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It Takes a Community to Prosecute

Anthony C. Thompson

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ARTICLES

IT TAKES A COMMUNITY TO PROSECUTE

*Anthony C. Thompson**

INTRODUCTION	322
I. THE CONVENTIONAL VISION OF THE PROSECUTORIAL FUNCTION.....	325
A. <i>The Constituency Prosecutors Serve</i>	327
B. <i>The Definition of the Central Mission, the Nature of the Work, and the Criteria for Evaluation</i>	330
C. <i>The Individuals with Whom Prosecutors Work</i>	332
D. <i>Office Design and Management</i>	335
E. <i>Training</i>	336
II. THE MOVEMENT TOWARDS A NEW MODEL OF COMMUNITY PROSECUTION	338
A. <i>Forces Propelling and Constraining the Movement to Community Prosecution</i>	338
1. The Community Movement in Other Spheres of the Criminal Justice System	338
2. Inducements for Prosecutors To Adopt a Community Orientation	344
3. Impediments to Prosecutors' Adoption of a Community Orientation	347

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B.	<i>The Lessons That Can Be Gleaned from Experiments in Community Prosecution</i>	350
1.	The Lessons of History.....	350
2.	Contemporary Community Prosecution Programs	354
III.	A PROPOSED CONCEPTION OF COMMUNITY PROSECUTION....	360
A.	<i>The Constituency Prosecutors Serve</i>	360
B.	<i>The Definition of the Central Mission, the Nature of the Work, and the Criteria for Evaluation</i>	363
C.	<i>The Individuals with Whom Prosecutors Work</i>	366
D.	<i>Office Design and Management</i>	367
E.	<i>Training</i>	368
	CONCLUSION	372

INTRODUCTION

The past decade has witnessed a fundamental shift in the ways the major players in the criminal justice system define their roles. Police departments have eased away from a traditional reliance on reactive forms of law enforcement toward community-policing efforts that emphasize collaboration with the community.¹ Judges have launched problem-solving courts in a number of jurisdictions, both to target recurring criminal justice problems and to devise ways that courts might work more actively with communities to develop treatment plans for offenders.² Public defender offices have, albeit to a lesser extent than these other entities, begun to open community offices or specialized units designed to focus on community justice initiatives.³ Although

1 See Mark Harrison Moore, *Problem-Solving and Community Policing*, in MODERN POLICING 99, 123 (Michael Tonry & Norval Morris eds., 1992) (arguing that community policing will result in stronger and safer communities); JEROME H. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY 295-99 (1994) (pointing out that police departments are organizing more and more community based crime prevention activities); William J. Bratton, *The New York City Police Department's Civil Enforcement of Quality-of-Life Crimes*, 3 J.L. & POL'Y 447, 451 (1995) (describing how the New York City Police Department is reorganizing its resources and strategies to help communities counter the problems that afflict them). For further discussion of community policing, see *infra* notes 58-65 and accompanying text.

2 See, e.g., John J. Ammann, *Addressing Quality of Life Crimes in Our Cities: Criminalization, Community Courts and Community Compassion*, 44 ST. LOUIS U. L.J. 811, 815-19 (2000) (describing how different cities implement community courts). For further discussion of community courts, see *infra* notes 66-82 and accompanying text.

3 See, e.g., Kim Taylor-Thompson, *Effective Assistance: Reconceiving the Role of the Chief Public Defender*, 2 J. INST. FOR STUDY LEGAL ETHICS 199, 210-13 (1999); see also, e.g., Anthony V. Alfieri, *(Er)Race-ing An Ethic of Justice*, 51 STAN. L. REV. 935, 950 (1999) (advocating that defenders pay close attention to the impact of their advocacy on

the activities of these criminal justice players may differ in various respects, a common thread is apparent: each has recognized the need to fashion a role that is less reactive and more participatory in relation to the communities with which—and in which—they operate. What these efforts evidence is a core appreciation for an invigorated role for the community in defining and enforcing standards of conduct.

To varying degrees, prosecutors also have taken nascent steps to reinvent themselves in the midst of this changing environment. In ever increasing numbers, prosecutors' offices have launched, or are on the verge of launching, "community prosecution" programs.⁴ These efforts have sought to augment the traditional notions of the prosecutor. It remains unclear precisely how much this transformation flows from a desire to be self-critical about the conventional role of prosecutor rather than an instinct to ride the contemporary tide toward including the community in the operations of the criminal justice system. But, whatever the reason, the phenomenon of community prosecution has taken hold in offices across the country, encouraged and accelerated by the availability of federal funding.⁵ The "community prosecution" label is now widely used and broadly applied.

It is not at all obvious, however, what the term "community prosecution" actually means. At a minimum, the term would appear to connote a decentralization of authority and accountability, with the ultimate aim of enabling an office to anticipate and respond to community problems. Such a model presumably would place an emphasis on preventive measures for controlling crime instead of the reactive, case-driven approaches that tend to characterize traditional prosecu-

communities); N. Lee Cooper et al., *Fulfilling the Promise of In re Gault: Advancing the Role of Lawyers for Children*, 33 WAKE FOREST L. REV. 651, 671–72 (1998) (advocating a public education and advocacy role for juvenile defenders); Elisabeth Semel, *The Lone Star State Is Not Alone in Denying Due Process to Those Who Face Execution*, CHAMPION, July 1999, at 28, 29 (identifying the need for community defender programs). For further discussion of defenders' efforts to incorporate a community orientation into their work, see *infra* notes 85–89 and accompanying text.

4 See generally AM. PROSECUTORS RESEARCH INST., COMMUNITY PROSECUTION (Nat'l Cmty. Prosecution Conference Sept. 25–27, 2000) (on file with author). A webcast of certain portions of the conference can be accessed from the American Prosecutors Research Institute website, available at http://www.ndaa.org/apri/programs/community_pros/webcast.html (last visited Nov. 27, 2001). For description of specific community prosecution programs, see *infra* notes 90–99 and accompanying text.

5 See James D. Polley, IV, *Community Prosecution Grants*, PROSECUTOR, May/June 2000, at 16, 16.

tion efforts.⁶ Assuming the accuracy of this description, and given the degree of change in focus and approach that it represents for an entity that wields tremendous power in the criminal justice system,⁷ one would expect a widespread, explicit discussion of the penological, practical, and even ethical implications of such a sea of change in the conception of a prosecutor's role and functions. But there has not as of yet been a comprehensive analysis of the new community-based model of prosecution. In the absence of such a detailed analysis and common understanding, there is a risk that individual prosecutors' offices may develop ostensibly "community-oriented" strategies that ultimately fail to improve their collaboration with—and responsiveness to—the communities that they hope to serve.

My own informal observations of community prosecution efforts over the past two years⁸ have offered graphic evidence of both the promise and potential problems of the new shift to a community orientation. Some of the new community prosecution programs have begun to forge exciting new working partnerships with communities in preventing and addressing crime and in defining justice.⁹ But when one considers the gamut of initiatives as a whole, it becomes apparent that what is lacking is a coherent vision that will systematically guide offices as they experiment with varying versions of community prosecution.¹⁰

Of course, experimentation may well be a virtue in imagining and giving life to constructive relationships between prosecutors and the

6 Norma Mancini Stevens, *Defining Community Prosecution*, PROSECUTOR, Mar./Apr. 1994, at 13, 14.

7 See Elkan Abramowitz & Peter Scher, *The Hyde Amendment: Congress Creates a Toehold for Curbing Wrongful Prosecution*, CHAMPION, Mar. 1998, at 22, 22 (arguing that the Hyde Amendment may go a long way toward providing judicial oversight of the Department of Justice's excesses). See generally EDWARD HUMES, *MEAN JUSTICE* (1999) (narrating the story of a person who was wrongly convicted of a crime).

8 For the past two years I have been involved in a series of meetings at the Department of Justice Bureau of Justice Assistance (BJA) and with the American Prosecutors Research Institute (APRI), looking at community prosecution efforts throughout the country and charting possible future directions of community prosecution efforts. This work has included participation in the national training conducted by APRI and funded in part by the Department of Justice.

9 See Catherine M. Coles & George L. Kelling, *Prevention Through Community Prosecution*, PUB. INT., Summer 1999, at 69, 76-77. Significant numbers of state prosecutors are taking a direct interest in the safety and health of particular neighborhoods. See, e.g., Bill Miller, *Prosecutors To Act as Community Advocates; U.S. Attorney Begins Experimental Program*, WASH. POST, June 6, 1996, at J1; Sam Skolnik, *Working the Streets*, LEGAL TIMES, Nov. 27, 1995, at 6.

10 See *infra* Part II.B.2. (describing a wide range of programs, some of which are minimally effective at best).

communities that they serve. Especially if detailed accounts of different experiments are disseminated, digested, and debated, prosecutors' offices can learn from each other, tracking the possibilities, trade-offs, and challenges implicated in various models of community prosecution. However, too much of what now passes for deliberate experimentation seems to be only haphazardly designed and implemented, not regularly or carefully studied and not well understood, either by those interested in learning from the experiments or even by the offices actually engaged in the experimentation.

Serious treatment of the concept of community prosecution would seem to require deeper thinking about the goals, values, and optimal methods of a community-oriented approach than is currently apparent. This Article will attempt to explore some of these issues, using the programs that have already been developed as a basis for identifying approaches likely to prove successful as well as the pitfalls that such programs may encounter. Part I of the Article lays the foundation for this inquiry by reviewing those core elements of the traditional approach to prosecution that are most germane to a discussion of an alternative community-based approach. Part II then examines the burgeoning movement towards community prosecution, focusing in particular on the forces that appear to be driving that movement and the lessons that can be extracted from current experiments. Part III proposes a vision of community prosecution that could serve as a framework for further experimentation.

I. THE CONVENTIONAL VISION OF THE PROSECUTORIAL FUNCTION

Prosecutors do not frequently find themselves having to define their vision of practice. Like most lawyers and most professionals of any field, prosecutors think mainly in terms of routines, tasks, and deadlines and rarely about the "big picture" that frames their day-to-day labors. This almost inevitable micro-focus typically results in insufficient attention being paid to any aspects of the practice that are tacit or inchoate. If pressed for a conceptual assessment of the nature of the practice, working prosecutors characteristically offer earnest yet incomplete accounts. A fair number invoke images of a crusader or even a gladiator.¹¹ Some depict themselves as "carni-

11 See Sheldon Krantz & Michael Ross, *A Decade of Litigating Dangerously: Time To Replace Rhetoric with Reason*, CRIM. JUS., Fall 1994, at 36, 38. Perhaps born of T.V. and movie images of criminal defense lawyers as "gladiators," prosecutors and defense attorneys have taken a no-holds-barred approach to the practice of criminal law. New prosecutors and new defense attorneys are not educated to espouse principles of per-

vores"¹² or as pursuing "only those things that are right."¹³ Others, offering more measured accounts, describe the prosecutor as having a special mandate and set of obligations within the criminal justice system.¹⁴ Yet even these more sober accounts typically are fragmentary rather than thorough.

As a general matter, it seems both feasible and essential to articulate a coherent vision of prosecutorial practice that captures the essential philosophy underlying the thinking and actions of prosecutors. Indeed, the very advent of a community prosecutors' movement suggests the viability of such a project: those within the movement are reacting against a certain idea, philosophy, or vision of prosecution that they regard as incomplete or perhaps too myopic.¹⁵ This new vision seeks to broaden the role of the prosecutor and question the limits of the conventional charge-convict-sentence paradigm that propels most offices. The implicit premise of this exchange of views is that there is, in fact, a conventional vision of prosecutorial practice that can be articulated well enough to debate. Thus, before commencing our exploration of the wisdom of replacing the existing approach with a new, community-oriented model, it is useful to first identify the contours of the currently dominant vision of prosecutorial practice. Given our focus on the subject of community prosecution, it seems fitting to begin by considering the conventional model's vision of the constituency to be served.

sonal integrity, civility, or practicality; rather, the focus has been on trial skills—and winning at all costs.

12 See Elizabeth Glazer, *Thinking Strategically: How Federal Prosecutors Can Reduce Violent Crime*, 26 FORDHAM URB. L.J. 573, 576 (1999).

13 See JOHN J. DOUGLASS, *ETHICAL ISSUES IN PROSECUTION* 31 (1988) (quoting Stephen Trott, Address to J. Frank Coakly National Symposium on Crime (May 1987)).

14 See Stanley Z. Fisher, *In Search of the Virtuous Prosecutor: A Conceptual Framework*, 15 AM. J. CRIM. L. 197, 215–26 (1988) (arguing that we have failed to give prosecutors a coherent understanding of their quasi-judicial role); Kenneth Melilli, *Prosecutorial Discretion in an Adversary System*, 1992 BYU L. REV. 669, 671–72 (discussing different standards in the exercise of prosecutorial charging discretion); Fred C. Zacharias, *Structuring the Ethics of Prosecutorial Practice: Can Prosecutors Do Justice?*, 44 VAND. L. REV. 45, 49 (1991) (arguing that prosecutors should not prosecute unless they have a good faith belief that the defendant is guilty and that prosecutors must ensure that the basic elements of the adversary system exist at trial).

15 I wish to thank the State's Attorney of Montgomery County, Maryland, Douglas Gansler, for a number of conversations that helped to describe the tension between the traditional role and the community prosecution efforts.

A. *The Constituency Prosecutors Serve*

The prosecutor's constituency is generally understood to be "the people" of the geographical division that the prosecutor has been elected or appointed to represent. In this regard, the prosecutor's role is a unique one, for she serves as both advocate and "minister of justice." As the Supreme Court has observed, "the American prosecutor [plays a] special role . . . in the search for truth in criminal trials"¹⁶ because the prosecutor is

the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.¹⁷

In defining the prosecution function, the Model Rules of Professional Conduct and the ABA Standards for Criminal Justice similarly articulate a model of an advocate who must take into account considerations that seem fundamentally at odds with the very notion of adversarial advocacy.¹⁸ As minister of justice, the prosecutor must endeavor to represent the interests of society as a whole, including the interests of those individuals who have run afoul of the law.¹⁹

Yet the very concept of serving "the people" is inevitably imprecise, even amorphous. Prosecutors certainly initiate prosecutions in the name of "the people" and maintain a trustee's obligation to safeguard the people's interest. But the extent to which prosecutors actually serve the people themselves or instead serve the government remains unclear. By imposing standards of conduct and applying laws against offenders, prosecutors necessarily act as an enforcement arm of the government against the people. And when one filters prosecution through a pragmatic political lens, it seems obvious that decisions about whom prosecutors serve and how they serve them will inevitably be influenced—and at times determined in part—by legislative-funding choices.²⁰ In a world of limited resources, prosecutors must act in accordance with the priorities of their funding authorities. That ra-

16 *Strickler v. Green*, 527 U.S. 263, 281 (1999).

