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NEEDED: A COMMUNITY EXPERIMENT IN PROBLEM-ORIENTED JUSTICE

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Large-scale and widespread frustration with the functioning of the criminal justice system has been evident for some time among residents of urban communities. This has led, within the arena of law enforcement, to the institution of new methods known as "community policing." Our experience is that when both the community and the police communicate and become more involved with each other, notable successes have transpired. It may be time that a similar methodology should be applied within the courts as well.

Let's examine some of the problems widely perceived to exist within the operation of the judicial system. For a defendant accused of dealing drugs in his or her neighborhood, what are the obstacles to getting a fair trial?

First, there's the matter of finding and affording a lawyer who will prepare and coherently present the defendant's case. Most likely the case will be plea-bargained,¹ because an overwhelmed and underpaid public defender is unable to mount a credible defense (and the prosecutor is correspondingly overburdened). The problem is compounded by the fact that lawyers tend to live and work in a middle-class, white, college-educated and suburban world. Most defendants charged with this kind of crime do not, and chances are that no one in the system will understand their background.

Identifying the defendant's peers is another problem. In Queens County, for instance, a typical juror might be Mrs. Smith: married homemaker with children in school and friends of similar racial, economic and family composition. The defendant, however, is likely to be a young man whose mother is solely responsible for several children, some not yet in school. Mrs. Smith lives in a household and neighborhood where there are more choices, where finding a job that can support a family is possible, even probable. Chances are that many residents in the defendant's neighborhood live on fixed incomes,

* A citywide, nonprofit organization that supports block and neighborhood associations with training, technical assistance, small cash grants and self-help materials.

1. The Bronx District Attorney's office has recently implemented a policy of not engaging in post-indictment plea bargaining. Martin Fox, *Next Six Weeks Seen Critical in Bronx Courts; No Impact Yet from Bar on Plea Bargaining*, N.Y. L.J., Jan. 4, 1993, at 1.

are single heads of households, live in crowded and deteriorated buildings, and entertain elusive hopes for the future.

Practically speaking, the striking lack of commonality in backgrounds makes a peer relationship unlikely. In fact, if our Mrs. Smith has been watching a significant amount of television or reading many newspapers within the past decade, she may well believe the prevailing ideology that impoverishment is really a deserved comeuppance for lazy and immoral ways. Taking into account all the obstacles noted above, many observers reach the verdict that fair trials are hard to come by.

Those victimized by crimes — individual victims and communities suffering from criminal behavior — also perceive the criminal justice system to be unfair. When an alleged drug dealer is arraigned, and a plea to a lesser charge is accepted by the prosecutor, the neighborhood where the defendant “worked” is frequently outraged and demoralized. The feeling is similar when street prostitutes “go through the system,” only to receive insignificant slaps on the wrist without any evident condemnation by judges or prosecutors. Although allegedly a victimless crime, prostitution is widely felt to be destructive to neighborhoods and their health. The system’s failure to deter the dealer or prostitute from plying their trade in the poorest neighborhoods generates widespread cynicism and resignation.

In today’s urban court experience, prosecutors, defense attorneys and judges make decisions largely based on expedience. Thoughtful consideration of social goals and just processing of community and defendant interests are shunted aside. The politically correct recoiled in horror, but the grotesque depiction of New York City courts enshrined in Tom Wolfe’s *Bonfire of the Vanities* is nonetheless painfully accurate in many respects.

Any society that hopes to raise its young to believe in justice needs to find a *better* way. Surprisingly to some, there is movement toward a better way that is emerging from the grassroots. It is surprising because the expectation within the judicial system, as well as in many other branches of government, is that advances will come from duly qualified experts. The premise that close-to-the-ground organizations of amateur civilians can contribute to our democratic tradition, and are in fact at the heart of that tradition, is hardly considered these days. But in fact, innovative approaches to stopping neighborhood drug traffic and other quality-of-life crimes are being tried out in hundreds of new, neighborhood-level initiatives around the country. The discovery is being made that courts need not, should not and ultimately cannot be laboratories of justice, removed from popular con-

cerns. They should take into account neighborhood viewpoints and socioeconomic realities, just as cops on the beat learn to deal with crime in the context of communities.

In our work with the Neighborhood Anti-Crime Center and with Youth Force, the Neighborhood Youth Leadership Center — two arms of the independent, nonprofit Citizens Committee for New York City — we have witnessed in the past five or six years a resurgence of neighborhood organizing in low-income communities besieged by drug dealing and other forms of street crime. Thousands of low-income neighborhood residents in New York alone have become involved in efforts to take back the streets, parks, playgrounds and buildings.

Some groups unfortunately have resorted to dangerous vigilante tactics. More have found ways to mobilize and strengthen their communities while working with the police, assisted by a law enforcement strategy based on community policing. This activity is taking place in the context of neighborhood-based campaigns to strengthen communities, intervene in problems, resolve disputes and target the delivery of services. We believe that neighborhood initiatives like these can be applied further down the line of the law enforcement process to the judicial system itself, opening up possibilities for bringing more justice to the courts.

