Community, Context, and the

Emergence and Shape of Community Courts

by

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ABSTRACT

This research examines what contextual elements shape a community court. In the past several decades, the court system has lost trust with the American public. Citizens thought the courts were too complex, expensive, didn't address the issues of crime, and were out of touch with their communities. A movement called community justice began to grow in the 1990s. As part of this movement the concept of problem solving courts grew. Community focused courts were part of this. Community courts are unique in that the courts reach out to the community to help solve problems identified by citizens, businesses, and others in that area. Various stakeholders are involved in the planning, implementation, and operation of these courts, working together to address issues that arise from those who commit a crime and come before the court.

Four community courts were examined using the case study method, examining the literature and conducting interviews, and a model was developed based on these courts. Two additional courts were examined, having been established after judges from their respective communities had attended a national seminar on community focused courts. These two courts were then compared to the model.

Based on the model, areas most likely to develop a community court were identified. Additionally, the model can be utilized to indicate how these courts can be successful or fail. Other issues that were examined were how community courts differ from traditional courts and how this could impact judicial impartiality and independence, and the traditional adversary system.

i

DEDICATION

I would like to dedicate this to my parents, who never knew I had earned any college degrees, and my Aunt Moo who encouraged me and had hoped to attend my graduation, but died a few years ago at age 97. I also want to dedicate this to my sons, Jeff and Chris, and my friends who had to live through all of my college studies.

ACKNOWLEDGEMENTS

TABLE OF CONTENTS

COMMUNITY, CONTEXT, AND THE EMERGENCE AND SHAPE OF

COMMUNITY COURTS

CHAPTER ONE

INTRODUCTION

Overview

Community courts in the United States began with the Neighborhood Justice Centers in the 1970s, but more recently are identified with a process in which the courts work in neighborhoods with citizens, social service agencies, police, attorneys for the prosecution and defense, and others to improve the quality of life to reduce low levels of criminality.

These courts are part of a larger movement, known as problem-solving courts which look at specific problems such as substance abuse and work with all stakeholders to assist the defendant to take responsibility to change his/her actions. To date, there are about 30 community focused courts. The first was the Midtown Manhattan Court, begun in 1993 after several years of planning by court officials, New York City, local businesses, and residents. Based on its success, other cities established their version of a community focused court. Different groups were involved in the impetus and planning for these courts. In several cities, efforts were led by the district attorneys. In others the criminal justice commission or police chief began the effort. And in some cities it was the business community. Some used different approaches in the planning stages— holding neighborhood meetings, conducting interviews with stakeholders, creating community advisory committees, and focus groups. After implementation, they use community advisory boards, door to door surveys,

distribution of a newsletter, and use of committees to devise community service projects, and to help in making those assignments to the service projects. All of the community courts have common goals of imposing immediate sanctions for offenders, and forging a partnership with the neighborhood they serve (Lee, 2000).

This study examines the research question of what factors in the context of the community shape the various community focused courts.

Although many have thought laws and courts evolved over time, today's scholars believe that social, economic and political forces shape a nation's courts and its legal system (Messick, 2000). Throughout history, many judicial systems were the outcome of the conqueror imposing central control by establishing their form of law (and sometimes in combination with local law and customs) over the local inhabitants (Shapiro, 1981) and establishing courts as governments were established (Messick, 2000). All societies have used mediation and negotiation, but as societies develop there is a need for courts with its decisions "representing a collective response to a dispute" (Messick, p.176). Courts emerged to settle disputes in the community, replacing the idea that man had a natural right to "redress wrongs done to him or his family (Lieberman, 1984, p. 73).

Many citizens view courts as an ideal type consisting of four elements: "(1) an independent judge applying (2) pre-existing legal norms after (3) adversary proceedings in order to achieve (4) a dichotomous decision in which one of the parties was assigned the legal right and the other found wrong" (Shapiro, 1981, p. 1) and judges are apolitical, making unbiased decisions based

on neutral laws (Smith, 1993). However, Shapiro states this is inaccurate, or at best misleading. Instead courts resolve conflicts, enforce social control and make laws and these are interdependent. Lieberman (1984) adds processing of uncontested cases, promotion of economic development (by enforcing contracts which create predictability and stability). And there is research suggesting judges and their decisions are the result of their socio-economic background, their law school, their political party and the main currents of legal, political, and intellectual opinion (Lieberman, 1984).

The public has become dissatisfied with the court system. Much of the impetus for changes in courts comes from the negative images of the courts as reflected in national surveys over several decades (Rottman & Tomkins, 1999). "Public trust and confidence in the courts is essential as it is needed for compliance with the law and the perceived legitimacy of the judicial process" (Rottman, Casey & Efkeman, 1998). In 1999 the National Center for State Courts and the Hearst Corporation completed a national survey of 1,826 Americans on their views of state courts. Findings included: less than one-quarter of those surveyed had great trust and confidence in the courts. This is particularly true for African-Americans who see themselves as being treated worse than Whites or Hispanics.   The courts ranked sixth out of eight other community institutions, e.g., the medical profession, and the local police were the highest. Those who ranked lower than the courts were the state's legislature and the media. More people thought courts handled cases in a poor manner rather than an excellent

manner. "Approximately 40% thought courts were not in touch with their communities" (Rottman, et al., p. 28).

During much of the 20th century, reformers have tried to change court organization. They think it will make it less confusing to the public by eliminating overlapping jurisdictions, by centralizing funding and administration, by promulgating uniform rules, allocate resources where needed and eliminate any perceived political control. However, there are barriers to this. One is that political parties try to control the courthouse as judges hire many clerks, bailiffs and other staff, using this as a form of political patronage. Many of these efforts at reform are spearheaded by elite attorneys, who are mostly Republican. This has been perceived as a way of reducing Democratic control of judgeships and court administration. Trial lawyers usually oppose court reform as they have built relationships with judges and staffs and any change could affect their success. Judges and staffs usually oppose reform as it could mean loss of autonomy, prestige, and/or employment. And there is some doubt that court reform really produces the advantages it proponents claim (Smith, 1993).

Additionally, the public has been unhappy with courts as they seem to be nothing more than "revolving-door justice"--that is those accused and found guilty of crime soon return to the courts. Additionally, court processes are too slow, the judges are out of touch with their communities, and victims are ignored. Case loads keep increasing in the courts which many address by increasing the number of judges, attorneys, and developing better technology.

Some of the attempts at improving citizens' trust in courts include court outreach, making the courts less bureaucratic by making many processes more informal, allowing cameras in the courtroom for televising live trials, and developing community focused courts.

Some of the ways courts are addressing the public's perception of courts is through outreach to the public and media through seminars/meetings between the community, courts, and special interest groups, to communicate to the community what the court does, speakers' bureaus, tours of the courthouse, increased relations with the media, including Hispanic media, and the use of volunteers from the community.

According to Terry (2000), increasing the use of volunteers in the courts will likely lead to a positive effect on the public's attitudes toward the courts, by increasing their understanding and appreciation of the judicial process. It also allows judges and court staff to better understand public concerns as the public gains a voice in the court and its procedures and policies. Terry lists current volunteer programs in Wisconsin, but they are also utilized in other states. These programs include victim-offender mediation, alternative dispute resolution, court information, court watch programs, programs focusing on juveniles, guardian cases, probation/parole matters, domestic violence/sexual assault victim advocates, CASA,[1] Teen Courts, and legal services. The programs in Wisconsin are successful partly because they are backed by the state Supreme Court and the

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[1] CASA stands for Court Appointed Special Advocates whose volunteers work with and speak for children in court proceedings during their time in foster care. The program started in the United States in 1977 and is one of the most successful volunteer services with over 800 programs.

Director of State Courts office. Volunteer programs are "designed to involve the community in the justice system and enhance the level of service offered to the community" (Lovko, 1994). Additionally, in a review of volunteer programs the National Center for State Courts found that volunteer programs allow court staff and judges to better understand public concerns (Lovko).

The first trial to use audio-visual recording was the kidnapping trial of the Lindberg baby in 1935 (Lassiter, 1996). But the judge banned the cameras after seeing the circus-like atmosphere they created. The Supreme Court took up the issue of cameras in 1965 on a case from Texas. The majority decided to ban them, noting four concerns: impact on jurors, damage to the quality of testimony, additional responsibility placed on the trial judge, and impact on the defendant. Beginning in 1978, state legislatures began adopting rules regarding this issue. And in 1981, the Supreme Court determined cameras in the courtroom did not violate the defendant's due process. According to the latest published report, Lassiter (1996) stated that to date, 47 states have adopted legislation allowing cameras, but with some restrictions, including defendant, witnesses, victims giving consensus, and the final decision remaining with the trial judge.

Court TV began live coverage in 1991. Many think cameras in the courtroom show the public how judges and attorneys conduct trials (Abrams & Kaminer, 1995); the inner workings of the courtroom (Lassiter, 1996); and they provide "an openness and access to court proceedings, providing public education and improvement of public confidence in the judicial system" (Pogorzelski & Brewer, 2007, p. 125). But there are objections to having cameras in the

courtroom. They include: everyone in the courtroom playing to the cameras (Abrams & Kaminer, 1995) including judges using televised trials for re-election purposes (Lassiter); people watch high profile trials for their prurient interest (Abrams & Kaminer); high profile trials exploit the defendant for larger social issues (Lassiter); and biasing the public by showing only clips from the trial on television news programs (Pogorzelski & Brewer).

Another approach is the problem-solving courts. These came about because of a break-down of social and community institutions that normally address these types of problems and traditional court approaches do little to change offender's behavior (Berman & Feinblatt, 2001). There are different types of problem solving courts: drug courts, community courts, domestic violence courts, DUI courts, and other courts that focus on a particular issue or problem.

In an attempt to stop "revolving-door justice" and change offender's behavior, some judges and attorneys are trying to address these issues, not only having the "punishment fit the crime, but that the process fits the problem" (Berman, 2005, p. 5) changing judges' and attorneys' minds and practices from their traditional roles to one of problem solvers. The idea is not to just process cases but to make a difference in the lives of the defendant, the victim, and the community. The author says there are five elements of problem solving courts: matching judicial resources to the needs of each case, courts involving the neighborhoods and social services, having more information about the defendant, his/her background, and the impact of the crime on the neighborhood,

aggressively monitoring each case, and collecting data on how the process impacts victims, offenders and the community.

Domestic violence courts deal with intimate abuse by providing victims with services while supervising defendants closely to prevent further abuse. Drug and DUI courts look at addiction as the cause of other problems and provide a team approach of judge, prosecutor, defense attorney, probation officer and treatment professional to provide rehabilitation services, job training, and counseling, instead of jail time for defendants while closely monitoring them through regular status checks and drug/alcohol tests. The first drug court opened in Miami in 1989. There are now over 2,000 problem solving courts nationwide.

Community courts have been developed in areas that have persistent quality of life type crimes: prostitution, low level drug use, panhandling, shoplifting, and graffiti. The court and the community work in partnership to address issues and provide public service projects for the defendants to pay back the community. These courts were created in reaction to the public's feelings that courts were out of touch with their communities, as many local courts had been centralized into one large main court located in the downtown area, in which the goal is to move cases as quickly as possible through the criminal justice system. These community courts have common goals of locating courts in the community close to where the crimes occur, making the courthouse accessible to the community, making justice visible by imposing immediate sanctions for offenders, providing social services to assist in addressing problems that caused

these crimes, paying back the community by completing community service projects, and forging a partnership with the neighborhood they serve (Lee, 2000).

Participation by citizens is key to the success of community focused courts. They should be involved in the planning stages, implementation, and operations of these courts. Citizen participation in these courts is seen as a fulfilling of a citizens' role in a democratic society. However, Clear and Karp (1999) note that one of the most difficult things is to get community members motivated to participate in these programs.

These problem solving courts are part of a larger movement referred to as community justice. It includes not only the above descriptions of courts, but also community policing, and community corrections. All efforts at community justice share "an ideal that the justice system ought to be made relevant to the quality of community life, and that it ought to make better use of a community's individual and institutional resources in dealing with crime" (Clear & Karp, 1999, p. 15). But many attempts at community justice are not successful. The authors state that the context of a community depends on the success or failure of these efforts. They define community context as "the social characteristics of a community which strongly determine the ability of the community to engage in community action" (p. 39); a set of neighborhood conditions--structural and social--that create the context for community social life; and a set of neighborhood characteristics that determine the community's resource base: its social, physical, and human capital: stability, social ties, and institutional capacity.

Purpose of Study

This study utilized a case study approach as the author is interested in an in-depth study of understanding the issues of establishing community focused courts. This was done by examining the literature, and supplemented with interviews when necessary, of four existing community focused courts to determine what and who led the efforts to establish the court, what elements in the community caused the court to be established in that place, who and how were others involved (most particularly residents and others present in the community), sources of funding, relationship to the formal court structure, types of cases the community court hears, and involvement of community social service agencies. A model was constructed of these elements that will aid others who might be considering developing a community focused court.

A second phase of the study began with a survey of judges that attended a National Judicial College seminar, funded by the Department of Justice, on establishing community courts. The judges were a cross-section of jurisdictional and geographic areas. An email or letter survey was sent to the attendees requesting basic information on whether they began planning for a community court in their jurisdiction. If they responded in the affirmative, telephone interviews were conducted with them to gain information to compare to the model. All names, courts and locales were coded to provide confidentiality.

Organization

Literature Review: The literature on community justice, problem solving courts, community focused courts, and citizen participation was reviewed,

including the philosophical and historical antecedents.   Various types of

participation by citizens was defined, as well as who participates and why.

Methodology: This section describes the case study approach, how the

four community courts were selected, a review of the context in which they were

established and are operating. Additionally, the results of the survey of the judges

who attended the National Judicial College seminar were detailed.

Findings: The results of the review of the literature and interviews were

developed into a model. The elements of the model of these four courts were

detailed, compared and contrasted to the model to determine what made these

courts successful.

Information about any community focused court that was started by a judge

attending the seminar was included and compared to the model.

Conclusions and Implications: The findings from the four courts were

summarized and compared to those developed by the judges attending the

seminar.   The findings should provide direction to other judges and courts who

are contemplating developing and implementing a community focused court.

CHAPTER TWO

A REVIEW OF THE LITERATURE

Introduction

The review of the literature includes areas regarding citizen participation from the founding of the country to today, literature regarding the purpose of courts, citizen dissatisfaction with courts and courts attempts to ameliorate that including various forms of court reform and the establishment of more informal types of courts.

Citizen Participation

Public participation has been a cornerstone of our government. Public participation is a process of two-way communication, involving citizens and their government working together to solve problems. It allows citizens to voice their concerns, needs, and values in shaping decisions of various governmental agencies. To understand the impact of participation in the courts, it is helpful to investigate it in government as a whole, looking at it in an historical context. Little has been studied about public participation in the court system until recently so it is incumbent to examine participation in the legislative and executive branches, to provide background for participation in the courts. Public participation is a key to a democratic form of government. But the amount, the method, and by whom has been the subject of debate and discussion since prior to the Founding. This review will begin by framing the major ideas that affected the Founding.

Religion played a large role in the development of a republican form of government which was very different from any previous governments. The colonists brought with them their religion--the idea of a covenant of the Puritans, combined with the Calvinists' Christian love, creating a common emphasis on goodness and general welfare of the community (Duncan, 1995). One basis for our political participation lies in Puritan theology in which church members, although predestined to be God's elect, could prepare and possibly be selected at any time. Part of that preparation was participation in the community, to try to be better than they were before becoming part of the community. Evangelical Calvinism of 1776 led to "ideas of general will of the community …and responsibility of collective people to define it" (Duncan, 1995, p. 60).

Political Philosophies

Prior to describing the dynamics of the Constitutional Convention, it would be helpful to understand the underlying ideas of political philosophies and differing concepts of human nature which were being continually debated and found expression in the drafting of the Constitution and the ratification process. After a brief description of the historical base, this review will compare and contrast several major philosophers.

The role of sovereignty was a driving force in these discussions. Though most believed sovereignty lay with the people, it was a vague concept, applicable only during revolution when people took back power. The colonists got the idea from the English in which sovereignty lay with Parliament. The Declaration of Independence did not address the issue. The Articles of Confederation envisioned

a group of sovereign states that were loosely united. But in practice the people said the state legislatures did not speak for them (Wood, 1987).

Social contract theories. Social contract theories were discussed and utilized conceptually in the drafting of the Constitution. There are two different concepts embedded in social contract theory: 1) a contract of government which tries to explain the origin of legitimate political authority; and, 2) a contract of society which tries to explain the origin of society (Lessnoff, 1986). There have been many contract theories, but most have certain things in common: they are voluntaristic and consensual (political authority legitimated as subjects have willed it and consensual among those subject to the political authority); acceptance by individuals; and individual wills are rational (Lessnoff, 1986). Contract philosophers begin with men in a state of nature who choose to come together to form a civil society. The concept of government presupposes community; and social contract presupposes the concept of political authority (Lessnoff, 1986).

According to the Greek, Protagorus, 5th Century BC, "men lived scattered, in a state of self-destructive mutual hostility" (Lessnof, 1986, p. 20). The idea of a state of nature comes from the Stoic-Christian tradition. The Stoics saw an unwritten universal law (natural). Seneca, a Roman Stoic, said the first men lived in a Golden Age—uncorrupted, following nature; rulers were confined to the wise. But man declined as kings became tyrants and there was a need for law. Augustine of Hippo said men lived in a state of nature in which God created

mankind. Implicit is freedom and equality of all men. But with the fall of man, God created government to provide justice (Lessnoff, 1986).

The first contract theory was probably derived from feudalism as it was a system of legal contracts between lord and vassal, the latter providing services, the former protecting and administering justice (Lessnoff, 1986). The first known contract theory is that of Manegold of Lautenbach in Alsace in 1080 in which he sets out a theory that a ruler must govern with right reason and if he violates the contract under which he was elected, the people no longer have an obligation to obey him (Lessnoff, 1986). Another addition to contract theory was made in the 14th century by Englebert of Volkersddorf who said political authority is the will of god, that political organization and subordination of some men to others is natural and provides peace and justice. But, the "authority of the states originates in a particular act of will, a contract of subjection which men entered into in order to be ruled, protected, and preserved" (Lessonoff, 1986, p. 18).

Three philosophers and their social contract theories affected the authors of the Constitution. They were Thomas Hobbes, John Locke, and Jean Jacques Rousseau.

Thomas Hobbes was born in the late 1500s, a time of religious ferment and power struggles between the King and his enemies. As noted above, although contract theories had been promulgated for many centuries, Hobbes was the most innovative. He attempted to integrate the previous social contract theories with the beginnings of the scientific revolution. Politically, his theory defended and upheld the authority of the rulers as his main interest was in maintaining peace.

All three agreed that man first existed in a state of nature, but differed on how man lived. Hobbes saw man as a creature of action and passion, acquisitive, violent, fearful, living in a constant state of war, pursuing his own self interest, seeking whatever gave him pleasure, and shunning those actions which led to displeasure. This required power over others, leading to competition and fear of others, and war. There is no injustice, but this natural state is inconvenient. Man, fearing death, pursued his self-interest through reason, seeking peace through agreement. Hobbes saw man as a creature of action and passion, essentially equal, and their differences in physical and mental abilities did not grant them any privileges.

In the *Leviathan*, published in 1651, Hobbes states the pre-political state of man is "the natural condition of mankind" (Lessnoff, 1986, p. 49), who has a natural right of liberty. Man is acquisitive, fearful, violent, deterred only by fear. Man lived in a state of nature (not historical) in a constant state of war, pursuing this own self-interest. This led to laws of nature—a rule, founded on reason, forbids taking away life, thinking of ways to preserve it. There are three important laws of nature: 1) man should try for peace; 2) for sake of peace, man must give up his right to all things, and be content with a certain amount of liberty; and 3) make a covenant of the other two and abide by it. The contract is only among men, not with the sovereign, although the sovereign is a representative of the people, with the right to make laws, to preserve the peace. Injustice occurs when there is a violation of the covenant. Not all rights are transferred to the sovereign. The sovereign must protect the people, and if he

fails, the obligation to obey the sovereign ceases and the people still retain their natural right to self-preservation (Medina, 1990).

Locke developed his theory of social contract during the rise of the Whigs in England as a new political party in the1680s. He was against an absolute monarchy, as it was not impartial. Building on Hobbes theories, his was the first social contract theory to limit "political authority through the idea of inalienable natural rights" (Lessonoff, 1986, p. 60). Parties in social contracts are of two models: 1) people and their rulers; and 2) people as individuals.

. Locke saw men living without authority but in peace, lending mutual assistance. They do fight, and to escape, develop a civil (political) society. Locke said there was a mutual recognition that all men are equally God's creatures and are not to harm each other. Men are to respect this law, otherwise they are free. This freedom exists with other natural rights: right to life, liberty, and the right to possess whatever he can acquire as long as there is no "spoilage" (Medina, 1990, p. 30). Locke thought nature made man equal as to their rights; but nature made them unequal with respect to their capabilities and talents.

Locke believed the state of nature was an actual historical period. The need for government arises when man violates natural laws and rights. The Lockean idea of contract was one formed by individuals in society with each other, not between rulers and

ruled, but "an agglomeration of hostile individuals coming together for their mutual benefit to construct a society" (Wood, 1973, p. 609; Mace, 1979). Interests of society and rights of individuals were separate and distinct;

government is to "protect citizens in their personal liberty and their property"

(Wood, 1973, p. 609). The idea of public virtue was seen as impossible as people

acted out of self-interest and personal freedom. Political authority defends the

natural rights of individuals and the public good: this requires an executive power,

a system of adjudication, and legislative power to define laws, whose members

are selected by the people. The people hand over all their powers to the majority,

allowing them to make the decisions provided these decisions "enhance and

protect the ends for which the people decided to form a political society …and do

not violate the natural rights of any member of society" (Medina, 1990, p. 40).

Locke does not advocate for a specific type of government, instead allowing the

people to decide. If rulers break this trust, people are allowed to resist the

government. He said the consent to be governed is not automatic after the initial

contract; if one does not wish to participate, one must leave the territory

(Lessnoff, 1986, Medina, 1990).

Rousseau's theory was developed on the idea that a social contract was

between people as individuals, but was also a political contract as he discussed

terms of legitimate political authority.

Rousseau thought man happy, peaceful, healthy, and free in his natural

state. There is an ability to choose, an absence of rules, and an absence of

dependence on others. Natural individuals have two qualities: self love/self

preservation and commiseration leading to "do what is good for you with as little

harm as possible to others" (Medina, 1990, p. 48). People, in going from the

natural state to civil society, exchanged freedom for social bondage as they are

alienated from their natural freedom and self-sufficiency, becoming dependent upon each other (Medina).

Rousseau saw natural inequalities become artificial inequalities in civil society. Rousseau thought economic inequalities led to political inequalities. Those with greater wealth have access to greater political power. To be politically equal all citizens must have equal rights and duties and equal opportunity for citizens to change laws (Medina, 1990).

Rousseau believed the state of nature was hypothetical but he used it to explain man's progression from its beginnings to the actual state of corruption. The natural individual differs in physical and mental capacities that lead to social and economic differences and inequalities. These inequalities, combined with development of agriculture, metallurgy, and the emergence of private property with its division of labor, leads to corruption. In the natural state, people are happy, peaceful, healthy, and free. However, Rousseau, although a proponent of the simple way of life, was not against the right to private property—"the most sacred of all citizens' rights," but it must serve a social function (Medina, 1990, p. 51). He saw private property as promoting community welfare. He uses the social contract as a moral and political device to transform an unjust status quo to a just political order. To reconcile justice with freedom, laws need to be enacted that will protect without violating the interests of others. Through education and legal constraints, people will be encouraged to do what is best for the general will. This will lead to the collective self that emerges as a result of a social pact when each gives themselves and their rights to the community in order to promote the

common good. The function of law is to protect and promote the common good.

If law promotes private or class interest the social contract is broken. To be

politically free each citizen must be treated equally before the law and must have

equal voice in making the law (direct democracy). Sovereignty is inalienable (it

remains forever with the people). Government responds to the needs of a

sovereign who is really the collectivity of citizens. There is no unjust sovereign

as he is the will of the people and you can't be unjust to yourself. Formal or ideal

justice coincides with material or distributive justice as both are functions of the

law as expressed by acts of the general will. There are no safeguards against the

tyranny of the majority suppressing minorities' rights to express its views and

vote. If that occurs, the social contract is violated and the "minority ceases to be

obliged by it" (Medina, 1990, p. 60).

<div align="center">*The Founding*</div>

Articles of Confederation.