17 *Id.* (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

18 See MODEL RULES OF PROF'L CONDUCT R. 3.8 cmt. 1 (1999); MODEL CODE OF PROF'L RESPONSIBILITY DR 7-103 (1981); *The Prosecution Function*, in 1 STANDARDS FOR CRIMINAL JUSTICE, Standard 3-1.1 (A.B.A. 1992).

19 See Angela Jordan Davis, *Prosecution and Race: The Power and the Privilege*, 67 FORDHAM L. REV. 13, 51-52 (1999).

20 See William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1, 22 (1997) (noting that prosecutors' activities are governed by their budgets).

tioning of services and targeting of problems may determine and limit whom prosecutors actually serve.²¹

Yet, in trial arguments and sentencing colloquies, prosecutors regularly, almost reflexively, invoke the people's name and authority. In so doing, they seem to intend that their positions be accorded special weight because they convey the backing of the general public. Assuming this rhetorical stance is adopted in good faith,²² the question inevitably arises: to what extent is a prosecutor obliged to maintain close contact with the community she serves, consult representatives of that community on relevant matters, and provide members of the community with an opportunity to offer input on exercises of prosecutorial discretion?

As a matter of public policy, most (possibly all) prosecutors would accept that they have an obligation to articulate and defend their views of how best to attend to the needs and concerns of the people. But those working within the conventional paradigm of prosecution work typically regard this obligation as election-driven.²³ Only elections—and election concerns—are viewed as triggering the obligation to make public pronouncements about the choices that are being made and the reasons for those choices.²⁴ Otherwise, prosecutors generally view themselves as free to implement their general mandate as they see fit. They need not regularly describe or explain their unfolding decisions.²⁵ They need not involve their constituents or any-

21 See *id.*

22 There may well be occasional abuses. An individual prosecutor may invoke "the people" precisely in hopes of misleading. With the aid of this rhetoric, she may seek to induce her audience to believe that the people she serves in fact support a policy or action about which they have no idea—indeed about which they have been kept ignorant, sometimes as a deliberate matter. But, in most cases one can assume that the prosecutor is legitimately invoking the name of "the people" to remind listeners that she has earned the political and legal discretion to make policies and choices in the name of the people.

23 See Carol J. DeFrances et al., *Prosecutors in the State Courts, 1994*, in BUREAU OF JUSTICE STATISTICS BULLETIN 1, 2 (1996) (some chief prosecutors are elected and others are appointed); Robert L. Misner, *Recasting Prosecutorial Discretion*, 86 J. CRIM. L. & CRIMINOLOGY 717, 730 n.78 (1996) (in all but four states, prosecutors are elected officials).

24 Some have argued that the electoral process has forged a system of direct accountability to the people in an increasingly bureaucratic society. See, e.g., Abraham S. Goldstein, *History of the Public Prosecutor*, in 3 ENCYCLOPEDIA OF CRIME AND JUSTICE 1286, 1286 (Sanford H. Kadish ed., 1983) (suggesting that full-time elected prosecutors are more accountable).

25 See James Vorenberg, *Decent Restraint of Prosecutorial Power*, 94 HARV. L. REV. 1521, 1522 (1981); see also Angela Jordan Davis, *The American Prosecutor: Independence, Power and the Threat of Tyranny*, 86 IOWA L. REV. 383, 397 (2001).

one else in the process of defining and enforcing standards of conduct.²⁶ They need only stand for elections that determine who can, until the next election, envelop their judgments and actions with the imprimatur of "the people."²⁷

For some, this institutional stance may be shaped, at least in part, by ethical standards and rules that call for proper professional detachment.²⁸ Indeed, some commentators have been critical of prosecutors for wielding their discretionary powers in a manner designed to garner popular support from the electorate in future elections.²⁹ Interestingly, however, even the prosecutors who are prone to shade their discretionary judgments in this manner do not take steps to solicit the views of the community; instead, they act on their own personal assessments of the tide of public opinion.

What, then, accounts for the traditional prosecutor's tendency to maintain distance from the constituency she has been elected or appointed to represent? Many, perhaps most, prosecutors who adopt this stance would say that distance is a necessary precondition for the independence that prosecutors need in order to perform their functions.³⁰ Prosecutors seem to depend on distance as a means of maintaining perspective as the arbiter of right and wrong and as the "mediator" between broad legislative proscriptions and the equities of individual cases.³¹

Such distance is hardly mandated by political theory, however. Indeed, one could regard close, regular contact with those who are being served as elemental to the discharge of a prosecutor's obligations. Over the years, some have faulted the prosecutor's traditional stance of detachment on this ground.³² They have urged that "serving

26 See Davis, *supra* note 19, at 51-52.

27 See Davis, *supra* note 25, at 387.

28 STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION, Standard 3-1.3(f) (A.B.A. 1993).

29 See H. RICHARD UVILLER, *VIRTUAL JUSTICE: THE FLAWED PROSECUTION OF CRIME IN AMERICA* 163 (1996) (finding "the political factor in the calculation of discretion to be profoundly offensive, bordering on unethical").

30 See, e.g., Walker A. Matthews, *Proposed Victim's Rights Amendment: Ethical Considerations for the Prudent Prosecutor*, 11 GEO. J. LEGAL ETHICS 735, 748 (1998) (examining the ethical obligations that may be implicated by the recent expansion of victims' rights in the criminal justice process); Joan Meier, *The "Right" to a Disinterested Prosecutor of Criminal Contempt: Unpacking Public and Private Interests*, 70 WASH. U. L.Q. 85, 89-90 (1992).

31 See Daniel C. Richman, *Old Chief v. United States: Stipulating Away Prosecutorial Accountability?*, 83 VA. L. REV. 939, 958 (1997).

32 See William T. Pizzi, *Understanding Prosecutorial Discretion in the United States: The Limits of Comparative Criminal Procedure as an Instrument of Reform*, 54 OHIO ST. L.J.

the people" must mean something more than merely election-driven activities. Instead, it has been said, prosecutors and their constituents should aim to achieve a relationship that mutually informs and shapes their agendas and their strategies. But the difficulty of persuading others to join in this effort has had the net effect of reinforcing the hold that the conventional wisdom has on the minds and actions of most prosecutors. The conventional view of a prosecutor's legal and political obligations has come to feel not just correct, but natural.

B. The Definition of the Central Mission, the Nature of the Work, and the Criteria for Evaluation

Prosecutors, like virtually everyone else, view crime as a grave problem. They understand that the crime problem is interwoven with complex social and economic forces, but they regard themselves (as do others who operate within the conventional vision) as politically and legally authorized—and professionally able—to address only part of this nexus: the enforcement of the criminal law. That judgment certainly reflects the conventional interpretation of political and legal mandates that define the prosecutor's service to the people. But this view of the matter also follows from a particular understanding of the kinds of functions that lawyers are trained and expected to perform.³³

The category of "enforcing the criminal law" is defined by many prosecutors as largely consisting of a single function: prosecuting those individuals who have allegedly violated criminal law statutes.³⁴ Of course, even the prosecutors who hold this view are typically aware of, and probably even value, preventative efforts. Moreover, these prosecutors may, on occasion, take actions that fall outside the category of "case prosecution."³⁵ They may comment on the wisdom or

1325, 1339 (1993) (suggesting the importance of some connection with the people as a measure of accountability).

33 Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 594 (1994) (criticizing the MacCrate Report for being too heavily oriented towards litigation).

34 See DAVID NISSMAN & ED HAGEN, *THE PROSECUTION FUNCTION* 2 (1982); Davis, *supra* note 25, at 408–10 (expressing concern over extensive discretion afforded prosecutors through increasing numbers of laws and statutorily defined crimes); George T. Felkenes, *The Prosecutor: A Look at Reality*, 7 SW. U. L. REV. 98, 99 (1975); Eric H. Holder, Jr., *Community Prosecution*, PROSECUTOR, May/June 2000, at 31, 31–32 (distinguishing community prosecution from the conventional vision); Vorenberg, *supra* note 25, at 1522; Zacharias, *supra* note 14, at 53.

35 See Kristan Trugman, *Prosecutors Down Neighborhood Bully: Program Strives for Proactive Tactics*, WASH. TIMES, Nov. 13, 1998, at C11 (quoting Washington D.C. Assis-

flaws of proposed legislation.³⁶ They may publicly decry the inadequacies of the criminal law or the criminal justice system as it is currently configured.³⁷ And they may comment on the ways in which the larger social and economic forces—labor markets, families, and youth services—bear upon prosecutors' ability to fulfill their mandate (as they have defined it). But their interest in these matters, while not simply personal, does not alter their bottom-line conclusion: their role, as they envision it, is to enforce the existing criminal law.

Given the current culture of high prosecutorial caseloads, this view arguably makes sense. No system of deterrence and punishment can possibly work without a vigorous, resourceful, and effective prosecution regime. A single-minded focus on case processing enables individual prosecutors and prosecution offices to handle an extremely high volume of cases in an efficient manner. It satisfies legislators and funding authorities that prosecutors are taking measurable steps to address the crime problem.

Having defined their mandate to be the effective enforcement of criminal violations, prosecutors use sensible measures to gauge their effectiveness at fulfilling this mandate. First, they often focus on conviction rates.³⁸ If the office has prevailed in its prosecutions and secured jury verdicts or negotiated guilty pleas, then it can point to tangible evidence that its litigation strategies have succeeded. Second, press coverage and the attendant public perception of prosecutorial successes (either within an individual high-profile case or across the board in terms of overall convictions) permit both prosecutors and those outside the office to herald convictions as proof that the office can curb crime.³⁹ Third, the rise or fall of crime rates in the area may offer some indication that the prosecutors' efforts have contributed to the general safety of the community.⁴⁰

tant United States Attorney Clifford Keenan, Chief of the Community Prosecution Section of the U.S. Attorney's Office). According to Keenan,

[F]or too many years, [prosecutors] have taken it on [them]selves to be case processors. Community Prosecution is not a program or a project, it is a philosophy. It is looking at offenders and offenses and how each figures into what is going on in a community. We cannot still look at cases in a vacuum.

Id.

36 See Newman Flanagan, *Message from the Executive Director*, PROSECUTOR, Jan./Feb. 2000, at 6, 6 (providing commentary by the Director of National District Attorneys Association).

37 See Holder, *supra* note 34, at 32; see also Glazer, *supra* note 12, at 573–74.

38 See Stuntz, *supra* note 20, at 46.

39 See *id.*

40 John Marzulli & Barbara Ross, *Murder Takes a Hit: Manhattan Slays on Pace To Hit Low Not Seen Since 1937*, DAILY NEWS (N.Y.), July 14, 2000, at 17 (noting dropping

Obviously some, including prosecutors themselves, worry about whether even their best efforts can adequately address the crime problem.⁴¹ Some prosecutors express concern about whether their strategies actually stem the tide of particular chronic problems.⁴² And the larger problem of crime, including the social and economic forces that give rise to it, do not escape their notice.⁴³ But they traditionally take the position that these larger problems fall outside the purview of the prosecutor's job description. They maintain that prosecutors can provide only a part of the answer, doing what they can do and doing it well.

C. *The Individuals with Whom Prosecutors Work*

For those prosecutors who operate within the conventional framework, there is no need to involve anyone outside the prosecutor's office in the ultimate decisions of how to define and enforce standards of social conduct. But once the prosecutor's office has settled upon its conception of the types of cases to prosecute, the implementation of that vision will require that the prosecutor work effectively with other actors within the criminal justice system.

Prosecutors invariably coordinate efforts with law enforcement officers and other investigators. Initiating and successfully managing a criminal prosecution depends on thorough investigation and competent arrests by police officers. Expert witnesses (sometimes police specialists, sometimes experts from the private sector) often serve along with the police on the prosecution team in a particular case. Lay witnesses (the complainant, percipient witnesses) often are crucial to the prosecution's ability to prove its case, but they are far less likely to be regarded as part of the "team." Even when it comes to the complainant, many prosecutors view the individual in instrumental terms as a vehicle for telling the prosecution's side of the story rather than a

homicide rates and District Attorney Robert Morgenthau's response, which included crediting prosecution efforts directed at gang activity, and dismissing the notion that a better economy played a role); *see also* Holder, *supra* note 34, at 31 ("[L]ocal prosecutors deserve much of the credit for bringing crime rates down to these historic lows. . . .").

41 *See* Glazer, *supra* note 12, at 573-74 (arguing that traditional "case-processing" prosecution is an ineffective method for reducing crime).

42 *See id.* at 574.

43 *See* Holder, *supra* note 34, at 32 (arguing that prosecutors cannot lower crime without understanding the community problems that give rise to crime); Glazer, *supra* note 12, at 596 (arguing that prosecutors must understand and address the social and economic factors that increase or decrease crime within a community).

teammate who should be consulted on important decisions regarding the case.

Prosecutors also must work in loose coordination with their institutional adversaries: public defenders and other defense attorneys. At trial, the prosecutor's role as an effective advocate is largely dependent on her opposing counsel vigorously performing her role.⁴⁴ In negotiating a disposition short of trial, prosecutors typically structure the terms and then coordinate the effort to bring about a particular resolution of the case with the defendant through her counsel.⁴⁵ On those occasions when defense lawyers represent individuals who have turned in "state's evidence," the interaction between prosecutors and defense counsel perhaps more closely resembles collaboration: they work together—albeit with different motivations—to ensure that the witness will provide meaningful assistance to the prosecution.⁴⁶ But in looking at the working arrangements with criminal justice players as well as civilians, prosecutors appear largely to control the nature and extent of interaction. Indeed, the prosecutor prescribes the boundaries.

On a systemic level, prosecutors' offices may develop less formal relations with other enforcement arms of the criminal justice system. They may establish limited working relations with probation and parole authorities; they may also maintain communications with corrections authorities, so as to be alerted to systemic concerns. Some state prosecutors' offices also maintain close working relationships with their federal counterparts.

Some have questioned the relatively narrow band of players with whom prosecutors regularly work.⁴⁷ These commentators ask why the list typically does not include all other agencies with prosecutorial power.⁴⁸ Why don't prosecutors coordinate their efforts with, for ex-

44 See Melilli, *supra* note 14, at 696.

45 See Mae C. Quinn, *Whose Team Am I on Anyway? Musings of a Public Defender About Drug Treatment Court Practice*, 26 N.Y.U. REV. L. & SOC. CHANGE 37, 58 (2000). Quinn discusses frequent areas of collaboration in drug-treatment court practice:

In the traditional adversarial setting there are many instances of collaboration between the prosecution and defense. For instance, prosecutors and defense attorneys may work together to convince a reluctant judge that a particular disposition for a case is appropriate, or to stipulate to certain evidence in the course of a hearing or trial.

Id.

46 See Melilli, *supra* note 14, at 695.

47 See Holder, *supra* note 34, at 32 (noting the need to develop relationships with community members, law enforcement, and other public and private agencies).