Professor Mark Moore of Harvard's Kennedy School of Government points to the potential use of interactions between defendants and prosecutors in the juvenile justice system. Addressing a meeting at the Association of the Bar of the City of New York in 1991, he noted that the community policing experience offers a precedent for problem-solving breakthroughs within an otherwise stultified milieu.

Simply stated, the strategy of community policing affords the police agency, and through it the community at large, a chance for problem-solving every time an officer responds to an incident. This is in contrast to what is now considered traditional policing, whereby a 911 radio operator, removed from the scene of an incident, dispatches officers and then urges them to move on as soon as the emergent motive of the incident has been treated. Since most incidents derive from problems incapable of being solved by a patrol car rapidly departing the scene, *de facto* police practice becomes a series of incident responses with no solutions to crime problems.

The community policing approach instead authorizes and trains patrol officers to look at each incident in terms of its priority among problem conditions identified by the neighborhood. Personnel are then expected to consider the array of departmental and extra-depart-

mental resources that can be brought to bear on solving the underlying issue(s) that generated the offending incident.

An example from the police blotter is illustrative. Police officers and firemen in a Brooklyn police precinct repeatedly were directed to respond to a series of mysterious emergencies at the same address. The scenario, which might have continued for years, was as follows: 911 service receives call; patrol car or fire engine is dispatched; residents at location receive visits at all hours from emergency services; but no emergency exists. The main resident and her neighbors grew angry as they realized that the officers lacked the time, training or departmental support to determine the cause of the false alarms, which clearly were not randomly motivated.

This wasteful and potentially tragic vicious cycle was finally brought to a halt, after community policing procedures were instituted. Officers who were trained and supervised to promote community-oriented problem-solving and who were accountable to the neighborhood talked with the dispatcher and pieced together a pattern of over 100 similar calls involving the same location. An investigation turned up a vindictive ex-boyfriend, who happened to be employed in uniformed services by a nearby county. Since he was especially vulnerable to prosecution, mere notification and limited legal action produced the desired result: the calls stopped.

Transposing this approach to the courts will require that personnel throughout the system are mandated, trained and supervised to identify and solve problems as their primary duty, whether these problems become known to them through a complaint, arrest, summons or referral. Under current practice, the arrest of a young person dealing drugs, for example, allows for two basic options. Both are problem-laden. Conviction leading to a jail sentence is difficult to obtain, costly for society in general, often disruptive to the dealer's family, and may stimulate future criminal behavior rather than discourage it. Allowing the defendant back on the streets, if in fact he or she is engaged in drug dealing, is a defeat for the communities that are affected.

The alternative we suggest involves bringing together individuals and agency representatives who have a direct interest in tackling the situation. Suppose that curtailing the kind of drug dealing the young defendant is involved in has been identified by neighborhood residents as a top priority. In that case, a collaborative problem-solving meeting of the following participants is indicated: a key family member, another neighborhood youth who is a peer of the offender, a youth organizer from an agency or a youth coordinator from the local com-

munity board, the property manager from the building(s) in front of which drugs are being sold, a knowledgeable community police officer who works the neighborhood, a parole officer, a representative of the prosecutor's office, a public defender, a social worker, a drug treatment specialist and the defendant.

In this one meeting all parties can apply a relatively simple problem-solving process to find answers to such questions as:

- What are the problems the arrest has unearthed? (A full description might include specific criminal acts as well as harm to users and neighbors; victimization of neighbors in the area where drugs are sold; shame and negative role modeling for the offender's family; a desperate need for income on the part of that family; overdosing or severe addiction by users.)
- Why was the young person dealing? (Local proximate causes could include income earned; increased peer status; widespread availability of drug-dealing job opportunities in the neighborhood; no concerted effort in the neighborhood to stop the dealing; perception by local youth of limited negative consequences; problems in the defendant's family severely limiting availability of affection, recognition, support, recreation, coping with stress.)
- Who are the key actors who can help solve the problem, i.e., who else needs to be brought into the problem-solving process? How, or in what role, can each contribute to solutions? (Examples of roles include: the defendant agrees to work and attend school and only participate in non-destructive recreation; the police agree to try to focus on reducing the presence of dealers on the streets; the mother or other accountable relative communicates with the young person and supports his or her commitment to stay clean; peers agree to join the defendant in working on a youth-run project.)
- In the real world, what barriers or limits do each of the key actors face? (For example, the local economy and the crumbling local school make getting a job or staying in school unlikely; police may lack information from the community needed to adequately confront street dealing; the mother may be struggling to survive financially; she may have difficulties with other children and she may be strung out on drugs herself.)
- What collaborative strategies will help overcome these barriers? (Possible strategies include: the mother is required to get drug treatment or face jail time; a local youth organizing drive confronts school problems and networks for decent job opportunities; neighborhood youth form a positive peer support group providing a support structure alternative to the family; com-

munity policing training and supervision improve law enforcement.)