These social contract ideas played a role in the drafting of the Articles of

Confederation and the Constitution. In 1776, the Continental Congress appointed

two committees: one to draft the Declaration of Independence and the second to

prepare "a form of confederation" which was formally accepted and in operation

in 1781 (Farrand, 1913, p. 2). The Articles of Confederation were the first attempt

at some form of unification, enabling the colonies to present a united front against

England, after declaring their independence as England was "destructive of their

unalienable rights of life, liberty and pursuit of happiness" (Farrand, 1913, p. 1).

Duncan (1995) states the Articles can be considered the first Founding, the first American social contract, formalizing the political and cultural transformations that had occurred. The drafters based their ideas on their studies of political philosophies of Locke and Montesquieu and ancient governments. Montesquieu proposed four major themes: the power of states to control their own political lives; the role of national government as a forceful and efficient defense; the role of the national government in arbitrating disputes between states; and the embrace of democratic theories of consent, representation, and equality, with consensual decision making (Duncan).

The Articles proposed a Congress with one House, with each state having one vote, its members appointed by whatever method each state legislature agreed to; a two-thirds vote was required to pass legislation; there was no power of enforcement, no executive, no courts except those appointed by Congress for "trial of piracy and felony on high seas and for determining appeals in cases of prize capture" (Farrand, 1913, p. 4). The Articles could be amended by concurrence of all 13 states. Each state acted independently on matters of commerce. The states also had the power to tax, and to impose import/export duties (Farrand; Warren, 1937).

Following Locke's ideas, the legislature became the most important part of government. With the growth in population, it became impractical for all to participate in governing, so people elected representatives who would reflect those electing them. However, to counteract previous abuses, the legislatures were constituted two and three times larger than those prior to 1776. The ability

to be an elector depended on paying taxes or owning property. It was thought these qualifications assumed some knowledge, and votes were less likely to be bought. Locke's ideas on property were utilized. He saw property as an attribute of a man's personality—"property not in opposition to individual rights but a piece of them" (Wood, 1987, p. 219). The interests of all property holders were similar and the interests of all people were similar to those of the property holder. This was to change in the 1780s as the country and economy became more diversified.

However, the idea of representation was complex and open to much debate, both in England and the colonies. To those who weren't qualified to vote, the idea of virtual representation was utilized--a carryover from England (Wood, 1987). This assumes the interests of the non-electors were the same as electors as all were homogeneous and had the same common interests. However, concern was expressed over how representative electors really were, appearing as an elite to others-- "that if an exact portrait of the people was what was desired then choose a man in middling circumstances who knows better than puffed-up professors and rich lawyers the wants of the poor, and can judge pretty well what the community can bear of public burdens" (Wood, p. 180).

Another concern arose over how closely an elected official must follow the wishes of the electors. Because of the concept of virtual representation, it was believed the representatives had superior attributes acting for the general good. In practice, instructions were given to the representatives, which gave primacy to local interests over the good of the whole (Wood, 1987).

Duncan (1995) states the Articles could be judged as successful in meeting some standards: the Articles kept the idea of a union alive; and it provided for a national power to make war and conduct foreign relations. It allowed each state to determine its own political fate, allowed for expanding democratic participation, and for political associations to flourish. The Founders wanted a local, participatory democracy, in which the community took precedence over the individual but allowed the individual to participate politically. Duncan quotes Jensen who said the American Revolution was a revolution against centralized political authority which is reflected in the Articles of Confederation (p. 80).

In the 1780s, there was an appearance of stability and prosperity, marked by economic growth. However, many people thought the promise of the Revolution was not being met, especially in the area of equality—as evidenced through education, manners, dress, and income. Legislative power was lodged with special interests. The legislatures enacted large numbers of laws, many of which were unjust, many representing minor grievances which usurped private rights (Wood, 1987). And since members of the state legislatures were elected every year, laws could change annually (Jensen, 1950).

One of the crises of the 1780s was Shay's Rebellion in 1786. However, it was just one of many longstanding insurrections by settlers in western Massachusetts against those in the eastern part of the state. Grievances fueling the Rebellion included: only men of property were allowed to be elected to the state Senate; electors had to own property, and therefore, were not responsive to the needs of other people; they wanted a reduction of taxes with payment of the

national debt through import and excise taxes. Those in western Massachusetts wanted to control their own government with a new constitution--a social compact of the people. The Rebellion scared many into calling for a revision to the Articles.

The Constitution

Although the states were amending their constitutions, action was needed at the federal level. Congress was almost collapsing, people were not obeying laws, many which were unjust. Many people thought the Confederation was weak and needed changing. The Confederation was based on the idea of the "goodness of human nature" (Wood, 1987, p. 471). There were continuing intellectual discussions about American society—some seeing everyone as virtuous, acting for the public good while others saw everyone seeking only their own pleasures.

George Washington and others realized state governments were causing problems, that somehow the structure of government should continue the Revolution's ideas. According to Benjamin Franklin, reforms were needed to correct the "defect of obedience in the subjects" (Wood, 1987, p. 432). Radicals of the 1770s and 1780s trusted the people more than any political body, whether the governments were considered representational or not. Only the people at large were the lawful legislature. Abuses by the legislatures fed the idea of people taking back their power.

Various groups suggested revisions to correct the defects. George Washington, James Madison, Thomas Jefferson, and Alexander Hamilton were among those who lobbied for a separate convention as they felt Congress could not provide a meaningful remedy. In 1781-83, a group called the Nationalists, composed of top army men including George Washington, began a movement to reorganize the central government, thinking power should come from a strong central government, not the states.

The idea of class conflict can also be seen. Madison and other Federalists saw a new constitution as controlling "the social forces the Revolution had released" (Wood, 1987, p. 476). The old guard was seeing newcomers in politics without the background of prosperity, manners, and breeding, that were acquired by rising through a hierarchical society. The idea of a ruling elite was still strong. However, it is difficult to separate the idea of those who supported a new constitution from its opponents by class, but it can be viewed from the perspective of an aristocracy as compared to a democracy. Madison in "Vices of the Political System of the United States" in 1787 wrote that many of the abuses were the result of the "natural arrangement of society" (Corwin, 1973, p. 35). He attributed this to the many interests that can combine into a majority which can then trample the rights of others. As a remedy he suggested enlarging the "geographical sphere of government" which would of necessity include a greater variety of interests, and the larger distances would naturally create a barrier for the formation of factions.

Congress passed a resolution in 1787 calling for a convention to meet in Philadelphia to revise the Articles and report back to Congress and the state legislatures. Delegates were appointed by the states. They were to identify the defects and develop a plan to remedy them.

"For the Framers, property was both a natural and a positive right …" (Nedelsky, 1990, p. 152). The framers were concerned about the conflicts that could be generated between the rights of property owners and democratic values. Nedelsky states that this has led to unequal political rights and lack of public political participation. The delegates knew they had to protect property rights from the masses to ensure the economic and political growth of the republic. This led to a general distrust of the public. Their activities had to be channeled and controlled by the new government. Three delegates-Madison, Morris, and Wilson, provided three contrasting views on property rights. Madison tried to find a mid-point between the competing values of property rights and democratic values. He did see the accumulation of wealth leading to a variety of competing interests or factions. To counteract this, he stated increasing the public sphere by allowing people to directly elect office holders provided a better representation. Madison also assumed that man's self-interests and commerce could be mitigated by a large republic with representatives, who through wisdom, have the best interests of the country and love of justice at heart, providing "public space necessary to protect public liberty and the public good" (Gibbons, 1992, p.122; Duncan 1995).

Morris held that property rights took priority over all others; and Wilson stated that protection of property was not the role of government, instead government should foster public participation in government by developing the best in human nature. "In Wilson's view, popular sovereignty, majority rule, participation, and representation are matters of right" (Nedelsky, 1990, p. 113). These take precedence over any personal rights. According to Nedelsky, the Constitution is a Madisonian document, whose vision prevailed, if not all of his suggestions. Political rights became a means to an end—government is to protect civil rights (defined by Nedelsky as freedom from interference with one's private rights), with the elected elite protecting these civil rights of the many. There was no need to restrict political rights; the governmental institutions would have built-in restrictions. This also allows for the protection of property and the economic interests of the elite. Only the elite have political rights (participation and shaping of public affairs), others can only elect and consent to their representatives.

It is difficult to determine the actual motives of the drafters. The framers were concerned about the future. According to McWilliams (1992), the Constitution was not a compromise, nor was it based solely on pragmatism, but also on philosophy and the "improved science of politics" (p. 2). The debates were centered not only on ancient and modern theories, but also on the "nature of modern representative democracy (McWilliams, p. 3). The delegates had four major considerations: "providing protection for the lives, liberty and property of the citizenry:" "commitment to republicanism" (although there were differing opinions on what that meant); "history" of three types-using it as an example, as a

legacy of English institutions, and the actual making of history; and "a large body of political theory" (McDonald, 1985, p. 3).   The founders saw the Constitution as more complex than the pursuit of self or class interests. They also saw the Constitution in terms of human nature, the nature of politics and democracy, the public good, a properly constituted public sphere, and problems of stability and of political culture (McWilliams).   Put more succinctly, John Quincy Adams said it "had been extorted from the grinding necessity of a reluctant nation" (Farrand, 1913, p. 201). The final document was more a result of the delegates' experiences, common sense, and willingness to compromise (McDonald).

Concern has been expressed that the delegates were not representative (Warren, 1937; Roche, 1973). "The Constitution was framed by financially successful planters, merchants, lawyers, and creditors, many linked by kinship and marriage and by years of service in Congress…They were impelled by a desire to do something about the increasingly insurgent spirit evidenced among poorer people" (Parenti, 1980, p. 41). They were appointed by their respective state legislatures or governors. Most had been active in the Revolutionary War, eight had signed the Declaration of Independence, one-sixth were of foreign birth, three-quarters served in Congress, most held public positions in their states.

Madison developed the new plan for government and after discussion and compromise it consisted of a two branch legislature with representatives in the lower House elected by the people—"in proportion to whole numbers of white and other free citizens and three-fifths of all others except Indians not paying taxes" (Warren, 1937, p. 209). Members of the upper branch were to be chosen by

members of the House. The president was to be chosen by the establishment of the Electoral College. Powers of the president included authority to appoint certain officials, execution of national laws, and veto power. The judiciary was comprised of one supreme tribunal. Congress could establish inferior federal courts to oversee national laws. Supreme Court judges were to be nominated by the President with Senate approval. The court had jurisdiction "over collection of national revenue, impeachments of national officers, questions which affect national peace and harmony" (Warren, p. 330). The court also had jurisdiction over laws passed by Congress, controversies between two or more states, and could act as an appellate court for other matters as to equity and admiralty cases (Farrand, 1913).

Early during the Convention, the delegates realized the approval for changes to the Articles should come from the people. The idea of calling a convention to modify the Articles instead of using the state legislatures was to avoid the states as they would never agree to reforms, requiring unanimous consent. Additionally, the new Constitution would rest on a more solid base if approved by the people. "Madison saw clearly that the new national government, if it were to be truly independent of the states, must obtain 'not merely the assent of the Legislatures, but the ratification of the people themselves'" (Wood, 1987, p. 532). Popular ratification gave the supreme power of changing their government to the people, usurping state sovereignty and power (Mason, 1973).

Both the Federalists (those who drafted and supported the Constitution) and Anti-Federalists (those who opposed the Constitution) believed people acted

out of their own self-interest and expressed fear in the "constituent capacity of people" to act wisely in the choice of a Constitution (Kenyon, 1973, p. 77). The Founders were suspicious of popular passions, realizing all men act on the basis of passions and interests; the Founding was to devise laws and institutions that restrained and channeled those passions, so citizens could act, but within the interests of the community (Brudney, 1992; Nye, 1960). The Constitution was not ratified directly by the people but through conventions in each state by elected delegates. Those allowed to vote for the delegates had to meet property qualifications (Parenti, 1980).

Ratification

The Federalists thought the country needed rescuing from chaos, the cause being too much diversity and democracy. The solution was a uniform republic. Since people can't be educated to be virtuous, as they are incapable of transcending their own self-interest, the country needed to be expanded so the various factions would offset each other. Power would be transferred to a national government where the representatives are removed from local issues and therefore will be more interested in the public good (Duncan, 1995).

By increasing the size of a representative democracy the number of interests increased, so there could be no tyranny of the majority. The causes of various factions influencing the elected representatives can't be removed but can be controlled and done by enlarging "the sphere" which will contain many factions and various kinds of property, therefore eliminating a class type of struggle.

During the ratification debates, the Federalists had to downplay the elitist labels, instead arguing that the Constitution provided a strong national government based on the sovereignty given to the people, not the states, and therefore, the people really had more rights with a voice and representation in a national government (Mason 1973).

The picture of the Anti-Federalists as state office holders, or debtors, and the Federalists as bankers and lawyers are caricatures according to Warren (1937). Instead, the leader of the Anti-Federalist party, Richard Stryker, said the party was made up of people of the community, men of middling prosperity. Warren thinks the Anti-Federalists were the "old patriots of '76, those who fought for the liberty of the individual and of their states, for a republican rule" (p. 759). The Anti-Federalists were seen as "more democratic and populist, fearing the aristocratic control and the likely corruption of a national legislature" (Sharp, 1993, p. 24). They thought their representatives should be frequently elected, and have close ties to their constituents. However, the Anti-Federalists were not organized in their opposition, lacked coordination and leadership, were not as wealthy or as well connected as the Federalists. Many were focused only on local interests. The newspapers supported the Federalists as they had the money and power.

The Anti-Federalists thought a "moral regeneration of American's character (was) needed, not a legal one as in the Constitution" (Wood, 1987, p. 485). While admitting society was hierarchical, it was still one cohesive unit. The people weren't at fault; instead it was their organizations, particularly those

far removed geographically from the people. They understood that direct democracy was unworkable, but thought representatives should actually resemble the people they served, to allow for feelings of attachment to their government (Nedelsky, 1990).

The Anti- Federalists viewed society as a covenant, between each with all, not a contract (Duncan 1995). A contract is for mutual benefit and convenience, a covenant implies a promise to give aid even when not convenient; breaking it could court the wrath of God and undermine society. The Anti-Federalists thought the British had broken covenant with the American colonies. They saw the Constitution as a breaking of the covenant—the Articles of Confederation (Duncan, 1995).

The Anti-Federalists drew their strength for their ideas from Montesquieu: the form of government rested on the character of the people, and the proposed Constitution would alter the American republican character (Kupersmith, 1992). The Anti-Federalists saw the Constitution as increasing prosperity which could lead to habits of luxury, breeding inequality and rich men who loved their fortunes, not their country's welfare. This large territory would undoubtedly contain many of these rich men.

The Anti-Federalists saw the framers as demons who wanted "to subvert the fundamental basis of American political life" (Duncan, 1995, p. 153). Although some saw the Anti-Federalists fearing government, Duncan says instead they feared a corrupt or detached government, a fear of forgetting the past and its continuity to the people. They thought the Constitution's idea of a national

government was too removed to understand people's needs, but was still involved locally without knowing local sensibilities. They saw the differences among the states as something to be praised; that a national government would enforce uniformity. The Anti-Federalists were for local justice, local standards of right and wrong interpreted through the local context and covenant. They were concerned about protection from arbitrary power which led to their call for a Bill of Rights. They were also concerned about the power to tax, seeing it as power to sap a citizen's resources.

The Federalists used Montesquieu to attack the Anti-Federalists, stating the latter were misinterpreting him and his ideas were not relevant to the American experience. His referral to size was for a direct democracy, whereas the Federalists were proposing a republic. The Federalists also stated that land and property were a driving force, not love of country—the Anti-Federalists were romantics, whereas the Federalists were pragmatists and the Constitution better met the needs of the American people than the Articles (Kupersmith, 1992).

In the end, the Federalists' arguments that the Constitution addressed real problems and needs, won the peoples' vote.

The Early Republic

"The new frame of government, as ratified in 1788, was influenced by the overly optimistic, classical republican, civic humanist assumption that selfless representatives of the citizenry could and would come together and legislate for the national public good and that this public good somehow could and would be determinable" (Sharp, 1993, p. 2).

However, this did not reflect the reality as there were deep sectional divisions, a diverse society which was undergoing economic and social change, great geographical distances and differences. And the public was more interested in direct participation in government from their revolutionary experiences.

Many of the issues that were debated during the Revolution, and the period surrounding the drafting and ratification of the Constitution, persisted in the early years of the republic.

The first order of business, after the Constitution was ratified was to begin to govern.   The founders assumed that men of selfless civic merit would be elected and place the best interests of the country before all other interests; that all factionalism would dissolve and these men would rule by consensus. Instead the early years were marked by such distrust of each other by the two major ruling groups that it was thought secession and/or civil war could break out. .

Everyone knew that George Washington would be the first President. But that was the only certainty. One of the great ambiguities was how to define the sovereignty of the people and what role they would play in the new government; and how to express disagreement with the elected leaders and their decisions.

The idea of a positive political party did not exist at this time (separate from the government itself), as a method for opposing the government without being seditious. Political parties were seen as evil, a method to promote one's self-interest. However, two quasi-parties did arise--the Federalists and the Republicans.   The Federalists saw themselves as the defenders of the Constitution; the Republicans claimed to represent the people, defending the new

Constitution against the Federalists whom they thought would return the new government toward English practices. Both were antagonistic to the other, each believing their position represented the public good.

They used the people themselves to give their positions legitimacy. They were channeled into "societies" similar to the Committees of Correspondence that were popular during the Revolutionary period (Sharp, 1993). These societies mobilized and educated people to shape and influence their elected representatives. However, many times this led to extralegal and disruptive means to achieve their objectives. As the Federalists were firmly entrenched in the federal government, the Republicans turned to the states for support.

Within several years, the government was divided between the Federalists, led by supporters of Washington and Alexander Hamilton, and the Republicans, led by James Madison and Thomas Jefferson. This opposition was divided along mostly sectional lines, the former who saw America as a commercial society and the Republicans who wanted it to remain a more simple rural society. Hamilton's proposals to pay the War debts and the establishment of a national bank fueled the Republicans' concerns about a strong centralized federal government, catering to commercialism at the expense of state governments and an agrarian society.

While Washington remained president, Jefferson and Madison attempted to elect more Republicans to Congress, without much success. They did realize the natural leaders (the ruling elite) needed to educate the public on citizenship and to see the common good (Kemmis, 1990) instead of relying on the peoples' sense of defeating those who ran for office out of self-interest. And they thought

that the state legislatures would be key to electing men of similar political outlook to the Senate. The state legislatures were seen as closer to the people, reflecting the will of the people. The Republicans believed in engagement of the citizens, both with each other, and in working together for solutions to public problems (Kemmis).

But there were also those who thought the American people should take a more active role without any guidance from the ruling elite. Democratic-Republican societies were formed, a grass-roots effort allowing for more radical and democratic participation and expression of ideas. They saw themselves as observing their elected officials' actions and channeling the people's will to the government. Membership reflected the diversity of the people, with many members being merchants, craftsmen, small farmers, planters--men of wealth. (The Republicans like Jefferson and Madison tried to distance themselves from these societies.) Generally the members of these clubs criticized the unresponsiveness of elected officials to the public, representation did not reflect the American people, and some means was needed to formulate and effectuate the public good. They believed the ideals of the Revolution had been corrupted by those acting in their own self-interest.

In addition to these societies there were other extra-legal activities, reflecting the feelings that citizens' needs were being ignored by the federal government. In Western Pennsylvania, there was armed insurrection against the imposition of the whiskey tax. And in Kentucky, there was talk of splitting from the Union. These groups and their activities indicate there were no acceptable

means at that time to express opposition to governmental policies, or to realize that representative government requires compromises. Although many were not happy with the deferential connection between elected officials (the ruling elite) and the people and thought the societies did express the will of the people, the societies had mostly ceased to exist by 1796.

The establishment of judicial review was used to help define the issue of rights which the Constitution had not spelled out in detail. This review also cemented the Federalists' position, reinforcing the lack of popular political participation. " (Judicial review) would define the rights that limited legislative power; they would struggle with the question of when laws affecting property rights were regulations and when they were violations…and they would enforce the limits on the states" (Nedelsky, 1990, p. 188). Judicial review institutionalized the supremacy of individual rights, providing more weight to property than democracy.

For some decades of the early republic, there were many different ideas on what the Constitution and Revolution really meant, how the government was to be defined. The Supreme Court did not become as strong until the early 19th Century and the rise of political parties. It was then that the Court determined that politics and law were two separate spheres, and the Court would determine any issues that would arise if there was a question.

With the election of Jefferson, the Virginians (Republicans), held the presidency for many years, believing their philosophy of encompassing the public good, saved the Revolution and Constitution, overcoming the Federalists' self-

interests. The influence of the "Federalist Party," as represented by the New

Englanders, virtually ceased after the War of 1812. However, the Republicans

began to divide into two distinct philosophies-the Old Republicans who were

considered more democratic, agrarian, and suspicious of any Federalist sounding

policy; and the moderates (incorporating some Federalists) who were more

nationally focused, wanting federal action that would improve economic

expansion and growth.   However, with the election of Andrew Jackson in 1828,

the political philosophy of states' rights, appealing to non-commercial citizens,

continued the Southern domination of the government. From the ratification of

the Constitution to the Civil war "…a Southerner was president more than two-

thirds of the time", most of the Speakers of the House were Southerners, and

Southerners controlled the Supreme Court (Spark, 1993, p. 286).

On March 4, 1829, a newspaperman reported "It was a proud day for the

people---"General Jackson is *their* president" (Schlesinger, 1953, p. 6). However,

others despaired: "The reign of King 'Mob' seemed triumphant" (Schlesinger, p.

6). . Jackson was popular with the people, who elected him president based on his

military record, his background as a Southern farmer, and his integrity. He

appeared to be the antithesis of the entrenched "aristocracy." As President, his

leadership grew, his strength was an understanding of people.

Populism

The early 1800s saw the growth of business and manufacturing, and with

this, an increase in their power. Agriculture was still the main economic force,

especially with the expansion westward; however, it did not exert the influence it

should have. It was a time of deepening class conflict, between the wealthy commercial and industrial interests and the farmer and the working man, leading to discontent. This was also a time of examining the idea that those without property could also vote.

Industrialism continued to grow through the 19th Century. And with it the power of those who owned and managed manufacturing and commercial interests. The next great surge of people demanding to be part of the political process came in the latter part of the century, with the rise of Populism. It was fueled by a monetary crisis, similar to the one that brought Jackson to Washington. After the Civil War, the country was divided along sectional, religious, and racial lines. There were three large occupational groups: farmers, urban workers, and the commercial classes. And two others, defined more by race: free African-Americans in the North, and ex-slaves in the South (Goodwyn, 1976). The two political parties used these prejudices to their advantage while ignoring the economic interests of millions.

It began in the South with farmers who ended up at the mercy of their creditors. The system was referred to as the crop lien system (Goodwyn, 1976). Congress determined they needed to hold the money supply steady as population and the economy expanded, thereby forcing prices down so it was not profitable to redeem dollars for gold. Farmers would go to merchants asking for an advance on their crops to purchase needed supplies for farming and sustenance until they were able to sell their crops and then repay the merchant. This could occur several times during the season. When it was time to pay the merchant for the

credit extended to the farmer plus usurious interest, invariably the farmer was short as prices for his crops had decreased or he would experience crop failure due to the weather, and eventually would have to turn over the title to his property to the merchant while he became a tenant farmer locked into this cycle with no hope of escape.

Some did escape to the frontiers, but there they experienced similar problems caused by the railroads. In the 1880s, the farmers began to gather into alliances, creating cooperatives to market and sell their products. While creating these alliances, they allowed the farmers to share their problems with others and became educated about the economic system. They built a vision and gave the farmers feelings of self-worth, that they could control their future. However, they ran into merchants who refused to deal with them. But they kept expanding the alliances, and soon realized they needed to take political action as they were not receiving any assistance from the two major political parties and were concerned that unless something was done to the economic system, democracy would cease. They formed a third party known as the People's Party, and met in Omaha in 1892 to develop and approve a party platform and nominate a candidate for president. They were successful in various states in electing their slates to the state and national legislatures, and although their candidate did not win the presidential election he received over a million votes. However, during the next presidential election, the tide was turning. Many members who had been part of the Peoples' Party joined with the Democrats to nominate William Jennings Bryan who lost the election. The Party was dead within a few years.

Modern Participation

With the exception of a few attempts at involving the citizens more directly in their government (including the activities associated with Andrew Jackson, the Populist Movement, and the amendments to the Bill of Rights providing women and other minorities the right to vote, direct election of senators, the initiative and referendum), citizen participation had been limited until the 1950s and 1960s.

According to Pateman (1970) the classical theorists conceived of democracy with full participation by its citizens. Pateman cites the participatory theories of democracy of Rosseau, Mill, and Cole who saw participation in the making of decisions, and "political equality …as equality of power in determining the outcome of decisions" (p. 43), noting that people learn to participate by participating, which leads to the development of feelings of political efficacy.

