what is to happen. In the process most of the power previously vested in the court is transferred to the local community which now carries this new responsibility.

“Perhaps when the real strengths of the new model have been understood we will be able to take it beyond the Youth Court, find a mechanism for defining a relevant community group for adult offenders, involve victims and the wider process in finding solutions, and in the process remove from the courts and our prisons much of the burden of unrealistic expectation under which they labour.” (Emphasis added.)

3. Should judges be mandated to order community restitution whenever communities make a showing of negative impact due to crime? Should personal restitution be mandated to fully compensate all known victims for all losses as a part of any plea? And should “community service” be legislatively redefined to designate voluntary services in

the community contributed by citizens in good standing while “community restitution” be used to denote activities that offenders do to satisfy restoration mandates?

4. Should communities be allowed to submit victim impact statements concerning violations of social order and crimes processed in the Restorative Community Justice process?

5. Should communities be given standing to sue drug-related nuisances such that successful plaintiffs can enjoin continuation of the drug nuisance, force a judicial sale of property used in the nuisance, and recover damages from the sale proceeds?

This is a concept proposed by Congressman Charles E. Schumer in a proposed Community Empowerment Against Crime Act. The cause of action is similar to current civil forfeiture provisions which target property used to facilitate crime without necessitating a criminal prosecution, and to “private attorneys general” statutes that induce private citizens to bring suits enforcing federal law and keep a share of the recovery.

Perhaps in the development of Restorative Community Justice, one should look increasingly to these and other civil-law tools of redress and accommodation as ways to assert legitimate community interests while seeking to prevent increases in crime and violence.

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Appendix

The following is the sample partnership agreement referred to in the monograph that was developed by the groups described in the document at the initiative of the Neighborhood District Attorney program in Portland, Oregon.

Old Town/Chinatown Community Policing Problem-Solving Action Plan and Partnership Agreement

Operation No Drugs

I. Introduction:

The Old Town/Chinatown Community Policing Steering Committee was formed for the purpose of bringing all responsible organizations/stakeholders together to develop a plan on how to improve the quality of life in the area commonly known as Old Town. This committee has drafted an action plan which had as one of its priorities to make Old Town a drug-free zone. Operation No Drugs is the name for the Community Partnership Agreement/Problem Solving Action Plan that seeks to make that priority - to make Old Town a drug-free zone - a reality. This agreement addresses only priority number 6 of the Old Town/Chinatown Community Policing Project Action Plan which is to make Old Town a Drug-Free Zone (DFZ). This agreement complements the efforts of the Old Town/Chinatown Community Policing Steering Committee, as well as other organizations, to address quality of life issues and problems that affect the Old Town/Chinatown area.

II. Stakeholders:

- Old Town/Chinatown Neighborhood Association (OTCTNA)
- Pearl District Neighborhood Association (PDNA)
- Downtown Community Association (DCA)
- Historic Old Town Association (HOT)
- Portland Metropolitan Chamber of Commerce
- Association for Portland Progress (APP)
- Chinese Chamber of Commerce
- Chinese American Citizens' Alliance
- Hispanics in Unity for Oregon
- Hispanic Services Roundtable
- Old Town Social Service Agencies
- Portland Police Bureau
- Multnomah County District Attorney's Office (DA)
- Multnomah County Sheriff's Office Corrections Branch
- Immigration and Naturalization Service (INS)

III. Problem As Agreed Upon By Stakeholders:

Illegal drug activity occurs on the sidewalks and streets of the Old Town/Chinatown neighborhood. This neighborhood has become an open-air drug market with the drug dealers and drug users taking over the sidewalks and streets. This has seriously impacted the way of life of the business, social service agencies, and residents.

IV. Major Goal:

To diminish illegal drug activity. To make business, social service agencies, residents, and visitors feel safe on the sidewalks and streets of Old Town/Chinatown neighborhood. To change the image of the neighborhood from an open-air drug market to a safe place to live, work, and visit. To truly make Old Town/Chinatown a Drug-Free Zone (DFZ).