It is not wishful thinking to envision this kind of collaborative system within the everyday workings of the judicial system. Partial applications have occurred in New York and other cities around the country. The Citizens Committee is just one of several agencies helping neighborhood activists to work in collaboration with other key actors to fight local drug problems, achieving many solid successes.²

There is the case of a grassroots anti-drug campaign recently conducted by African-American residents of a public housing project in Winston-Salem, North Carolina. An impressive collaboration of local problem solvers resulted in a new truancy prevention program, a "Hire a Teen" mobilization with the Chamber of Commerce, youth organizing drives, parent support committees, improved police activity, increased access to drug treatment options and a significantly enlarged planning resource role for previously disenfranchised residents. The tenants and community organizers were able to institute these measures by securing the collaboration of housing authority management, police, specialists in drug prevention, city planners, religious leaders, youth outreach workers and a clear-sighted local community foundation.

To cite another example from our experience, a major crack dealer in a Manhattan neighborhood was sentenced to serious jail time thanks to collaborative problem-solving by tenants from the public housing project whom the dealer had terrorized. These tenants had worked with community organizers, police and the district attorney's office. Previously, the offender had been arrested on a low-level crime and then released on his own recognizance because of the paraplegic condition of the accused, and a courtroom overflowing with other drug dealers. The collaborative strategy enabled the offender to be arrested on more serious charges and fostered police and prosecution coordination.

The power of neighborhood-level collaborations to identify, prioritize and creatively address undesirable neighborhood conditions has attracted interest from a number of quarters. Brooklyn District Attorney Charles Hynes has focused attention on the nature of the neighborhood as well as the nature of the crime by creating community "zone" responsibilities for his staff. Similarly, Manhattan Dis-

2. Brief case studies are available from the Citizens Committee. More extensive documentation has been created by the Harvard Kennedy School's program in Criminal Justice, the National Institute of Justice, the National Crime Prevention Council, the Eisenhower Commission, and others.

trict Attorney Robert Morgenthau has devoted considerable resources, and has assigned serious responsibility, to his aggressive Community Affairs Unit, which encourages collaborations. In addition, successful experiments in the use of community service and other forms of alternative sentencing for convicted individuals have occurred here and in Europe.

Yet no community or municipality has brought all the elements of the criminal justice system into a community-oriented collaborative process. Just as smart cops know how to use the community as a precious resource, court, probation and parole officials are learning how to gather information from these sources. But the courts and correction, probation and parole agencies remain largely unaffected by the new focus on community problem-solving.

How can we begin to involve the community in the courts? Neighborhood leaders might propose forms of compensation to the community in lieu of jail for some offenses. Community-level courts could be authorized to utilize collaborative problem-solving techniques, much as mediation is used in lieu of civil trials. These collaborative problem-solving techniques would be used in conjunction with agreements between prosecution and defense representatives.³ Volunteers from a range of ethnic and national backgrounds working with the Community Conciliation Center in Flushing, Queens, advertise their availability to mediate low-level disputes between individuals and households, bypassing the need to go to court or come to blows. Cultural differences in a community populated by recent immigrants from four continents often exacerbates misunderstandings, and the linguistic versatility and ethnic diversity of the volunteers serve them well.

Many experts, including leading proponents of community policing, have failed to realize that the success of these new approaches depends in large part on strong neighborhood organizations. Grassroots organizations must be involved in designing and implementing new interventions and approaches, as well as in evaluating their results.

Community justice means shared responsibility for benefits or failures. For strategies to be trusted and frequently used by the community, they must be built in collaboration with the community. And, the people who devise and implement these strategies must be accountable to the community. On the streets or within the judicial system, it is crucial that everyone involved be held accountable.

The present dysfunction and lack of fairness in our criminal justice

3. In civil cases, we are beginning to see grassroots initiatives in this area as well.

system creates an opportunity for the people, organized at the neighborhood level, to help decide exactly what is to be done. Remarkably, most of the needed reforms require no more than a change of procedures in the day-to-day process of meting out justice. Little legislative change is warranted. No constitutional amendments are proposed. Not even new oversight or administrative bodies (except perhaps some increased coordination) are required in the short run. That's one of the selling points for reform.

Working out the methodology for community-based problem solving in the courts will be a challenge. Courts are overburdened as it is, and it will be difficult to expand their terrain of operation. The new methodology, in the beginning, will apply most readily to misdemeanors, and may not ever prove feasible in some categories of felony cases. But in the long run, solving problems is more efficient than presiding over revolving door court cases and revolving door prisons.

What is crucial is to end the pretense that our current system is fair or efficient, and to enable this arm of our government to function by and for the people of every community.