48 See, e.g., AM. PROSECUTORS RESEARCH INST., BEYOND CONVICTIONS: PROSECUTORS AS COMMUNITY LEADERS IN THE WAR ON DRUGS 11 (1993) (explaining that the increase

ample, health departments and wage and hour divisions of local and state government? And why don't they collaborate with other types of agencies and institutions that have a relevant perspective, such as social service agencies, mental health centers, employment agencies, and faith-based organizations?

Some of the prosecutors who adhere to the conventional model have responded to, and even anticipated, such criticisms.⁴⁹ If only to

in drug cases has resulted in prosecutorial approaches aimed at increasing citizen involvement and responding to community needs). In a 1992 survey of 290 chief prosecutors across the country, 65% said that their offices met with community groups during the year and 54% reported that they talked with students at public schools. John M. Dawson et al., *Prosecutors in State Courts, 1992*, in BUREAU OF JUSTICE STATISTICAL BULLETIN 1, 7 (1993).

49 Many traditional projects exist in which prosecutors collaborate with different organizations and individuals to fulfill their case-processing role. Denver District Attorney Bill Ritter shared this experience from his collaborative community prosecuting work:

We owe a great deal to the victims and their advocates, who toiled mightily to educate us about the dynamics of domestic violence and who then assisted us in developing protocols to improve our response. A coalition . . . that has met since the early '80s — representing law enforcement, the courts, probation, treatment providers and victims — has played a significant role in developing the protocols and policies that have improved our response Law enforcement in Denver enjoys a good relationship with many of the agencies that care passionately about this issue. We constantly work with battered women shelters and with nonprofit victim advocacy groups to assist victims with safety plans that could save their lives.

Bill Ritter, *Curbing Domestic Violence*, DENVER POST, Nov. 12, 2000, at M1; see also Michael A. Fuoco, *Prosecution and Prevention Cut Gang Crime Here*, PITTSBURGH POST-GAZETTE, Oct. 3, 1997, at A1 (reporting that then U.S. Attorney Frederick W. Thieman "began meeting with a wide spectrum of community institutions and groups and floated his plan to coordinate prevention programs," and participated in a retreat with the mayor, as well as representatives from schools, churches, unions, neighborhood groups, etc., to help get the community prosecution model up and running.); Al Kamen, *Woman Gets Year in Jail as City Presses Anti-Prostitution Drive*, WASH. POST, August 13, 1981, at B1 ("Under the new [anti-prostitution] campaign, prosecutors are working with community organizations . . . asking citizens to present their views at sentencing hearings in order to pressure judges to mete out harsher penalties."); Steve Rubenstein, *Shampoo, Trim and Help Save a Life*, S.F. CHRON., Oct. 2, 2001, at A18 (Helene Rene "was one of seven San Francisco hairdressers who took part in the Hairdresser Project, a half-day training program sponsored by the San Francisco district attorney's office" where "[a] doctor, a prosecutor and several counselors from battered women's shelters coached the beauticians on what to look for, how to talk to clients about it and how to persuade them to get help."). According to Khalid Raheem, president and CEO of the National Council for Urban Peace and Justice:

The considerable decrease in gang-related violence and activities can be attributed to the intensive, hard work of community-based organizations working for violence prevention and intervention Now people are better

serve election-driven concerns, these prosecutors fashion loose professional ties with other groups and, on occasion, team up with others on particular campaigns.⁵⁰ But far more typically, prosecutors respond to such suggestions by declaring that collaboration with such agencies fall outside the role of the prosecutor (as these offices have defined that role). Working with the more extended group of people and institutions would divert, they maintain, the prosecutor from her ability to perform her "real job" and would inappropriately squander the limited resources available to the prosecution.

D. Office Design and Management

A prosecutorial office's embrace of the conventional model of prosecution necessarily drives certain design and management decisions. The very location of the office can be seen as an outgrowth of the organizing vision of prosecution work. Prosecutors' offices tend to be located in the central court complex, typically far removed—physically and figuratively—from the places where the crimes take place and where the victims of those crimes live.

The choice of vision also has reverberations in the staffing patterns of a prosecutor's office. The goal of efficient prosecution of individual cases is usually best achieved with hierarchical staffing patterns that delineate clear lines of authority, coupled with centralized management to ensure consistency in policies and approaches. The principal design scheme seeks to maximize both efficiency and convictions as the office processes an ever-expanding volume of cases. More often than not, prosecutors' offices assign cases to different investigators and different attorneys, often in separate sections or units within the office. While this system may, in fact, offer the most efficient means to process individual cases quickly, the structural fragmentation can cause an office to overlook connections between cases.⁵¹ Moreover, the case-specific focus may lead these offices to overlook or ignore patterns that might suggest systemic approaches to preventing particular types of crimes.

Many offices have sought to increase their efficacy by dividing the office into units based on types of crimes.⁵² These specialized units—

informed and better organized and are finding ways to adequately respond to the issue.

Id.

50 See sources cited *supra* note 49.

51 See Holder, *supra* note 34, at 32.

52 See, e.g., Bill Varian, *Opponent Attacks; Attorney Defends*, ST. PETERSBURG TIMES, Aug. 26, 2001, at 1 (Hernando Times) (Henry Ferro, a candidate for state attorney,

such as career criminal units or domestic violence divisions—enable investigators and lawyers to coordinate their efforts in prosecuting the cases. Because the caseload is specialized, prosecutors can develop expertise in investigating, evaluating, and resolving often complex cases. For example, the repetition involved in trying a succession of drug cases enables an individual prosecutor (and ultimately the unit) to establish practice routines to ease the pressure caused by a high volume of cases. But, here again, the emphasis is on processing the cases rather than thinking more broadly about patterns of crime or prevention efforts.

E. Training

One of the central management decisions that flow from the office's definition of its mission is the type of training the office will provide to new staff attorneys. Training of entry-level prosecutors is both expensive and time-consuming for local offices. As a consequence, smaller and rural jurisdictions often lack the resources to provide extensive training programs. Those offices that can and do offer training typically focus on the practical aspects of the job to prepare new lawyers for the rigors of handling a heavy caseload. To the extent that training extends beyond individual trial practice, it generally serves as an opportunity to explain office policies and to familiarize the newest lawyers with the culture of the office.

Prosecutorial training programs traditionally concentrate principally on the information and skills needed to prosecute an individual case.⁵³ New lawyers learn the mechanics of the charging process and the techniques for interacting with and managing victims, witnesses, and police officers. Most programs offer practical instruction on fundamental criminal procedure and the court rules governing practice in the specific jurisdiction.⁵⁴ Formal training programs tend to cover ethical issues that might arise during the course of practice, office pol-

"proposes creating a division that would focus on crimes against the elderly," adding specialty programs that would target drunk drivers and domestic abusers, and reorganizing the office to allow prosecutors to specialize in particular types of crime, while the incumbent, Brad King, "says his office is already doing much of that with a special unit tackling white-collar crimes and focusing on abuse of the elderly."); *Community Prosecution; Montgomery Relocates Law Enforcement to the Neighborhoods*, WASH. POST, July 11, 1999, at B8 ("Traditionally, local prosecutors' offices have been organized according to type of crime—i.e., homicide, sex offenses, narcotics, felonies and misdemeanors.").

53 See Robert S. Fertitta, *Notes from the National College*, PROSECUTOR, May/June 1999, at 8, 8.

54 See, e.g., Leandra Johnson, *The Attorney's Perspective*, 74 FLA. B.J. 55, 56 (2000).

icy regarding prosecution and disposal of cases, and general court orientation. There is also, inevitably, a very heavy emphasis on the development and honing of trial advocacy skills.⁵⁵

A training program's content and emphases convey important messages to new employees: the training program sets a tone for the office and helps to inculcate new lawyers into the culture of the office. The traditional prosecutorial training program's focus on litigation inevitably signals that the office considers litigation its principal function.⁵⁶ Other forms of practice in the office, not associated directly with litigation, receive little or no attention and, consequently, are perceived as less important.

The choice of instructors for a training program also sends an important signal to new lawyers. Because the lawyers who are chosen to demonstrate lawyering skills are usually the most experienced trial lawyers, the new members of the office come to understand that advancement in the office is tied to trial prowess.⁵⁷ Because non-lawyers rarely play any role in orientation and training programs, the new lawyers grasp the implicit message that lawyers alone have the knowledge and skills to handle the tasks that a prosecutor is expected to perform.

Of course, any prosecutorial training program necessarily devotes considerable attention to the non-lawyers with whom a prosecutor will work in the course of a case: the investigators, victims, and the witnesses. Typically, such training programs describe the prosecutor's

As a former division chief in the Third Judicial Circuit State Attorney's Office, one of my duties was to train new prosecutors. I found through the years that without confidence, control, and courage, no one can become a successful trial lawyer. . . I taught new lawyers, and now teach mock trial students, that any good case stems not only from having concise facts and well-argued points, but also from conveying the facts and arguments with articulation and poise.

Id.

55 See Fertitta, *supra* note 53, at 8 (describing a similar training program offered by the National College of District Attorneys).

56 For examples of prosecutor's offices listing their "firm resumes" see <http://www.middlebury.net/acsa/index.html> (last visited Nov. 20, 2001) (providing profile of Addison County State's Attorney which notes that "office was recently rated #1 in Vermont with the highest conviction percentage in domestic violence cases"); <http://www.ago.state.al.us/blank.cfm?Include=bio> (last visited Nov. 20, 2001) (providing profile of Alabama Attorney General and noting increased prosecution efforts, including five hundred percent increase in prosecution of welfare fraud during his tenure). For links to websites for prosecutors' offices nationwide, see <http://www.co.eaton.mi.us/ecpa/proslist.htm> (last visited Nov. 20, 2001).

57 See James M. Dedman, *Notes from the National College*, PROSECUTOR, Mar./Apr. 1998, at 6, 6; see also Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. Miami L. Rev. 79, 144 n.218 (1997).

role in directive terms: the new prosecutors learn that they have the obligation to manage a criminal investigation, to direct law enforcement agencies, and to select and prepare witnesses to present the case effectively to the grand jury and, if the case goes to trial, a petit jury. Rarely do such programs conceptualize the prosecutor's work with non-lawyers as a collaborative enterprise.

Essentially the same messages are conveyed even in those offices that cannot afford formal training and that provide new lawyers with on-the-job training. In offices of this type, new lawyers typically receive one-on-one instruction from more experienced members of the office. Sometimes, there may be a formal vehicle for such instruction: for example, some offices pair new lawyers with more experienced lawyers to serve as a second lawyer at counsel table for trials. In other offices, new attorneys are encouraged to seek out experienced attorneys for advice when questions arise. In these and similar arrangements, what is conveyed to the new attorney in the course of the one-on-one interactions is not only substantive information, but also highly significant subtext about the nature of the prosecutor's role and the office's ethos. And, through this process as in formal training programs, the new employees come to accept the primacy of the prosecutor's role as litigator.

II. THE MOVEMENT TOWARDS A NEW MODEL OF COMMUNITY PROSECUTION

A. *Forces Propelling and Constraining the Movement to Community Prosecution*

1. The Community Movement in Other Spheres of the Criminal Justice System

The criminal justice landscape has been changing in ways that almost demand that prosecutors look differently at how they approach their work. Recognizing the need to respond to a more knowledgeable and critical public, the other players in the criminal justice system—the police, courts, and defense lawyers—have tried to find ways to collaborate with communities in the exercise of their functions. These new opportunities for the public to become involved in the criminal justice system have increased the public's appetite for a greater voice in how justice is conceived and enforced. And this has led to mounting pressure on prosecutors to follow suit.

Heightened community interest in the criminal justice system sparked a cultural change. The first signs of a shift in the criminal justice system's relationship to the community emerged in police de-

partments in the 1990s. Community policing began to gain prominence as a new alternative to what were widely perceived as ineffective policing strategies of the past.⁵⁸ This new philosophy of policing placed a particular emphasis on the involvement of neighborhoods and communities in the law enforcement enterprise.⁵⁹

This change in approach occurred against the backdrop of a less interactive form of policing. The traditional form of professional policing is reactive in nature. The police respond to complaints and only pursue those crimes in which victims and witnesses are ready and willing to cooperate in the processing of a criminal case.⁶⁰ Police rarely interact with members of the community except in connection with the investigation of a specific crime: when the officers are not working on a specific case, they cruise the neighborhood in a patrol car or wait at the precinct station house to be dispatched to the scene of a crime.

Two sociologists questioned these premises and recommended a retooling of the policing paradigm so as to view the officer as an integral part of the neighborhood. The key to deterring serious crime, they argued, involved attacking so-called "quality-of-life" crimes.⁶¹ Unrepaired broken windows, they said, led to additional broken windows by giving the community the impression that lawlessness is tolerated within its borders; this perception, in turn, enables crimes to flourish.⁶² And the strategy for attacking quality-of-life crimes, they suggested, is community-based policing.⁶³

A few pilot programs of community policing successfully implemented these concepts, leading other police departments to adopt similar approaches. These departments shifted the focus from response time and arrest rates to a concentration on the prevention of crime.⁶⁴ This shift represented both an "important drive toward reform on the part of the police" and a necessary effort to increase police legitimacy.⁶⁵ The police had begun to forge partnerships with its

58 See SKOLNICK, *supra* note 1, at 296; see also Bratton, *supra* note 1, at 464.

59 See SKOLNICK, *supra* note 1, at 298; see also Moore, *supra* note 1, at 103.

60 See Moore, *supra* note 1, at 112-13.

61 George L. Kelling & James Q. Wilson, *Fixing Broken Windows*, ATLANTIC MONTHLY, Mar. 1982, at 29, 31-33.

62 *Id.* at 30-31.

63 See *id.* For an overview of the success of these programs, see Moore, *supra* note 1, at 137; see also WESLEY SKOGAN & MICHAEL G. MAXFIELD, *COPING WITH CRIME—INDIVIDUAL AND NEIGHBORHOOD REACTIONS* 233-35 (1981).

64 Kelling & Wilson, *supra* note 61, at 29.

65 PAUL CHEVIGNY, *EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS* 116 (1995). Professor Chevigny suggests that one of the dangers of community policing is that it may encourage local police to "slight the rights of some in favor of others who

communities, and those partnerships redefined police work. Not surprisingly, the experience also began to shape public expectations about the community's ability to play a role in the criminal justice system.