This changed with the work of Joseph Schumpeter who thought too much participation could lead to instability and even totalitarianism as evidenced by Germany in the 1930s and 40s.

The classical theorists thought there should be maximum participation by all people. But based on a more empirical grounding in political science in which few participated in government, Joseph Schumpeter in the 1940s revised democratic theory to fit reality: "Democracy is a political *method*, that is to say a certain type of institutional arrangement for arriving at political-legislative and administrative decisions" (Pateman, 1970, p. 3). Participation in democracy is limited to casting your vote for competing candidates and discussion. Pateman

states a modern theory of democracy, as espoused by Sartori and Dahl, require

political equality to be defined as universal suffrage and equality of opportunity of

access to decision makers. However, Sartori sees that once a democracy has been

created, the ideal must be downplayed as in practice a democratic form of

government relies on a vertical authoritarian system in which competing elites

rule, and fears that too much participation can lead to instability and

totalitarianism such as occurred in Germany.

This lack of participation has been seen as apathy of citizen involvement

in government. Although citizen participation is a cornerstone of democracy, the

bureaucracy has set barriers to keep citizens from becoming too active (King,

Feley, & Susel, 1998). There has been an increase in calls for citizen participation

as citizens demand more accountability from their government, and the

government is finding that decisions without their input are ineffective (King et

al.) Public managers do not see public input in administrative decision making as

they think it increases inefficiencies by creating delay and costs. So, much input

is asked for after major decisions have been.

An example is the public hearing. Citizens become disenchanted with

these false bureaucratic attempts to gain their input, becoming antagonistic and

thwarting implementation of decisions. "Administrators are territorial and

parochial; they resist sharing information and rely on their technical and

professional expertise to justify their role in administrative processes" (King et

al., 1998, p. 320). They become the client of the public manager's expertise.

Citizens see communication in the participatory process as flowing one way from

the professional to the citizen. According to Kemmis (1990) "next to the courtroom, the public hearing room is one of society's favorite arenas for the blocking of one another's initiatives" (p. 52). Instead of discussing the issues, it becomes a place to push one's own interests.

In a representative democracy, citizens rely on their elected officials to act for them. However, because of complexity, and its parallel with thinking citizens can't understand this complexity and therefore a lack of responsiveness on the part of public managers, and special interest groups, citizens are losing trust in local, state and national government. This has been reinforced by an unresponsive bureaucracy "plagued with excessive rules, bound by rigid budgeting, and personnel systems, preoccupied with control….ignoring citizens, shunning innovation and serving their own needs" (Denhardt & Denhardt, 2000, p. 551).

Stiver also noted that there was a lack of active citizenship mostly brought about by liberalism's idea of individual rights and self-interest (1990). The political economy and the public administrator's expertise and competence also thwart active citizenship. To achieve active citizenship, citizens need to acquire a commitment to a set of ideals that will then bond them together. This will require knowledge which can be supplied by the public administrator who must also accept the idea of citizen's practical wisdom. Stiver suggests this can be accomplished by legislative mandates, policies, procedures and actions that provide sharing between the citizen, seen not as a consumer, but as a co-decision maker with the public administrator.

One of the most widely used and easiest forms of participation is voting. Although voting takes less time and resources, citizens seem apathetic about voting or being involved in politics. In Robert Putnam's (1995) article "Bowling Alone: America's Declining Social Capital" he attributed this to lack of trust and cynicism in social and political institutions. Previously America had been known for people banding together in associations, clubs, or other types of social interaction. This develops better institutions, lower crime, faster economic development, and better communities by creating something called "social capital"--"networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit" (p. 67). People interact with each other, thereby increasing communication among members, developing collaboration and trust. He noted the declining membership in various social organizations (including bowling clubs) and the increase in cynicism and withdrawal from civic and political engagement. Although he lists several possible explanations, (including increased membership in new organizations such as the environmental Sierra Club, feminist groups, and the American Association of Retired Persons, which although are for political purposes the only engagement by its members is writing a check) he determined this needed further study.

Sirianni (2009) cites Putnam along with Theda Skocpol in noting the shift from civic organizations with local engagement to narrow advocacy groups. And much of the decline is reflected in those at the margins of the population according to Robert Wuthnow (Sirianni). Further, "J. Eric Oliver finds that

suburban segregation demobilizes citizens and decreases civic capacity…"

(Sirianni, p. 6).

According to Denhardt (2004), as trust in government declines, the act of governing becomes more difficult. It is manifested by citizens withdrawing into private spaces and personal concerns, disenchantment with governmental affairs, unwillingness to serve. Citizens have become more self-interested, and have joined groups promoting their self-interested issues, regardless of broader issues.

Governance

There has been a change in how we are redefining government into governance—"a shift from government as a direct provider and deliverer of public programs and services to governance as 'indirect government.' in which nongovernmental entities, including corporations, nonprofit organizations and public-private partnerships, use tools…to implement policy" (Boyt, 2005, pp. 536-537; Cooper, 2005). This grew out of dissatisfaction with technocratic, rights based, state-centered processes (Boyt). Citizens were seen as voters, clients or consumers; this view is changed as seeing citizens as problem solvers and co-creators of public goods. Boyt uses the Hubert H. Humphrey Institute of Public Affairs Center for Democracy and Citizenship definitions: democratic governance is comprised of three elements: political organizing that can be utilized by others, "the democratization of general practices" and a renewal of the concept of democracy as a society, centered on shared civic responsibility for the creation and sustenance of public goods (p. 542).

It involves collaboration and empowerment more than hierarchy and control. It is political but uses non-partisan processes of negotiating diverse interests and views to solve public problems and create public value. It involves citizens with diverse interests and opinions with approximately equal standing in horizontal relationships with each other, not simply in vertical ones with the state. Instead of professional politicians framing the issues, it sees citizens reclaiming non-partisan politics through extensive discussion and debate

Concepts of government are being replaced by governance (Denhardt and Denhardt, 2000; Boyt 2005). It is a participatory approach involving not only government, but also the private sector, non-profits, and the public. "Governance involves collaboration and empowerment more than hierarchy and control…" (Boyt, p. 537). This shift involves seeing citizens as more than voters or consumers, but as problem solvers. As consumers or clients they were seen as being serviced by state-centered technocrats, with information provided from public agencies to the citizens devaluing any citizen's practical wisdom. Bingham and Nobotchi (2005) also see a shift from a vertical relationship—"a command and control" (p. 548) between government and citizens to a more horizontal one, with citizens of differing views networking together to solve problems. They contrast government with governance: "Government occurs when those with legally and formally derived authority and policing power execute and implement activities; governance refers to the creation, execution and implementation of activities of shared goals of citizens and organizations, who may or may not have formal authority and policing power" (p. 548).

According to Fazimand (2004), governance means" a participatory

process of governing the social, economic, and political affairs of a country, state,

or local community through structures and values that mirror the society. It

includes the state as an enabling institution, the constitutional framework, the civil

society, the private sector, and the international global institutional structure

within limits" (p.11). Governance is more inclusive and promotes and encourages

citizen participation and interaction. . Government has been seen "as a unilateral,

monopolistic exercise of authority by governing elites…the role of citizens was

limited, women and ethnic groups were alienated and the civil society was

ignored" (Farazmand, p. 78). Good governance recognizes that expertise is shared

by not only the government but also citizens, stakeholders, non-governmental

agencies, and private sector organizations.

These ideas regarding government and governance can be seen in how the

government and citizens have interacted in the last several decades.

Recent history of public participation

First, some definitions. Because citizen participation means different

things, depending on the context, Langton has defined citizen participation as

"purposeful activities in which citizens take part in relation to government" (1978,

p. 17).   He defines four categories: citizen action which include lobbying and

protest; citizen involvement which is defined by government to gain support for

programs and decisions including public hearings and surveys; electoral

participation; and obligatory participation, such as paying taxes, jury duty. Verba,

Nie and Kim (1978) provides a similar definition: political participation "refer(s)

to those legal activities by private citizens that are more or less directly aimed at influencing the selection of governmental personnel and/or the action they take" (p. 46). Creighton (1992) defines public participation as a process incorporating public concerns and needs into governmental decision making. He states it is a two way communication, resulting in better decisions with public support.

Cooper, Breyer, and Meek (2006) define civic engagement as "people participating together for deliberations and collective actions within an array of interests, institutions, and networks, developing civic identity, and involving people in governance processes" (p. 76).

All agree that citizen participation is necessary for democracy, but differ on the amount. Underlying the concept of citizen participation are the democratic values of political equality and popular sovereignty (Rosenbaum, 1978). Equality is defined as "all citizens have an equal opportunity to exert influence through political activity if they choose to do so" (p. 44). And that government is created and overseen by its citizens. It is assumed this will allow for diverse interests to be heard in reaching decisions.   But as this paper has outlined it was not until recently that the opportunity for political equality was reached as those in government distrusted the mass public.

The experience of the New England town halls is used an example of public participation. But this can be problematic in a large diverse population. More recent times saw public participation focus on neighborhoods and/or communities. It began with the settlement houses which were staffed by the upper classes who provided services to the immigrant and low-income groups in

hopes of assimilating them into the middle class. They focused on the neighborhood which was seen as a social entity—an area where those of the same social class and ethnicity resided. Although settlement houses did improve the lives of some, it had little impact on the delivery of public services.

The community action approach focuses on the political neighborhood, mainly the inner city. It started with the Housing Act of 1949 with the federal government providing money to cities for acquiring and redeveloping slum areas. Two programs were recognized as the forerunners of the community development programs: the Ford Foundation's Gray Areas Projects and President Kennedy's Committee on Juvenile Delinquency. Both attempted solutions to a broad range of social problems within a community.

The 1950s and early 1960s saw a proliferation of urban redevelopment programs. The enabling legislation required citizen participation which mostly meant using "citizen leaders" on advisory boards (Burke, 1979). However, this was not effective. These programs were dubbed "black removal" projects as they targeted inner city slums, removing housing to build new commercial developments and highways (Thomas, 1995).

In the 1960s and early 1970s citizen participation took three different forms: one was the civil rights movement; another was citizen driven to influence and monitor government activity which included public interest groups, consumer organizations, grass root organizations; the third was mandated by legislation to involve citizens for input and approval of governmental programs (Langton, 1978).

To counteract the bad feelings of urban renewal, the War on Poverty in the 1960s mandated "maximum feasible participation" in trying to involve communities in housing, welfare and education programs. In 1964, Congress passed the Equal Opportunity Act which provided funds for Community Action Programs to relieve poverty. Money was provided to community boards, elected by the people they served, to allocate funds for social programs in their neighborhoods (Creighton, 1995). The idea was to give people a voice in programs that affected them. One of the first, and highly publicized efforts, involved Saul Alinsky and his Industrial Area Foundation. He organized many communities and trained others to organize to give people power to help themselves by developing leaders. His tactics were confrontational, but non-violent. His focus on community action led to the Model Cities and Community Action Programs (Clay and Hollister, 1983).

After a decade of anti-poverty programs, it was estimated there were almost 900 community action agencies in over 2000 cities (Barber, 1981). However, these programs never lived up to expectations as there were not enough resources to accomplish the goals. The 1960s also saw how people involved in the civil rights movements could become powerful, acting not as an individual but as a group. Generally, the 1970s saw public participation efforts move from poverty and race to environmental issues.

How much participation. Not all government decisions should involve public participation or for all decisions. Many decisions are technical in nature and are best made by those with expertise in the field. They are more "issues of

'feasibility' rather than 'desirability'" (Creighton, 1995, p. 25). Issues become political when there are trade-offs to be made between competing social goals. Critics also cite the time and other resources demanded of public managers to involve citizens. Participation can lead to bad decisions by not relying on the expertise of public managers. And by working with some groups, public managers could be neglecting the broader public interest (Thomas, 1995).

Involving the public depends generally on whether there is a need for a quality or technical decision or acceptability of that decision. According to Cohen and Uphoff (1977), if the public is to be involved, there are four areas where participation should occur: decision-making, implementation, benefits, and evaluation. Many public managers involve the public in only the first area.

Thomas (1995) proposes five levels of involvement. From no public involvement to shared power and decision-making, they are: autonomous managerial decision, modified managerial decision, segmented public consultation, unitary public consultation, and public decision. The more important the decision is to be accepted and implemented the more likely the need for public involvement. Thomas noted that involving the public after decisions have been made, and/or not being willing to share influence leads to disgruntlement for all parties.

Arnstein (1969) also provides an example of the various types of participation she saw on her review of the War on Poverty Programs which she based on urban black ghettos. She offered eight steps on the ladder, from the lowest or non-participation to tokenism to actual citizen power. These are from

lower to higher: manipulation, therapy (non-participation); informing, consultation, placation (tokenism); partnership, delegated power, citizen control (actual citizen power). Arnstein admits her article is provocative as she thinks "that participation without redistribution of power is an empty and frustrating process for the powerless" (p. 216).

Cooper et al. (2006) propose a model for civic engagement which moves from the adversarial to collaboration, using deliberative and consensus-based approaches, with the latter building trust between citizens and government, responsiveness and legitimacy from government to citizens, and enhancing efficiency and competence of citizens.

Who should participate. Ideally, the public manager will involve the "relevant public"--those who can provide information relevant to the issue and/or could affect the implementation of the decision (Thomas, 1995). These could be comprised of special interest groups, public interest groups, interested citizens. Depending on the issues, unorganized citizens and various governmental actors might also be invited to participate. In a survey of local public administrators, Yang and Callahan (2007) found that elected officials, followed by agencies and administrators, are more likely to promote public involvement but the administrators did not use that involvement for strategic decision making, thereby maintaining their power and control. Care must be taken that those who participate can represent more than just their own selfish interest. Cupps (1977) is concerned that many interest groups are not representative of the public, or necessarily reflect the views of their members. According to Coleman (1957),

people get involved when a topic can affect an important aspect of peoples' lives; or an event affects the lives differently, and they feel that their actions are meaningful.

In a seven nation survey, conducted by Verba et al. (1978), the authors found (in the United States) that being a member of an institution that is politically motivated provided more equality across all socio-economic classes than those activities by an individual. They found that those individuals who were higher on the socio-economic scale were more politically active, acting as an individual, than those lower on the scale. This was also true for institutional and voting activity. They also found men more politically active than women. In comparing community participation in rural and urban areas, they found people in rural areas to be more politically active. They explained this by using their decline of community model which describes smaller communities as a place where you know others and whom to contact. In larger cities life is more impersonal and complicated. There is no distinct community, but blurred economic, political, and social areas, with many community boundaries blurred, and adults and children working or going to school outside of the neighborhood. In summary, the authors are concerned about political equality in a democracy. However, other inequalities could replace the socioeconomic one based on their findings in other nations. And the participants could not be as politically informed or interested if mobilized by an institution. They further state the political party system has lost its importance--people have little or weak ties to a

party, instead they are replacing the party with the mass media for information and various citizens groups for activism.

Types of participation. Participation can emanate from the top down or the bottom up.

Top-down participation depends on whether the public manager needs information or seeks public acceptance of decisions.

a) Individuals. Information only. This involves seeking information from citizens as individuals and includes key contacts, citizen-initiated contacts with agencies, citizen surveys, and new communication technologies (Thomas, 1995). These methods don't demand much in the way of time and effort on the part of the citizen.

b) Groups. Different types of groups are used for a variety of reasons: Barber (1981) noted the usefulness of each type depended on the "circumstance, locale and audience" (p. 31).

1. Public hearings. To gain acceptance of decisions the least productive are public hearings (Barber, 1981). Using citizen participation in the educational field as his basis, he found that public hearings did not work very well, particularly with mixed racial groups or people of differing backgrounds, although is was the cheapest method. Public hearings are better for gaining public support, or for single issues. Kemmis (1990) also found that public hearings tend to pit the various interests against each other in protecting their turf and not really hearing

each other (similar to James Madison's position that these competing arguments would balance each other).

2. Workshops. These are preferred for resolving conflicts, for mixed race and mixed age populations.

3. Advisory committees. Although more expensive, workshops or advisory groups were preferred for most issues and most groups (Barber, 1981). Advisory committees were more suited to creating decision-making data, dealing with problems, achieving long-term gains, working with high and middle socioeconomic groups, and dealing with complex issues. These are helpful when there are multiple groups, each with their own opinion. By working together they might not only reach consensus, but are also made aware of the larger community.

Some participation efforts are not goal directed, but are used for needs assessment (Barber, 1981). This is particularly useful for community organization. Another use of citizen participation is for planning purposes. Some participation efforts are centered on the neighborhood, such as the Neighborhood Centers and block organizations. As Barber has suggested, in the past, power from block organizations came from political machines and bosses or from the parish priest. If you wanted something, you went to them. More recently, people organize to provide safe neighborhoods or other goals, such as preserving historic landmarks.

Bottom-up participation includes grass roots activism and volunteerism. Most of these volunteers are motivated by feelings of self-fulfillment by helping others and doing-good (Barber, 1981).

Outcomes. Reality has not equaled the assumptions about citizen participation. There are various reasons for failures. One is assumptions about participation. These include having no incentive to participate (studies have found that most people do not participate, only small groups are active who are not representative of the general population) (Checkoway and Van Til, 1978) or who argue for their own self-interests (Cupps, 1977; Barber, 1981); grass root groups have difficulty in being heard by governmental agencies; the programs asking for input having little direct impact on the citizen; public input did not necessarily provide acceptance of the final program, and can inflate expectations of those participating; it can energize those who oppose the program, giving them a forum for their negativism (Barber, 1981). Additionally, legislatures give little direction about citizen participation, and few resources to the agencies to involve the public (Rosenbaum, W., 1978). Many agencies only minimally utilize citizen participation, or do so for their own ends. Also there are the issues of dealing with diverse opinions to create a policy. "Citizen participation can be extremely costly, unwieldy, and time-consuming" (Rosenbaum, N., 1978) It involves providing information, sometimes very technical, to citizens who are not familiar with the material, nor do they always understand the complexity of issues. Citizen participation can undermine agencies by slowing their decision-making, reaching different decisions than the agency would have made (sometimes to the

detriment of both), determining goals different from those of the agency, and not relying on bureaucratic expertise. Citizen participation is seen as the antithesis to some agencies who value "efficiency, economy, and control" (Checkoway and Van Til, p. 33; Thomas, 1995).

There are successes. It requires several things: fitting the type of participation to the subject to be decided. Barber (1981)suggests that to be successful, political support is necessary to accomplish the groups' goals; to accomplish this requires building credibility based on the make-up of the group which should be diverse; that much depends on the group's leadership/consultant talents and abilities.

Volunteers

"Volunteering…is seen as highly important for the proper functioning of society" (Dekker& Halman, 2003, p. vii). Volunteering is seen as a key component of a civil society, generating social cohesion and societal self-regulation as well.

Volunteers have been active in not only social service agencies but also in policy and governance. Volunteers were active in the community as service providers to the settlement houses, trying to provide immigrants and low income people with services. However, the volunteer efforts declined from about the 1920s to the 1960s as there was a rise in the social work profession, including increased activity from the professional social work agencies during the Great Depression (Perlmutter and Crook, 2004) and with the rise in the welfare state, there didn't seem to be a need for volunteers (Musick and Wilson, 2008).

However, governmental and other agencies have found they do not have the funding to provide all the services people demand, so they rely on citizen participation to provide these services (Hodgkinson, 2003; Gazely & Brudney, 2005).

What is volunteering? "Volunteering is a form of altruistic behavior. Its goal is to provide help to others, a group, an organization, a cause, or the community at large, without expectation of material reward" (Musick and Wilson, 2008).

Most authors provide similar definitions. According to Brown (1999) most definitions of volunteerism used by both legal and academic sources cite four dimensions: voluntary nature of the act, nature of reward (either psychic or non-remunerative), auspices under which work is performed, and beneficiaries of the act and relationship to actor, e.g., a stranger or someone removed from the family circle.

Dekker and Halman (2003) suggest four main elements in defining volunteering: non-obligatory, carried out for the benefit of others, unpaid, and sometimes takes place in an organized context. Hodgkinson (2003) states that the United Nations has identified four types of volunteering: self-help groups (Alcoholics Anonymous), philanthropy or service to others or the community (tutoring, mentoring), campaigning and advocacy (environmental causes), participation (serving on committees).

It was thought that with the rise in the welfare state, there would be no need for volunteers. Now, it has become apparent that volunteering is needed to

help governmental agencies reach their goals. According to Musick and Wilson (2008) volunteerism has support from both sides of the political spectrum: those on the right see volunteerism as promoting self-sufficiency and individual initiative. President Reagan stated that citizens had allowed government to take over many services that were previously done by volunteers and private philanthropy. Those on the left see volunteerism as creating grass roots civic participation, greater self-determination, especially for the under-privileged of society. The growth of identity politics has shifted politics from one of distribution to one of identity in which a wide variety of groups use volunteers.

Salamon and Sokolowski (2003) explain that there are two areas of research that explain volunteering: one is at the micro level which sees volunteering at the individual level and explained by benefits, values, beliefs and sees the motivation to volunteer are social capital and personal value systems. The other area looks a macro level criteria, seeing volunteering "as part of larger social forces and institutions and concentrates on opportunity structures to answer the question of why people volunteer" (p. 77). After reviewing the Johns Hopkins Comparative Nonprofit Sector Project, they found that volunteering is greatest in countries that have an organized non-profit organization. And that volunteering is not based on some altruistic reason, but is affected by larger social and institutional forces.

Why do people volunteer? It is complex and involves both altruistic and individualistic reasons. Perlmuter and Crook (2004) put forth the idea of social exchange theory in which one estimates the costs and benefits of volunteering,

and if there is a net benefit, that person will not only volunteer but continue volunteering. Musick and Wilson (2008) examine both micro-level reasons for volunteering (attributes of individuals) and macro-level (social context). However, they caution that it is difficult to separate out many of these variables when trying to explain the reasons people volunteer. For example, volunteering raises one's self esteem; however, those with high self esteem volunteer more than those with low self esteem. The net cost approach assumes volunteers provide a service for which they do not get material rewards, or if they do, their costs exceed those rewards. Additionally, they also discuss the psychic benefits volunteers receive and how interests also play a role in volunteering. It appears that personality traits combined with the situation can provide some explanations of why people volunteer. People are drawn to volunteer work as it provides a direct service-they can actually see results.

Dekker and Halman (2003) suggest that people volunteer because they are naturally helpful and generous, or they do things because of where they are at a particular time. Many times people volunteer not because they were actively seeking volunteer work but because they were asked by family, friends, or neighbors.

Musick and Wilson (2008) have found that some of the reasons people don't get involved in civic life is "because they can't, because they don't want to, or because nobody asked" (p.6).

Based on surveys, the volunteer labor market is as segmented as the paid labor market, that is, there are different types of volunteer work occurring in

different settings which attract different population groups, appeal to different

motives, and speak to different interests (Musick and Wilson, 2008). Most studies

find weak correlations between volunteering and socio-economic factors such as

age, income, education, as does the volunteer's values (Dekker and Halman,

2003). Women tend to volunteer for more typical female jobs and men occupy

leadership positions. Those more highly educated tend to serve on boards and

committees. Those with less education are likely to volunteer for manual,

unskilled labor (Musick and Wilson, 2008).

Brown (1999) cites a survey for 1996 (the most recent available on a

presidential election year) in which 54.2% of the adult population voted, 63.2%

worked, and 48.8% volunteered for an average of 4.2 hours per week. She also

found that volunteerism is highest among adults, white, married, well educated,

employed with above average incomes. Those who volunteered as a youth are

more likely to volunteer as an adult. Volunteerism peaks from ages 35 to 55 years

of age.

Hodgkinson (2003) cites several surveys that indicate a relationship

between human capital (income, level of education, professional or managerial

positions) and the propensity to volunteer. Additionally it is thought that people

who are active in religious organizations, voluntary associations and other

membership organizations, are more likely to volunteer.

Salamon and Sokolowski (2003) noted volunteering represents the

equivalent of 5 million FTE jobs in the United States. Additionally, the authors

cite a 2002 Current Population Survey that found 27.4% of Americans engaged in

volunteer activity, with most volunteering in the religious, educational or youth service areas, with a smaller percentage volunteering in the social or community service areas. According to a survey by the International City/County Management Association, 31% of the volunteers in local governments volunteered in museums, 27% in cultural and arts programs, 17% in programs for the elderly and in the delivery of public safety.