V. Strategies/Actions To Be taken By Each Stakeholder:

A. Starting Date: April 1, 1993

B. Review Date: October 1, 1993

The Old Town/Chinatown Neighborhood Association Agrees to:

1. Work with the Volunteer Coordinator for the Citizen Crime Reporting Project in developing a pool of volunteers to become Volunteer Crime Reporters (VCR's).
2. Participate in procuring equipment and materials necessary to implement the Citizen Crime Reporting Project, such as cellular phones, etc. along with the PDNA, DCA, HOT, and APP.
3. Work with the APP in finding an office space to become the Citizen Crime Reporting Project Office.
4. Develop and implement on a monthly basis a Public Safety Education and Training Program for the people who live and work in the neighborhood. To the extent possible, this program will attempt to be available in several different languages to accommodate the diverse population of the Old Town/Chinatown area.
5. Develop and distribute a Drug-Free Zone Guide and User Card which explains what citizens can do when they see illegal activity occurring in the entire area of the downtown Drug-Free Zone.
6. Develop and distribute a poster which will identify the entire area of the downtown Drug-Free Zone as a drug-free area.
7. Continue to develop the "Jasper lantern" project.
8. Work with APP, Hispanics In Unity For Oregon, and the Hispanic Services Roundtable in developing a list of qualified people who speak Spanish who would be willing to volunteer their time to (a) translate for the PPB officers who have an arrested person in custody at the Old Town Precinct who only speaks Spanish, and (b) educate Spanish speaking people about the Drug-Free Zone.
9. Monitor the neighborhood for any increases or decreases in illegal drug activity.
10. Work with the PPB Old Town Detail sergeants in distributing a selected number of photographs of the excluded subjects under the Drug-Free Zone ordinance to appropriate businesses in the neighborhoods and to encourage those businesses who receive those photographs to watch for those subjects and to call PPB if an excluded subject is seen in the DFZ area.

The Pearl District Neighborhood Association Agrees to:

1. Work with the Volunteer Coordinator for the Citizens Crime Reporting Project in developing a pool of volunteers to become Volunteer Crime Reporters (VCR's).
2. Participate in procuring equipment and materials necessary to implement the Citizens Crime Reporting Project, such as cellular phones, etc. along with the OTCTNA, DCA, HOT, and APP.
3. Develop and implement the Pearl District's Cellular Watch Foot Patrol. The Watch Patrol volunteers will patrol the Pearl District neighborhood at varying times of the day. They will be equipped with a cellular phone to report criminal activity directly to the police.
4. Work with the police to monitor any increases or decreases in illegal drug activity.
5. Work with the Portland Police Bureau Old Town Detail sergeants in distributing to the members of the foot patrol photographs of the excluded subjects under the Drug-Free ordinance.

The Downtown Community Association Agrees to:

1. Work with the Volunteer Coordinator for the Citizens Crime Reporting Project in developing a pool of volunteers to become Volunteer Crime Reporters (VCR's).
2. Participate in procuring equipment and materials necessary to implement the Citizen Crime Reporting Project, such as cellular phones, etc. along with the OTCTNA, PDNA, HOT, and APP.
3. Monitor the neighborhood for any increases or decreases in illegal drug activity.
4. Work with the PPB Old Town Detail sergeants in distributing a selected number of photographs of the excluded subjects under the Drug-Free Zone ordinance to appropriate businesses in the neighborhood and encourage those businesses who receive those photographs to watch for those excluded subjects and to call PPB if an excluded subject is seen in the DFZ area.