On the heels of this community police movement, the courts began seeking ways to address similar criticisms of their inability to control crime and their lack of responsiveness to citizens' needs. By the late 1980s, the war on drugs had produced staggering increases in the number of drug-addicted defendants who were being sentenced to jail and prison.⁶⁶ The criminal justice system struggled to deal with not only the resulting overcrowding of penal facilities, but also the vast increases in probation and parole revocation hearings as drug-addicted defendants violated court orders that they should remain drug-free.⁶⁷ The public began losing confidence in the courts, which were viewed by some as too "soft on crime" and by others as too harsh on non-violent defendants who were unable to break the grip of their addiction.⁶⁸ In response, one jurisdiction created a pilot drug court to concentrate more on treatment and less on incarceration.⁶⁹ Judges of this court were expected to find ways to begin addressing, at least in part, the root causes of defendants' drug problems.⁷⁰ Soon thereafter, similar courts sprang up in many other jurisdictions.⁷¹ Evaluations of these programs suggest that they have been effective at reducing recidivism and alleviating some of the social costs of drug

call themselves the relevant community and could lead to increased discrimination in enforcement." *Id.* at 116 & n.135 (citing CRAG UCHIDA & DAVID WEISBURD, *POLICE INNOVATION AND CONTROL OF THE POLICE* (1993)).

66 See MARC MAUER, *RACE TO INCARCERATE* 132-33 (1999).

67 See Lynne M. Brennan, Comment, *Drug Courts: A New Beginning for Non-Violent Drug Addicted Offenders—An End to Cruel and Unusual Punishment*, 22 *HAMLIN L. REV.* 355, 377-78 (1998).

68 *Id.* at 377 n.225 ("The driving force behind the concept of drug courts was the frustration felt by law enforcement and the courts from the failure of efforts made in the 1980s to combat the drug problem throughout the country.").

69 The inaugural drug court began in Dade County, Florida, under the direction of then State's Attorney Janet Reno. See *id.* at 357.

70 *Id.*

71 See John S. Goldkamp, *The Drug Court Response: Issues and Implications for Justice Change*, 63 *ALB. L. REV.* 923, 955 n.170 (2000) ("[A]s of June 1, 1998, 264 courts were operating and 151 were in the planning stages."); Telephone Interview with Caroline Cooper, Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project at American University (Feb. 2, 2000). For a general description of drug courts, see OFFICE OF JUSTICE PROGRAMS DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT AT AMERICAN UNIVERSITY, *LOOKING AT A DECADE OF DRUG COURTS* 3 (1999). The Department of Justice has funded many of these drug court programs.

addiction—with far lower expenditures of state funds than is required for the operation of correctional facilities.⁷²

The apparent successes of the drug courts inspired jurisdictions to develop other sorts of community courts. These have taken the form of youth peer courts, domestic violence courts,⁷³ mental health courts,⁷⁴ and “community courts.”⁷⁵ Although typically framed in terms of a particular type of docket, these community courts are characterized by a general approach to adjudication: one that emphasizes problem-solving and prevention of crime. For example, the New York courts created the Midtown Community Court of New York to focus on the kinds of “quality of life” offenses that an urban courthouse, inundated with serious felonies cannot typically address.⁷⁶ The court opened its doors in 1993 and now handles approximately 15,000 misdemeanor cases per year.⁷⁷ The court envisions its mission as combining punishment with treatment.⁷⁸ Judges tend to frame the “punishment” dimension of a sentence in terms that require service,

72 A SUMMARY ASSESSMENT OF THE DRUG COURT EXPERIENCE prepared for the U.S. Department of Justice in 1997 concluded that recidivism among all drug court participants has ranged between 5% and 28%, and less than 4% for those who successfully completed the program. ROBERT B. AUKERMAN & PEGGY MCGARRY, COMBINING SUBSTANCE ABUSE TREATMENT WITH INTERMEDIATE SANCTIONS FOR ADULTS IN THE CRIMINAL JUSTICE SYSTEM 1 (1994). Ancillary benefits included increased levels of employment, prevention of possible drug-addicted newborns, and reduced costs of incarceration and case processing prior to the original sanctioning. See *id.* at 1–2. Drug courts of various types (achieving varying degrees of success) have been established in many states. See Susan Gochros, *Hawaii Drug Court: Ho'ola Hou (Renewed Life)*, HAW. B.J., Mar. 1998, at 32, 33. The concept of drug courts is certainly a success from a cost-benefit viewpoint: Treatment has proven much cheaper than incarceration. See Sheila M. Murphy, *Drug Courts: An Effective, Efficient Weapon in the War on Drugs*, ILL. B.J., Oct. 1997, at 474, 474.

73 See Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1286–87 (2000) (discussing several model domestic violence courts).

74 See Judith S. Kaye, *Making the Case for Hands-on Courts*, NEWSWEEK, Oct. 11, 1999, at 13, 13; see also Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 454–56 (1999).

75 See *Court-Community Collaboration*, 80 JUDICATURE 213, 215 (1997) (transcript of panel discussion at an American Judicature Society meeting).

76 *Id.*; see also MICHELE SVIRIDOFF ET AL., DISPENSING JUSTICE LOCALLY: THE IMPLEMENTATION AND EFFECTS OF THE MIDTOWN COMMUNITY COURT 14 (1997).

77 *Court-Community Collaboration*, *supra* note 75, at 215.

78 See Judith S. Kaye, *Rethinking Traditional Approaches*, 62 ALB. L. REV. 1491, 1492 (1999).

restitution, or mediation with the community.⁷⁹ Sentences often include participation in community beautification projects such as street sweeping or repainting of graffiti-covered walls or work for non-profit organizations that serve parts of the community.⁸⁰ The "treatment" component of a sentence aims to address the specific needs of the individual to prevent further violations. This dimension may take the form of mandatory participation in a drug treatment program⁸¹ or some other type of treatment or assistance program, or enrollment in an educational program such as an "English as a Second Language" course or a general education degree program.⁸²

The approaches employed by these new types of courts require that criminal justice professionals perform functions very different from those to which they are accustomed. The adversarial model typically utilized in trials and hearings has turned out to be inadequate to the tasks these courts undertake.⁸³ The new modality of working with individuals to try to change the conditions that gave rise to criminal conduct requires that players within the system share information with each other—an approach that is alien to an adversarial system in which lawyers routinely withhold information from each other in order to gain a tactical advantage. The courts have had to encourage—and, at times, even mandate⁸⁴—the system's players to collaborate in

79 See Susan K. Knipps & Greg Berman, *New York's Problem-Solving Courts Provide Meaningful Alternatives to Traditional Remedies*, N.Y. ST. B.J., June 2000, at 8, 8–9.

80 See ROBIN CAMPBELL, *THERE ARE NO VICTIMLESS CRIMES: COMMUNITY IMPACT PANELS AT THE MIDTOWN COMMUNITY COURT 2* (Ctr. for Court Innovation 2000).

81 See Goldkamp, *supra* note 71, at 956.

82 *Court-Community Collaboration*, *supra* note 75, at 215.

83 See Richard C. Boldt, *Rehabilitative Punishment and the Drug Treatment Court Movement*, 76 WASH. U. L.Q. 1205, 1248 (1999) ("[E]ach of the defining features of the adversary system comes into conflict with rehabilitative penal practice.").

84 Drug courts, for example, require that judges, prosecutors, defense attorneys, and treatment coordinators commit themselves to a collaborative, rather than adversarial approach. See Hora, *supra* note 74, at 476 (explaining that "[t]he orientation, structure, and procedural portions of the DTC [Drug Treatment Court] cannot maximize the successful treatment of addicts without the essential element of collaboration among the court's primary players" and that "[d]rug courts transform the roles of both criminal justice practitioners and . . . [drug] treatment providers," indicating that "[t]he metamorphosis of these roles allows the goal of court to become primarily therapeutic while remaining a legal institution"); see also Gloria Danziger & Jeffrey A. Khun, *Drug Treatment Courts: Evolution, Evaluation and Future*, 3 J. HEALTH CARE L. & POL'Y 166, 168–69 (1999) ("[T]he concept of the drug court 'team'—judge, prosecutor, defense counsel, treatment provider and corrections personnel—is important" to meeting the goals of both the criminal justice system and those of treatment providers."); *Development in Law: Alternatives to Incarceration*, 111 HARV. L. REV. 1863, 1918 (1998) (describing the new role for these attorneys "[a]s part of the treatment 'team,' the defense attorney is supposed to act in accordance with his client's best interests,

addressing the problems of crime. As might be expected, this new effort has been met with some resistance from prosecutors and defense attorneys, at least some of whom have proven to be reluctant to depart from their familiar roles.

Many defense lawyers have been skeptical of the new trends towards community involvement, not only when it comes to new court programs that demand information about the defenders' clients, but also when it comes to the possibility of restructuring defender services to reflect a community orientation.⁸⁵ Although there have always been individual defenders who have reached out to their clients' communities in individual cases (for example, to enlist the support of a church-based or community-based program as an alternative to incarceration), defender offices did not conceive of their roles as working with communities. Some defenders believed that their professional duty to provide their clients with zealous representation clashed with the interests of the larger communities in which they operated.⁸⁶

Defender offices have been forced to realize, however, that traditional approaches to criminal defense work will not suffice. In the decades that followed the Supreme Court decisions mandating the appointment of counsel to indigent defendants,⁸⁷ public defenders suffered increasing caseloads, decreasing budgets, and public condemnation.⁸⁸ In recent years, some defender offices have been willing to consider that their clients might benefit from defenders' ability to find common ground with residents of communities from which their clients come and to which they will return.⁸⁹ These defenders are coming to recognize that communities often share their

even when those interests involve sanctions" and "[t]his change in perspective subverts the traditional role of defense counsel as zealous advocates for their clients' legal rights, which requires counsel to argue in accordance with their clients' wishes, not necessarily their best interests") [hereinafter *Alternatives to Incarcerations*].

85 See Boldt, *supra* note 83, at 1216 (raising ethical concerns about the defense lawyer's role); *Alternatives to Incarceration*, *supra* note 84, at 1913-19.

86 See Taylor-Thompson, *supra* note 3, at 210-13.

87 See *Gideon v. Wainwright*, 372 U.S. 335, 343-45 (1963) (establishing a right to counsel for indigent defendants in felonies); *In re Gault*, 387 U.S. 1, 30-31 (1966) (establishing a right to counsel for children in delinquency proceedings); *Argersinger v. Hamlin*, 407 U.S. 25, 36-37 (1972) (extending adult criminal defendants' right to counsel to misdemeanors).

88 See LISA J. MCINTYRE, *THE PUBLIC DEFENDER: THE PRACTICE OF LAW IN THE SHADOWS OF REPUTE* 28-29 (1987); Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations To Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1241 (1993) (discussing the "burnout" that many public defenders are suffering); Taylor-Thompson, *supra* note 3, at 202.

89 See Taylor-Thompson, *supra* note 3, at 213.

views about how justice should be implemented in the neighborhood. As a result, these defenders have initiated projects in conjunction with communities on issues such as police accountability and racial profiling. Such collaborations have sensitized defenders to the potential for using community resources and support to push the criminal justice system to respond to crime in ways that will better serve the defenders' own clients, as well as the communities in which they live.

2. Inducements for Prosecutors To Adopt a Community Orientation

The criminal justice system's increasing awareness of and sensitivity to community concerns appears to have raised expectations—on the part of the public—that prosecutors will exhibit equivalent concern for community sentiment. Chief prosecutors, many of whom are elected officials, are coming to appreciate the need to accede to the public's wishes. For example, Marion County Prosecuting Attorney Scott Newman, who embraced the concept of community prosecution when he was elected in 1994, explained, "I realized that community policing was being implemented and the police were drawing closer to the community. When they would encounter failures [police and residents] were starting to unite against the prosecutor. I thought the prosecutor had to be at the table in these discussions."⁹⁰

Victims' rights groups have been particularly vocal in demanding greater prosecutorial attention to community concerns. These groups have drawn attention to—and, at times, enacted legislation to correct⁹¹—what they perceive as a tendency on the part of prosecutors to be insufficiently sensitive to victims' needs. Similar criticisms of prosecutors have been voiced by communities of color. There is a perception in some communities of color that prosecutors' offices—which, in most regions of the country, tend to be staffed by predominantly

90 Robert V. Wolf, *Building Partnerships: Community Prosecution in Indianapolis, Indiana*, in CTR. FOR COURT INNOVATION & U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE 1, 1 (2000).

91 See Richard Barajas & Scott Alexander Nelson, *The Proposed Crime Victim's Federal Constitutional Amendment: Working Toward a Proper Balance*, 49 BAYLOR L. REV. 1, 14–24 (1997) (discussing the proposed constitutional amendment for victim's rights); see also William W. Taylor, *Victims' Rights and the Constitution: Proceed with Caution*, 11 CRIM. JUST. 2, 2–4 (1997).

white lawyers⁹²—are inattentive to (and sometimes even suspicious of) victims of color.⁹³

Some prosecutors' offices have responded to such expressions of mistrust by reaching out to the communities they have been elected by or appointed to serve. For example, Eric Holder, the first African American to serve as United States Attorney for the District of Columbia (a position that involves oversight of local prosecutions in the local District of Columbia courts as well as the District's federal courts), responded to longstanding community criticisms of his predecessors by embracing the mandate to develop better ties with the African American community. He commented:

As a local prosecutor, I realized that I could be far more effective in addressing the crime problem if I deployed some of my attorneys into the community where they could develop special relationships with members of the police department, businesses, non-profit organizations, educational institutions, the faith community and, of course, the citizens themselves. In doing so, I found that we were better able to respond to the community's needs.⁹⁴

Some community groups have been explicitly critical of the degree to which prosecutors are physically removed from the communities they represent.⁹⁵ Prosecutors have responded by promising to reach beyond the confines of their own offices in defining and fighting crime. For example, San Francisco District Attorney Terence Hallinan began his first term as district attorney by announcing that a prosecutor's job extends beyond simply prosecuting. He promised that prosecutors in his office would go to high-crime neighborhoods to get to know the people and tell them how they can help local police and district attorneys. "We have to break down the barriers of mistrust between the minorities and the criminal justice system."⁹⁶

92 See Robert L. Misner, *Recasting Prosecutorial Discretion*, 86 J. CRIM. L. & CRIMINOLOGY 717, 734 (1996).

93 See HELEN PREJEAN, *DEAD MAN WALKING* 240–41 (describing research on prosecutorial management of cases when victims are black; often families of black victims are provided with little information and viewed with suspicion).

94 Holder, *supra* note 34, at 31; see also Bill Miller, *Prosecutors To Act as Community Advocates; U.S. Attorney Begins Experimental Program*, WASH. POST, June 6, 1996, at J1; Sam Skolnick, *Working the Streets*, LEGAL TIMES, Nov. 27, 1995, at 6.