"Citizen participation can be extremely costly, unwieldy, and time-consuming" (Rosenbaum, N., 1978). Based on a large national study, many volunteers stop because of poor volunteer management practices. Additionally they get discouraged if they receive little feedback on their effectiveness or quality of their performance. Whether a volunteer serves on an advisory board or provides direct service, the organization must provide the volunteer with an understanding of his/her roles and the goals of the organization. The administration of volunteers can be costly, there can be a loss of efficiencies and quality, and there are possible liability concerns. There is also the issue of conflicts between paid staff and volunteers as the former see the latter as encroaching on their jobs and authority. Volunteers may be more difficult to control than paid staff as they do not need to work, so their performance is not tied to keeping their job, and the volunteers may not share the values held by paid staff (punctuality and confidentiality). The administrator of a volunteer program has many duties: recruitment, training of volunteers, developing programs with policies and procedures, fostering partnerships between the paid staff and

volunteers, monitoring the volunteers, recognizing the volunteers, etc. (Perlmutter and Crook, 2004; Gazley & Brudney, 2005).

Volunteers serving in local, state and federal governmental agencies are part of the new governance (Gazley & Brudney, 2005). "One-quarter of all individuals who volunteer donate their time to government, and 85% of these volunteers serve city and county governments" (p. 131). Most research examines volunteers in the non-profit sector, but Rehnborg (2005) looks at volunteering in government. She states that some volunteers are significant, such as volunteer fire fighters, but there are many who volunteer who go unnoticed, e.g., monitoring wetlands, assisting in archeological digs, litter cleanup, and many other tasks in local, state, and federal government. One issue facing government agencies is having the infrastructure to recruit, train, and manage volunteers. An advantage of using volunteers is as an additional resource in meeting the public's demand for increased services even when funding is not available. This has led to concern about the potential volunteer pool, leading to heightened recruitment efforts, being careful to achieve diversity as "A volunteer who is also part of the community can provide a kind of legitimization for the organization" (Perlmuter and Crook, p. 133). As Rehnborg (2005) notes, "citizen participation is more than an alternative delivery system for public services. It is one of the key resources of a democracy" (p. 100).

The Court System

History of Courts in England and the United States

England had crude courts in the 12th century which reflected the self-interests of the nobles. Kings eventually did away with all local courts taking on judicial duties. By the 15th century the kings handed over their judicial duties to judges who were trained in law. Although judges began making laws in deciding cases (which became common law) they insisted that law was always there, permanent and unchanging (Lieberman, 1984; Hoffer, 1992). Judges should interpret the law when deciding cases. These ideas carried over to the American colonies. In the early years of the republic, courts were distrusted; people saw legislatures as more closely identified with the law. It wasn't until the late 1890s that people began to see the state appellate courts as lawgivers.

Prior to the Revolution, the colonies utilized the court system structure from England. In early England, "common law judges began as administrators who dispensed the king's justice in the course of doing the rest of the king's business" (Shapiro, 1981, p. 21). Common law came from judge's decisions which established precedence. In the 16th Century, these decisions were being written and published (Hoffer, 1992). English law also included acts of Parliament.

The courts of the King's Bench (which heard appeals), Common Pleas (which heard most civil suits) and Chancery (a court of equity that remedied injustices not covered by the other courts) were all held simultaneously in Westminster Hall with nothing but a partition between the courts. The judges wore heavy taffeta robes, not only signifying their rank and power but also to keep them warm. The judges were appointed by the King, and were often his

allies and friends (Hoffer, 1992). England also established appellate courts whose duty included looking for errors by the lower courts in their interpretation and application of the law, thereby providing a centralized system of control over other judicial officers. Since there was little record that went with the appeal, the disputing parties were allowed a trial de novo, a new trial.

The local courts were presided over by a justice of the peace who was appointed by the king. These courts oversaw the posting of bonds, the payment of fines, ordered people to give evidence, handled criminal matters and were a place to file legal papers. Twice a year the king's judges rode "circuit," bringing with them a retinue of clerks, attorneys, jailors, to convene grand and petit jurors to preside over criminal cases (Hoffer, 1992). The circuit judges also heard civil trials that had been sent back from the courts at Westminster. Many of the town magistrates were also the local governing administrator.

There is no clear historical record on how or when English juries began. Jurors were originally those who had knowledge of the conflict and were used to provide that evidence. The king required local inhabitants to come together occasionally and report to a king's officer any misdeeds or wrongdoing. This was the beginning of the grand jury system. Petit or trial jurors were originally called to testify to the facts of a case.   By the 19th century, juries were seen as protecting citizens against powerful prosecutors or judges (Shapiro, 1981).

When the first explorers and settlers set sail from England they carried charters from the King empowering the settlement of new lands. "In effect it was a form of public incorporation" (Hoffer,1992, p. 14). It also included the

admonishment to follow the laws of England. These became the first public law in the colonies.

Although the thirteen colonies each had their own version of a legal system there were many similarities (Hoffer, 1992). The individual colonies established a two level system, with the justice of the peace courts in each county (which heard petty felonies and misdemeanors and civil cases involving debt, contracts, replevins), and a provincial, or higher level court, which heard appeals from the lower courts, murder cases and cases involving common law. Some colonies formed additional courts: a prerogative or commissary general's courts which heard testaments and legacies; and admiralty courts which had jurisdiction over maritime matters.

England maintained control over the judiciary in the colonies by several methods: charters which defined the legal rights of the inhabitants (all adventurers and settlers were considered English subjects); instructions from the English government; Board of Trade which reviewed all cases heard in the colonies looking for irregularities (although it is difficult to determine if they truly reviewed each case); review and negations of colonial legislation that did not conform to English law; and corrections to court procedures by appeal to the King of Council (Washburne, 1967; Hoffer, 1992).

The law reinforced dependencies of all sorts. Colonial law denied equality to women. And those who were not of English descent suffered even more. More than half of the people in most of the settlements were legally unfree in some way—dependent on fathers or husbands, masters or landlords (Hoffer,

1992). The source of law in the colonies was from English common law, precedents, and from laws passed by Parliament. Few colonists were lawyers or were familiar with the law.

Articles of Confederation. The Articles of Confederation assigned Congress the task of hearing appeals. The process was similar to the Privy Council: states could petition Congress for a hearing who in turn directed the states to appoint judges to conduct a hearing on the matter (Farrand, 1913). But this system worked poorly (Henderson, 1971). The Articles provided for no courts except those appointed by Congress for "trial of piracy and felony on high seas and for determining appeals in cases of prize capture" (Farrand, p. 4).

The Constitution. From their experience with the Articles of Confederation, those attending the Constitutional Convention realized a federal supreme court was needed, a coercive agency to enforce acts of Congress (Henderson, 1971). Article III of the Constitution outlines the jurisdiction of the federal courts to matters concerning the Constitution, laws or treaties of the United States, provide for admiralty and maritime jurisdiction, act as an appellate court for other matters as to equity and admiralty cases (Farrand, 1913) and cases where an ambassador, the federal government, two states, or citizens of different states are parties and "over collection of national revenue, impeachments of national officers, questions which affect national peace and harmony" (Warren, 1937, p. 330). They later agreed the Supreme Court would have jurisdiction over laws passed by Congress. They agreed to the appointment of Supreme Court

judges by nomination of the President, with the Senate's approval. Judges could

hold office during good behavior and were to be compensated (Henderson).

There was no direct authority to declare laws unconstitutional, but it was

assumed. Criminal trials would be heard by a jury where they were committed.

(Civil jury trials were added by the 7th Amendment.)

Congress should have the powers to determine what constitutes a crime, to

determine the punishments, and for instituting a federal judicial court to try these

matters. Federal courts also have exclusive jurisdiction over bankruptcy, patent,

and copyright cases and violations of federal laws.

There was much opposition to the establishment of the federal district

courts. Opinions divided along the Federalist and Anti-Federalist lines with the

latter voicing concerns about the federal judiciary taking over the state courts,

conflicts between the federal and state courts over jurisdiction, and costs to

implement the federal district courts. As a compromise, it was decided to allow

Congress to establish other federal courts.

Objections to this section of the Constitution were raised in many of the

state ratifying conventions. Most cited were arguments that the jurisdiction was

too great, the federal system would swallow the state court systems, people would

have to go great distances to attend court, they were too expensive, there were no

jury trials for civil matters. These concerns were addressed in the Judiciary Act

by the first Congress (Henderson, 1971).

Judiciary Act of 1789. Article III of the Constitution was vague, but it did

allow Congress to create such courts as it saw was needed. The Judiciary Act of

1789 created three levels of federal courts: the Supreme Court, circuit courts, and district courts. The Act established a Supreme Court with one Chief justice and five associate justices, 13 district courts (one for each state) presided over by a judge residing in that district, established circuits and procedures, defined the jurisdictions and power of each court, procedures for appeal, created the offices of the marshal, district attorney, and attorney general (Henderson, 1971).

It proposed the number of judges, the jurisdiction of these courts, and provided the Supreme Court the power to review state supreme court decisions affecting federal law. The Act established a district court in each state with a single district judge. (Currently because of population growth and case load, there is more than one federal district court for each state.)   In 1789, there were concerns expressed that with the establishment of federal district courts, there would be too few cases to warrant the expense, or there would be so many cases that the state courts would be eliminated. Neither held true (Henderson, 1971). This structure lasted over 100 years after which Congress changed the jurisdiction of the district courts, an increase in the amount they could hear, created a court of appeals for each circuit, and eliminated the appellate jurisdiction of the circuit courts, making them more congruent with the district courts, eventually abolishing the circuit courts in 1911.

Prior to the act passing, the ramifications were known to be political. After drafting it was sent to many jurists and lawyers for comment. One of the concerns was the potential cost of this system. Another was the division between federal and state jurisdictions; what law would prevail-common or legislative; the

role of juries; the location of district courts and the drawing of district lines. However, the Act, as finally passed, assuaged many of the Anti-Federalists concerns as did the passage of the Bill of Rights which was being written by Congress at the same time (Henderson, 1971; Marcus and Wexler, 1992).

It was not until the late 1790s that the federal courts became more distinct from the state courts, this in part due to their jurisdiction over admiralty and maritime matters. Most of the cases heard by the circuit courts were criminal cases from actions that occurred at sea, usually assault and battery, more rarely murder and piracy. The circuit courts also heard most of the civil cases. In the early years, these cases involved debts contracted prior to and during the Revolutionary War. In the decade of 1790, of the over 3,000 cases the circuit courts decided, only 20 cases were appealed to the Supreme Court (Henderson,1971).

Court Structure

The court system in the United States has been referred to as a two-tier system, e.g., there are both federal and state courts each with general and appellate jurisdiction. The court system today is multi-tiered: the federal system which has appellate, specialized courts (Bankruptcy, Trade, Tax), and general jurisdiction over federal laws, the state system which has general jurisdiction to hear the most serious of criminal cases, the more complex civil cases, and appellate jurisdiction over the lower courts; and the lower or local courts usually referred to as limited jurisdiction courts which hear minor criminal matters, small

claims issues, traffic cases, etc. The lower courts hear approximately 90% of all cases.

   Federal courts. The federal court system is arranged into three divisions: the district court (trial court), Courts of Appeals (hearing appeals from the federal district courts), and the Supreme Court (which hears appeals from the federal appellate and state supreme courts).   The district courts hear cases arising from federal law (dealing with rights, protections and privileges), or cases in which citizens of different states are involved in litigation (Waltman, 1988). The Judiciary Act of 1789 divided the country into 13 judicial districts, each containing a judge, and these districts were grouped into three circuits (Smith, 1993). Federal judicial districts follow state boundaries, and appellate courts group districts. District judges are residents of that district and recommended by that state's senator, with appointment by the President. Today, there are almost 20,000 state and local courts, and just over 100 federal courts. In 1891 Congress created the circuit courts of appeals and gave the Supreme Court discretion on what cases they wanted to review.

   Over time Congress has changed the structure by making the circuit courts appellate and the district courts into trial courts. There are 12 circuits plus the US Court of Appeals for the Federal Circuit, hearing appeals concerning trademarks, patents, copyrights, and claims against the government. The Court of Appeals in the District of Columbia hears appellate cases in the nation's capital. It can also hear appeals from other parts of the country in cases involving federal agencies (Songer, 1991).

There are also specialized federal courts with narrow jurisdictions: Court of International Trade, Rail Reorganization Court, Foreign Intelligence Surveillance Court. Some have their own judge, other courts borrow judges on a temporary basis. These are referred to as Title III judges, appointed by the President who serve life-terms. Article I judges are appointed to handle limited tasks and serve a limited term. These include the territorial district judges. The executive branch also appoints judges, who preside over administrative questions of government regulations and benefits (Smith, 1993).

State courts. Each state has its own four or five tiered court system. Generally it is comprised of the limited jurisdiction courts (justice and/or municipal courts) deciding minor civil, criminal, and traffic cases; general jurisdiction courts (trial courts) which hear cases between individuals, individuals and businesses, family matters and serious crimes, an appellate court, and a state supreme court. Beginning in the 1870s as urbanization and caseload increased, states created specialized courts, e.g., juvenile, small claims. Appellate courts vary among the states. As of 1992, 38 states had intermediate appellate courts which hear most of the appeals from the general jurisdiction courts (Waltman, 1988).

Today's courts are criticized for performing functions that many see as going beyond their purview, i.e., defining authority, policy making (school prayer, busing to achieve school integration, rights of the criminally accused, abortion), changing society (*Brown v. Board of Education*), and administering institutions (schools, prisons). However, the courts usually sustain the governmental actions,

thereby providing a source of governmental legitimacy and political stability

(Waltman, 1988).

Judicial review is not provided for in the Constitution, but the *Federalist*

Papers supported the idea which was confirmed by Chief Justice Marshall in

Marbury v. Madison. The Supreme Court rarely exercised this authority until the

20th Century, instead affecting economic matters by restraining the state against

the increasing industrial might. In the second half of the 20th Century the Court

has addressed issues of individual rights. "The first amendment, due process, and

equal protection clauses have been used in cases over race and gender

discrimination, criminal procedure, government welfare policies, separation of

church and state, and freedom of speech, press and religion" (McKay, 1988, p.

211).

Today's courts are rendering "extended impact" decisions that affect

nonparties (Lieberman, 1984, p. 48). Judges have supplemented legislative law in

several areas: environmental protection, occupational safety and health, civil

rights, and equal employment opportunities.

The idea of judges deciding important issues runs counter to the idea of a

democratically elected decision maker (Redlich, 1988). Adamany (1991) quotes

from Alexander Bickel who defined countermajoritarian as "When the Supreme

Court declares unconstitutional a legislative act or the action of an elected

executive, it thwarts the will of the representatives of the actual people…it

exercises control, not in behalf of the prevailing majority, but against it" (p. 1).

Defenders of judicial review state that the judiciary is "countermajoritarian"

(Redlich, 1988, p. 151). Judges need to decide cases in which litigants bring constitutional questions to them. Additionally although the judiciary should yield to legislative rule-making there are two times in which they should intervene: for minority groups who cannot receive fair treatment in the democratic process, and laws that infringe on the democratic process. Others think courts have a duty to further moral visions in a democratic society. Redlich proposes that the legislative branch at both the state and federal levels does not follow the democratic ideal of elected officials following the popular will--through institutional practices (seniority system), powerful staff members of elected officials, lobbying by special interest groups, the media, and funds from political action committees. In the executive branch many appointed administrators and agency department heads decide matters of public policy with little or no input from the public. The courts might be the only branch of government to enforce the popular will against a chief executive.

Court Reform

As noted in Chapter 1, the public has lost confidence in the court system. Abel (1982) cites various reasons for this: the inability of the social system to effectuate change; a reaction to the progressive policies of the 1960s and 1970s; the legal system looking to reduce the caseload, getting rid of "junk cases" (matters that are relatively unimportant, not requiring a high level of skill); the public wanting a cheaper, more accessible access to resolving their cases (while at the same time, mistrusting courts).

He states this has led to a major transformation of United States' legal system, becoming more informal, that is, mostly non-bureaucratic in structure, minimizing the use of professionals., and "eschew(ing) official law in favor of substantive and procedural norms that are vague, unwritten, commonsensical, flexible, ad hoc, and particularistic" (Abel, p. 2).

Harrington (1982) has noted that informalism is expressed by such dispute resolving methods as arbitration and mediation as a way to settle disputes among those who have an on-going relationship. The reasons for this movement is the expense and the need to follow procedural rules which makes taking minor claims to court terribly expensive, thereby denying individual rights and effective management of conflict.

The first attempt at informalism was the arbitration panels in the 1880s to handle commercial disputes. The attorneys' bar soon took up the idea of incorporating arbitration by lawyers within a more formal framework, which would "re-establish the lost jurisdiction and credibility of courts" (Harrington, 1982, p. 41). During the Progressive Period, with the growth of urban economy, court reform also used scientific management principles to assist with the increased caseloads caused by a huge influx of immigrant workers and the poor. Forums such as the small claims court, juvenile and family courts were seen as a method of socialization and Americanization of the immigrants, developing them for entry into middle class American life. These new management principles would streamline the process, thereby reducing cost and increasing access to justice. Additionally, it was thought that informal mechanisms would promote

the idea of democracy by involving these litigants in the justice process (Harrington).

But concern was also expressed by members of the legal system that these courts were decentralized and lacking in any judicial controls. These concerns led to court unification and centralization, with presiding judges supervising the courts. And as courts grew, so did specialization by judges and their calendars.

Some specialized courts were known as "socialized courts," juvenile, domestic relations, and small claims, "in that their 'procedures and remedies focused on diagnosis, prevention, cure, education'" (Hurst, 1955, p. 5, Harrington, 1982, p. 61). It began in the 1880s with the juvenile courts, in which social workers and psychologists provided new and additional resources. Domestic relations courts used conciliation, conducted by court staff playing a proactive role, in assisting litigants to reach solutions prior to trial. Court unification continues to this day but faces many political and cultural obstacles.

In the last several decades the criminal justice system has grown from three to five times, depending on how the growth is counted, and public confidence in that system has declined during that time. One way to increase trust is by partnering with the community. But there is no one standard approach: "the design of a particular community justice approach will depend upon the interlocking traditions of the neighborhood's community organizations, justice system practices, and crime problems" (Clear and Karp, 1999, p. 2). "The essential elements are: a professional organization that sets up and operates community programs; a participating community; a sympathetic justice system;

and sufficient crime to make the arrangement financially feasible" (p. 13) along with imagination and willingness to experiment. Harrington (1982) noted that in the 1970s and 1980s court unification was criticized as ignoring local environments and resources. Harrington refers to this as a "shift in policy from managing organizations to managing organization environments" (p. 59).

Community can be defined in different ways: some use geographical areas; or a group of citizens who are powerless or oppressed (usually ethnic minorities); or a network of personal relationships (Clear and Karp, 1999). Wahrhaftig (1982) says successful efforts are those that rely on the latter. And they don't have to take place in a neighborhood, but also in schools, work place, civic organizations. Clear and Karp define community as a network of relationships and institutions that not only provide a sense of belonging, but also creates behavior standards. We think of it as a safe place from which we come, it can be an entity--group or geographic area, an indication of shared practices, solidarity and traditions, and emotional connectedness. Community is a complex of interlocking relationships, with most of us living in multiple communities. All have in common "some form of trust, a confidence in our belonging and a faith that others will cooperate with us in pursuit of common ends" (p. 60).

Jargowksy (1997) cites Suzann Keller who defined neighborhoods as geographical areas, containing "ethnic or cultural characteristics of the inhabitants, psychological unity among people who feel that [they] belong together" (p. 7). Census tracts are also used to help define a neighborhood: areas containing from 2,500 to 8,000 inhabitants who are somewhat homogenous.

Community Justice

Clear and Karp (1999) define community justice: it " broadly refers to all variants of crime prevention and justice activities that explicitly include the community in their processes and set the enhancement of community quality of life as an explicit goal" (p. 25) shifting the focus from individuals to systemic patterns, from individual goods to common goods. Community justice operates at the neighborhood level; is problem solving; decentralizes authority and accountability; involves citizens in the justice process. And they list the essential elements of community justice: "the essential elements are: a professional organization that sets up and operates community programs; a participating community; a sympathetic justice system; and sufficient crime to make the arrangement financially feasible" (p. 13) along with imagination and willingness to experiment. Community justice is not only about citizen participation in the justice system but also about the quality of community life.

Citizen participation is important for two reasons: much more than the formal criminal justice system is responsible for social control. It also includes churches, schools, families, civic organizations; and not only should each community member be treated with respect, but in a democracy they "must actively work toward the welfare of the whole society and not just themselves" (Clear and Karp, 1999, p.32). "Citizen participation is not merely an ideal but an instrument for articulating, amending, and endorsing communal values and priorities" (p. 79).

However, the community context is important: "the social characteristics of a community strongly determine the ability of the community to engage in community action" (Clear and Karp, 1999, p. 39). It is a set of neighborhood conditions-structural and social-that create the context for community social life; a set of neighborhood characteristics that determine the community's resource base: its social, physical, and human capital: stability, social ties, and institutional capacity. Neighborhood stability refers to frequency of population turnover; social ties are relationships formed between community members evidenced by knowing others well such as extended families or at least knowing some by sight and name; institutional capacity refers to institutions having a high degree of integrity, and organizational proliferation and participation (number of churches, grass roots organizations).

Clear and Karp (1999) note that community justice is a good idea as continuing with the current approach the criminal justice organization won't solve problems nor build trust. Good things come from community justice—for victims, offenders, community. Community justice is a form of community development in which criminal justice agencies work with local residents. Community justice is a local solution to local crime problems. A strategy grows out of an assessment of the strengths and impediments. Initiatives can come from citizens or the criminal justice system itself. However, "it is most difficult to mobilize community action in support of community justice" (p. 149) because of alienation of community members.

The most well known version of community justice is community

policing. It is more preventive than reactionary, attempting to respond to

community concerns by addressing social disorder and utilizes members of the

community in assisting police with anti-crime campaigns and citizen patrols,

while police become engaged with the community. Community justice is also

seen in case adjudication including victim-offender mediation, victim impact

statements, community prosecution, and community courts (including drug

courts, teen courts, domestic violence courts) in an attempt to find better

solutions. All efforts at community justice share "an ideal that the justice system

ought to be made relevant to the quality of community life, and that it ought to

make better use of a community's individual and institutional resources in dealing

with crime" (Clear and Karp, 1999, p.15). Community justice changes the

direction from a disinterested, depersonalized professional stance to an activist

involved system that treats crime as a community problem.

Restorative justice. One of the first attempts at court involvement in

community justice is a movement referred to as restorative justice. Although

courts reached out to victims of crime by allowing them input throughout the

prosecution and sentencing, of the offender, many were dissatisfied. According to

Umbreit (2001), there are several reasons: "Though many of these privileges are

entitled 'rights' through state or federal statutes, they in fact remain privileges that

may or may not be extended in every case. Second, a critical question for many

victims as they seek to understand what happened to them is why it happened to

them. … Third, the adversarial system has not been particularly oriented toward altering patterns of criminal behavior….” (p. xv).

Restorative justice has been practiced for many centuries, with its advocates claiming it was the method to settle disputes by many aboriginal and native societies (Johnstone, 2002) but, beginning in the 12th Century, succumbed to the state which used dispute settlement as a way of showing its power. In the 1960s, native peoples began to reintroduce their traditions at controlling crime and settling disputes as a way of recognizing their own cultures and establishing their sovereignty (McLaughlin, 2003). At about the same time, other groups advanced the ideas of restorative justice. One is the religious communities, particularly the Mennonites in the United States as restorative justice embraces the ideals of Christianity; another is the communitarians. Etzioni stated the idea that society's ills could be traced to the concept of “one-sided emphasis on individual rights, unregulated free choice and a sense of entitlement” (McLaughlin, 2003, p. 3). Others began to take notice of the restorative justice process as an option as the retributive system did not seem to control crime, was costly, inefficient, alienating, bureaucratic, inaccessible, and focused on the interests of lawyers and judges and had little effect on convictions or recidivism (Umbreit, 2001; McLaughlin, et al, 2003, Pavlich, 2005).

What is restorative justice? It can include such forms as Victim Offender Reconciliation Programs (VORPs), sentencing circles, family group conferences, reintegrative shaming, victim-offender mediation, community mediation and panels, reconciliation commissions (Johnstone, 2002, Pavlich, 2005). There are

some common elements among the various forms--that a crime is considered a conflict in which someone has been harmed either directly or indirectly who seek to redress these harms by mutually discussing and determining how best to repair these harms within the community involving all the stakeholders. "It revolves around the ideas that crime is, in essence, a violation of a person by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offenses are prevented; that the form and amount of reparation from the offender to the victim and measures to be taken to prevent reoffending should be decided collectively by offenders, victims and members of the their communities through constructive dialogue in an informal and consensual process; and that efforts should be made to improve the relationship between the offender and victim and to reintegrate the offender into the law-abiding community"(Johnstone, 2002, p. ix). And restorative justice has its critics who focus on two major areas: constitutional and rights-based issues, and whether restorative justice is effective in preventing crime (McLaughlin, 2003).