The Historic Old Town Associations Agrees to:

1. Work with the Volunteer Coordinator for the Citizens Crime Reporting Project in developing a pool of volunteers to become Volunteer Crime Reporters (VCR's).
2. Participate in procuring equipment and materials necessary to implement the Citizen Crime Reporting Project, such as cellular phones, etc. along with the OTCTNA, PDNA, HOT, and APP.
3. Monitor the neighborhood for any increases or decreases in illegal drug activity.
4. Work with the PPB Old Town Detail sergeants in distributing a selected number of photographs of the excluded subjects under the Drug-Free Zone ordinance to appropriate businesses in the neighborhood and encourage those businesses who receive those photographs to watch for those excluded subjects and to call PPB if an excluded subject is seen in the DFZ area.
5. Develop and implement a facade lighting project with the goal to light up the Historic Old Town district by installing lighting that in some cases back-lights the buildings and in others shines light down onto the sidewalks and streets. This will be an ongoing project that will attempt to light up the entire Historic Old Town area by the end of 1994.
6. Develop and implement a crime watch program which will include the installation of video cameras and signs to deter and monitor illegal drug activity with the Drug-Free Zone area.

The Portland Metropolitan Chamber of Commerce Agrees to:

1. Help identify sources of equipment and materials necessary to help the stakeholders implement Operation No Drugs.
2. Continue to encourage Multnomah County and the State of Oregon to maintain adequate resources for local and state corrections programs.

The Association for Portland Progress Agrees to:

1. Provide one or more Portland Progress patrol officers to work as Volunteer Crime Reporters in the Citizen Crime Reporting Project.
2. Work with the Old Town/Chinatown Neighborhood Association in finding and office space to become the Citizen Crime Reporting Project Office.
3. Work with the DA DFZ Coordinator and the PPB DFZ Coordinator in finding a citizen to be the Volunteer Coordinator for the Citizen Crime Reporting Project.
4. Participate in procuring equipment and materials necessary to implement the Citizen Crime Reporting Project, such as cellular phones, etc. along with the OTCTNA, PDNA, DCA, and HOT.
5. Work with the Old Town/Chinatown Neighborhood Association, Hispanics In Unity for Oregon, and the Hispanic Services Roundtable in developing a list of qualified people who speak Spanish who would be willing to volunteer their time to (a) translate for PPB officers who have an arrested person in custody at the Old Town Precinct who only speaks Spanish, and (b) educate the Spanish-speaking people about the Drug-Free Zone.
6. Monitor the Drug-Free Zone area through the Portland Progress guides and patrol officers for any increases or decreases in illegal drug activity.
7. Through the Portland Progress guides and officers, watch for and report if seen all excluded subjects under the Drug-Free Zone ordinance to the PPB district car.
8. Develop and implement a program whereby the Portland Progress Field Office phone number will be provided to those people who live and work in the downtown Drug-Free Zone areas as well as the number to call when they see illegal drug activity occurring. The Portland Progress dispatcher would act as the relay of that information to the on-duty PPB district car by cellular phone.

The Chinese Chamber of Commerce Agrees to:

1. Encourage their individual members to become involved in the Old Town/Chinatown Neighborhood Association and to participate in the implementation of the association's programs as outlined in this partnership agreement.
2. Translate into Chinese the Drug-Free Zone Guide and User Card produced by the Old Town/Chinatown Neighborhood Association and distribute it to the Chinese-owned businesses in the Old Town/Chinatown area.
3. Work with the Old Town/Chinatown Neighborhood Association in presenting their Public Safety education and Training Program to the Chinese people who live and work in the Old Town/Chinatown area.
4. Monitor the Chinatown area for any increases or decreases in illegal drug activity.

The Chinese-American Citizens' Alliance Agrees to:

1. Encourage their individual members to become involved in the Old Town/Chinatown neighborhood Association and to participate in the implementation of the association's programs as outlined in this partnership agreement.

