



# Courts & Community Collaboration

## Research Services



## Community Courts: Prospects and Limits\*

by David B. Rottman, Ph.D.

This country once had what were, in effect, community courts. The attachment between the courts and their communities grew weak as urban areas expanded. But the trend is growing again to build attachments between communities and courts. Although the history of community courts is complex, it suggests the parameters within which future courts will develop.

Prospects and limits for community courts are seen in the few existing models for comprehensive court and community collaboration. The contrasting examples of "Peacemaking" in the Navajo Nation's court system and the Midtown Community Court and Red Hook Community Justice Center in New York City are discussed here as touchstones for exploring the possibilities of community-focused courts.

### Court centralization and its legacy

From the start of this century to its middle, the agenda for court reform was set by Roscoe Pound, dean of the Harvard Law School. Pound was keenly aware of the ties that once bound courts and communities in an era when limitations on transportation prevented litigants from traveling without great inconvenience. Gradually, physical distance became less of a barrier to access, but the real change came in the shift away from the dominance of the homogeneous, rural community. Pound wrote that the type of community that emerged was one in "which our legal institutions had no experience."<sup>1</sup>

Factors promoting the shift. Cities required new types of courts, notably ones specializing in business law, juvenile offenses, and small claims.<sup>2</sup> Legal specialization and professionalization were the twin engines of change. New types of disputes and the increasing involvement by lawyers as judges and as advocates led to the creation of different types of courts.

The number and variety of courts proliferated accordingly; in 1931, 556 courts were serving the citizens of Chicago.<sup>3</sup> That expansion was of greater concern to reformers than the prospect of estrangement

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<sup>1</sup> Quoted in Tannenbaum, Frank, *Crime and the Community*, Boston: Ginn and Co., 1938:30.

<sup>2</sup> See Friedman, Lawrence, *Crime and Punishment in American History*, New York: BasicBooks, 1993.

<sup>3</sup> Glick, Henry, and Kenneth Vines, *State Court Systems*, Englewood Cliffs, NJ: Prentice-Hall, 1973:25.

between courts and communities. As a result, 65 years later, a single court with a main courthouse and ten satellite locations serves the city of Chicago. The pattern of consolidation of trial courts into a single location was repeated many times. The rationale was efficiency and coordination, but one result was that courts became less visible to the community.<sup>4</sup>

There were other, less evident motives for consolidation. Reformers like Pound wanted to sever the link between the courts and local politics; they used court unification, along with specialization and professionalization of the law, to do this. They also wanted to eliminate jurisdictional overlaps and thus prevent litigants from "shopping" for a sympathetic judge and court.<sup>5</sup>

## Steps toward a renewed community focus

During the 1960s and 1970s, the national commissions on crime promoted a quest for the justice system's community roots by espousing citizen participation. Harbingers of a renewed community focus can be found within the traditional court structure from the 1960s onwards. Court-watching programs, judicial disciplinary commissions, and permanent court advisory committees flourished. The primary goal of most of these early efforts was limited to serving as "conduits of information" between the courts and the community.

**Court devolution.** More recently, in response to pressures to provide better service, courts are decentralizing facilities. Some have adopted the ATM machine as their model: A court system permitting access at many remote locations enables people to file forms or pay fines and fees. This enhances convenience, but it does not constitute collaboration with the community.<sup>6</sup>

**Citizen participation.** If by the mid-1980s opportunities for citizen participation in the courts were not plentiful, they were expanding. (See "Community and Court Involvement Varies in Purpose and Type.") During the 1990s, the widespread adoption of community policing encouraged extension to the courts of similar approaches. The underlying premises for involving the community with the courts are that the urban social problems manifest themselves as problems for the courts and that, in turn, fair adjudication of cases requires consideration of the context for understanding these problems that only the community can provide.