In practicing restorative justice, the offender is usually diverted away from the traditional criminal justice system, either at the pre-trial or sentencing stage. And they must acknowledge their responsibility for their acts. If not, they proceed through the traditional criminal justice system. Many restorative justice programs work with first and second time offenders, and many of these are juveniles.

Problem solving courts. Another approach is through problem solving courts. These specialized courts are designed to address recurring social problems. Earlier they were known as "socialized courts," juvenile, domestic relations, and small claims, in that" their 'procedures and remedies focused on diagnosis, prevention, cure, education'" (Hurst, 1955, p. 5, Harrington, 1982, p. 61). It began in the 1880s with the juvenile courts, in which social workers and psychologists provided new and additional resources. Domestic relations courts used conciliation, conducted by court staff playing a proactive role, in assisting litigants to reach solutions prior to trial.

"Each of the specialized courts targets different kinds of concerns in different kinds of places. (They) share a basic organizing theme: a desire to improve the results that courts achieve for victims, litigants, defendants, and communities" (Berman and Feinblatt, 2001, p. 125). There are several elements that distinguish them from the way cases are handled in traditional courts: they try to provide new responses to chronic social, human, and legal problems. They broaden the forms of legal proceedings so as to change behavior of litigants and assist in the future well-being of the community.

They have been developed to address rising caseloads[2] and the increasing frustration with standard case processing, accompanied by a breakdown of social and community institutions that traditionally addressed these types of problems; increasing numbers of incarcerated offenders; and trends emphasizing

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[2] According to the National Center for State Courts criminal case filings increased by 50% from mid-1980s to 1998. Even greater increases for the same time period were seen in domestic relations cases (up 75%0 and juvenile court (an increase of 73%) (Berman and Feinblatt, 2005).

accountability of institutions (Berman and Feinblatt, 2005), and high rates of recidivism[3], jail overcrowding and revolving door justice (Mirchandani, 2008).

Problem solving courts have certain elements in common: they try to achieve tangible outcomes for victims, offenders, and society; reengineer how government agencies respond to social (legal) problems; rely upon active use of judicial authority to solve problems and change behavior; use a collaborative approach among court, social service agencies, and community groups (Berman and Feinblatt, 2005).

One of the problem solving courts is the drug court which handles felony drug cases of non-violent offenders with substance abuse problems. Patterns in enrollment in drug courts are not fully explained by number of drug arrests by police. They are also a reaction to certain contextual effects: federal and state law; politics; general court policy and leadership, and changes in clientele (Goldkamp, White, & Robinson, 2001). Examples of these effects are: creation of drug free zones; changes in judicial supervision and policies of drug courts; changes in laws from sentencing offenders to local jails instead of state prisons (Goldkamp et al.). They use expedited case processing, intensive case monitoring, drug testing, out patient treatment, and support services (Olson, Lurigico and Alberston, 2001). Drug courts exhibit five common components: "immediate interventions, a non-adversarial process, hands on judicial role, drug treatment with clearly defined rules and goals, and a team approach" (Olson et al., p. 174). These authors note

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[3] 34% of domestic violence probationers violate the orders of protection; more than 50% of those convicted of drug possession will violate within three years according to the National Center for State Courts (Berman and Feinblatt, 2005).

that for success these courts must have a good working relationship among all parties, which includes information sharing, a non-adversarial relationship between prosecution and defense with roles tending to blend, group solidarity and cohesion which requires staff socialization into program goals and objectives. Success also depends on identifying a target population, determining its size and characteristics, and processing felony arrests through a single point of review.

These courts fail when there is too little input from the defense bar, no specialized training for attorneys working in these courts; courts in which defendants are not allowed to raise factual issues, courts in which non-completion results in longer jail sentences than the defendant would have originally faced, have done little to ensure social service interventions are effective and culturally appropriate (Berman and Feinblatt, 2001).

Mirchandani (2008) examined another type of problem solving court--domestic violence courts--in Salt Lake City. They are similar to drug courts in that they take a team approach, using counseling, seeing offenses and offenders in a larger social context of social and neighborhood problems. Judges and staff in these courts receive training on how domestic violence, drugs, etc. manifest themselves in their community. Some domestic violence courts try to change a cultural perception that women are property, and men can beat his partner if she disobeys. These courts replace the idea that the offender is a victim with one that the offender must take responsibility for his/her actions.   They use the courtroom as if staging a play, scheduling different types of cases and offenders to have a maximum effect on the courtroom audience (which is composed of other

offenders, victims, friends, and family) to bring a message to a larger audience of social and cultural change.

Community courts are another type of problem solving court. Community courts in the United States began with the Neighborhood Justice Centers, but more recently are identified with a process in which the courts work within neighborhoods with citizens, social service agencies, police, attorneys for the prosecution and defense, and others to improve the quality of life to reduce low levels of criminality.

 Harrington (1982) describes the Neighborhood Justice Centers (NJC) as allowing for decentralization without the chaos of multiple courts as seen in the Progressive Era (1900-1930). They are still part of the judicial system, relying on it for case referrals without denying litigants access to the courts. The NJC use lay people who have been trained in mediation to assist the litigants in taking responsibility for resolving their own disputes. Decentralized courts allow for access to justice for minor disputes by decreasing the barriers of cost, language, and culture. They allow for participation in the dispute resolution process, which could rebuild citizens' trust in courts.

Wahrhaftig (1982) has described three types of citizen dispute programs that stress community empowerment, using citizen mediators: those that are part of the justice system, or community owned, or part of an existing agency. He cites the NJC, sponsored by the court system, which receives their cases from court referrals, and are not necessarily neighborhood oriented as courts have jurisdictions larger than neighborhoods. They were established in 1977 as grass

roots pilot projects but said the Justice Department saw them as established by and extension of the courts, the bar, and local government. Most of the programs sponsored by criminal justice agencies benefit from the neighborhood programs handling lesser cases which frees up the court system time for hearing more serious disputes.

Agency established programs suffer from not being "owned" by the community, instead established by outside agencies which see they are fulfilling a need. However, their clients become responsible to the agency and not the criminal justice system.

Wahrhaftig (1982) divides community models (in the minority) into three types: middle-class dominated, grass roots, and homespun. Most of these programs are similar to agency based ones. One of the most publicized grass roots projects is that of the Community Boards Program in San Francisco which was planned from the beginning for community empowerment. The idea for the Community Boards Program was begun by Ray Shonholtz, in 1976, who saw it as a "community-based alternative to the justice system, one in which citizens resolve disputes and complaints in a responsible way" (p. 89). The Boards are preventive--the idea is to resolve issues prior to entry into the justice system. The program was organized from the bottom up after meetings in a variety of neighborhoods to determine which area was interested in utilizing mediation to resolve disputes. He received funding from private sources. Planning was done by community members. To build a community base, every church, school, business and other organization were approached, the program explained, and

their support solicited. Panelists volunteered and were selected during open meetings. There are three to five people on a panel. Hearings are open to the public, so they can hear about problems in the neighborhood. The panels also meet to discuss the cases and issues regarding the neighborhood. There is a newsletter that is circulated. Cases come mostly from non-justice system referrals: leaflets, schools, newsletters, panel members, security guards. However, "Shonholz stresses the enormous amount of work necessary to create a sense of community ownership sufficient to motivate people to use the project" (Wahrhaftig, p. 92).

The third type is homespun. These projects are begun by someone who sees a need, organizes the project without funding, using community problem solvers known to the organizer, has no one location, with mediation taking place where convenient. No records are kept, but these groups do help build the community.

Wahrhaftig (1982) favors the community based programs, for among other things, they can discover from individual disputes a broader pattern at work in the community and address it.

Using the experiences gained by planners, administrators, and judges in the Midtown Manhattan court, about a dozen other courts opened throughout the United States in the late 1990s. These courts were in reaction to the public's feelings that courts were out of touch with their communities, as many local courts had been centralized into one large main court located in the downtown area, in which the goal is to move cases as quickly as possible through the

criminal justice system. These community courts have common goals of locating courts in the community close to where the crimes occur, making the courthouse accessible to the community, making justice visible by imposing immediate sanctions for offenders, providing social services to assist in addressing problems that caused these crimes, paying back the community by completing community service projects, and forging a partnership with the neighborhood they serve (Lee, 2000). All used the community in planning the courts, using some or all of the following approaches—held neighborhood meetings, conducted interviews with stakeholders, created community advisory committees, and conducted focus groups. Different groups were involved in the impetus and planning for these courts: four were established by either judges or court administrators; five court efforts were led by elected district attorneys. In two others, a mayor and a criminal justice commission began the effort. After implementation, they used community advisory boards, door to door surveys, distribution of a newsletter, use of committees to devise community service projects, and help in making those assignments to the service projects.

The Midtown Community Court began in 1993 after several years of planning and was considered a pilot project which would run for three years. It grew out of a need to clean up the Times Square area in New York City which had deteriorated. Many Broadway theaters had closed, porn shops proliferated, and an increase in low-level crimes drove tourists away creating even more economic woes. The criminal justice system doesn't adequately address these types of crimes or the offender, being seen as "revolving-door justice," e.g., a

person is arrested for prostitution, low-level drug offenses, homelessness, or panhandling, goes to jail, and when the judge hears their case and finds them guilty, the sentence is "time served" and they are back on the streets, committing new crimes. To criminal justice professionals, there is greater concern about crimes of murder, assault, robbery, rape. However, when surveys were done in these target neighborhoods, citizens there were concerned about these low-level crimes—quality of life crimes.

The courthouse is located within the area. After an arrest, the police take the defendant to the courthouse. If the defendant pleads guilty, he/she is sentenced to community service and/or social services to address the underlying cause. These services are present in the courthouse, and many complete their sentence within 24 hours of being arrested.

The Midtown Court developed goals and objectives during planning which were then used for evaluation. The National Center for State Courts, among others, has conducted evaluations at various points during its existence. To date, the court has met its operational objectives of "providing speedier justice; make justice visible in the community where crimes take place; encourage enforcement against low-level crime; marshal the energy of local residents, organizations and businesses to demonstrate that communities are victimized by quality-of-life offenses" (Sviridoff, Rottman, Ostrom and Curtis, 1997).

The Midtown Court has been very successful, is still in operation, and serves as a model for others. For example, several other courts were established in low-income areas around New York City. Based on the success of those in

New York the next generation of community courts has been developed utilizing the model but making adjustments for differing locales, including political and funding issues. For example, instead of focusing on a neighborhood, Hartford, Connecticut developed a community-wide court to address quality of life crimes. Portland, Oregon has established several community courts that encompass all of Portland. According to the Center for Court Innovation, there are now about 30 community courts operating in the United States.

These problem solving courts have critics who are concerned about "judicial paternalism, reduced adversarialism and appropriate limits of judicial authority" (Berman and Feinblatt, 2005, p. 10). At risk are judicial neutrality and impartiality, possibly violating due process, and widening the social control net.

The National Center for State Courts has developed a Courts and Community Collaboration Center, providing seminars, training manuals, and evaluations on this concept. Their mission statement states this collaboration "is to improve the administration of justice so as to produce better outcomes, results, and impacts for the individuals, communities, and society at large (Rottman, Casey, Efkeman, 1998). It requires the support and involvement of the public on how the courts should operate. The authors state there are many benefits to this collaboration: it builds public trust and confidence in the courts by providing citizens input and by making the courts relevant to community problems; the courts benefit from volunteers who will then speak out on behalf of the court's interests; provides more appropriate sentencing which benefits the offender and the community; attracts new community resources to assist the courts while also

benefiting the community through restitution and sanctions for community service; allows for input from racial, ethnic, and class groups which can sensitize judges and staff to the communities they serve.

The next chapter on methodology examines how community focused courts, with their various contextual elements, are successful. Four community focused courts were examined in depth, using a case study approach. A model was developed from these courts. Additionally judges attending a seminar presented by the National Judicial College on community focused courts were surveyed to determine if they developed a community focused court, and if so, how they developed the court, including those involved in the planning, funding, involvement of the community in determining where to place the court, what types of cases the court hears, use of community service and social services, and other infra-structure issues. These courts were compared to the model.

CHAPTER THREE

METHODOLOGY

Introduction

The objective of this dissertation is to examine various factors in the context of the community that enable a community focused court to be successfully established and operated. The first section discusses the research question. In the second section the choice of a research technique for this study was examined. The third section describes the data collection methods and gives a brief description of the various courts studied as well as how they were selected. The final section reviews expected findings.

Research question

Community focused courts grew out of a dissatisfaction with the criminal justice system. The system is too concerned about retribution, making the offender pay for his/her crimes, with increasing costs of the system and increasing numbers of prisons, all with little rehabilitation (Gorczyk and Perry, 1997). In particular, the public felt the courts to be out of touch with their communities, and too involved with matters such as murder, rape, robbery that little or no attention was given to low level or quality of life crimes and the impact on victims and neighborhoods (Rottman et al., 1998). The system was losing credibility and trust of the public. In most cases the offender who was arrested for a misdemeanor, was held for arraignment in a jail far from the site of the crime, tried in a courthouse many miles from the area in which it occurred, if found guilty given a sentence for time served, with the offender quickly returning to the community

(Berman and Feinblatt, 2005). These low-level crimes, e.g., prostitution, vandalism, shoplifting, vagrancy, low level substance abuse, graffiti, affected the quality of life of that community.

Community focused courts are unique in several ways. Possibly the most important is that the court reaches out to the community to help solve problems while traditional courts generally wait for cases to be filed in court after a crime has been committed or civil infractions occur. Additionally, community focused courts bring together many stakeholders, in addition to the community, that work together in collaboration to address issues that arise from those who commit a crime and come before the court. Beginning with the first community focused court in Midtown Manhattan in 1993, there are now approximately thirty. This is a rather slow growth pattern for something that seems to be successful. In comparison, problem solving courts number almost 2,000 (Berman and Feinblatt, 2005). According to these authors this can be attributed to the difficulty of planning and establishing community focused courts.

The research question was what factors contribute to making a community focused court successful.

Data collection methods

This research study examined four different community focused courts to respond to the research question. The study used a case study method, and reviewed literature from the Bureau of Justice Assistance, Center for Court Innovation, law review journals, and news articles on these four courts to answer the how and the why regarding their planning, development, implementation, and

on-going operations. According to Yin (2003) case study research "is a preferred

strategy when "how" or "why" questions are being posed, when the investigator

has little control over events, and when the focus is on a contemporary

phenomenon within some real-life context" (p. 1). It provides a richness that

allows for detail and evaluating similarities and differences among the four courts.

As Berg (2007) notes, this is a good method to gather information to

understand how this program functioned. Additionally, Jensen and Rodgers

(2001) note that case studies provide an in-depth understanding of cause and

effect relationships. Maxfield and Babbie (1995) note that field research is more

than mere observation, that it is often used to generate theory, and it can develop a

deeper and richer understanding of what one is studying whether a social or

physical setting, behaviors or events. They also discuss the uses of unstructured

and semi-structured interviews, noting that one of the strengths of field research is

its flexibility, allowing the researcher to change questions in response to previous

questions of the interviewee.

The literature on these four courts was reviewed and summarized. It was

analyzed using a content analysis method as it is the most relevant in examining

descriptions in the literature (Berg, 2007). The review looked for patterns among

the four courts to determine what makes them successful. And by examining four

courts instead of only one, provides for construct validity. Interviews were also

utilized if it appeared there was either missing information or the interviewee's

personal observations would add to the richness of the court's description.

After describing the four courts, the analysis consisted of reviewing these courts to determine how they were successful given the different community contexts. For this study context examined those factors that contributed to the establishment of a community focused court. These factors included political culture, power structures, court organization and structure, neighborhood organization and vitality, neighborhood leaders, socio-economic factors of that community/neighborhood. It was expected there will be some commonalities. A model was then constructed with these elements.

Case selection

The four courts that were studied are: Midtown Manhattan, Red Hook (both in New York), Hartford, Connecticut, and Orange County, California. These courts were selected for their diversity and response to quality of life crimes.

Midtown was the first and very successful and became a model for all of the other community focused courts. It began in Midtown Manhattan in the area of Times Square. Times Square had deteriorated, affecting business and residential life in the area. The area had deteriorated so badly that many tourists would not go to the theaters and other attractions in the area. It had become a Mecca for panhandling, prostitution, vandalism and wide spread drug dealing. As a result the theaters began closing, porn shops proliferated, smaller businesses were failing, and residents either moved away, or for those who stayed, frightened for their safety (Berman and Feinblatt, 2005).

With assistance from the mayor of New York (Rudy Giuliani), the Schubert Organization, the Walt Disney Corporation, and the planning staffs of the New York State Unified Court System, the City of New York, and the Fund for the City of New York began planning on a community focused court as a collaboration between the community and the court to improve the quality of life in this area by making justice visible to the community and the defendants, to restore a neighborhood victimized by crime, and to solve underlying social issues of the defendants. It was envisioned as a three year pilot project, but was so successful, it became the model for community focused courts. It is still in operation today (Sviridoff et al, 2001).

Red Hook Community Justice Center grew out of the fears and concerns of members in this Brooklyn neighborhood. Most of the residents are low income racial minorities. Red Hook is surrounded on three sides by water and on the fourth by an elevated freeway. Residents feel cut off from the world, literally and figuratively. It has continuously deteriorated since the 1980s when shipping operations went to another port. Since then it has become a territory for drug gangs and their turf wars. After the shooting death of a popular school principal by a drug gang, the Brooklyn district attorney and the New York State Chief Judge called for a community focused court to address the crime issues and to rebuild the community. Beginning in 1994 a series of community meetings were held to gain input from the residents. The court opened in 2000 as the first community court cutting across jurisdictional boundaries by providing services not only to defendants but to residents in the neighborhood, and hearing not only

criminal misdemeanors but also domestic violence, delinquency cases, and landlord/tenant disputes (Berman and Feinblatt, 2005; Berman and Fox, 2005).

Hartford, Connecticut also had a serious crime problem with drug and gang related problems. The city received a Comprehensive Committees Partnership grant to improve coordination among criminal justice agencies and neighborhoods. To ensure this coordination a Community Planning and Mobilization Committee was formed, with a cross-section of community members, various city agencies and the police department. As crime decreased, the Committee began to look at quality of life crimes and how to address them. After a visit to the Midtown Community Court, it was decided to develop something similar in Hartford. Planning began in 1996 among the various stakeholders even though there was some skepticism at first. The court opened in 1998. Hartford is different than Midtown in that the court is centralized but covers seventeen different neighborhoods. It was determined that politically it would be best to centralize the court instead of targeting only one or two neighborhoods. To ensure these neighborhoods are represented each neighborhood has its own committee with representatives providing input to the city-wide Community Planning and Mobilization Committee (Weidner, 1999).

Most recently, a community focused court was developed in Orange County, California which tied together two different concepts of problem solving courts—community focused court and programs for substance abuse offenders. With planning assistance from the Center for Court Innovation, the court began in the fall of 2008.

Participant interviews

Next, judges who attended a National Judicial College seminar on community focused courts were mailed a letter or emailed asking them to provide information on whether they began the planning on a community focused court in their area. They were contacted by telephone for an interview with questions similar to those listed below. These interviews were summarized but with the judge's and other's names, court, and locale coded for anonymity. These were then compared to the model. This procedure can lead to external validity, that is did the findings from these judges match what was found in examining the four courts?

The interview schedule included mainly open ended questions to access information such as: What was the impetus for developing a community focused court? Who took the lead in the preliminary planning? Why was the court placed within a certain community? After it was determined there was a need for this court what role did the residents/local businesses, etc. play in developing the community focused court? And how and when did you engage the residents of this area? Does the court provide any services for the residents who haven't committed a crime, e.g., allowing residents to hold meetings in the courthouse or attend some classes, or provide mediation services for minor neighborhood disputes? Is the community still involved with the court now that it is operational? Are there advisory boards, newsletters, do residents volunteer community service projects to be completed by offenders, and do they oversee any of these projects?

How did you decide what types of cases this court would hear? And was there a need to provide additional services for offenders? Regarding funding--when you determined you were going to establish a community focused court, could it be done within the existing court structure, or did it require additional funding, and how and where did you look for additional funding? Was the court's current automated system able to provide the information needed for your community focused court? What type of training was provided to not only the judge and support staff but also other stakeholders?

Expected findings

This study looked at why and who started the planning for a community focused court (basically the person or persons who took the lead). But as Lee (2000) notes, different communities have taken the Midtown model and adapted it to their reality depending on that community's needs, funding, and politics. This includes who led the planning, how the court was designed and operationalized, what types of cases the court hears, where the court was located, etc. In other words, one size does not fit all, but these different models have been successful.

According to Clear and Karp (1999) several elements need to be present to make a community focused court successful: "a professional organization that sets up and operates community programs; a participating community; a sympathetic justice system; and sufficient crime to make the arrangement financially feasible (p. 13).

A second area of uniqueness is that community focused courts want to make justice visible not only to the offenders but to the community. To be successful community focused courts have to involve the community. They do this in a variety of ways: utilizing the community in the planning of the court, placing the courthouse in a neighborhood, having offenders complete community service in that community, providing a quick response to crime by speedily processing cases and using the community and the police to be proactive in spotting trouble.

Although citizen participation is a cornerstone of our democracy, not all citizens will volunteer. According to Coleman (1957), people get involved when it can affect an important aspect of their lives; or an event affects the lives differently, and they feel that their actions are meaningful.

According to a Bureau of Justice Roundtable Discussion (1998) community focused courts continue to engage the residents and businesses of the neighborhood after the establishment of the court. These include making the courthouse accessible to all, making the courthouse inviting not intimidating; using the community's neighborhood groups to determine community service programs; establishing an advisory board of local citizens to meet with the court to discuss local crime problems; hiring a community liaison person.

A third area shares common ground with other problem solving courts, that is the courts try to "treat" the reasons for crime instead of just punishing the offender.

Quality of life crimes cover a broad range of offenses. To determine what types of cases the court should focus on, planners need to take into account the community's perception of what crimes they find most objectionable, along with statistics provided by criminal justice professionals.

Aside from the uniqueness of community focused courts as noted above, they too must deal with many of the same issues other criminal justice agencies encounter. Community focused courts usually cost more than traditional courts as they provide more services. There could be savings as offenders are handled more quickly, from arrest through arraignment and sentencing to community service. This would produce savings in court time and record keeping, and savings in jail costs.

Some community focused courts, in addition to their traditional funding sources, have utilized various federal grants not only from justice agencies but also neighborhood development funds, substance abuse funding, and from local business interests in that the area who should see an economic upturn.

The next chapter reviews the four selected courts in detail, creates a model, describes the outcome of the survey of the judges attending the National Judicial College seminar and whether their community focused courts fit the model.

CHAPTER FOUR

DATA ANALYSIS

This chapter reviews four community courts which addressed their issues differently, depending on the context. Next, a model was proposed based on those courts. Several community focused courts were established after judges had attended a National Judicial College seminar. These latter courts were compared to the proposed model. The first established community court, and the one that became the example, was the Midtown Community Court.

Four Community Courts

Midtown Community Court

At one time, Times Square was known as the "crossroads of the world" (Wolf, 2001, p. 350). But in the late 1980s and early 1990s, tourists had stopped coming to the area; theaters closed, small businesses shut down, residents moved away. It had turned into an area of prostitution, porn shops, crack vials, condoms, garbage, and human waste littering the streets and parks.

Revitalization was a group effort, but began with a community activist, Barbara Feldt, who organized RASP (Residents Against Street Prostitution) in 1990 (Wolf, 2001). She noted that when the group observed the court process, judges gave the prostitutes "timed served," they were released, got into their pimp's car, and were back soliciting on the street before Barbara and members of her group returned to the neighborhood. Prostitution is considered a victimless crime, but RASP and others thought the community was the victim. One member

of a block association said the noise was atrocious as there would be several dozen prostitutes on each street corner, screaming and shouting, trying to attract a john. Additionally, they wore very little clothing, and often flashed passersby. Parents didn't want their children to see or hear this activity. RASP started a campaign with the police and courts to take more aggressive action against prostitutes. They wrote letters, conducted demonstrations, and organized protests.

Others began discussions regarding the possibility of a community court to address low level crime in the area. According to Anderson (1996), there were several people who became instrumental in driving this concept: Herbert Sturz, a real estate executive who had served on the Planning Commission; Robert Keating, an administrative judge of the New York City Criminal Court; Lee Brown, then New York City Police Commissioner; and Sol Wachtler, then Chief Judge of the State Court of Appeals. In 1992 the Times Square Business Improvement District was formed to coordinate among city agencies, community boards, and businesses to focus efforts on revitalizing the area. Also at about the same time the 42nd Street Development Project began working with commercial interests to bring new businesses, restaurants, new buildings to house headquarters for national companies, and rebuilding the theaters to attract tourists. The area comprises about 350 blocks which contain the residential neighborhoods of Chelsea and Clinton (which used to be known as Hell's Kitchen but has become gentrified), the area around Times Square, the theater district, the garment district which includes Macy's and other large department stores, and high rise office towers (Anderson, 1996).