2. Translate into Chinese the Drug-Free Zone guide and User Card produced by the Old Town/Chinatown Neighborhood Association and distribute it to the Chinese-owned businesses in the Old Town/Chinatown area.
3. Work with the Old Town/Chinatown Neighborhood Association in presenting their Public Safety Education and Training Program to the Chinese people who live and work in the Old Town/Chinatown area.
4. Monitor the Chinatown area for any increases or decreases in illegal rug activity.

Hispanics In Unity For Oregon Agrees to:

1. Provide volunteers and other resources to aid the Hispanic Access Center's outreach program in the Old Town/Chinatown area.
2. Seek both government and private funding for the Hispanic Access Center's outreach program in the Old Town/Chinatown area.
3. Work with the Old Town/Chinatown Neighborhood Association, APP, and the Hispanic Services Roundtable in developing a list of qualified people who speak Spanish who would be willing to volunteer their time to (a) translate for PPB officers who have an arrested person in custody at the Old Town precinct who only speaks Spanish, and (b) educate Spanish-speaking people about the Drug-Free Zone.
4. Work with the Portland Police Bureau in developing a program to encourage and attract Hispanic people to apply to become police officers with the bureau.
5. Translate into Spanish the Drug-Free Zone Guide and User Card produced by the Old Town/Chinatown neighborhood Association and distribute it to the Hispanic-owned businesses in the Old Town/Chinatown area.

The Old Town Social Service Agencies Agree to:

1. Social Service Agencies will work through the Old Town/Chinatown Neighborhood Association's Housing and Community Service Committee to meet their commitments under this agreement.
2. Social Service Agencies will work with the PPB Old Town Detail sergeants in distributing the photographs of the excluded subjects under the Drug-Free Zone ordinance to the social service agencies and encourage those agency staff members who receive those photographs to watch for those excluded subjects and to call PPB if an excluded subject is seen at their respective agency or anywhere else in the DFZ area.
3. Social Service Agencies will identify the drug problems that most significantly affect the operation of their programs and develop and implement a Drug Problem Plan that will identify the agency actions needed to eliminate the problem.
4. Social Service Agencies will develop a Physical Facility Plan to secure their buildings and reduce the opportunities for drug use and/or dealing which may include increased security personnel, better lighting, and environmental changes to reduce access to unsecured areas.

The Portland Police Bureau Agrees to:

1. Assign an officer to work with the DA DFZ Coordinator and the Volunteer Coordinator in the implementation of the Citizen Crime Reporting Project.
2. Assign a two-person bike patrol on both the day and afternoon shifts to act as the DFZ Bike Patrol which will respond to calls from the Volunteer Crime Reporters on a daily basis when available.

3. Create a Tactical Drug intervention Team which will undertake either “Spotting Missions” and/or “Undercover Buy Missions” in the Drug-Free Zone on a continual basis starting April 1, 1993 and continuing through October 1, 1993.
4. Coordinate the use of outside agencies in doing drug investigations and missions in the Drug-Free Zone area on an available basis.
5. Assign two horse patrol teams to patrol the Drug-Free Zone area on a daily basis as part of their routine functions.
6. Assign the PPB Drug Dog to work in the Drug-Free Zone and patrol the area several times a month.
7. Distribute up-to-date photographs of the excluded subjects under the DFZ ordinance to the social service agencies in the Drug-Free Zone area, and distribute a selected number of photographs of excluded subjects under the Drug-Free Zone to the OTCTNA, PDNA, DCA, HOT, and APP.
8. Implement the Drug-Free Zone ordinance both by excluding people who qualify and arresting those who return for Criminal Trespass.