95 See Sarah Glazer, *Community Prosecution*, CONG. Q. RESEARCHER, Dec. 15, 2000, at 1011, 1011.

96 Maura Dolan, *A Liberal Lays Down the Law in S.F.*, L.A. TIMES, Apr. 5, 1997, at A1. In San Francisco, District Attorney Terence Hallinan has championed community prosecution. He has ordered assistant district attorneys in his office to visit city neighborhoods wearing jackets emblazoned with the words "Community District Attorney." *Id.*; see also William Claiborne, *San Francisco Prosecutor Tries 'Something Differ-*

Prosecutors in other regions similarly have sought to decrease the distance and detachment of the office by attending neighborhood events and meetings held by other institutions.⁹⁷ Some prosecutors have taken the even larger step of placing prosecutors' offices within the community itself in storefronts, police precincts, and housing projects.⁹⁸ Some of the prosecutors who have taken such remedial measures may be partly or even predominantly motivated by self-interest: they perceive that vocal community criticisms can result in a loss in the next election for the position of district attorney. Other prosecutors may be acting on the basis of a professional vision of prosecutors as elected officials who have a fiduciary obligation to respond to the complaints of their constituents.⁹⁹ Still others may appreciate that

ent. 'Crusader Applies Liberal Traditions to New Duties, WASH. POST, Feb. 20, 1996, at A3. Hallinan has spurred efforts to involve gang members in community activities, has instructed assistant district attorneys to seek mentoring programs for drug offenders instead of jail sentences, and has refused to enforce California's stringent three-strikes-and-you're-out law against nonviolent repeat offenders. *Id.* He justifies community punishment for drug possession cases as a means of clearing court dockets and ensuring adequate attention to major drug traffickers and other serious offenders. *See id.*

[L]et's get the other junk out of the courtroom, the simple possessions and the kid on the street selling a rock or two of crack cocaine. The courts are so cluttered with these cases that when you get real [sic] serious crimes, it's a year or more before you can bring them to trial. It's crazy.

Id. Hallinan also opposes imprisoning large numbers of small-time drug dealers because of "the disparate impact it has on minority communities." *Id.*

97 Douglas Gansler, *Community Prosecution: Montgomery Relocates Law Enforcement to the Neighborhoods*, WASH. POST, July 11, 1999, at B8 (describing the responsibilities of community prosecutors, which include attending community meetings and working with schools).

98 *See, e.g.*, Jim Dyer, *New Prosecutor Right at Home*, ATLANTA J. & CONST., Sept. 28, 2000, at 1JD ("From his centrally located office, [community prosecutor John DeFoor] can explain legal issues to residents, bring them in contact with helpful government agencies, and serve as a positive role model to youth."); Raoul V. Mowatt, *Kane County Brings Prosecutor to People*, CHI. TRIB., June 6, 2001, at 1 (Metro) (The state's attorney office opened new office in Aurora Township, making "Kane the latest county to adopt a community prosecution program" and providing for community prosecutors that "will listen to residents' concerns and bring together representatives of government agencies to find answers to persistent problems.").

99 *See* James N. Johnson, *The Influence of Politics upon the Office of the American Prosecutor*, 2 AM. J. CRIM. L. 187, 190-91 (1973) (discussing public support for popular election of prosecutors). Prosecutors and attorney generals are characterized as "representatives" under the Voting Rights Act when they are subject to elections. *See* Chisom v. Roemer, 501 U.S. 380, 399-400 (1991). In this regard, the prosecutor's role as elected official is viewed as distinctly different from that of a judge in those jurisdictions in which judges are also elected officials. *See* Ruth Gavison, *The Implications of Jurisprudential Theories for Judicial Election, Selection, and Accountability*, 61 S. CAL.

communities have skills, information, and knowledge that would be useful to tap. Even those prosecutors who are not initially driven by the desire to draw on community expertise often come to recognize this fundamental benefit of collaborating with community members.

3. Impediments to Prosecutors' Adoption of a Community Orientation

The prospect of adopting a community prosecution paradigm seems to spark a variety of negative reactions that can temper enthusiasm and slow implementation efforts. These reactions—both external and internal to the prosecutor's office—range from skepticism about the genuineness of prosecutors' efforts to concerns about the real costs of making such fundamental changes.

One can almost expect that other professionals within the justice system will malign community prosecution efforts as political maneuvering. In particular, the office's adversaries—public defenders, the remainder of the locality's court-appointed bar, and private defense attorneys—may question the sincerity of a reform effort of this type. By adopting such programs, prosecutors' offices may open themselves to criticisms that their decisions are merely window dressing, designed to appease an angry public. Or the prosecutors' efforts may be dismissed as a thinly veiled measure to attract funding that has become available. Somewhat more generous critics may predict that the efforts by these offices, while genuine, will be doomed to fail because of organizational inertia or resistance from other entities that have a political interest in seeing the office maintain a focus on conviction rates.¹⁰⁰

L. REV. 1617, 1643–50 (1988) (discussing theories of law in relation to judicial accountability); Louis Michael Seidman, *Ambivalence and Accountability*, 61 S. CAL. L. REV. 1571, 1572–87 (1988) (describing contradicting defenses of judicial independence); cf. *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807 (1987) (“The requirement of a disinterested prosecutor is consistent with our recognition that prosecutors may not necessarily be held to as stringent a standard of disinterest as judges.”).

¹⁰⁰ Newspaper articles and editorials citing legislators' election platforms of being tough on crime may put pressure on prosecutors to maintain high conviction rates. See Dana Hedgepeth, *State's Attorney Race in Dead Heat*, BALT. SUN, Nov. 4, 1998, at 9D (Opponents in state's attorney race distinguish each other by criticizing “‘lackluster prosecution’ and ‘an embarrassingly’ low conviction rate in criminal trials.”); Greg Hernandez, *2 Candidates Hoping To Increase the Ranks of Women on the Bench*, L.A. TIMES, Oct. 9, 1996, at B4 (explaining that candidates for superior court judicial posts cite 100% conviction rates and being tough on crime as qualification); Abraham McLaughlin, *Prosecutors' Power Now on the Defense*, CHRISTIAN SCI. MONITOR, Mar. 25, 1999, at 1 (“Prosecutors—many of whom are elected—also face big pressure to have high

Public reaction may mirror this skepticism. Particularly those communities that have viewed prosecutors as prone to dismiss, ignore, or minimize community members' concerns in the past may not so readily trust that the prosecutors' new rhetoric will translate into meaningful changes in behavior. Moreover, the public will understandably wonder about how this new model of "community prosecution" will operate and what it might change. Will prosecutors be willing to work in partnership, holding themselves accountable for their choices and policies even though they have been reluctant to do so in the past? And some sectors of the community will wonder whether enhanced prosecutorial attentiveness to community concerns may actually decrease even the limited influence the sector has wielded in the past, given that the residents of the sector make up only a small part of the electoral district or lack wealth and influence. Prosecutors, these interest groups fear, may resort to patterns of paternalism in attempting to gauge the concerns of those parts of communities that remain less vocal.

Prosecutors themselves may be skeptical or, worse, cynical about the community prosecution effort. Some prosecutors may be reluctant to abandon a role that, for all its tensions, has the pull of familiarity. A vague role that emphasizes community sensitivity and interaction smacks of work that seems far removed from what traditionally-trained lawyers would consider legal practice.¹⁰¹ Community prosecution models may introduce new tensions in the prosecutor's already complicated role. Some might contend that placing too much emphasis on community sentiment could undermine the detachment the prosecutor needs in order to exercise discretion and fulfill the role of minister of justice.¹⁰² By changing the focus from an adver-

conviction rates. If they don't, they can be portrayed as 'soft on crime' by political opponents."); Editorial, *Keller Won't Run*, LAS VEGAS REV. J., Oct. 23, 2001, at 6B (In 1994, Jerry Keller won his race for Clark County sheriff as a virtual unknown by "stressing a get-tough-on-crime approach that included advocating adult prosecution of kids who commit violent crimes.").

101 See William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment of Poverty Law Scholarship in the Post Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099, 1102-08 (1994).

102 See *supra* notes 30-31 and accompanying text. In its 1963 decision in *Brady v. Maryland*, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). Citing an earlier case, the State also has an obligation not to allow "false evidence . . . to go uncorrected when it appears." *Id.* (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). Such obligations are in keeping with the prosecutor's duty to treat the accused in a fair and just manner:

serial model to a more collaborative one, prosecutors may be seen as subordinating their mandate to serve as advocates for communities, and, in particular, for victims. The more one focuses on collaboration, the more problematic the conventional adversarial role seems. If advocacy comes to mean a singular devotion to a client—or in the case of a prosecution, to the victim—then community prosecution may upset that pattern.¹⁰³

These concerns would seem to have some merit. Enhanced proximity to and collaboration with the community, if not handled in the right way, could result in prosecutors becoming too accountable or too susceptible to influence. Moreover, even if the prosecutor remains independent in fact, a close relationship with community

A prosecutor that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile."

Id. at 87–88.

Following *Brady*, a new trial must be granted if it is found that a prosecutor failed to disclose evidence that is *material* either to guilt or to punishment. As explained "in *United States v. Agurs*, 427 U.S. 97, 104 (1976): 'A fair analysis of the holding in *Brady* indicates that implicit in the requirement of materiality is a concern that the suppressed evidence might have affected the outcome of the trial.'" *United States v. Bagley*, 473 U.S. 667, 674–75 (1985).

The issue in *United States v. Bagley* was "whether a conviction should be reversed because the prosecutor failed to disclose requested evidence that could have been used to impeach Government witnesses." *Id.* at 669. In response, the Court reiterated its holding in *Brady* and stated that while "the prosecutor is not required to deliver his entire file to defense counsel," he must "disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial." *Id.* at 675. Because impeachable evidence, like exculpatory evidence, is favorable to the accused, and "may make the difference between conviction and acquittal," failure to disclose impeachable evidence that is material to the outcome of the trial is a violation of *Brady v. Maryland*. *Id.* at 676. Returning to the lofty principles of justice and fairness, the Court also emphasized that "the prosecutor's role transcends that of an adversary: he 'is the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.'" *Id.* at 675 n.6 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

103 See Elliott Currie, *Crime and Punishment in the United States: Myths, Realities, and Possibilities*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 381, 382 (David Kairys ed., 1998) (noting trends toward prison labor, three-strikes-and-you're-out, public shaming, and public perception of source of crime as "moral and cultural"). The implementation of federal and state sentencing guidelines, in particular, responded to both popular pressure for more aggressive enforcement of criminal sanctions and academic pressure to reduce the unjust disparity in sentencing policies.

groups and organizations may give rise to a perception of the office as unabashedly partisan.

*B. The Lessons That Can Be Gleaned from Experiments in
Community Prosecution*

Now that the competing forces that propel and constrain the move to community prosecution have been identified, this Section will examine the kinds of programs that prosecutors have chosen to create in response to these competing pressures. The Section will begin by dropping back to a much earlier time in history, so as to examine the lessons that can be gleaned from what might be regarded as the very first "experiments" in community prosecution.

1. The Lessons of History

In contemporary discussions of the community prosecution approach, few commentators consult the history of the prosecution function.¹⁰⁴ Yet, it is a history that illustrates the inherent logic (or, some might even say, the inevitability) of a connection between prosecutors and the community, as well as the potential pitfalls of too close of a connection.

The American system of criminal justice traces its roots to the English system. In the early Middle Ages, England had no formal system of criminal justice. The community and the individual victim were directly involved in the apprehension and prosecution of the offender. In a sense, it was neighbor against neighbor. The victim of a crime would assume the role of a police officer when organizing a patrol, typically relying on family and friends to pursue and capture the offender.¹⁰⁵ If the victim succeeded in apprehending the guilty party, the community ensured that the perpetrator was physically punished for the crime and then required to provide restitution to the victim.¹⁰⁶

As one might imagine, a drive for vengeance often fueled the victim's conduct, resulting in quite punitive private efforts to redress

104 For some rare examples, see Anthony V. Alfieri, *Prosecuting Violence/Reconstructing Community*, 52 STAN. L. REV. 809, 835-36 (2000) (focusing mainly on ABA ethical standards, as opposed to the historical function of the prosecution function); David D. Friedman, *Making Sense of English Law Enforcement in the Eighteenth Century*, 2 U. CHI. L. SCH. ROUNDTABLE 475, 475-83 (1995).

105 See Jose Cardenas, *The Crime Victim in the Prosecutorial Process*, 9 HARV. J.L. & PUB. POL'Y 357, 359 (1986) (citing 2 F. POLLOCK & F. MAITLAND, *THE HISTORY OF ENGLISH LAW* 449 (2d ed. 1898)).

106 *Id.*

grievances. But the person who broke the law was perceived not only to have injured the victim, but also to have waged war against the community, and, thus, the community went to war with the offender.¹⁰⁷ Until 1879, England had no public officer or court official charged with the responsibility of prosecuting crimes.¹⁰⁸ Although the King's Attorney (the early version of the Attorney General) had official duties, all such duties fell within the rubric of protecting the King's interests.¹⁰⁹ Thus, crimes against individuals and their property largely became the focus of private prosecution.¹¹⁰

The criminal justice system of the colonies reflected the influence of the British system, although that system certainly was not adopted wholesale.¹¹¹ In New York and New Jersey, for example, the British common-law methods were altered because of the Dutch influence.¹¹² Those colonies utilized the services of a "schout,"¹¹³ who conducted public prosecutions. The British government largely removed itself from the day-to-day functioning of the local colonial courts.¹¹⁴ Although many of the colonial courts mirrored those in England, in New York and New Jersey, the influence of the Dutch, the original colonizers, and their legal system remained.¹¹⁵ The American local tribunals held by the governor essentially mimicked the practice in England.¹¹⁶ There was no formal system of advocacy, no trained bar, and no public official to bring charges.¹¹⁷ As in the English system, the American criminal justice system consisted of actions brought by individuals who had been victimized.¹¹⁸ Actions were brought by "sheriff prosecutors," who were later replaced by deputy attorneys general.¹¹⁹

But concerns began to surface about prosecutions by victims. Some worried that victims were often at the mercy of shrewd defendants. Repeat offenders, who had proceeded through the criminal justice system at least once, often gained an advantage over the first-time

107 *Id.*

108 See JOAN JACOBY, *THE AMERICAN PROSECUTOR: A SEARCH FOR IDENTITY* 4, 20 (1980).

109 *Id.* at 8.

110 *Id.*

111 *Id.* at 11.

112 *Id.* at 13.

113 See Goldstein, *supra* note 24, at 1287.

114 See JACOBY, *supra* note 108, at 12.

115 *Id.* at 13-14.

116 *Id.* at 12.