Criminal justice agencies also became involved. With urging from RASP the police began cracking down on quality-of-life crimes in that area. These crimes included not only prostitution, but also graffiti, vandalism, panhandling, illegal peddling, and low level substance abuse. Assisting the police were private security officers funded by the Times Square Business Improvement District (Wolf, 2001). The City Council passed a zoning ordinance that placed restrictions on adult type businesses, e.g., porn shops and theaters.

In addition to public and private security measures, one of the major factors in improving the area was the establishment of the Midtown Community Court which opened in 1993 after two years of planning. Its roots began with the dissatisfaction of citizens, the business community, and members of the criminal justice agencies with the current way quality-of-life crimes were handled in the main downtown court. Judges, court staff, prosecuting and defense attorneys, inundated with cases, focused their attention on the most serious of crimes—murder, rape, robbery. Those charged with the misdemeanor quality-of-life crimes usually were given the sentence of time served or the charges were dismissed. If community service was the sentence it was rare it was ever completed as there were too few to monitor the activity. And, this did nothing to stop these individuals from being re-arrested many times, with the same outcome, often referred to as revolving door justice (Wolf, 2001).

The New York State Unified Court System, the City of New York, and the Fund for the City of New York, a private non-profit organization, collaborated on the planning for the court (Sviridoff et al., 2001). Courts, as a rule, don't get

involved in the community, waiting for cases to come to the court, in order to maintain judicial impartiality and independence. However, these agencies actively involved the community in planning for the court. Planners attended neighborhood meetings, conducted interviews with various stakeholders, and developed advisory boards to assist in the planning and development (Lee, 2000).

Several goals became important: making justice visible to the community, speedier case processing which involved instant accountability and completion of sanctions for the defendants, paying back the community, and addressing underlying issues of the defendants (Sviridoff et al., 2001).

The court received approximately $1.4 million, from foundations, corporations and the city, to refurbish a building in the area that had been a magistrate's court prior to centralization of all criminal court cases into a downtown location in the early 1960s (Anderson, 1996). But this court doesn't look like other courts. Instead of holding cells, the detainees are placed in a clean, well-lighted room with glass instead of bars. And, all the services that defendants would need are housed in the courthouse. These services include not only an area for community service staff, but also social services, with areas for people from different agencies (food stamps, welfare, drug treatment and counseling, health education class and services, and employment training) to meet with defendants (Lee, 2000). There are classrooms for literacy, GED, and meeting rooms for the neighborhood to use. Additionally, there is court-based mediation to handle citizen's disputes (Sviridoff et al., 2001).

John Feinblatt was recruited to administer the project. His background

included serving as a Legal Aid attorney and as deputy director of New York

City's Victim Services Agency (Anderson, 1996). Staff came from the downtown

court, and all stakeholders had to learn to work in new cooperative ways. This

concept required forming new partnerships among court and social service agency

professionals. Defense attorneys are concerned with the speed and efficiency of

the court, as they use delay and the "possibility things will fall through the

cracks" (Anderson, 1996, p.67).

A new automated system helps with not only case processing but

providing information about the defendant to all court staff. For example, when a

defendant has been arrested and brought to Midtown, court staff enter the

defendant's personal information, e.g., any substance abuse issues, housing and

employment information, into the computer, and then provided a time for

arraignment. The court's social service staff then review the information to

develop an assessment and sentencing recommendations for the judge. The judge

and prosecuting and defense attorneys are able to review this information, which

helps the judge in determining sentences.

If the judge sentences the defendant to community service, the defendant

is escorted to that staff person to schedule the time and task. In many cases, the

defendant can complete the community service that same day. Community service

as a sentence is to pay back the community. Defendants wear bright blue vests

with the court's name to indicate to the community that they are paying it back for

the damage they have done. Community service tasks are developed by a

citizen's advisory board, the Times Square Business Improvement District, and the police, and can include such tasks as painting, removing graffiti, sweeping sidewalks, raking and weeding in parks, working in the court mailroom. When sentenced to social services, the defendant is taken to the various agency staff to develop a plan. Further, a defendant can voluntarily participate in any of the court-based programs. The police and social workers provide outreach services to the homeless and other street people, encouraging them to utilize court based programs.

After the opening of Midtown, the community is still involved with the court. Citizens serve on an advisory committee which meets quarterly to review court operations and results, a community conditions panel which keeps the court informed of community problems meeting monthly, individual community members serve on victim impact panels to describe to defendants how their behavior has hurt the community. And the court publishes a newsletter to keep the area informed of its work (Lee, 2000).

Evaluation. As a demonstration project, the court had to build in evaluation criteria. With funding from the State Justice Institute, the National Institute of Justice and the Center for Substance Abuse Treatment, research was conducted by the research staff at Midtown with staff from the National Center for State Courts (Sviridoff et al., 2005).

The research was conducted in two phases: the first phase covered the first 18 months of implementation and preliminary effects; the second phase covered an additional 18 months which looked at overall impacts and a cost/benefit

analysis. The first phase combined process analysis and impact analysis—the former looked at problems during implementation, changes in the project as it evolved, and the role played by the community in the court; the latter examined case outcomes, the court's impact on quality of life conditions, and analysis of the evolution of the community's attitudes toward the Court. The researchers wanted to explore whether case outcomes, compliance with community and social service rates, jail displacement effects, defendants recidivism rates, local attitudes toward the court, and the costs and benefits of the Midtown Court could not only be maintained throughout the three year period under examination, but were different when compared to the Downtown Court.

Most of the obstacles to the court were overcome prior to its opening, i.e., obtaining site approval for the court, funding, and attorney resistance. According to (Sviridoff et al., 2001) the court reached its operational goals.

- The first was swifter justice: arrest to arraignment time was 18 hours at Midtown, 30 at the downtown court. And, 40 percent of defendants had a same or next day start for community service.

- The second goal was to make justice visible to the community. This was accomplished by creating a Community Advisory Board, assigning defendants to work crews addressing community problem spots (contributing almost $300,000), distributing a quarterly newsletter, and conducting outreach to community groups and tours of the courthouse.

- The court encouraged enforcement for low level quality of life crimes by working with the police to achieve this third goal.

- Midtown was able to involve not only community groups but also community-based service providers, e.g., substance abuse counseling and programs, GED classes, medical testing, who provided these services at the courthouse to reach the fourth goal.

- And the fifth goal was to show that the community was victimized by these low level crimes, and was paid back by defendants assigned to community service (Sviridoff et al., 2001).

Impact analysis examined four areas: "case outcomes, compliance with intermediate sanctions, community conditions and community attitudes" (Sviridoff et al., 2001, p. 3).

- The court was successful in sentencing defendants to the middle ranges of punishment, i.e., from nothing (time served) and jail, to community and social service sentences, fewer sentences for jail but for longer periods.

- And compliance rates for community service were better at Midtown--the court arraigned approximately 12,000 defendants with a 75% completion rate for community service as compared to 50% compliance for the downtown court. This high rate seems attributable to housing the community service program in the court building allowing for immediate orientation and assignment to a project (Anderson, 1996; Sviridoff et al., 2001).

- From arrest rates, ethnographic observations, focus group and individual interviews, all pointed to improved quality of life and reductions in prostitution and unlicensed vending. However, it was noted that the opening of Midtown was one of several projects that might have contributed to the improved quality of life.

- During the first 18 months, community attitudes changed from doubt about what the court could do to improve the quality of life to support for the court from not only residents and businesses but also the police, attorneys and judges (Sviridoff et al., 2001).

The second phase was to examine overall impacts and to determine costs and benefits of the court. One of the research questions was whether the court sustained the outcomes found in the first phase over the three year period. Researchers found that the court maintained its impact found in the first phase on case outcomes, compliance with intermediate sanctions, community conditions and community attitudes. For example, the court wanted to reduce the number of defendants sentenced to time served and frequency of jail sentences for some crimes. The research showed that there was an increase in intermediate sentences: there were twice as many sentences to community service as Downtown, a reduction in time-served sentences—40 times greater for prostitution and six times for unlicensed vending at Downtown, and twice as many defendants sentenced to jail Downtown as compared to Midtown, although the jail sentences were longer at Midtown. However, because jail was less frequently used as a sanction, Midtown jail days were almost 52,000 compared to

Downtown's 79,000 or a difference of 27,000 jail days. And there was a cost savings when comparing the time from arrest to arraignment: 18.9 hours at Midtown compared to 29.2 for Downtown. And Midtown continued to show an increase in compliance rates for community service when compared to Downtown although the latter's did increase over the time period: 73% for Midtown, 56% for Downtown (Sviridoff et al., 2005).

From interviews and ethnographic observations, it appeared that the quality of life conditions improved over the three years. Prostitution and unlicensed vending continued to decrease over the time period. And community attitudes were positive about the court and its contribution to the neighborhood. Through interviews it was suggested that the court do more outreach to a larger population, to increase participation on the community advisory board (Sviridoff et al., 2005).

Other impacts included: the effect on "secondary" jail time, e.g., non-compliance with intermediate sanctions were greater at Midtown than Downtown for prostitution and drug charges. However, as noted above, Midtown sentenced fewer defendants to jail, so there was still a savings, but reduced to 12,600 jail days (Sviridoff et al., 2005). While arrests for recidivism rates for prostitution decreased city-wide over the three year period, there was an indication of even fewer arrests in the Midtown area, approximately 10%. Recidivism for those defendants sentenced to drug treatment programs also decreased for those who either completed the program or remained in it for at least 90 days. A random survey of 563 Midtown residents, conducted in 1998, found high levels of

satisfaction with the neighborhood—92%, and the residents thought the neighborhood had grown safer—57%. However, only 20% had any familiarity with the court. When told about the cost per case to operate the court, 24% said benefits outweighed the cost, 51% said it equaled the costs, and the remaining 25% said costs outweighed the benefits (Sviridoff et al., 2005).

Critics have complained about the cost to operate Midtown—that the money could be spent for programs at the downtown criminal court. In its first year the community service and social service programs, additional staff, technology and other expenses added $1.3 million to the court's annual operating budget (Anderson, 1996). Sviridoff et al. (2005) stated that depending on different assumptions, these costs ranged from approximately $1.9 million to $2.2 million annually or $126 to $150 per arraignment respectively. Benefits were estimated to range from $1.1 million to $1.2 million annually. They found it was difficult to place a dollar amount on the intangible benefits of the court.

And it is difficult to determine how the court has affected the community as the establishment of Midtown was only one piece in revitalizing the Times Square area. However, major crime has been reduced, many think due to Midtown's dealing more effectively with minor offenses before they escalate into major ones. And street prostitution has also been reduced. Police note that although some now work for escort services, it appears there has been almost no displacement to other areas.

Hartford Community Court

Although Hartford was the third community focused court that was developed (after Midtown and Portland) it was different than the Midtown model. First, the community court was centralized over the entire city of Hartford; secondly, legislation was passed to allow for alternative sanctions for ordinance violations.

Hartford did not set out initially to develop a community court. Instead, a new mayor, Michael Peters, took office in December 1993 with the vision of making Hartford a more livable city as it was plagued by gang warfare and drug-related crimes. With the help of Rae Ann Palmer, a policy analyst with the Hartford Police Department, the city applied for and was granted a $2.2 million grant from the Comprehensive Communities Partnership (CCP) sponsored by the Department of Justice in 1995. The grant was used to develop neighborhood problem solving groups, e.g., the Community Planning and Mobilization Committee, using citizens to make their neighborhoods more livable and working with the various criminal justice and city agencies. Hartford was divided into 17 neighborhoods, with a different mix of social, ethnic, and income groups--from low-income Latino neighborhoods to Anglo middle and upper class areas (Goldkamp et al., 2001).

As serious crime decreased, the committee determined that quality of life crimes impacted their communities with little response from the traditional criminal justice system. Ms. Palmer, now director of the Comprehensive Communities Partnership in the City Manager's Office, had heard of the Midtown experiment and thought the model could be applied to Hartford. She, along with

the State's Attorney for Hartford, Jim Thomas, the police chief, and other city and criminal justice agency personnel, visited Midtown to determine if it could be adapted to Hartford. In late 1996, a working group began planning for a community court. Weidener (1999) credits Rae Ann Palmer and a community organizer, Alta Lash, with driving the process, along with the first judge, Raymond Norko.

It was determined that the community court would have to encompass all of Hartford. This is not as daunting as it sounds as Hartford's population is approximately 130,000 (about the same population that Midtown covers) in a 17 square mile area. And most importantly, the working group could not single out just one or two neighborhoods for a court, as it was not politically feasible, given the strength of the 17 neighborhood committees. However, in order to incorporate these 17, the planners included community leaders from all 17 neighborhoods in their planning and operations. "Each of the cities 17 neighborhoods has a problem-solving committee that determines priorities for their communities, including crime and non-crime issues to be dealt with by the police, the Community Court, and other appropriate City departments" (Weidner, 1999, p. 7). There is a city-wide Community Planning and Mobilization Committee that includes a representative from each of the 17 neighborhood committees that act as an advisory board, meeting monthly to inform the court of community issues.

The jurisdiction of the court was determined by state statute and local ordinances. In 1997 the state legislature determined the types of cases the court would hear and sanctions that could be imposed; the Hartford City council

designated which ordinance violations were eligible for the community court.

Misdemeanor offenses included breach of peace, criminal trespass, disorderly

conduct, larceny, threatening, patronizing prostitutes, criminal mischief,

obstructing free passage; municipal non-violent public nuisance ordinance

violations are loitering, graffiti, public drinking, unreasonable/excessive noise,

and public indecency.

Hartford had backing and funding from a variety of sources. These

included funding from federal and city sources: $700,000 for planning came from

the earlier Comprehensive Communities Partnership, $350,000 from federal block

grant money used for staffing, Hartford contributed $300,000 for equipment,

including computers, and furniture, the state provided approximately $300,000 for

support of courtroom staff and social service staff. After two years of intensive

planning, the Hartford Community Court opened in November 1998 (Weidner,

1999).

The state, which owned a building located between the Superior Court's

criminal and civil courthouses, provided funding in the form of a $5,800,000 bond

issue for renovation. It is on the edge of the downtown area, in a neighborhood

that has one of the highest crime rates in Hartford. The building has

approximately 54,000 square feet. The upper level "houses the bail

commissioners, community court, housing court, the public defender's office, and

human services. The lower level houses judicial and administrative offices"

(Goldkamp et al., 2001, p. 19).The planners designed the community court to

reflect the flow of defendants through the process.

Although the court has been excluded from hearing drug cases, previous studies have indicated that most of these low level crimes are committed by someone with substance abuse problems. In an effort to break this cycle, the planners determined the court should provide social services on-site. These providers include the Hartford Human Services Department, the State Department of Social Services, and the State Department of Mental Health and Addiction Services. Services include referrals to substance abuse treatment, medical and mental health services, on site processing for medical and general assistance, food stamps, and other entitlements. And both defendants and community residents can access GED classes, job training and placement assistance, and housing information, attend a parenting group, a nutritional education group, and an employment orientation group (Goldkamp et al., 2001; Weidner, 1999).

Similar to Midtown, Hartford Community Court developed a management information system that reflects the workings of the court. According to Weidner (1999) it serves three functions: bolsters accountability by tracking compliance; allows the neighborhoods to input community service sites; and provides the judge, court and human services staff with information about the defendant and any problems. Security measures have been built in so not all staff have access to all information. For example, social services staff can't see the defendant's criminal history record.

The Hartford Community Court is mostly a plea court, that is, the defendant usually appearing without representation, admits his/her guilt. Police arrest or issue a summons for the defendant to appear in court, usually within 48

hours. Police do a background criminal history check. When the defendant arrives at the courthouse, the first stop is the bail commissioner who verifies personal information, and does a more detailed criminal history check. This information is entered into the court's information system. The prosecuting attorney reviews the cases with the defendants, the requirement of admission of guilt or conditional plea, and a community service sentence. If accepted, there will be a subsequent dismissal of their case. After the judge advises the defendants of their rights, he hears each case. If the defendant appears to have observable mental or substance abuse issues, the defendant is referred immediately to social services, and the hearing is continued to a later date. After the defendant enters a plea, the judge reviews the information on the defendant in the computer system, sentences the defendant to a certain amount and date of community service, with charges to be dismissed when community service is completed. The defendant is also ordered and escorted by a sheriff's deputy to the social services department for screening and possible referral. A defendant can plead not guilty, and a bench trial will ensue. If the defendant requests a jury trial, the case is transferred to Superior Court. And the judge and/or prosecuting attorney can transfer cases to Superior Court if the defendant has a long criminal history record.

The court utilizes a community service supervisor who coordinates services to the community. The supervisor has a four person staff, each assigned a quadrant of the city. They oversee the work crews and maintain contact with the various community representatives to determine work sites. These could include:

cleaning abandoned properties, trash pick-up, cleaning up and setting up for special events, landscaping, snow removal, and vacant lot clean-up. Defendants are generally assigned to the area in which they committed their offense.

In addition to the community and social services, Hartford also utilizes specialized sentencing for certain cases. For example, those arrested for prostitution are ordered to attend a five week counseling and education program. Defendants involved in prostitution, solicitation and public indecency are ordered to undergo testing for sexually transmitted diseases. Other defendants can voluntarily be tested. Voluntary mediation, conducted by community volunteer mediators, is used when there are disputes between two or more individuals.

The community has played a major role since planning for the court began. The idea of a community court was presented to various neighborhood coalitions and associations. These groups were asked a variety of questions and their answers directed the structuring of the court: what types of crime problems were important to them, what areas had the most serious issues, what types of community services were needed, and where they should be performed. The community is involved in the on-going operations of the court by attending staff meetings, participating in making operational decisions and setting priorities, identifying neighborhood problems they would like the court to address, and determining areas for community service. The Sanctions Committee, which includes members of the 17 neighborhoods, meets monthly to discuss some of these issues.

Red Hook Community Justice Center

Red Hook is an area in Brooklyn, New York that has seen better days. It is surrounded by water on three sides. It is isolated from the rest of Brooklyn by an expressway built against residents' wishes. At one time it was a busy port, but shippers left for better facilities. With the decline in shipping, there was an accompanying decline in jobs. The population declined from 22,000 in the 1950s to 11,000 in 1990 (Fagan and Malkin, 2003). According to the 2000 census 30% of the working age men were unemployed; almost 30% fell below the poverty level. Almost 8,000 residents live in one of the oldest and largest New York City's public housing projects. Residents are suspicious about government, citing the placement of a methadone clinic and waste transfer station in Red Hook, against their wishes, along with failed promises and neglect. Crime, blight, drug and gang wars are rife. One such gang war ended the life a respected elementary school principal when he was accidently shot while looking for a student in 1992. At that time Brooklyn's district attorney, Charles Hynes, thought Red Hook would benefit from a community focused court (Berman, 2001).

The District Attorney's Office and the Center for Court Innovation (CCI) worked on a joint funding application to hire a planner to determine the feasibility of such a court. In 1994 the New York City Housing Authority provided the funds and planning began. CCI hired Greg Berman who began conducting focus groups with the assistance of the District Attorney's Office and an outside facilitator. Members of the focus groups included community leaders, social service providers, young people, and single mothers (Berman, 1998). They were asked

what were the major problems in Red Hook, could a community court address

them, what should be the court's priorities. Their responses included concern

about quality of life crimes, a need for feeling safe, need for a multi-jurisdictional

court, and need for social services for the entire community not just defendants.

It has been noted that like many poor urban neighborhoods, although they feared

crime, they distrusted the criminal justice system (Berman and Fox, 2005; Fagan

and Malkin, 2003). For example, not only did Berman receive these impressions

from his interviews but also from a door to door survey in which only 14 per cent

of respondents gave "excellent" or "very good" ratings for the criminal justice

system (Berman and Fox, 2005). The planner also talked to many neighborhood

residents individually for several months and attended many public meetings.

Next came a special advisory board. New York City has almost 60

community boards that advise the city on neighborhood issues. A special task

force was formed from the Brooklyn community board devoted to the Justice

Center. Berman also worked closely with the District Attorney's Office and

Victim Services. Together they started the Red Hook Public Safety Corps prior to

the opening of the court, to keep the idea of a justice center alive while planning

continued. The Corps employed 50 local residents using grant money from

AmeriCorps to provide community service and victim assistance. In exchange for

working for one year, each is provided a small living allowance and $5,000 for

education. By 2001, they had contributed 350,000 hours providing safety

inspections in the housing projects, assisting in the class room, after school and

summer activities, implementing community gardens, after school tutoring, and tenant patrols (Berman, 1998).

Work also continued in looking for a site for the court, and then finding funding to purchase and remodel the building into a courthouse, which took several years. Because of the decrease in population, there were many buildings to choose from, but eight made the final cut. Berman organized a bus tour of the sites for community leaders. They chose a parochial school that had closed in the 1970s, Visitation School. It is located in a "neutral" area, between the housing projects and the area closer to the waterfront composed of single family row houses occupied by mostly Italian and Irish Americans. Catholic Charities agreed to lease the building but the building required several million dollars for renovation. By the end of 1996 they had received a grant from the Justice Department's Bureau of Justice Assistance to pay for architects, engineers, and renovation managers. The City of New York covered the full cost of renovation. Prior to the groundbreaking ceremony in the summer of 1998, the project had to pass several review boards. After six years of planning, the court opened in June 2000.

The planners had two broad goals for the Justice Center: "improving the safety of the neighborhood and enhancing the legitimacy of the justice system in the eyes of local residents" (Berman and Fox, 2005, p. 79). This was presented at the many meetings and interviews along with a willingness to try new programs, but attendees were also told the court was part of the New York court system and had to follow the court rules. Every defendant is represented; prosecutors attend

every case. It was the first community court to be a multi-jurisdictional court, that is, one judge will hear criminal, family and housing issues as it was thought that defendants have issues that touch all three areas. Based on what the planners found, the court has five areas that address the issues of public safety: promoting accountability, repairing conditions of disorder, solving underlying problems, engaging the community, and making justice visible (Berman and Fox, 2005). The court houses many offices, e.g., a district attorney's office, Legal Aid (indigent defense), the New York City Criminal Justice Agency (a pre-trial service for bail screening), and the New York City Probation Department. AmeriCorp has an office in the courthouse to oversee the Red Hook Public Safety Corps.   The court also houses many social services, e.g., a clinic for drug treatment, mental health referrals, domestic violence programs, counseling, anger management programs; GED classes; victim assistance programs; mediation to resolve neighborhood disputes; Youth Court; job placement and training; health education groups for prostitutes and johns; housing information and advocate for needed repairs; day care center for defendants using court services; public assistance screening and enrollment; mentoring programs for high school and middle school students. Some of these programs are run by the Center for Court Innovation (CCI) staff; and others through partnerships with CCI and social service agencies. These programs are used by the judge when sentencing defendants, but many are also available to the community at large. The court monitors and tracks defendants, and has a better than average completion rate for short-term sanctions (Fagan and Malkin, 2003).

The court developed a program, Operation Toolkit, where community members identify local problems with the court. The community and others jointly work at solving these issues of crime and disorder. The Justice Center also created a Community Advisory Board composed of community members, court staff, police precinct captains, and school principals. It meets every three or four months as the Justice Center wants to keep them informed of the court's programs, hear complaints, and get ideas for community service projects. The judge and court staff attends community meetings and local social events. Court staff help tutor kids after school and coach the neighborhood's baseball team. The presiding judge has been known to play baseball with the team.

Evaluation. According to Berman and Feinblatt (2005) the perception of safety is almost as important as the actual statistics. In 2004 there were no homicides in Red Hook, and in surveys, residents said they felt safer. And residents have greater confidence in the court system. To determine what impact the court has on Red Hook, crime statistics are reviewed, along with results from door to door surveys, focus groups, and opinions of court users. Berman and Fox (2005) state that Red Hook has reached the following goals:

- Better decisions-judges make better decisions when they are more familiar with local conditions. They cite the fact that the judge visits the housing projects to understand tenants' complaints first hand, and also to determine if problems have been fixed by the Housing Authority. And he knows which buildings are known as drug dens so when hearing trespass cases it helps him distinguish

someone who is there legally to visit from someone there to buy drugs.

- Solving problems-as an example, using Operation Toolkit the community and court worked together to rid an area of abandoned cars after no other governmental agency would take action.

- Changing sentencing practice-while residents of Red Hook don't want crime to go unpunished, they also don't want defendants to be part of revolving door justice. Instead Red Hook uses alternatives such as community and social services. These sentences are closely monitored.