**Community-focused courts.** A community-focused court is a more expansive effort still, requiring ongoing collaboration between a trial court and one or more community groups either for a specific purpose or in a major aspect of the court's adjudicatory scope. This definition does not generally encompass programs that consist primarily of court outreach, such as public education. On the other hand, court "inreach" (court monitoring, for example) comes closer to meeting the definition, particularly if its objective is to forge a more broadly based connection between court and community.

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<sup>4</sup> Johnson, Earl, *Courts and Communities*, Williamsburg, VA: National Center for State Courts, 1978.

<sup>5</sup> Colonial-era legal philosophy and the anti-Federalists in the early 19th century stressed the virtues of local jurors as both fact-finders and as the expression of the community's conscience. See Abramson, Jeffrey, *We, the Jury: The Jury System and the Ideal of Democracy*, New York: BasicBooks, 1994, chapter 1.

<sup>6</sup> Planet, Michael, "Future Directions in the Practice of Court Management," in *Handbook of Court Administration*, eds. Hays, S., and C. Graham, New York: Marcel Dekker, 1993:503.

## Court and Community Involvement Varies in Purpose and Type<sup>7</sup>

Program Purpose	Program Types
Better court practices	Citizens' advisory committees Futures commissions Public opinion and exit surveys Community volunteer panels Court-watching programs Teen courts Judicial evaluation programs Citizen sentencing panels
Better public access	Telephone hotlines Divorce workshops Day-care facilities Information kiosks
Increased public knowledge of courts	Courthouse tours Citizen guides "Meet your judge" programs School outreach Media outreach Public service announcements

### The unique community of a court

Why has a genuine community focus been so slow to reemerge in the Nation's trial courts? Courts lack law enforcement's easy affinity with the community that has allowed community policing to achieve prominence. When people talk about their police force, they have in mind a local entity with a distinct image, a high-profile official in charge, and a set and knowable boundary. Police officers are visible, entering every neighborhood of their jurisdiction. Courts lack this clear identity.

**An indistinct image.** To most people, the term "the courts" conjures up an amorphous image of the judicial branch in which local, State, and Federal jurisdictions merge without distinction. Courts are remote and mysterious, and while police chiefs are known in their communities, the chief judge is not. Furthermore, the organization he or she heads consequently lacks a human face. Lack of knowledge about what the courts do—and about what court does what—is pervasive.

This amorphous image is supplemental by the public's ambivalent opinion of the courts. Survey research reveals a judiciary that has great confidence in the courts but a public that consistently rates them lower than other public institutions (although not lower than the other two branches of government).<sup>8</sup> All this makes collaboration between courts and communities difficult.

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<sup>7</sup> The prevalence of various programs is assessed in two recent surveys: "The Court-Community Relations Survey," conducted by the National Center for State Courts in 1993 and "The Survey of Strategies to Improve Public Trust and Confidence," conducted by the American Judicature Society in 1994.

<sup>8</sup> Two recent examples of surveys on the courts are the American Judicature Society's Results of a National Survey of Strategies To Improve Public Trust and Confidence in the Courts, Chicago, 1994, and the State-specific Reinventing Justice 2022, Boston: The Supreme Judicial Court of the Commonwealth of Massachusetts, 1992.

## What is the community of a court? Three models

Some different models exist for a community-focused court today.

**Navajo Peacemaking.** In the late 19th century, traditional Navajo approaches to resolving disputes were superseded by the imposition of a court system rooted in Anglo-American adversarial justice. Subsequent reforms recreated a role for Navajo traditions and principles in the judicial process.

The infusion of Navajo values is most evident in the Peacemaker Division of the Navajo Nation judicial branch, which emphasizes nonadversarial processes in dispute resolution. The formal components are a peacemaker, who is an individual of recognized ability and wisdom, the disputants and their extended families, and the use of Navajo religious ceremonies. Peacemaking, however, often operates within the framework of such familiar proceedings as intake interviews and subpoenas, and the resulting agreements can be incorporated into court orders.<sup>9</sup>

Peacemaker sessions follow a similar pattern. Ground rules are established, prayers are said, all people present are involved in investigation and questioning, a problem-solving statement is crafted, a summary is prepared by the peacemaker, commitment is made and solidarity is achieved, and, finally, prayer is said again. Sessions average 2 or 3 hours but can last for several days, and they address problems ranging from marital discord to land disputes. The objective is healing. There are no winners and losers.