117 *Id.*

118 See Cardenas, *supra* note 105, at 366.

119 See JACOBY, *supra* note 108, at 16; see also Cardenas, *supra* note 105, at 368-70.

victim because the offender had amassed a certain procedural knowledge from previous experiences.¹²⁰ Critics of the private prosecution approach also expressed concerns about abuses of justice stemming from collusion between the parties. The accused and the accuser would often meet and settle out of court for a negotiated percentage of the penalty.¹²¹ This practice, in turn, threatened the financial solvency of the courts.¹²²

The foregoing criticisms and concerns led to an effort to distance the prosecution function from the victim of the crime. In 1704, Connecticut became the first colony to eliminate the system of private prosecution entirely.¹²³ The statute of 1704 created a position for a professional to "prosecute and implead in the law all criminals."¹²⁴ In 1832, Mississippi became the first state to include in its constitution a provision for the popular election of local district attorneys.¹²⁵ The concept of an elected prosecutor eventually caught on, and, by 1912, most states had provided for locally elected prosecutors.¹²⁶

The responsibility of the public prosecutor dramatically altered the prosecution function. Rather than simply serving as an advocate for the victim, the public prosecutor was the representative of the government. To complement and supplement the traditional advocate's role, the public prosecutor received both the authority and the considerable resources of the state. Consequently, she could make discretionary decisions about how and when she should deploy those resources in actions brought against an individual.¹²⁷ And the public no longer could make the decision to prosecute. Yet the public nonetheless maintained a role, although an obviously more limited one, in the prosecution function—through its voting power.¹²⁸

Or so it appeared. The advent of the locally-elected professional prosecutor has led to an unexpected dichotomy. On the one hand,

120 See JACOBY, *supra* note 108, at 18.

121 See *id.*; see also George Fisher, *Making Sense of English Law Enforcement in the Eighteenth Century: A Response*, 2 U. CHI. L. SCH. ROUNDTABLE 507, 508-14 (1995) (critiquing the system of private prosecution). There is a great deal of debate about whether these payments actually occurred, as well as their impact on the criminal justice system.

122 See OLIVER P. CHITWOOD, *JUSTICE IN COLONIAL VIRGINIA* 120-21 (1971).

123 See JACOBY, *supra* note 108, at 16.

124 *Id.*

125 See Goldstein, *supra* note 24, at 1287.

126 *Id.*

127 See generally John D. Bessler, *The Public Interest and the Unconstitutionality of Private Prosecutors*, 47 ARK. L. REV. 511, 545 (1994) (discussing how the role of a public prosecutor differs from that of other advocates).

128 See Goldstein, *supra* note 24, at 1289.

some argue, the electoral process has forged a system of direct accountability to the people in an increasingly bureaucratic society.¹²⁹ On the other hand, many insist that the desire for neutrality has driven a wedge between prosecutors and those individuals and communities that need their services.¹³⁰ Of course, at a minimal level, the community can maintain a voice in prosecution through the electoral process: the public can approve or disapprove of the prosecutor's track record or stated agenda by electing a candidate to that office or by voting a prosecutor out of office. But during the prosecutor's term, the voting public has little or no ability to influence policies and practices. Moreover, the neighborhoods that most often experience the greatest incidence of crime tend to participate least in the electoral process. This disenfranchisement—some self-imposed¹³¹ and some not¹³²—often fuels both the perception and reality of a gap in policy goals between the prosecutor's office and the neighborhood in which it operates.

The foregoing brief history of the prosecution function indicates the difficulties of fundamentally altering the prosecutor's role. Given the fractious relations that have come to exist, prosecutors' offices cannot expect cozy consensus simply by choosing to extend themselves outside the boundaries of the courtroom. Moreover, any design of a community program must take into account the delicate balance between appropriate respect for and cooperation with the community on the one hand and the risk of ceding undue control to (or simply being perceived as having ceded undue control) to community mem-

129 See, e.g., *id.* at 1287–88 (observing that full-time elected prosecutors are more accountable).

130 See, e.g., Meier, *supra* note 30, at 100–19. See generally Matthews, *supra* note 30 (discussing the ethical obligation implicated by expansion of victims' rights in criminal judicial process).

131 See, e.g., *NAACP's Goal Is Educating Minorities To Cast Ballots*, THE TENNESSEAN, Sept. 29, 2000, at 7B (describing efforts by NAACP to increase voter registration and turnout among communities of color); Alex Rodriguez, *Latinos Lack Political Clout; Low Turnout Keeps Power Out of Reach*, CHI. SUN-TIMES, Jan. 18, 1999, at 10 (describing low Latino voter turnout as a function of multitude of barriers, including language difficulties, lower education and income levels, and cynicism for democracy). Perhaps less well known are efforts in this century to erect institutional barriers to prevent the poor from voting. For a detailed examination of this phenomenon, see generally FRANCES F. PIVEN & RICHARD A. CLOWARD, *WHY AMERICANS DON'T VOTE* (1988).

132 The problem of limiting voter power is acutely felt in the black community, in part because fourteen percent of a total voting age population of 10.4 million black men nationwide are currently or permanently barred from voting, either because they are in prison or have been convicted of a felony. See Fox Butterfield, *Many Black Men Barred from Voting*, N.Y. TIMES, Jan. 30, 1997, at A12.

bers on the other. The next Section will examine the ways in which modern prosecutors have balanced these various concerns in the community prosecution programs they have created.

2. Contemporary Community Prosecution Programs

An examination of modern community prosecution programs immediately makes plain that the concept of "community prosecution" is not in any way self-defining. As is apparent from the wide range of programs that lay claim to the name "community prosecution," one can give this vision of prosecutorial practice virtually any meaning. For example, some prosecutors' offices have claimed a community orientation because staff attorneys of the office attend high-profile community meetings. Other offices have added a community component to the prosecutor's job by requiring that assistants accompany police in patrol cars.¹³³ Still other offices rotate prosecutors through a community branch office to handle civilian complaints in given neighborhoods, but the principal—and most desirable—assignments still revolve around traditional courtroom-based prosecution.

A small number of offices have undertaken bolder objectives. In Indianapolis, the district attorney's office initiated its new community approach by placing prosecutors in police precincts.¹³⁴ Thereafter, the effort evolved into collaborations between local prosecutors and other city and county agencies to coordinate the issuance of warrant checks and health and safety inspections of rundown properties.¹³⁵ In Washington, D.C., community prosecutors make regular appearances at police roll calls, discussing new criminal cases and providing advice on ways to handle particular investigations.¹³⁶ And, in an effort to coordinate their efforts, police commanders and prosecutors meet on a regular basis to discuss crime trends and to develop strategies for the future. In Denver, Colorado, prosecutors have been working with community members to create a "Community Justice Council" that will identify and prioritize problems facing its local community. Portland, Oregon boasts a "Neighborhood D.A. Program"¹³⁷ in which deputy district attorneys are assigned to neighborhoods to work in

133 See Sacha Pfeiffer, *Mutual Aid Police and Prosecutors Say Putting Assistant DAs in the Precincts Is Making Both Their Jobs Easier*, BOSTON GLOBE, July 2, 2000, at B1.

134 See Wolf, *supra* note 90, at 2.

135 *Id.*

136 See Holder, *supra* note 34, at 32.

137 See Multnomah County District Attorneys, *available at* <http://www.co.multnomah.or.us/da/mindex.html> (last visited Oct. 14, 2001).

conjunction with members of the locality to develop strategies to decrease or eliminate recurring safety problems and thereby improve the community's quality of life.

Perhaps the most ambitious of the community prosecution efforts have involved prosecutors who have been willing to imagine collaborations and problem-solving approaches that stretch beyond the traditional conflict paradigm that governs criminal prosecutions. In Austin, Texas, District Attorney Ronald Earle has launched a variety of programs that he styles "community justice in Austin."¹³⁸ These initiatives include the formation of a Children's Advocacy Center, the establishment of Neighborhood Conference Committees, and the adoption of various techniques to engage youthful offenders in community service and mentoring projects.¹³⁹ In Kansas City, County Prosecutor Claire McCaskill has created a neighborhood prosecution program in which a team of four prosecutors and a supervisor are placed in a community-based setting and work with school officials, city agencies, business leaders, and neighborhood representatives to develop crime prevention strategies.¹⁴⁰ Their efforts thus far have included joining forces with community groups and landlords to close drug houses and working with community groups to combat environmental pollution.¹⁴¹

A principal goal of community prosecution seems to be to develop structures that lend themselves to an invigorated role for the community. Thus, decentralization appears to be a critical component. Particularly in those regions in which subordinated communities have not had meaningful access to the prosecutor's office, it is essential that prosecutors bring their operations to the community. Without such an affirmative demonstration on the prosecutor's part, community members are unlikely to regard invitations for consultation and involvement as genuine. The design of a community prosecution program obviously must take into account the nature and size of the community. Whereas a natural approach in an urban setting is to place prosecutors into different neighborhoods, a rural setting calls for a different conception.¹⁴² The size of the community will affect

138 Coles & Kelling, *supra* note 9, at 79.

139 *Id.*

140 *Id.* at 80.

141 *Id.*

142 Two individuals who deserve great credit for injecting this insight into national planning discussions are Marna McClendon, the State's Attorney of Howard County, Maryland, and Henry Valdez, the District Attorney in the First Judicial District of New Mexico.

judgments about the amount of resources that can be allocated to that region.

Existing programs offer valuable insights on such issues as office structure and design. At one extreme, a few offices have chosen to integrate community prosecution throughout the office. For example, the elected State's Attorney of Montgomery County, Maryland rejected the inefficient allocation of criminal justice resources that the "case-oriented approach" had produced in favor a new organization of the prosecutorial staff by neighborhood.¹⁴³ Each of the prosecutors in the office was assigned to one of the five police districts in the county.¹⁴⁴ Although the State's Attorney describes his office as the "first prosecutor's office in the United States to fully implement community prosecution,"¹⁴⁵ he chose to target his three highest crime precincts and to encourage greater interactions among his prosecutors, the police in those neighborhoods, and the community.¹⁴⁶ In these designated communities, prosecutors meet extensively with neighborhood groups, closely screen complaints, and divert inappropriate cases from the criminal justice system.¹⁴⁷ Prosecutors in these districts maintain detailed records of contacts and data in a community prosecution database for evaluative purposes.¹⁴⁸

Other offices have added separate community prosecution units. In the earlier-described "Neighborhood D.A. Program" of Portland, Oregon,¹⁴⁹ the prosecutors belong to a discrete unit of the office and they meet weekly to discuss problems and brainstorm solutions; rotation into the unit is for a limited period of time.¹⁵⁰ The prosecutors in the unit work with community groups to define the areas in which they will focus their efforts.¹⁵¹ Similarly, the District Attorney of Denver, Colorado, has created community justice councils that provide direct community input into the definition and prioritization of problems, and the development and implementation of remedies to

143 Douglas F. Gansler, *Implementing Community Prosecution in Montgomery County, Maryland*, PROSECUTOR, July/Aug. 2000, at 30, 30.

144 *Id.* at 31.

145 *Id.* at 34.

146 *Id.* at 32.

147 *Id.*

148 *Id.*

149 See *supra* note 137 and accompanying text.

150 Conversation with Mike Schrunk at American Prosecutors Research Institute, Alexandria, Va. (July 11, 2000).

151 See Multnomah County District Attorneys, *supra* note 137.

solve those problems.¹⁵² The unit is staffed by lawyers, community workers, and investigative and support staff.¹⁵³

Although the creation of a separate community prosecution unit appears to be the structural option favored by medium-to-large-scale urban prosecutors' offices, this approach has its hazards. Lawyers who enter practice with traditional notions of the work may be reluctant to serve in a unit that does not handle jury trials.¹⁵⁴ Moreover, lawyers may fear that placement in such a non-traditional unit will adversely affect career advancement within the office. To address such problems, the District Attorney of Portland allows community prosecutors their choice of assignment after rotation into the community prosecution unit.¹⁵⁵ Other offices have dealt with the problem by giving a form of preferential treatment to the community prosecution unit. For example, in Indianapolis, the District Attorney meets regularly with the community prosecution unit both at work and at his home to underscore his commitment to their efforts and to acknowledge their contributions to the office.¹⁵⁶ Still, the very fact that such an extra effort needs to be made to encourage people to participate in these community units reveals deeper "cultural" issues within prosecutors' offices that should be addressed in making structural decisions.

As indicated earlier, a few offices have created storefront service delivery centers.¹⁵⁷ Such centers make it easy for residents of the community to come and speak with the prosecutors assigned to their neighborhood.¹⁵⁸ The choice to locate the office physically within the geographical boundaries of the neighborhood has two related effects. First, it provides much greater access for the community, and, second, gives the prosecutor a high level of visibility in the communities she seeks to serve.

A critical lesson that emerges from existing community prosecution programs is that the process of working with a community, even when that process functions at its best, is considerably messier than

152 See *id.*

153 This structure is the one utilized by Scott Newman in the Indianapolis, Indiana, District Attorney's office, as well as a number of other mid-sized prosecutors' offices.

154 See Wolf, *supra* note 90, at 2-3.

155 See Carrie Johnson, *Wholesale Shake-up at Prosecutor's Shop*, LEGAL TIMES, Nov. 2, 1998, at 1 (describing promotions given to community prosecutors by U.S. Attorney Wilma Lewis, which "likely are an indication of Lewis' esteem for the Community Prosecution Section").

156 See Wolf, *supra* note 90, at 4.

157 See *supra* notes 96-99 and accompanying text.

158 See Charles J. Hynes, *The Urban Criminal Justice System Can Be Fair*, 20 FORDHAM URB. L.J. 419, 427 (1993).

conventional prosecution. It is far easier to invoke the specter of "the community" and to purport to speak and act on its behalf than to work at discovering its varied voices, goals, and concerns. As prosecutors have embarked on this process, they have discovered that "the" community rarely is a single entity with static issues. Rather, it is a series of communities with competing and often conflicting sentiments about everything that occurs within and surrounding their borders. Thus, to be effective, the new models of prosecution have devoted considerable time and energy to learning how a community operates.

As the community prosecution programs also have discovered, the differing segments of a community may react very differently to an invitation to provide information and advice to a prosecutorial program. Members of the community may differ widely in the ways in which they approach issues or even their willingness to discuss particular topics at all. Some individuals will come to community meetings exclusively for the purpose of complaining and will be otherwise unwilling to participate in community activities. Others will be skeptical of the prospect of working with law enforcement officials on any collaborative project.

To gain an accurate picture of community problems and develop a valid diagnosis of the remedies likely to solve those problems, prosecutors must take pains to obtain input from all of the members of the community, including (and perhaps especially) those who can offer a perspective that differs from the staff of the prosecutor's office.¹⁵⁹ Because of the history of tension between law enforcement officials and communities of color, it will be particularly important for members of community prosecution projects to learn how to overcome barriers of "difference" caused by race, class, and other factors.¹⁶⁰

That is easier said than done. One of the difficulties in obtaining input is to identify appropriate representatives of the community with whom to speak and consult. Organizations like victims' rights groups are obvious allies in any prosecution effort. But a community prosecution program must reach out beyond these familiar voices to appeal to those parts of the community that are not as visible or as well organized. So, for example, in seeking involvement on community advisory boards, a prosecutor should not be content merely to secure the par-

159 See Mary I. Coombs, *The Constricted Meaning of "Community" in Community Policing*, 72 ST. JOHN'S L. REV. 1367, 1373 (1998).