- Improving accountability-with the judge, prosecuting, and defense attorneys devising a sentence for a defendant and with judicial monitoring, Red Hook claims a 75% compliance rate, compared to approximately 25% nationally. Additionally, defendants assigned to community service, combined with work done by AmeriCorps members and Youth Court defendants, jointly have contributed more than 79,000 hours of service annually and $408,000 worth of labor based on a minimum wage (Berman and Fox, 2005).

- Access to services-allowing residents access to social services that are not available in the neighborhood has shown that a courthouse can be more.

- Reducing fear-since 1999, based on door to door surveys, residents reported a 42% drop in those who had said they were afraid to go out at night.

- Legitimacy-a 2001 household survey reported a 68% approval rating for the Justice Center. And Berman and Fox (2005) also said approval ratings have increased for other segments of the criminal justice system.

A different evaluation of Red Hook is presented by Fagan and Malkin (2003). The research took place from October 2000 to December 2001. It was an ethnographic study comprised of participant observations, interviews, attendance at community and court meetings. The authors found the court's operations were successful and the staff pleasant, but see some areas that could affect its legitimacy. Based on their research, the authors note the original plans for Red Hook changed due to reality and politics. Through outreach to the community in the planning stage, residents wanted the court to be more than a traditional court—provide social services and prevention programs, such as job training, education, and youth development, in addition to a court dispensing therapeutic justice. For the first 18 months that the court was open, it was inundated with drug cases, and of necessity turned to a therapeutic jurisprudence using social service agencies that directed defendants to drug treatment programs, much like other treatment courts. Defendants had to travel elsewhere for some services, some providers lost funding or left Red Hook due to lack of participation. Community leaders had thought there would be more services on site. One of the

major goals of the Red Hook Justice Center was to increase the legitimacy of the court and other criminal justice components so that it could lead to the community using informal means of social control. However there is great tension between the police and many public housing residents and although the court has gained the support of the police, they have not been successful in "acting as a mediator between the police and the community" (Fagan and Malkin, 2003, p. 933).

The court has also had to deal with different priorities of the residents. As noted earlier, the neighborhood of Red Hook contains those living in public housing, but also home owners, some who "represent the 'gentrifying' class" (Fagan and Malkin, 2003, p. 944). And though the Red Hook Justice Center was to serve Red Hook, the court had to adjudicate cases from other wealthier neighborhoods to create a sufficient case load. These residents are more vocal and well-organized, having different agendas than those in the public housing projects. The authors also note the problem the Red Hook Justice Center has to overcome of residents disliking and distrusting government. Until they can show the residents the court is working for the good of the community, the court will have a problem establishing its legitimacy.

Orange County Community Court

Judge Wendy Lindley had assumed the bench in 1994. She became pessimistic with the traditional criminal justice system's responses to defendants with substance abuse issues as she kept seeing the same defendants before her. She had heard and then visited the new community courts at Midtown and Red Hook coming away excited about the possibilities for Orange County. With support from the Presiding Judge, the court undertook a needs assessment guided by the Center for Court Innovation lasting for 10 months over the period of August 2002 to May 2003. The assessment included meetings with five stakeholder groups, e.g., criminal justice professionals, social service providers, faith agencies, educational leaders, and the Superior Court Community Advisory Committee; a Town Hall style forum in Spanish; 30 separate interviews with key stakeholders; and two site visits to resource centers that provide on-site services. It became apparent through feedback that the court would not focus, as others have, on prostitution. Instead, what was more important to the stakeholders was the homeless and mentally ill population that seemed to congregate around the civic center.

Planning began in 2003 to bring together a multitude of problem solving court programs under one roof. These specialized courts began with a drug court; other types of specialized courts were added. However, these were scattered at four different courthouses throughout Orange County. Problem solving courts combine judicial supervision over a defendant's progress with various treatment and social services. Generally they focus on substance abuse type crimes, whereas

community courts address the same issues from defendants who have been arrested for other crimes, but substance abuse underlies their criminality; and they typically offer more services.

The new court is located in a renovated building approximately a mile from Orange County's centralized courthouse. The building had been home to a department store which closed in the 1970s. The county took ownership of the building, moving in the Probation Office. However, there was still much unused space. The court received renovation funding from the State Administrative Office of the Courts. According to a spokesperson, the new court has a mission style architecture, which is seen as user friendly, with its own entrance. During renovation, an historic mural was discovered which has been saved and incorporated into the interior design. The building houses onsite support services, e.g., mental health agencies, legal aid society, victim witness agencies, health care agencies, social service agencies, veterans' affairs office, along with offices for prosecution and public defender, probation, and the sheriff's department.

Orange County developed a management information system for its collaborative courts. It is considered cutting edge, according to this spokesperson, as the State Administrative Office of the Courts has reviewed it for use by other collaborative courts in California. He also noted that the court enjoys good support from the city, county, and Superior Court—all have been involved with the court since the initial needs assessment. The community is still involved with the court, mostly by state elected officials from Orange County who attend the graduations, and meetings with the different programs' stakeholders groups.

Court personnel are invited to attend the elected officials' community forums, particularly those centered on veterans and the needs of the community.

Orange County was the first community court to bring all of these specialized courts under one roof, opening in the fall of 2008. Today there are 12 different "courts" at the Community Court. Most focus on drug abuse. Some defendants are sentenced to a particular program, others can opt in voluntarily to other programs. The most rigorous is the Adult Drug Court. Defendants are held accountable for attending counseling, court appearances, and random drug testing. If they are non-compliant, there are sanctions including jail time and/or program termination. Defendants are rewarded for being accountable. To graduate from the program, a defendant must obtain a high school diploma or GED, be employed or attending a training/academic program, have attended all counseling and self-help meetings and court hearings. There are several other courts addressing drug abuse, depending on the violation. "Dependency Drug Court is a family reunification program for parents whose children have been removed from the home by the County because of the parents' abuse of drugs or alcohol" (Superior Court of California, County of Orange 2009 Annual Report).

The Community Court also recognizes the roles that mental health plays in criminality. There are voluntary programs in which defendants are linked to psychiatric services, counseling, residential treatment, assistance in receiving medical care and government benefits, employment counseling, vocational rehabilitation, and housing. Some defendants are directed to the program after being arrested and jailed or offered services from outreach workers. Judge

Lindley visits the homeless shelters to hear low-level misdemeanor cases, substituting fines or jail with links to social services. Another court addresses various mental health issues provided by returning veterans who have become involved in the criminal justice system. The defendant works with an on-site full-time case manager from the Veteran's Administration along with state and local veteran service providers. Judge Lindley was adamant that there be an on-site veteran's office as the closest one is 35 miles away, and would make access difficult for someone with few resources and mental or substance abuse issues. The Community Court also has a Truancy Court for chronically truant youth; a Domestic Violence Court; and a DUI Court.

Community service is also an integral part of every program. The spokesperson noted it is especially useful for the homeless as they re-engage with the community while learning new skills, such as working at a Food Bank. Community service is also used as a sanction for those who do not comply with their program or are repeat offenders. This could include working with Caltrans cleaning up highways. The court works through the Volunteer Center of Orange County for community service projects and oversight.

According to the 2009 Annual Report, these programs saved almost $6 million dollars in jail and prison costs by providing other therapeutic services; almost $1 million in out of home placement for children of parents who had substance abuse problems; and health-related cost savings through women giving birth to drug-free babies while participating in the programs. Recidivism is also less in these courts: those who participated in the program were repeat offenders

32% after three years compared to 74% who had the opportunity to participate and didn't; juvenile drug court graduates had an 18% referral rate to probation after two years; DUI court graduates had a recidivism rate of 3.7%.

The next section examines the outcomes of a seminar on community focused courts to determine if any such courts were established and were successful following the seminar. The final section compares the four courts and any newly established community courts to the proposed model.

National Judicial College Seminar

The seminar was conducted by the National Judicial College (NJC). The National Judicial College is allied with the University of Nevada in Reno and provides training to improve judicial skills and productivity. NJC received a grant from the Bureau of Justice Assistance to conduct this seminar. NJC has not presented another seminar on this topic, nor has it done any follow-up.

The NJC sent invitations to the states' judicial educational departments requesting them to send those judges interested in this topic. This method brought together judges from various court jurisdictions and geographical areas, for a week-long seminar about community courts. The faculty was composed of judges (including Judge Norko of the Hartford Community Court), members of the Center for Court Innovation, a director of the Bureau of Justice Assistance, the District Attorney from Multnomah County who was instrumental in developing the Portland Community Court, and a senior staff attorney for the National Center for State Courts. The faculty, using lecture, readings, and discussion groups,

reviewed the concepts of community justice and restorative justice, underlying principles of community courts, various models of community courts, how to create a community court including planning and evaluation strategies, and ethical considerations.

Using the roster of those who attended the National Judicial College seminar on community focused courts in February 2001, all names were validated as to their current judicial status. An introductory letter or email was sent to those still on the bench requesting information on whether they began planning for a community court in their jurisdiction. If not, why did they not continue with the process. If they responded affirmatively, they were asked if a community court has been established and if it is currently operational. For those who have established a community court, follow up interviews were arranged. Questions included how they planned for the court, how they involved citizens, what were the objectives, what problems they wanted to address, any previous programs utilizing volunteers, issues in implementation or operations such as location of the court, funding, any political issues, and on-going citizen/community involvement. Additional interview questions will depend on responses from the interviewees. All names, locale, and courts will be coded to provide confidentiality if they so desire.

There were 36 judges who attended this conference. After reviewing their current status using court information supplied on the Internet, this number was reduced to 16 who were sent a letter by surface mail or email requesting their experience with a community focused court after their attendance at the seminar.

Several responses were received. Phone calls were made to the others, for a few

more responses, totaling six altogether.

One judge said she was very enthusiastic about the idea of developing a

community court, but didn't due to lack of interest of the presiding justice and

funding issues. Another judge attended to learn more about restorative justice,

and came away with more information to benefit his court. A third judge noted

that a community court focusing on quality of life offenses did not fit in his small

town/rural environment. Another judge did not like the concept of community

courts, thinking it ignored the constitutional right of presumption of innocence.

However, he did develop a drug court.   One judge attended the conference to get

new ideas for his already operating Teen Court and to learn about other possible

ideas for a community focused court. He noted that he began a drug court in 2008

and will be starting a juvenile drug court later this year. He noted that financing is

the largest hindrance to establishing these courts.

The remaining two did develop what they are referring to as community

focused courts, although it appears they tend more to the problem solving genre.

These are briefly reviewed as these specialty courts were developed to provide

alternatives to the usual way of doing business.

Judge Gabler, of the Circuit Court in Eau Claire County

Wisconsin, attended the seminar but admitted although the court did develop three

specialty programs, he was not responsible for them. (He said his name and any

information he provided could be used as it is public record.) The first was the

drug court. It was begun as the judge hearing criminal cases realized that the

usual criminal justice response was not effective. She enlisted a county board member and a social service agency member. They attended several workshops on drug courts. They formed an advisory board composed of members from the police, prosecuting attorney's office, defense counsel, probation/parole, county and city agencies, treatment providers, and the media. They received some funding for training, and for treatment from the state. Another specialty court is AIM Court—provides support and education, as an alternative to incarceration, for single mothers who have committed a low level felony or misdemeanor and have substance abuse problems. The third is a mental health court. These are mostly defendants who commit low level crimes who don't take their medication. They also have a restorative justice program mostly targeting juveniles. And the court is partnering in developing a new program to develop transitional housing and mentoring for men entering into the community upon being released from jail and/or prison.

A Superior Court in Fort Wayne, Indiana began a Reentry Court in 2001. In 1999 the Indiana Legislature passed a statute that allowed the counties to develop programs in which eligible inmates from the state Department of Corrections can be released early into such a transitional program with judges overseeing parole. Judge John Surbeck of the Allen Superior Court, with several others from the region, looked at recidivism rates for their area and found that approximately 45% of the offenders were returned to prison within the first year, and nearly 67% after the third year. They conceived of a voluntary transitional program which would provide supervision by electronic monitoring with

assistance addressing issues facing these defendants. Upon release, a forensic assessment is made to determine his or her needs, including an intelligence test, a personality assessment, an interview with a mental health counselor, other risk assessments for substance abuse, domestic violence, sex offender and violence depending on the current reason for incarceration or previous behavior.   The Reentry Team formulates a plan which is recommended to the judge who sentences the defendant. The plan includes programs to address educational, mental health, substance abuse, and unemployment issues.

Additionally, the defendant must remain drug-free, make restitution to his victim, and comply with any other terms. The defendant must return to court every several weeks to review progress. Non-compliance results in a return to prison (www.ojp.gov). From evaluations, it was found to reduce recidivism of the men who were released from prison, not only for those who completed the program but also who did not, and any re-arrests were for less serious crimes (www. allencountycorrections.com). The community has been actively involved in this program, most notably a Community Resources Coordinator who has been involved with the inner city and its churches. She has recruited three ministers who attend Reentry Court to provide mentoring and support. This spokesperson also noted they utilize five half-way houses to house those offenders who lack housing. She noted housing was their largest issue, with lack of housing denying an offender placement in the Reentry program. This program received no grants, but does receive a per diem of $15 per day for supervising these offenders. This has been compared to the daily cost of housing an inmate at the prison at

approximately $65 per day. The offender must also pay a $7 fee related to the electronic monitoring. However, these fees can be worked off by doing community service at $5.50 per hour

(www.ojp.usdoj.gov/ccdo/programs/J_e.pdf).

In the likelihood that not all judges would respond, an additional search was made on the Internet of each of the respective courts to determine if the court had developed a community focused court. Two of these courts (Atlanta and Portland) had begun such a court prior to the seminar; two courts developed community focused courts after the seminar. The latter courts were contacted by phone.

Washington, D.C.

In 2002, two community focused courts began in Washington, D.C. The planning and implementation of these courts was led by one of the judges who had attended the NJC seminar and was the first judge to hear these cases. She formed a committee composed of various agencies including the defense bar, prosecution attorneys, and social service agencies. They received technical assistance from the Center for Court Innovation. One court hears D.C. criminal traffic and misdemeanor cases occurring city-wide: disorderly conduct, aggressive panhandling, possession of an open container of alcohol, drinking in public, urinating in public, no permit, unregistered auto, driving while intoxicated; the other court—East of the River—hears U.S. misdemeanors which mostly address quality of life crimes, hearing such cases as prostitution, minor drug offenses,

public drinking, drug dealing, unlawful entry, simple assault, illegal dumping, that

occur in that neighborhood, a neighborhood plagued by poverty, crime and

disorder with rates higher than other communities in the D.C. area

(www.dccourts.gov/dccourts/superior/community_courts.jsp).

Both courts are located in the D.C. Superior Court Building. A

spokesperson for the courts described the on-site social services: an employment

office, an urgent care clinic for indigent defendants which also provides mental

health services, substance abuse counseling, and education assistance in obtaining

a GED.

Upon arrest, the cases are referred to either the D.C. or U. S. prosecuting

attorney's office to determine if the defendant is eligible for either pretrial or

deferred prosecution respectively. There is collaboration among the court,

prosecutors, defense counsel, and pre-trial services who try to identify issues that

affect the defendant's criminality and determine which diversion and social

service programs best address these. The defendant is required to complete

community service: if it was a D.C. case, the Downtown Business Improvement

District oversees the community service projects; if a U.S. case, the pre-trial

services agency coordinates community service. Usually this is

assigned and completed within a day or two. Upon successful completion of

community and social services, the case is dismissed. Upon intake, if the

defendant appears to have mental health or substance abuse issues, the case is

continued, or if the defendant wishes to go to trial, the case is transferred to a trial

division. It was noted that there has been discussion of placing a courthouse in

the East of the River community, but there has been an issue of locating an adequate facility.

Seattle, Washington.

Although two Seattle judges attended the NJC seminar, neither was involved in establishing the Seattle Community Court. Planning began in 2004 with the then Presiding Judge of the Seattle Municipal Court Fred Bonner, the then City Attorney Tom Carr, and Dave Chapman, the then director of an indigent defense agency, trying to determine a more effective way of dealing with defendants who are repeatedly arrested for quality of life crimes. The three met with various community and neighborhood groups to ask for volunteers to form a community advisory board which helped develop sentencing plans and identify community service projects. The court opened in March 2005, serving the downtown commercial area. With a grant from the U.S. Department of Justice the court expanded its coverage to all of Seattle in 2007.

Defendants are either arrested or given a summons to appear in Community Court for various non-violent crimes, e.g., criminal trespass, disorderly conduct, theft, prostitution, minor drug violations. Their eligibility is determined by the City Attorney. To be eligible the defendant must not be a risk to public safety, have fewer than three previous Community Court adjudications, and the defendant is appropriate for alternative sanctions. If eligible, the defendant is offered the program. Generally the defendant must plead guilty. They are given an assessment to determine their needs (housing, employment, public benefits, education, substance abuse treatment) and recommendations are

made to the judge who orders the defendant to meet with those social service

providers. In the last several years, Seattle has added to this basic program. First

time offenders are placed in a pre-trial diversion program in which they must

complete community service and stay out of trouble for 90 days. They are given a

needs assessment and must meet with the appropriate social service agencies to

get help. If these requirements are completed, the offense is removed from their

record. The program is the same for those who have been arrested before, except

they are offered a dispositional continuance-if they complete all the requirements,

their offense will be removed from their record. All defendants must complete a

certain amount of days of community service

(http://seattle.gov/communitycourt/facts.htm).

The court has found that 56% of their defendants were homeless (average

length is 15 years), 65% were chemically dependant, and 82% were unemployed

(average length was 5.5 years) (http://seattle.gov/communitycourt/facts.htm).

According to a spokesperson, there is a Resource Court where various social

service agencies send representatives to talk to the defendants. Community

service is overseen by staff from AmeriCorps and people at the work site. There

are 25 work sites. Tasks include removing litter and graffiti, weeding, watering

and planting, preparing community gardens. From a research study by the Justice

Management Institute, completed in the fall of 2009, it was found that defendants

who were seen at the Seattle Community Court reduced their rate of reoffending

by 66% within 18 months. The court is guided by a Community Advisory

Board—members include residents, business owners, community based

organizations, and public agencies, meeting quarterly. They provide input on

program priorities, community service activities, amount of community service

hours to be completed in lieu of jail time, and procedures for non-compliance.

The court also utilizes the Neighborhood Task Forces which identify the types of

services they would like to see completed.

Court X

(The court's name and location will not be identified.) The court

developed a community court after attendance at the seminar by the judge of this

court. The description that follows came from interviews with several staff,

volunteers, and the judge. The court is located in a suburb, formally an

agricultural community, of a large metropolitan area. Community courts focus on

quality of life crimes in designated areas. This neighborhood court didn't

experience these issues. Instead the judge tried to adapt the idea of community

involvement and paying back the community in making the court more user

friendly, using volunteers from the community and providing community oriented

service. The judge had always been active in the community, both as an

individual and as a judge. He attended the seminar, enthusiastically returning to

begin a needs assessment. He attended community policing neighborhood

meetings, listening to citizens. He described a community focused court and his

intention to establish one. He formed an advisory board composed of

representatives from businesses, criminal justice agencies, public officials, and

residents; developed an informational manual for the volunteers, and provided the

volunteers with vests identifying them as such. He wanted to make the court more

user friendly, less frightening. He recruited volunteers from the community to greet people as they came to court, help them complete any paperwork, provide instructions or descriptions of what to expect in court. Some of the volunteers were bi-lingual and assisted in the courtroom, if needed. A Teen Court had been established by a previous judge, and it was continued using volunteers. He also began a community service project, sentencing defendants to work crews to clean parks, streets, and assist at community special events. Some volunteers assisted in this program by assigning defendants to work crews and supervising them on-site.

The judge oversaw the entire process. He alienated staff by not including them in the planning process. There were issues between the staff and volunteers: the staff thought the volunteers cliquish, keeping to themselves or spending time with the judge in his chambers behind closed doors, often going to lunch together. The clerks also did not like the idea of the volunteers in their clerical space-- retrieving court files, making copies, and making more work for them. The clerks thought the program was run too loosely, with few or no guidelines, and there was confusion over the roles of the volunteers and the clerks. Additionally, the judge would occasionally assign defendants to assist in helping the clerks with filing and data entry, and the clerks were concerned over the integrity of the files and data, and their own personal belongings.

The volunteers thought the program a success. They thought the public appreciated the assistance they provided as they were helped quickly, and put at ease in the court. The volunteers blamed the demise of the community court on the clerks and the change in direction of the presiding judge.

The judge noted that he was inventing the community court concept as he went along as there were no models or mentors in the state, and since this was 2002, there were few examples of other community courts he could emulate. Although he had some over-all goals they were not well defined and tied into measurability. The judge also did not ask for any administrative support or additional funding. In developing the community service project, he received a gift of some computers from Motorola (which the court's MIS couldn't support). And he described his program to a car dealership and his need to transport defendants to the work sites. Both of these actions violated judicial ethics for which he was disciplined. The end of the program came when a new presiding judge ordered changes in the direction of the courts.

A Proposed Model

A model is proposed from the four courts described above. Although developed in different contexts, there are common elements among the four.

- Geographic area: To be successful a community focused court has to be established in an urban area, one which contains a population dissatisfied with the traditional criminal justice system's responses to quality of life crimes. The area has to be sufficiently large enough to provide enough of these types of crimes to justify the resources needed for the establishment of a community court.

- Leadership: Some individual (judge or a prosecuting attorney) or a group (business or a neighborhood organization) provides a driving force for change utilizing others in the planning and implementation of the court.

- Community: The community is involved during the planning and implementation. And the court continues this interaction after the court is operational.

- Services: A variety of social services are provided on site, available to both the defendant and the community.

- Visibility: In making justice visible, the courthouse is located in the community it serves. Additionally, defendants are required to complete a sentence of community service in that area to indicate they are paying back the community for their crime.

- Collaboration: A variety of stakeholders (court staff, prosecution and defense bar, social service agencies, and members of the community) work together to solve quality of life issues. Support also comes from various legislative and judicial offices.

- Planning: There is an organized planning effort, determining goals and objectives, and setting milestones.

- Funding: Adequate funding must be found to establish a court as at a minimum the court will require additional staff and space for social service agency representatives. Funding will also be required if the new court is to be located in a new building and the computer information system is enhanced.

*A*nalysis and Comparison to the Proposed Model

The proposed model was built on the descriptions of two courts in New York, Hartford, and Orange County. The courts in Seattle and Washington D. C. were then compared to the model. Each of these courts was established in different contexts, but some commonality runs through these descriptions that have led to their successes. These include:

Geographic area. All of these courts were established in urban areas in which quality of life crimes were of concern to the citizens of that area. The courts serve differing geographic areas with different populations—Midtown encompasses businesses, retail, theaters, and residential areas. Hartford's court covers the entire city. Red Hook's court is placed in a mostly residential area. Orange County serves the entire county, and is located in the civic center area. One of the Washington D.C.'s courts has city-wide jurisdiction, as does Seattle; the other D.C. court focuses on a neighborhood. All of these courts exist in an urban area with a variety of socio-economic classes that either live, work, do business, or attend entertainment functions in the area. This urban mix provides the possibility of quality of life crimes being committed in that area. As one attendee at the NJC seminar noted, his court is located in a small town/rural area and doesn't see these crimes.

Because of differing statutes, ordinances, crime statistics, and response to needs assessments, the types of cases these courts process differ, although most have an underlying focus on substance abuse issues: Midtown's focus is on low

level street crime. Hartford handles misdemeanors and municipal ordinances'
violations. Red Hook, along with other quality of life crimes also hears public
housing complaints. Orange County focuses on the homeless and mentally ill.
Seattle and Washington D.C. hear criminal traffic and non-violent misdemeanor
cases.

Leadership. One or more people who have the passion, knowledge and
skills to drive the process--all six community focused courts had someone, if not
several people, who shepherded a planning committee and drove it to
implementation. For Midtown, this was John Feinblatt, Hartford was Ms. Palmer,
Ms. Lash, and Judge Norko, Red Hook had Greg Berman and Prosecuting
Attorney Charles Hynes, Orange County had Judge Lindley, the courts in
Washington D. C. also had a judge who led the effort, and Seattle had three--the
presiding judge of the municipal Judge Bonner, the City Attorney, Tom Carr, and
Dave Chapman who was Director of a public defense agency.

Community. Involving others in the planning process, not only the usual
criminal justice actors but also social service agencies, and most importantly, the
various members of the community--all six involved the community from the
beginning of the planning process through use of focus groups, house to house
surveys, interviewing stakeholders, and/or Town Hall type meetings.

Midtown and Hartford had organized neighborhood associations with
well-recognized leaders who helped with the establishment of a community
focused court. Greg Berman had to help build these relationships in Red Hook.

And in some of the courts, it doesn't appear any neighborhood associations played as large a role as they did in Midtown and Hartford.

Also important is maintaining on-going relations with community members. After implementation the community continues to be involved in these courts through advisory committees, newsletters, community meetings with attendance by members of the court staff.