Peacemaking depends for its authority on the community, as manifested by the extended families and clan membership of disputants and the peacemaker. Peacemakers are selected by the disputants from the individuals so designated in their local areas. Most importantly, however, peacemaking depends upon, and also reinforces, the complex matrix of ties and responsibilities woven into the larger Navajo community by clan, kinship, and tradition.<sup>10</sup>

**The Midtown Community Court.** The Midtown Community Court (MCC) in New York City exemplifies the renewed interest in bringing high-volume, short-duration criminal cases back to communities through satellite and branch courts. MCC, however, adds a significant community component. The community is viewed as having a major stake in how well the courts adjudicate cases involving quality-of-life crime. In turn, the court's ability to better adjudicate such cases is seen as heavily dependent on the active involvement of community groups. Consequently, community groups provide opportunities and supervision for sentences to community service and offer social services within the courthouse, augmenting the traditional—mainly governmental—providers. The treatment, health, support, and educational services are available to local residents as well as offenders. In addition, a community advisory board was formed and a mediation program was established to address disputes within the community.

The geographic boundaries of MCC embrace 3 of Manhattan's 21 police precincts, which together account for 34 percent of all misdemeanor arrests in the borough. Times Square and the Theater District are near the court building (on 54th Street), as are the neighborhoods of Chelsea and Clinton. The area's population, which numbers about 120,000, ranges from immigrant working class to professional middle class.

Research evaluating MCC uses an abstract, less geographically based definition than is appropriate for policing.<sup>11</sup> MCC's environment contains a business community that extends from some of the country's

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<sup>9</sup> Caution is needed in seeking to abstract Peacemaking from its cultural and religious matrix. Justice Austin of the Navajo Supreme Court notes that studies of Navajo institutions often read "like Tony Hillerman novels. The characters are Navajos, but they do not think like Navajos, speak like Navajos, or act like Navajos." Austin, R. "Incorporating Tribal Customs and Traditions into Tribal Court Decisions," paper presented for the Federal Bar Association 1992 Indian Law Conference, Albuquerque, New Mexico.

<sup>10</sup> See Bluehouse, Philmer, and Jim Zion, "Hozhooji Naati'annii: The Navajo Justice and Harmony Center," *Mediation Quarterly* (1993).

<sup>11</sup> The evaluation is being conducted under NIJ sponsorship.

largest and most powerful organizations, such as the New York Times and owners of some of the world's most valuable real estate, to a multitude of small retailers whose financial situation is often precarious. The economic and political clout of the residents is dwarfed by some of these institutions.

The community is also distinctive it includes sections of the city, like Times Square, that are perceived as territory common to all New Yorkers and many Non-New Yorkers. This communal ownership and membership make it particularly relevant to think about community in a way that embraces the people who work in, shop in, or otherwise use the area served by the court, without disregarding the greater stake that residents have.

Only 7 percent of the criminal defendants live in the court's community. Court proceedings are limited to misdemeanor arraignments, which are not spectator events because court language consists largely of penal code numbers punctuated by acronyms. Because no witnesses, civilian or police, are called and no jurors sit in judgment, there is no obvious drama.

Although MCC is not located in a major residential area, conceptually it is, however, an integral part of a larger community effort. Its establishment coincided roughly with the ongoing revitalization of the Times Square area. A comment by a participant in a focus group session of community leaders reflects the sense of multiple change agents and the integration of the court into them:

Everyone acknowledges that the Times Square area is better, but it's very hard to assess who gets the credit. Is it because of the Times Square BID [Business Improvement District] or is it because of the Midtown Court? And when you go on Lower Ninth Avenue, below 40th Street, there it's not only the Times Square BID, but it's the Fashion Avenue BID and it's the 34th Street Partnership that maybe caused changes—around Penn Station, around Macy's.