The Multnomah County District Attorney's Office Agrees to:

1. Aggressively prosecute all prosecutable drug crimes that are committed in the Drug-Free Zone area.
2. Aggressively prosecute all prosecutable violations of a DFZ exclusion order.
3. Facilitate the processing and monitor the outcome of all illegal drug cases and DFZ trespass cases which occur in the Drug-Free Zone area.
4. Assign the Central Businesses District DDA to be the DA DFZ Coordinator and work with the Volunteer Coordinator in the implementation of the Citizen Crime Reporting Project.
5. Organize court watches of any illegal drug cases arising in the Drug-Free Zone at the request of any stakeholders.
6. Coordinate with the Multnomah County Sheriff's Office Corrections Branch and the Immigration and Naturalization Service to develop and implement an efficient and expedient system for processing INS deportation cases.
7. Coordinate with the Multnomah County Sheriff's Office Corrections Branch and the Immigration and Naturalization Service to ensure that upon resolution of all local charges and sentences, that all undocumented aliens with pending INS deportation proceedings will, at the discretion of the Portland INS office, either be kept temporarily at MCDC, or relocated to another county jail or INS service processing facility while pending determination of the deportation proceedings.

The Multnomah County Sheriff's Office Corrections Branch Agrees to:

1. Coordinate with the Multnomah County District Attorney's office and the Immigration and Naturalization Service to develop and implement an efficient and expedient system for processing INS deportation cases.
2. Allow the Portland Police Bureau officers to book all suspects arrested for Criminal Trespass II for violating a DFZ exclusion order in the Drug-Free Zone area into the Multnomah County jail facility.
3. Coordinate with the Multnomah County District Attorney's office and the Immigration and Naturalization Service to ensure that upon resolution of all local charges and sentences all undocumented aliens with pending INS deportation proceedings will, at the discretion of the Portland INS office, either be kept

temporarily at MCDC, or relocated to another county jail or INS service processing facility while pending determination of the deportation proceedings.

4. Allow the Portland Police Bureau officers to book all suspects arrested for felony Delivery of a Controlled Substance (DCS) and/or felony Possession of a Controlled Substance (PCS) in the Drug-Free Zone area into the Multnomah County jail facility.

Immigration and Naturalization Service Agrees to:

1. Agents will review as early as possible information concerning all drug arrests in the Drug-Free Zone area and determine which of those arrested subjects are undocumented aliens and place INS holds on all those who qualify for deportation.
2. Initiate deportation proceedings as resources permit where an undocumented alien has been convicted of a drug-related crime which was committed in the Drug-Free Zone area.
3. Coordinate with the Multnomah County District Attorney's office and the Multnomah County Sheriff's Office Corrections Branch to ensure that upon resolution of all local charges and sentences all undocumented aliens with pending INS deportation proceedings will, at the discretion of Portland INS office, either be temporarily kept at MCDC, or relocated to another county jail or INS service processing facility while pending determination of the deportation proceedings.
4. On a case-by-case basis, coordinate with the United States Attorney for Oregon the initiation of federal criminal illegal reentry proceedings against undocumented aliens who return to Oregon illegally after being deported for committing an illegal drug crime.
5. Coordinate with the Multnomah County District Attorney's office and the Multnomah County Sheriff's Office Corrections Branch to develop and implement an efficient and expedient system for processing INS deportation cases.

VI. Evaluation:

The Old Town/Chinatown Community Policing Steering Committee will be responsible for the general oversight of Operation No Drugs. Each stakeholder will report to the committee at the first meeting of each month starting in May of 1993 on the progress of their projects under Operation No Drugs. The committee will review and evaluate the success of each project and make necessary changes or additions to this partnership agreement on a monthly basis to ensure that Operation No Drugs achieves its goal.

On October 1, 1993, the Old Town/Chinatown Community Policing Steering Committee will review the overall success of Operation No Drugs and determine whether to extend, modify, and/or terminate this partnership Agreement.

VII. Partnership Agreement Signature Block:

We, the undersigned on behalf of the stakeholders we represent, have agreed upon the above listed problems and strategies. We have made a commitment to dedicate the necessary resources from our respective organizations to ensure that our goal of making Old Town/Chinatown and the surrounding neighborhoods a Drug-Free Zone is achieved, that Operation No Drugs is a success.