Services. One of the earmarks of community courts is the provision of social services. These six courts provide these services or links to them (Seattle) on-site. And the variety of services depends on the needs of the defendant or the community in which the court is located. Substance abuse treatment and counseling, mental health services, assistance with food stamps or other welfare needs, with Washington also providing an urgent care clinic, and Orange County having an on-site veteran's affairs representative. These courts also provide GED classes, employment counseling, literacy classes, job training and placement.

Visiblilty. A courthouse that is seen as part of the community—planners were able to find and renovate buildings within the community that were accessible to not only those involved in the criminal justice process, but also members of the community. And the courthouse has been opened to provide classroom and meeting space for the community. However, the Seattle and the D.C. courts have been successful utilizing existing courthouses.

Paying back the community through community service—this is seen as key to a community focused court. It not only makes justice visible to members

of the community, but also addresses community problems, while holding defendants accountable for their offenses.

Collaboration. These courts were able to work within the existing court structure, although the community focused courts were seen as a different type of court. The support of presiding judges and court administrative offices are crucial. No matter how much enthusiasm there is for a community court, if the idea is not supported, the court will not be successful. As an example, one of the judges who attended the NJC seminar commented the presiding justice was not supportive, as was the case with Court X. In establishing these courts, few experienced political barriers. Although the stakeholders had their own vision, they managed to cooperate and work together to plan and implement a community court.

Planning. The planning was led by different entities: Midtown's planning began with a neighborhood activist followed by business, city, and court agencies. Hartford's planning for a community court grew out of the establishment of neighborhood districts to combat serious crime. Red Hook's planning was initially started by the District Attorney. And Orange County's court was driven by one of the judges as was Washington D. C. and Seattle (with assistance from the city prosecutor and indigent defense agency director).

The length of planning and barriers to establishing the court differed: Midtown's planning took two years, and they experienced few barriers to its implementation. Harford's court took almost six years, mostly in time spent finding funding for renovation of the courthouse. Red Hook's barriers of community organizing and funding made the planning process last six years.

Orange County's community court, from initial needs assessment to opening, took six years though they experienced few barriers. Seattle and the D.C. courts planning took over a year, encountering few barriers

Funding. Acquiring adequate funding appears to be one of the largest barriers, especially the expense of renovating a building suitable for a courthouse. With the exception of Seattle, the other courts received funding from a variety of sources: federal, state, judicial, municipal, and private organizations. And though critics point out these courts are more expensive to operate, supporters note the savings made by fewer jail days, lower recidivism rates, and better neighborhoods with less fear of crime.

Management information systems. A management information system must be equal to the task to allow input from all stakeholders and for the tracking of sanctions. All of these courts developed new information systems or enhanced existing ones to provide input from those involved in the process.

All of these courts experienced a variety of issues they had to work through.
Some of them were: political; funding issues; concerns expressed by both prosecuting and defense attorneys about the possible lack of due process, including lack of representation. With judges working closely with the community, there exists the possibility of compromising judicial ethics and independence. Court staff with social and community agencies had to learn new ways, to be integrated and work as a team. Concern has been expressed about

"widening the net," e.g., a gathering of people with mental health and/or substance abuse issues into the criminal justice process to treat them. And, finally, the lines are tending to blur between a community focused court and a problem solving court. This could be a cause for tension when they might both end up competing for resources.

Court X did not meet many of the criteria of the model. That said, the court might have been successful if there had been more planning, more coordination with court and administrative staff, and identified funding sources.

The Center for Court Innovation undertook a review of failed criminal justice programs to provide direction for others. They noted new programs need comprehensive planning including setting goals and objectives that can be measured. They also stressed that seeking input from others is important as these programs are a new way of doing business that "requires the participation and support of many players, including traditional adversaries, bureaucracies that are not accustomed to change and disengaged citizens" (Cissner and Farole, Jr., 2009, p. 5). However, the number of inputs and timing of input is also of importance—too many stakeholders too early in the process will bog down planning, too late in the process will alienate some stakeholders. The authors also stress that buy-in from staff is crucial. Strong leadership is also necessary along with cooperation and support from local political leaders. Cissner and Farole's (2009) seem to bear out

some of the elements of the model, e.g., extensive planning, corroboration, strong

leadership, and input from stakeholders.

CHAPTER FIVE

CONCLUSIONS AND IMPLICATIONS

Introduction

This chapter provides a brief summary of the findings, comparing the present study's findings to other research, how the findings relate to the literature, implications for theory and practice, and what contribution this study makes.

Summary of findings

This study examined what factors in the context of a community shape various community focused courts. Four different courts were examined— Midtown, Hartford, Red Hook, and Orange County. These four courts were selected for an in-depth study as they are different from each other and could provide a good test to determine their commonalities. Each of these courts was established in different environments: Midtown is in a mix of business, entertainment, and residential areas; Hartford incorporated the entire city; Red Hook targeted a low income area with mostly public housing; and Orange County centralized its court in the civic center from several problem solving programs that were heard throughout the court system and added several more aimed at the homeless and mentally ill. All focus on quality of life crimes but again there are differences in which crimes the courts hear. Planning for these courts was led by different entities, and the length of planning varied from two to six years.

And their success was determined by certain factors present in these communities: strong leadership to envision and see the project through; getting

community support and maintaining the support after the courts are operational; finding sufficient funding and support from various legislative, judicial, and executive branches of their cities and states; involving others in the process, e.g., social service providers, the prosecution and defense bars, court staff, and citizens; providing social services to defendants; making justice visible through placing the courthouse in the neighborhood so it is accessible to both defendants and the community; and requiring defendants to perform community service to pay back the community for the harm they caused.

A model of these elements was proposed. It was tested by contacting current judges who had attended a 2001 seminar on community focused courts at the National Judicial College. Several courts have since undertaken new approaches to solving persistent issues that the traditional criminal court system has difficulty addressing. However, there were only two more courts that have been established that could be defined as community focused courts. And these new courts exhibit many of the same factors that made the established ones successful, e.g., a strong driving force to envision and lead the project; involvement of others; providing social services to defendants and/or the community; and requiring community service.

<div align="center">Comparison to other research</div>

There are 11 community focused courts that can be considered the first generation of community courts—those established in the 1990s and the year

2000, including the three described earlier (Orange County was established in 2008). The other eight are:

North/Northeast and Southeast Community Courts, Portland, Oregon;

Hennepin County Community Court Calendar, Minneapolis, Minnesota;

Hempstead Community Court, Hempstead, New York;

West Palm Beach Community Court, West Palm Beach, Florida;

Downtown Austin Community Court, Austin, Texas;

Frayser Community Court, Memphis, Tennessee;

Atlanta Community Court, Atlanta, Georgia (Lee, 2000).

They are similar to the model while adjusting to that community's context. For example: judges or court administrators led the planning in four courts; in five courts the leadership role was taken by an elected district attorney; in the other two, leadership came from the mayor's office; and a countywide criminal justice commission. The community courts mostly serve urban areas with the exception of the one in Hempstead, New York which addresses quality of life crimes in a suburban area. Several courts' jurisdiction covers the entire city: Portland (Portland began with one, then added a second court, and then went city-wide) and Hartford. Some are located in or target quality of life crimes in downtown areas: Midtown, Austin, Atlanta; others are located in a particular inner city neighborhood—Red Hook, Hennepin County, West Palm Beach, Frayser Community Court in Memphis, Tennessee, All used either full-time planners or a staff person dedicated to the project, although the length of planning varied from one year to several.

Not all courts are able to be housed in a stand-alone building located in the neighborhood. Some use existing facilities in the neighborhood, or renovated space in an existing courthouse but conduct community service projects, social services, and community meetings in the neighborhoods they serve. Six courts provide social services on-site with on-going case management; three provide referrals to social services with on-going case management, and two provide referrals only. The types of cases vary—in addition to hearing misdemeanors, judges might also hear housing code violation cases, juvenile cases, family matters.

And all of the 11 courts involved the community in the planning of the court by creating community advisory boards, held community meetings, focus group discussions, conducted interviews with stakeholders, and attended neighborhood meetings. After the courts opened, they still maintain their involvement with the community by continuing with a community advisory board, solicit community service projects, conduct door to door surveys, and/or distribute a newsletter.

With the exception of descriptions of some of the community focused courts found in the literature (some of which are described above), possibly the best comparison could be made with other types of problem solving courts regarding context. Goldkamp, White, and Robinson (2001) noted that drug arrests by themselves could not account for increases in enrollment in drug court. Instead context influences enrollment--it is also a function of law, policy, leadership, politics, and changes in drug court clientele. Those courts that succeed

do so by having a good working relationship among all stakeholders, sharing information, and insuring staff socialization into the goals and objectives of the program. They fail when there is little input from the defense bar, little or no training, defendants not allowed to raise factual issues, harsher sentences for non-compliance than the original charge would have entailed, and little or ineffective social services (Berman Feinblatt, 2001).

According to Berman and Feinblatt (2005) problem solving courts must be compared to the traditional methods of dealing with crime to determine if they are effective. In their review of evaluations of drug courts, they found several indicators of success: lower recidivism for those who completed the program-anywhere from 14% to 29% depending on how the study was structured compared to defendants who were processed through the traditional court system. Other findings include: defendants mandated to treatment stay in treatment longer than those who voluntarily go into treatment. And those defendants who remained in treatment for at least 90 days were less likely to be re-arrested. Judicial monitoring makes the difference. And drug courts save money by reducing the costs of adjudication of future crimes. Other benefits include more drug-free babies, more defendants who are employed at the time of graduation from drug court, which can lead to more revenues from income taxes, less public welfare costs, and reduced hospitalization costs.

Berman and Feinblatt (2005) also reviewed the research on domestic violence courts. Prior to the 1980s and 1990s, domestic violence was treated as a family matter and the criminal justice system did little to intervene. With a

change in context, e.g., the rise of the feminist movement and victims-rights groups and their advocacy, the criminal justice system began to make changes in how they addressed these issues. This resulted in increased arrests, increased prosecution and tougher sanctions for batterers, and greater ease for the victim to obtain an order of protection. The first domestic violence court began in 1987 in Quincy, Massachusetts. According to Berman and Feinblatt (2005), there were about 300 of these specialized courts at the time of publication. Although there has been increased cooperation among the stakeholders and more batterers have been sentenced to a batterer-intervention program, what has proved most effective in reducing recidivism is judicial monitoring—requiring the defendant to return to court regularly to report on compliance with court orders.

Another study, a 2002 symposium held at the Fordham University School of Law, examined what works and what doesn't in problem-solving courts. Panel members were representatives from the Center for Court Innovation, The Urban Institute, and several law professors, one who practiced in family court. Using deterrence theory--general and specific--they found that in drug courts under general deterrence it is best to see other defendants in their review hearings and what happens to them. Additionally, they have found that for specific deterrence, those who are legally mandated to treatment succeed better than those who go into treatment voluntarily. Also, courts need to utilize rewards and positive reinforcement. When fashioning a graduated sanctions contract with defendants, judges need to involve the defendant in that contract so they understand the graduated consequences of their behavior. These contracts have had the effect of

providing legal pressure on defendants to enter and remain in treatment. These

types of contracts work better than just having the defendant do drug testing, and

having judges praise defendants for doing well. The members said consistency in

enforcing the contracts was very important, as was determining what was salient

to that particular defendant in the way of rewards and punishment. Another

finding was that in the case of some of the drug courts in New York City,

relationships between the court and available treatment providers may affect the

treatment modality, e.g., long term residential as compared to intensive out-

patient programs.

Another panel member discussed how community courts are different

from other problem-solving courts,

> they are a form of collective action by neighborhoods and citizens within
>
> neighborhoods, a set of reciprocal actions-what citizens do affects the
>
> courts, what courts do affects the citizens, what citizens do affects the
>
> service providers, et cetera, et cetera…Second, the court is in fact not just
>
> a court; it is a community program…the court is now a service
>
> provider…(t)hird, the physical presence of the court in the community
>
> signals…that there are fact relationships of citizens to courts and to
>
> communities that differ in meaning and tone and content from the typical
>
> relationship that you see downtown or even in the problem-solving court,
>
> which is located in the Central Court Building (Fagan, 2002, p. 1937).

Fagan theorizes that what works in Red Hook could work elsewhere. This theory

is that the Red Hook Justice Center will try to become an effective social

institution, grounded in the community. This will be done in four ways: the Center deals with the "social sources of crime" (p. 1938) through treatment, remedial services, quick responses to wrongdoing. Second, the court can build as a social agency in addition to being a legal institution. The court builds its legitimacy by being in the community and providing positive experiences for those who come to the court and its building. By being in the community the court shows that certain behaviors won't be tolerated. And fourth, the creation of partnerships with the community.

Other comparisons can be made with those programs that don't succeed. According to Cissner and Farole (2009) most problem solving justice programs are experiments and as such can be successful or not. They reviewed 13 projects to learn from mistakes to guide others to successful program development and implementation. Five programs were demonstration projects developed by the Center for Court Innovation, the other eight were developed by other agencies. Using both qualitative and quantitative methods and reviewing process evaluations, they identified four key areas: "(1) engaging in comprehensive planning, (2) identifying key stakeholders, (3) responding to emerging challenges, and (4) recognizing the need for leadership" (p. 2).

The four courts that were selected to be studied (and the other seven successful first generation courts) were able to successfully address these four key issues.

Findings in relation to the literature

As noted in Chapter 2, courts are shaped by social, political, and/or economic forces. What was the impetus for community courts? In recent decades, court caseloads grew for various contextual reasons, e.g., "get tough on crime" with an increase in the number of police, the public's fear of crime with the result that legislatures passed more stringent sentences, a dramatic increase in substance abuse, proliferation and use of guns, growth of gangs, deterioration of the family and other social forms of control, and alienation and invisibility of living and working in large metropolitan areas (Abel, 1982, Berman and Feinblatt, 2005). As caseloads grew various measures were undertaken to address the rising number of filings. Some measures were the development of alternative methods of case processing, diversion programs, and development of speedy trial and case processing rules and timelines. But judges and other criminal justice practitioners were not happy with this assembly line justice, especially since they saw many of the same defendants reappearing before them. The public became dissatisfied with the traditional response to crime as it had led to jail overcrowding, high rates of recidivism, and revolving door justice (Mirchandian, 2008). From efforts at centralization and unification, the courts left their communities and those they served behind, resulting in growing negative public opinion of the courts—that the courts were out of touch with their communities. The public thought the system was too complex, litigation took too long and was too expensive, and the courts were viewed as nothing but "revolving door justice" for most defendants.

Problem solving courts

With the public losing confidence and trust in the criminal justice system, programs for community justice began in the 1990s. It began with restorative justice programs, then moved to problem solving courts, courts which look at cases not as something to process as quickly as possible but as a problem to be solved (Berman and Feinblatt, 2005). These courts are different from the traditional court system. The traditional courts did not see themselves monitoring compliance; instead these cases were diverted from the court system with those who provided the services monitoring the defendant. Berman and Feinblatt (2005) note that the perceived failure of these diversion programs led to problem-solving courts.

One type of problem solving court is the community court. The first community court, Midtown, grew out of the frustration with the centralized criminal court and its failure to deal with persistent low level crimes plaguing the area. Midtown led the way. The first generation of community courts had common goals of making justice visible to the community by locating the courthouse in the area where quality of life crimes occur, having defendants pay back the community by completing community service, opening the courthouse to not only defendants but the community to be used as a resource for social services, and forging partnerships with the community the court serves (Lee, 2000).

Community

All of the first generation of community courts used the community in the planning and implementation of these courts. But community can be defined in various ways depending on the context. They can be specific geographic places, groups of citizens (usually minorities), networks of personal relationships, which provide a sense of belonging and behavior standards (Clear and Karp, 1999). The four study courts were defined by geographical boundaries—physical attributes (Red Hook), city/county limits (Hartford and Orange County), or police precincts (Red Hook and Midtown). They could also be identified by their personal characteristics or networks. Most specifically, Red Hook is a residential area; Midtown contains businesses, shopping, theaters and residential areas.

Need for citizen participation

As Dendhardt notes (2004) as trust in government declines governing becomes more difficult with citizens withdrawing into private spaces, becoming more self-interested. To engage citizens in participation requires the state to be the enabling institution, to bring people together in collaborative efforts among citizens of diverse interests and opinions, the greater the need for a decision to be accepted and implemented the more need for public involvement (Garren and Bog, 2005, Thomas, 1995).

These four courts utilized community input in planning, implementation and operations. According to Thomas (1997) the public can be interested citizens, special interest groups, various governmental agencies, and private organizations (Midtown). All four courts worked with citizens, neighborhood associations (Hartford, Midtown), social service agencies, special interest groups (the Times

Square Business Improvement District and the 42nd Street Development Project in

Midtown), courts and other criminal justice agencies, and elected officials. All of

these can provide relevant information and affect the implementation of decisions.

The planners used a variety of methods to engage these people in

participation—Midtown used advisory groups, neighborhood meetings, and

interviews. Hartford mostly relied on the established neighborhood organizations

creating an advisory board for input. Planners for Red Hook utilized surveys,

focus groups, interviews, and an advisory board. Orange County conducted

meetings with five major stakeholder groups, held a Town Hall in Spanish, and

did interviews. As Barber (1981) found in his research on types of participation,

advisory committees are best at creating decision making data, dealing with

problems and complex issues, and working with a variety of socio-economic

groups.

Volunteers

But why did people from the community volunteer their time and effort to

these courts by participating in the planning stages—focus groups, neighborhood

meetings, surveys; serving on advisory boards, overseeing community service

programs? People volunteer to help others or groups in the community without

any expectation of material reward (Musick and Wilson, 2008). They found that

some volunteer because of their individual attributes or because of the social

context. This would describe the volunteers for the four courts. If the context

were different, it is difficult to know if these same community activists and people

serving on advisory boards would volunteer for other needs or programs. And,

many of those who were involved in the planning and implementation are paid

criminal justice professionals. However, they saw a need that was not being met,

for either the criminal justice system or the community. According to the research

there is no clear pattern for the type of person who volunteers--socio-economic

class, education, income, race, etc. Midtown's volunteers included neighborhood

activists who wanted to improve their area, along with business organizations

trying to improve their profits. Red Hook had difficulty getting citizens involved

because of their distrust of government, but planners were able to engage them by

building the court's credibility with the Public Safety Corps. Orange County also

used a variety of citizens and organizations to shape the court. And Hartford built

on their prior experience with neighborhood groups. And, possibly by sentencing

defendants to pay back the community by completing community service

projects, it will raise their self-esteem (Musick and Wilson, 2008).   Wolf (2001)

and Anderson (1996) note from interviews with community court defendants that

they felt better about themselves after completing their community court

sentences, praising court staff and social service agencies for their help.

Implications for theory and practice

The model can predict where community courts would most likely emerge

and be successful. A major impetus would be areas with persistent quality of life

crimes, e.g., prostitution, drug dealing, low level substance abuse, panhandling,

vandalism, etc., which interferes with the other activities of law-abiding citizens

going about their everyday life. These crimes are persistent which the traditional

courts have difficulty addressing. Additionally, there have to be enough quality of life crimes to generate sufficient violations to justify a community court, whether hearing cases five days a week or less. These areas are correlated with an urban environment. This could be a downtown business district, a residential area, an entertainment area, or a mix of these. These crimes affect those who live, work, shop, or go for entertainment in these areas. At this point, someone—a community activist, a neighborhood association, a business group, a person in the criminal justice system—takes notice of the debilitating effect of these crimes and its effect on the community and begins the process of determining the feasibility of a community court.

The success of a community court depends on several issues. The community should have an infrastructure of neighborhood or business associations or citizen activists who can lead and rally others in the community to become involved in the planning and operations of the community court.

The community will have a person, whether judge, attorney, or other type of elected or appointed leader, to conceptualize and drive the process to completion. This person will be able to bring others together collaboratively to work together to solve these quality of life crimes.

This court will have the support not only of judicial leadership but also from members of the legislative and executive branches, at both the state and local level as there might be a need to change existing laws and ordinances. The community court will provide a variety of social services, preferably on site, for both defendants and the community, tailored to their specific issues and needs. It

will make justice visible to the community by locating the court in the area, incorporating citizens in the planning process, and on-going operations, having defendants complete their community service in the area they committed their crime to indicate to the public they are repaying the community for the harm they have done.

The community court can fail if the court does not have the support of judicial leadership. It will also fail if planning, complete with goals, objectives, time lines for measurement, is not rigorous. Adequate funding is key as the community court is more expensive to operate than traditional courts, requiring more court staff, space for a variety of services, including social services, mediation services, rooms for group counseling and meetings, various criminal justice agencies, community service offices, and victim advocates to name only a few. Funding can come from both governmental sources and non-governmental sources, and from private organizations, local businesses, philanthropic organizations.

Failure will also occur if there is little or no collaboration among all the stakeholders. Community courts are a new approach and require the cooperation of all to develop programs to help the defendant solve the underlying social issues that lead to criminal acts. Buy-in from staff is also crucial as they can sabotage the project.

We have also seen a change in the role of the courts, from being considered removed from its community to one of actively involving the neighborhood, through its location in a neighborhood, opening the court to the

community and its citizens as a place to receive social services, a place to hold meetings, and a place to receive assistance. The traditional court uses the adversarial approach in which the prosecuting and defense attorneys present evidence, according to proscribed judicial rules, to convince a judge or jury of the guilt or innocence of the defendant, and if found guilty, to receive a punitive sentence.

Community courts differ from traditional courts. The judicial branch, considered the third branch of government, must adhere to legislative laws and prior court decisions, while balancing the constitutional rights of the individual. Judges are expected to be independent and impartial in their decisions. But as recent events and history have shown, this does not address issues of social/economic/political injustice. And so, we have seen the rise of an activist judiciary.

But this raises concerns about the impartiality and independence of judges. Judges, among others, have been involved in the creation of problem solving courts in which the court is attempting to address social and behavioral issues, expanding beyond the idea of judicial independence and impartiality by becoming actively involved in the defendant's and community's life, in trying to address issues that could give rise to criminal behavior. Further, they are actively involved in monitoring the defendant's sentence, something that traditionally was done by others, e.g., probation departments or social service agencies. Many of these judges and their staff are involved in the neighborhood the court serves, leading some to question how a judge can remain impartial in decision-making when

collaborating with the neighborhood's citizens, businesses, schools, and other associations.

Another theoretical constitutional concern which affects practice is the role of the attorneys for the prosecution and defense. Community courts are basically non-adversarial, in opposition to traditional courts. Not only are many concerned about lack of prosecution of a case and a defendant's right to be represented, but also that problem solving courts expect a cooperative, collaborative effort of those stakeholders involved in the case, working with the judge, social service and community agencies. Adding to this is the fact that for most defendants to be sentenced by a problem solving court requires a guilty plea.

An implication for practice is the use of citizen volunteers. One of the findings from Midtown was that even with all of the outreach during planning, implementation, and operations, it appears many citizens of that area were not aware of the court and its programs. And Red Hook also had a problem involving the public. One of the goals of community courts is to legitimize the court, and this will be difficult if the public does not know about the community court and get involved. More ways will have to be found to publicize the court and to involve the community in it. Beyond the current methods of publishing newsletters, advisory boards, court tours, and victim-impact panels, other ways of informing the public at large need to be found. One is the possibility of creating an advertising type of campaign, using public transit or billboards for the display of ads for the court.

One impetus for the establishment of problem solving courts was the negative attitudes toward courts, particularly from minorities. Many community courts are located in an area of diverse population. Research needs to be conducted to determine if minorities attitudes toward equal treatment by the courts has improved in those areas that have community courts.

Contribution of dissertation

This study examined four courts to determine how the context affects the establishment of a community focused court culminating with a proposed model based on those four courts' commonalities. This study could be a guide for those thinking about developing a community focused court by indicating how these four courts dealt with the context in their communities in establishing a community court. Although the first generation of community courts has been described generally, little attention has been given to those contextual factors across courts that make them successful. Much research remains to be done.

First, one could compare the almost 30 existing community focused courts to see how they relate to the proposed model. And, much might be gained by examining those community focused courts that were determined to be unsuccessful and how those deficiencies relate to the proposed model.

Secondly, can the goals of community courts, e.g., making justice visible by locating the court close to where the crimes occur, making the courthouse accessible to the community, imposition of immediate sanctions, providing social services to assist in addressing the problems that led to criminal activity,

completing community service projects, and partnering with the community, be

transferred successfully to the current court system and in what types of context?

A third area of research could address whether community focused courts,

with the focus on quality of life crimes, reduce future more serious violations in a

neighborhood? Does fixing the "broken windows" reduce future crime?

And finally, how do the community court programs compare with

other problem solving court programs with respect to recidivism? All of these

problem solving courts know there is no straight path to being clean, but which

approach seems to work best?

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