This court is a community court, most fundamentally because of its contribution to the broader array of partnerships and collaborations among local organizations and residents' groups in Midtown Manhattan that are dedicated to the general betterment of the area.

**The Red Hook Community Justice Center.** The Community Court concept is to be given different expression in a criminal justice center located in the Red Hook section of Brooklyn, New York. Planners responsible for the Midtown Community Court are seeking to design a court response to the social problems prevalent in Red Hook, an area very different from Midtown Manhattan.

Surrounded by water on three sides and an elevated highway on its fourth side, Red Hook is an isolated community that is served by two police precincts. Decades of declining population have left a marginalized community of low-income residents, most of whom (more than 70 percent) live in an old, massive public housing complex.

The plan is for a justice center that "significantly expands traditional notions about the role of courts and tests the extent to which they are capable of serving as catalysts for change." Features will include the use of local agencies to supervise community service sentences, general reliance on residents' groups as partners with the court, and the presence in the center of services not currently located in Red Hook, including child care, law-related education, drug treatment, GED classes, job training, and job referral, as well as through a variety of programs designed to fit the needs of young residents.

The court component of the Center will be tailored to the specific kinds of disputes common in Red Hook. Traditional barriers between the State's various lower trial courts are being disregarded to offer a comprehensive jurisdiction in which much of the court business generated in Red Hook will be resolved there. Family cases will include those arising from domestic violence and at-risk youth. Civil cases will be

landlord-tenant disputes and small claims and will use mediation as well as traditional court processes. Criminal cases will be mainly quality of life misdemeanors and violations.<sup>12</sup>

## The future of community courts

These disparate models belie some commonalities useful for organizing a community-focused court. First, a community-focused court practices restorative justice. Emphasis in these models is on the ways in which disputes and crimes adversely affect relationships among community residents. A just resolution of a dispute addresses all concerned, including the community at large. Second, a community court treats parties to a dispute as real individuals rather than as abstract legal entities. Third, community resources are used in the adjudication of disputes.

Community-focused courts will assume various forms, depending on the composition of the community and the nature of the problems brought before the court. In MCC, for example, defendants are rarely residents and the emphasis is on quality-of-life crime. In Red Hook, it is anticipated that defendants will be community residents, but family and civil disputes will be addressed as well. Navajo Peacemaking addresses a more expansive range of disputes, and its methods are distinct from the adversarial processes that MCC and the Red Hook Center might use.

**The potential process.** Potential exists for community-focused courts to offer a means to improve the performance of judicial institutions, respond to concerns about racial and ethnic bias, and increase public trust. Courts and communities have drifted apart largely because, with the best of intentions, reformers sought to distance courts from local politics. A move back inevitably reintroduces politics, although not the classic partisan variety. Rather, the courts will reflect the varied interests and conflicts inherent in any community, and for this reason the "community" of community courts will not be simple or homogeneous.

The potential for developing community-focused courts also depends to some extent on the legal profession. People want the opportunity to represent themselves in a wide range of disputes and to speak in lay terms. The demand is not met by adding more legal aid centers and more pro bono work by attorneys. What people want challenges the professionalization of the courts and their domination by lawyers—forces that originally contributed to the drift from community ties. Court and community collaboration today consequently depends on balancing the role of lawyers and the formalism they bring that militate against the influence of extralegal factors on the one hand and public expectations for user-friendly, problem-solving courts on the other.

Ultimately, the challenge of creating community-focused courts may lie with communities themselves. The low level of public knowledge about courts is a formidable obstacle to collaboration between courts and communities. For this obstacle to be overcome, organized community interests need to view the courts as a resource and as a vehicle for change. In other words, if there are to be community-focused courts, there must be court-focused communities.

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<sup>12</sup> Information on the Red Hook Community Justice Center is taken from a concept paper submitted in March, 1996 by the Fund for the City of New York.