160 For a discussion of similar concerns in the community-policing context, see Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities and the New Policing*, 97 COLUM. L. REV. 551, 589 (1997).

ticipation of local representatives of Mothers Against Drunk Driving, but might also solicit the involvement of mothers of juvenile offenders; both groups would bring valuable perspectives to the discussion. The eager participant will not necessarily be the best representative of the community.

Nor will the most vocal necessarily be the appropriate choice. There is danger in according too much attention to those individuals who consistently dominate discussions. Particularly in subordinated communities, residents may be unwilling to speak because of a concern about imposing their world view on others or being perceived as wishing to do so. Still others may remain silent because they have learned, through sad experience, that representatives of the government will disregard or dismiss their voices. Thus, identifying the views of residents poses significant challenges.

But ducking that challenge seems as problematic. Prosecutors must resist the temptation to make assumptions about the nature of the community or the likely views of community members. For example, residents of a high-crime neighborhood will not necessarily react in the ways that a prosecutor might expect of "crime victims" or hold the views that victims' rights groups commonly articulate.¹⁶¹ In the crime-plagued, low-income neighborhoods which are the focus of community prosecution efforts, there is often far more fluidity between the categories of victim and defendant than many would expect or concede. Part of the success in working *with* communities instead of *for* communities is the willingness to listen to community input on solutions, as well as the diagnosis of the problems.¹⁶²

161 Even victims' rights groups are not monolithic. For example, see David Hartman, *7-Year-Old's Murderer Executed*, THE DAILY OKLAHOMAN, Jan. 17, 2001, at 1-A (describing roles taken by murder victims' grandmothers, with one advocating for the death penalty and the other active in the death penalty abolition movement); Yonat Shimron, *Lobbyist Brings Hope to Death Row*, NEWS & OBSERVER (Raleigh, N.C.), Jan. 21, 2001, at B1 (profiling Stephen Dear, the executive director of People of Faith Against the Death Penalty, who is responsible for organizing the faith community's opposition to the death penalty in North Carolina and works alongside other grass-roots groups across the state to raise public awareness); Jo Ann Zuniga, *The Wrong Man?; Groups Turn International Attention to Death Row Inmate*, HOUSTON CHRON., Jan. 10, 1993, at A1 (describing local Hispanic community members rallied in support of Ricardo Aldape Guerra, on death row for a crime many believe that he did not commit and activists such as Liz Murillo, co-director of Comité Nacional de la Raza, who believe that theirs is "also a protest of the justice system that is discriminatorily used against people of color").

162 See GERALD LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VERSION OF PROGRESSIVE LAW PRACTICE* 61 (1992). This is a central distinction between "liberal" lawyers and rebellious lawyers. Liberal lawyers would view community presence as an end in itself.

As the foregoing review of community prosecution programs demonstrates, the best experiments suggest an emerging vision of community prosecution. To be sure, the vision remains inchoate in virtually every sense of the word: just beginning to develop; lacking structure; even chaotic. Yet the outlines of the practice that prosecutors appear inclined to realize seem discernible. The available evidence offers guidance about many of the elements essential to an effective community prosecution program as well as the pitfalls that need to be avoided. The next Section will use this evidence to offer some suggestions for the formulation of the goals, structure, and design of a community prosecution program.

III. A PROPOSED CONCEPTION OF COMMUNITY PROSECUTION

In recommending ways in which a community prosecution program might productively alter the traditional prosecution office's conception of its work, I will return to each of the programmatic elements identified in Part II—the constituency prosecutors serve; the definition of the central mission, the nature of the work, and the criteria for evaluation; the individuals with whom prosecutors work; office design and management; and training. I do not presume to offer either a blueprint or a model for a community prosecution program. One lesson that has clearly emerged from the experiments in community prosecution is that the transition to a new model of this sort is a profoundly complex process. The conventions that make up the case-processing approach are deeply entrenched and may not easily give way. As important, the manifold difficulties of engrafting a meaningful community focus onto the work that prosecutors do are daunting at best. I offer the following proposals, therefore, primarily as an attempt to stimulate further efforts to formulate a consistent, coherent vision of a community prosecution approach.

A. *The Constituency Prosecutors Serve*

Just as the successes of the community-policing programs led some community groups to demand greater access to and involvement in the work that prosecutors do,¹⁶³ so too the successes that existing community prosecution programs have enjoyed now foreclose conventional prosecutors from maintaining that the community has no meaningful role in the work of a prosecutor's office. Prosecutors no longer can treat conversations with voters at election time as an adequate vehicle for communicating with constituents.

163 See *supra* notes 58–65 and accompanying text.

What is not yet apparent, however, is what new kind of relationship should be forged. Those within the community prosecution movement—even the best among them—have not yet determined what they should substitute for the traditional prosecutor-constituent relationship. The existing experiments, which are inspired by an image of political and legal relationships, reveal a shared aim: they strive for a robustly participatory role for the constituents. But to describe relationships as participatory—for all its evocative power—opens more possibilities than it closes. Mapping those possibilities and frankly marking preferred routes then becomes a central concern.

Those informed by a vision of community prosecution believe that prosecutors should make regular efforts to learn from those they serve, to explain choices they may be considering or find themselves pursuing, and to hold themselves more transparently accountable for their policies, decisions, and record. They search for ways for prosecutors and their constituents to make themselves more immediately available to, and in touch with, one another. In the course of describing these general ambitions, they even label the relationships they believe themselves to be forging—“problem-solving partners” perhaps being the most common. But precisely how close do they mean these partnerships to be? Should community residents now be understood as having fully equal voting powers on prosecutorial policies and decisions? What constitute the terms of the partnership?

For all their populist rhetoric, not even those prosecutors who are deeply committed to community prosecution would endorse a model that cedes control to the community or even treats the community as a full voting partner.¹⁶⁴ Because communities almost always are divided,¹⁶⁵ neither of these formats is feasible as a practical matter—at least when it comes to daily decisionmaking. The danger that one segment of a community might choose to use enforcement power against another less powerful segment has too many discomfiting historical precedents to be ignored.¹⁶⁶

164 See Richman, *supra* note 31, at 969–70.

165 See Alfieri, *supra* note 104, at 816; see also Regina Austin, *The Black Community: Its Lawbreakers, and a Politics of Identification*, 65 S. CAL. L. REV. 1769, 1799 (1992).

166 Paul Butler defines jury nullification as the practice by which “a jury disregards evidence presented at trial and acquits an otherwise guilty defendant, because the jury objects to the law that the defendant violated or to the application of the law to that defendant.” Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677, 700 (1995).

The primary criticism of jury nullification is that it undermines the rule of law: “Granting jurors a license to nullify, whether they disapproved of the law in all cases or thought the law should not be applied to a specific defendant’s conduct, would result in a ‘government of men,’ not laws.” R. Alex Morgan, *Jury Nullification Should*

Even if communities were more monolithic and single-minded, few adherents of the community prosecution model would champion the view that communities should control prosecutorial decisions or have a fully equal vote in such decisions. Such models evoke the specter of vigilantism—or perhaps a return to earlier, crude forms of prosecution that more closely resembled mob justice than professional prosecution. Perhaps there are those among victim rights groups¹⁶⁷ or within particular low-income urban neighborhoods who, for contrasting reasons, yearn for some absolute or at least more effective ways to exert influence over local prosecutors. But they themselves have not yet fully elaborated their impulses. In any event, not many would seem to find the view politically and morally compelling. And equally important, any arrangements approaching full partnership would seem to inappropriately delegate the prosecutor's duties and to abdicate her responsibility as a minister of justice.

The type of relationship that would seem best-suited to accomplish the general goals of community prosecution without running afoul of one of the foregoing problems would seem to be a hybrid relationship or loose partnership. This sort of partnership imagines that both prosecutor and community would be mutually informed and mutually accountable. Prosecutors would retain final authority over broad policies and daily decisions. At the same time, they would regard community input as central to their thinking, just as the community would regard the prosecutor's views as central to the opinions they express. And prosecutors would consider themselves regularly and fully accountable to their constituency for their choices just as communities would regard themselves as accountable to their elected prosecutors for the obligations they would arguably impose upon prosecutorial work and for the consequences their views would have on the community as a whole.

Under such a model of prosecutorial service to "the people," elections would remain central events. But they would no longer serve as largely isolated instances of community participation and prosecutorial accountability. Instead, an election would be one of a series of regular events or occasions that define the relationship between the prosecutor and the community, and that provide opportunities for the entities to share their views of crime, criminal justice, and prosecutorial policies and programs. Such events would form the ba-

Be Made a Routine Part of the Criminal Justice System, But It Won't Be, 29 ARIZ. ST. L.J. 1127, 1136 (1997).

167 See Deborah P. Kelly, *Have Victim Reforms Gone Too Far—Or Not Far Enough?*, 6 CRIM. JUST. 22, 25 (1991).

sis for an ongoing relationship in which both entities would do their best to understand (and, over time, get better at understanding) the aspirations, concerns, and constraints of the other.

A relationship of this sort requires that both parties take risks and accept compromises. The prosecutor must be willing to accept the greater vulnerability that an open relationship entails. She must be willing to hear frank opinions of her actions, her judgment, and even her suitability for the job. She must be mature enough to accept criticism without anger and without engaging in counterattacks or reprisals. The experience often will be far less comfortable than hiding behind a mask of detached professionalism and expertise, but the personal risks are certainly justified by the potential benefits of better-informed and more effective fulfillment of a prosecutor's responsibilities to the public.

The members of the community, for their part, must accept certain harsh truths, most notably that they will not always—or even often—get their way. They must learn to tolerate a relationship which promises them no more than an opportunity to have their voices heard. They must also come to appreciate that the prosecutor operates within a web of political and legal constraints, and that even prosecutors of good will may not be able to make certain promises or accomplish certain ends. Like the prosecutor, they must come to understand that the benefits that stem from such a relationship often are accompanied with considerable frustrations and disappointments.

The ultimate process, which is one of mutual learning, has the potential to change virtually every aspect of the relationship between prosecutors and their constituencies. And it opens up highly promising, if frighteningly unfamiliar, possibilities in all one considers elemental to a prosecutor's practice.

B. The Definition of the Central Mission, the Nature of the Work, and the Criteria for Evaluation

The essence of the community prosecution vision is that prosecutors must look beyond a myopic focus on individual criminal transgressions. Prosecution of individual defendants certainly retains its importance—even its centrality—in the role of a prosecutor. But the job description expands to include a wide range of problem-solving efforts to attack the circumstances that lead to criminal activity. And just as important as the mission itself is the process by which the mission is to be accomplished: by means of collaboration with community members in a problem-solving team that reflects a wide basis of knowledge and a wide range of perspectives. The prosecutor no longer op-

erates as a solo actor or even as the team leader. Instead, the prosecutor serves as facilitator and coordinator, linking previously disparate actors and organizations in defining problems and identifying solutions.

Information acquisition is a key part of the process of understanding local problems and developing viable solutions. Local communities often have a working knowledge of their own unique public safety issues and recurring problems. In order to tap that body of information, community prosecutors must develop a working assessment of the neighborhood: its resources, its strengths, and its interest groups. This often requires that the prosecutor acquire an appreciation of the neighborhood in the context of larger forces—such as the economy—that may be beyond the individual neighborhood's control.¹⁶⁸ What is the nature of the job market? Who are the employers in the area? What informal economies operate in the neighborhood? Particularly in economically subordinated communities, the informal economy provides much of the financial wealth to community residents. Acquiring the answers to these sorts of questions will provide baseline information about the economic health of the community.

To identify and draw on local resources, prosecutors also need to pay careful attention to the composition and layout of the neighborhoods. Analyses of the community's demographics, age, and racial distribution patterns will provide some sense of residential patterns and perhaps the skein of relationships that has developed. Taking the time to learn about the history of various neighborhoods, to identify and meet long-term residents, and to study local institutions will help the office become more familiar with the dynamics of the community outside of the context of a particular criminal justice problem. In essence, the prosecutor must develop a finely-honed sense of the community's strengths and of its fault lines.

The inventory of strengths should take into account the host of informal resources in the community. For example, a local restaurant owner may choose on her own to provide food for homeless individuals.¹⁶⁹ Or a group of firefighters may choose to work as mentors with at-risk youth in their community.¹⁷⁰ Such programs are not easily

168 See Todd R. Clear & David R. Karp, *The Community Justice Movement*, in COMMUNITY JUSTICE: AN EMERGING FIELD 3, 16 (David R. Karp ed., 1998); see also TODD R. CLEAR & DAVID R. KARP, *THE COMMUNITY JUSTICE IDEAL: PREVENTING CRIME AND ACHIEVING JUSTICE* 25-26 (1999).

169 See Brandt J. Goldstein, *Panhandlers at Yale: A Case Study in the Limits of Law*, 27 IND. L. REV. 295, 336 (1993).

170 The Richmond, California, Black Firefighters Association runs a "Saturday Academy" in which at-risk youth learn CPR, life-saving, and self-esteem. The program

identified, but community residents familiar with the neighborhood often know of their existence. A working knowledge of these institutions will be invaluable in the identification of potential partners in the process of addressing problems and developing consensus-based solutions.

Community prosecutors also will need to learn about the neighborhood's formal and informal mechanisms for establishing standards and expectations of acceptable conduct. For example, prosecutors should attend meetings of teacher-parent organizations to understand the ways in which the community gives input to schools. Although prosecutors may give formal presentations at such meetings to inform residents of the community prosecution program, the prosecutors also should attend meetings to listen to residents' concerns and to observe the process by which those concerns are voiced and the responses they evoke.

The foregoing changes in the definition of the prosecutors' mission and the means by which prosecutors accomplish that mission will have to be accompanied by corresponding changes in the criteria for measuring success. Evaluation is a key component of any experimental program, for it allows the program to enhance successful components and to revise those that have proven dysfunctional or flawed. In a community prosecution program, evaluation is the means by which the prosecutors' office can ensure that the process adequately incorporates community input and perspectives, and the community members can judge whether the office is fulfilling its commitments.¹⁷¹

Obviously, conventional prosecutorial evaluative measures—such as the office's conviction rate—no longer will suffice. For certain types of problems, particularly those that are concrete, successes can be assessed in a straightforward way. For example: is the drug house still open? For deeper, more pervasive problems, prosecutors may need to formulate new evaluative criteria and perhaps develop new types of diagnostic tools. Here again, input from the community may prove critical. Intimate knowledge of the community (including the changes that have occurred over time) may be of great use in identifying goals that should be set in a multi-stage, progressive strategy to remedy a longstanding problem.

has grown into a highly praised community asset. Prosecutor Scott Newman also points to St. Florian Center in Indianapolis, Indiana as another example of firefighters working in communities.

171 See *supra* notes 4–10 and accompanying text. Portland, Oregon; Austin, Texas; and Denver, Colorado, represent examples of excellent community prosecution efforts that have benefited from self-reflection, and from evaluation and adjustment.

In developing such evaluative criteria, prosecutors must always keep in mind that they are dealing with a dynamic situation, in which one cannot anticipate the changes that will occur. Neither policymakers nor communities themselves can predict, with any precision, the set of problems that will plague a given neighborhood over time. Thus, the community prosecution vision must seek to develop mechanisms that permit prosecutors to remain sufficiently flexible to respond to ever-changing problems. Developing feedback loops between the office and the community to permit reliable interim evaluations and necessary course changes will be critical. Prosecutors should appreciate the hazards inherent in committing to a course of action too early: discussions of policies and priorities will help to hone decisions about resource allocation. Moreover, a prosecutor's very act of adjusting an initial plan in light of community input will help to reassure community members that the office is responsive to their views.

C. The Individuals with Whom Prosecutors Work

Of the many respects in which community prosecution differs from the conventional prosecutor's role, the most obvious and significant is the cast of characters with whom the prosecutors work and the roles they play. In addition to community residents and groups (such as, for example, tenants' organizations, parents' groups, or organizations of people of color), community prosecutors may enlist the aid of other governmental agencies in tackling community problems. These might include, for example, health officials and public housing officials.

In sharp contrast to the prosecutor's traditional relationship with lay witnesses—in which the prosecutor is the ultimate stage manager and director—the community prosecutor and community residents work as partners or teammates in framing problems, identifying solutions, and evaluating the impact of intervention. Community residents sometimes may even play a role in implementing solutions. For example, a resident's standing in the community or her relationship to the individuals involved in a certain problem may enable her to serve effectively as an arbiter or mediator in a situation that can be resolved by means of alternative dispute resolution techniques.

It has been said of conventional criminal trial work that the selection of expert witnesses is one of the areas that demands the greatest

of creativity on the part of lawyers.¹⁷² The same can be said of community prosecution, but this new context requires a far more flexible definition of the concept of "expertise." Creativity will be needed not only in the selection and deployment of experts, but also the prefatory definition of the type of expertise that may prove relevant to the solution of a problem.

D. Office Design and Management

The community prosecution approach's goal of invigorating the role of the community necessarily informs the design and management of community prosecution offices. Both internal and external design issues are implicated. One of the primary goals for this effort seems to be access in the broadest sense. Office staff should be readily accessible to community residents so that they can initiate contact when they have information to relay or concerns to express. In addition, the office should participate in, and have access to, community organizations and leaders. As described earlier, existing programs have placed prosecutors in police precincts¹⁷³ and in storefronts.¹⁷⁴ The organizational structure of the office should maximize the office's ability to assimilate and apply information likely to prove vital to solving a particular problem. Thus, as explained earlier, some community prosecution programs divide up staff by neighborhood.¹⁷⁵ This internal structural design of dividing all office business by precinct may not embrace all of the principles of community prosecution; one further needs to inquire about what different and unique training prosecutors receive. Other inquiries might include what background information lawyers and staff receive about the assigned communities.

Another internal issue that implicates design and management is that of rotation, promotion, and incentives to perform the community component of the assignment, at least until prosecutors themselves fully accept the value of the community-based approach, the structure of the office must take into account the apprehensions that prosecutors may feel about being assigned to a division that appears to pre-

172 See, e.g., RANDY HERTZ ET AL., TRIAL MANUAL FOR DEFENSE ATTORNEYS IN JUVENILE COURT § 11.01, at 281 (1991) ("The list of potential experts is limited only by the reach of counsel's imagination.").

173 See *supra* note 156 (describing a community prosecution program in Indiana).

174 See *supra* notes 137-38, 148-53 and accompanying text (describing programs in Portland and Denver).

175 See *supra* notes 143-48 and accompanying text (describing program in Maryland). But see *supra* note 142 and accompanying text (explaining that urban and rural regions may require differing types of organizational structures).

sent fewer opportunities for career advancement. As explained earlier, innovative prosecutors have dealt with this problem by rotating prosecutors into and out of the community unit, and by finding ways to demonstrate that the office attaches great value to the endeavor.¹⁷⁶

External mechanisms used to connect with neighborhoods and communities, such as advisory boards, must be constructed with understanding that flows both ways. Community members must feel as though they have genuine input and that the office of the prosecutor will be accountable to the community. At the same time, the office must not compromise its objectivity in these target areas. Charging and plea-bargaining must be rigorous and fair. One critic suggests that even in some of the best collaborations, some communities still complain that their residents receive longer sentences as a result of the community prosecution efforts.¹⁷⁷ One goal of the effort should be to include community input so that it informs the answer as well as definition of the problem.

Another design deficiency in some of the community prosecution has been the failure to implement a process of careful documentation as a way of compiling and maintaining statistical data to empirically analyze the effort. Careful documentation of community-based work is essential. Equally important is the recording of anecdotal information about neighborhoods and the impact of these efforts. Although difficult to quantify, the stories of how communities have changed have a degree of transformative power in their telling.

E. Training

The new kinds of tasks that community prosecution efforts demand have significant implications for the hiring and training of prosecutors. Because community prosecutors must work with community groups and residents as partners, the hiring process may give far more weight than it presently does to an applicant's collaboration skills and empathy. Of course, community prosecution programs will never supplant traditional crime-prevention strategies, but instead should supplement them. Accordingly, the hiring process will need to identify applicants who have trial advocacy skills, as well as collaborative skills and a genuine curiosity about people and their communities.

The training process should be designed to hone all of these types of skills. Naturally, collaborative skills and empathy also play an

176 See *supra* notes 142-53 and accompanying text.

177 See Glazer, *supra* note 95, at 1017.

important role in effective trial practice.¹⁷⁸ Unfortunately, prosecutors' training programs tend to shortchange such skills and to concentrate exclusively on what one might consider traditional advocacy skills.¹⁷⁹ Having the ability to understand different points of view may enhance the prosecutor's persuasive power in a courtroom. Thus, ironically, the expansion of prosecutorial training programs to add the skills needed for community prosecution work may result in long-term improvements in the overall quality of prosecutors' trial work as well.¹⁸⁰

There are, however, many aspects of community prosecution work that are *sui generis* and that will require training that diverges from that which prepares prosecutors for trial practice. Community prosecutors must be prepared to diagnose problems of a very differ-

178 See Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, LAW & CONTEMP. PROBS., Summer/Autumn 1995, at 5, 15 (discussing collaboration in law school curriculums); Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 472-76 (1993) (discussing the benefits of collaboration in legal work); Stephen Ellmann, *Empathy and Approval*, 43 HASTINGS L.J. 991, 992-94 (1992) (discussing the importance of empathy in lawyering); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1605 (1989) (discussing aspects of practicing law for social change); Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485, 495-97 (1998) (discussing collaborative pedagogy in law school clinics); Margaret M. Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum*, 1 CLINICAL L. REV. 135, 139-43 (1994) (discussing collaboration in legal teaching).

179 See generally the following articles depicting prosecutorial trial skills: Jim Accardi, *Winning Closing Arguments with Narrative Metaphor*, PROSECUTOR, Nov./Dec. 1999, at 38 (discussing a particular closing technique); Lawrence C. Doan, *The Art of Trial Advocacy for Prosecutors*, PROSECUTOR, Mar./Apr. 1999, at 34 (arguing that trial advocacy is an art); John J. Eannace, *An Art—Not a Science: A Prosecutor's Perspective on Opening Statements*, PROSECUTOR, Nov./Dec. 1997, at 32 (arguing that drafting and delivering opening statements can be an art from the perspective of a prosecutor); OTTO G. OBERMAIER, *THE JURY 1987: TECHNIQUES FOR THE TRIAL LAWYER*, JUDGE CONDUCTED VOIR DIRE, 340 (Practising Law Institute Litigation and Administrative Practice Course Handbook Series Litigation 151, Nov. 1987) (advising trial lawyers on techniques for either judge or lawyer-conducted voir dire). See generally JAMES W. JEANS, *TRIAL ADVOCACY* (1975) (part of a series of books discussing trial strategies); LAWRENCE A. DUBIN & THOMAS F. GUERNSEY, *TRIAL PRACTICE* (1991) (same).

180 Exposure to community prosecution work also can enhance the quality of prosecutors' trial practice by broadening their perspective on prosecutorial work and the solutions appropriate in a particular situation, deepening their understanding of the community in which crimes take place and complainants live, and enhancing their ability to work effectively with complainants and witnesses from those communities.

ent sort than those customarily explored in law school¹⁸¹ and to work with community groups in a wide variety of settings. How might lawyers learn these skills? Simulations involving community meetings, neighborhood histories, and non-litigation dispute resolution would seem to be a necessary part of the new training regime for offices involved in community prosecution. For example, new lawyers could be assigned to diagnose a systemic problem that exists in the communities in which they will work. They could then develop a series of questions that would be posed in a community meeting to facilitate dialogue with diverse community members about this problem. Working in teams, they would fashion solutions that do not necessarily rely on litigation.

Community prosecution training also would need to prepare prosecutors to work with a wide range of racial and ethnic groups. Because many of the communities that suffer from the greatest problems with crime tend to be lower-economic communities and communities of color,¹⁸² community prosecution training would need to focus on the dynamics of cross-cultural communication and the importance of cultural sensitivity. Here again, simulations might prove useful, in this context to surface racial and ethnic stereotypes.¹⁸³ And there may be fringe benefits for the segment of the office that is in-

181 See Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 219–31 (1997) (discussing the benefits of transactional clinics); Jeffrey S. Lehmann & Rochelle E. Lento, *Law School Support for Community-Based Economic Development in Low-Income Urban Neighborhoods*, 42 WASH. U. J. URB. & CONTEMP. L. 65, 72–73 (1992) (describing the Urban Communities Program as a non-litigation clinic for counseling, negotiating, and advising); Peter Pitegoff, *Law School Initiatives in Housing and Community Development*, 4 PUB. INT. L.J. 275, 283–84 (1995) (discussing a broader context for developmental clinics); Ann Southworth, *Business Planning for the Destitute: Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1121, 1132–47 (discussing the role of lawyers in addressing urban poverty).

182 See *supra* notes 92–97 and accompanying text.

183 See Margaret E. Montoya, *Voicing Differences*, 4 CLINICAL L. REV. 147, 152–57 (1997) (discussing the need for “re-mapping the learning environment” to provide space for the voicing of both insider and outsider student perspectives in the teaching of difference and similarity); Kimberly E. O’Leary, *Using “Difference Analysis” To Teach Problem-Solving*, 4 CLINICAL L. REV. 65, 76–81 (1997) (advocating that a complete legal education should include lessons of social justice and proposing teaching methodologies for helping students learn how to integrate “difference analysis”). “Difference analysis,” a term the author uses to describe an analysis in which a lawyer or law student “engage[s] in routine examinations of a diverse range of viewpoints” into problem solving. *Id.* at 66; see also Jane Harris Aiken, *Striving To Teach “Justice, Fairness and Morality”*, 4 CLINICAL L. REV. 1, 30–46 (1997) (discussing important aspects in clinical teaching, including racial and health issues); Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2

volved in trial practice: the frank discussion of issues of race and poverty in the community-based setting may prompt trial prosecutors to identify and to discuss issues of this sort that regularly arise in conventional prosecution.¹⁸⁴

A community prosecution training program should give careful thought not only to the content of the training program but also to the selection of the instructors. In contrast to traditional training programs, which tend to rely exclusively or predominantly on senior prosecutors as instructors,¹⁸⁵ a community prosecution program should bring in community leaders and activists as trainers. Not only are these individuals uniquely suited to teach lessons the new prosecutors need to learn about the nature of the communities in which they will be operating, but also the very involvement of such non-lawyers in the program will sensitize the new staff attorneys to the all-important message that knowledge and skills can come in different forms and from different sources.

In designing the training program, prosecutors' offices should be attentive to the opportunities to use the design of the program to achieve incidental benefits. For example, the involvement of community leaders will have the fringe benefit of reinforcing the critical message that the office respects and values community members. A decision to offer training in community prosecution techniques to all members of the office will have the fringe benefit of signaling that the office accords value to the community approach; thereby, assuaging the apprehensions of those prosecutors who might otherwise worry about being assigned to the community prosecution unit.¹⁸⁶

CLINICAL L. REV. 37, 53-71 (1995) (discussing the effect of serving low-income or otherwise disadvantaged clients on students and clinics).

184 See Eva S. Nilsen, *The Criminal Defense Lawyer's Reliance on Bias and Prejudice*, 8 GEO. J. LEGAL ETHICS 1, 43 (1994) (critically analyzing criminal defense lawyers' use of racial, gender, and culture stereotypes in the context of criminal trial practice, and arguing that courts, legislature, and law schools should pay closer attention to the propriety of such use of stereotypes by lawyers); see also Sheri Lynn Johnson, *Racial Imagery in Criminal Cases*, 67 TUL. L. REV. 1739, 1769-70 (1993) (describing the manipulation of racial fears and stereotypes in criminal trials, including, e.g., a white defendant in an interracial assault case who may attempt to enhance a claim of self-defense by exploiting the racial prejudices of jurors in asserting the reasonableness of their fear of supposed assailants who are black).

185 See *supra* notes 53-56 and accompanying text.

186 For discussion of the kinds of concerns a prosecutor may have about being assigned to a community prosecution unit, see *supra* notes 101-03 and accompanying text.

CONCLUSION

As this Article's description of existing community prosecution programs illustrates, some highly ambitious, innovative efforts are under way and are being met with success. But prosecutors—both those who have initiated community prosecution efforts and those poised to launch such programs—need to make explicit the visions that inform their experimentation. Rigorous articulation of objectives and techniques will enhance the quality of existing programs and will help other offices emulate approaches that have proven effective and steer clear of problems that others have encountered.

Moreover, community prosecution programs should engage in a systematic study of the efficacy of the approaches they have been employing. Because the vast array of experiments have not been subject to sustained study, prosecutors and communities are learning far less than they might. More detailed empirical study of these efforts could yield information that could be disseminated and compared. At a minimum, such studies could carefully observe and track how partnerships with the community develop and how they can be used to overcome difficulties.

Dissemination of such information will benefit not only the prosecutors involved in the community prosecution movement but also the communities themselves. Community groups and residents might take the lead in initiating community prosecution programs in their locales or perhaps merely use some of the diagnostic and remedial tools to solve problems within their community, even without the help of law enforcement officials.

This Article has attempted to contribute to this long-term process by analyzing some of the features that have helped existing programs achieve success and some of the pitfalls that these programs have encountered. The Article has used the experience of these programs to propose an overall approach to community prosecution work. Of course, the approach proposed here is only one of several that might be employed. It is far too early in this nascent movement to be able to say with any assurance what programmatic features are essential ingredients for success. All that can be said with assurance at this point is that self-critical analysis and widespread discussion of ideas are essential if the great promise of community prosecution is to be realized.