

POLITICS, PUBLIC SERVICE,
AND PROFESSIONALISM

Conflicting Themes in the Invention and
Evaluation of Community Prosecution

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Introduction

Over the last few years, a small number of highly visible prosecutors have been speaking of their offices as adopting a practice they call “community prosecution.” At the same time, their efforts are being studied and promoted by a small group of scholars and various parts of the United States Department of Justice. Are these prosecutors reacting to a common set of problems, or many different problems? Is community prosecution a common response, or only a convenient—if awkward—name for different strategies in different places? What does the published research on community prosecution tell us, and how is this research being pursued? In short, what is going on here?

The awkwardness of the term, “community prosecution,” is easily explained. The term is derived from community policing, a politically potent phrase that embraces a set of reforms that spread through urban American police departments during the 1980s and 1990s. Community policing promised a renewed focus on neighborhood conditions of disorder, a genuine collaboration with local communities in setting police priorities, and a problem-solving approach to the conditions that cause crime. Its widespread adoption occurred simultaneously with a substantial reduction of serious crime in many cities, leading some of its promoters and sponsors to credit it with causing—or at least contributing to—the drop in crime. Equally important, during President Clinton’s 1992 campaign and then in the Crime Act of 1994, community policing became the programmatic label attached to the largest investment of federal funds into local police departments in the history of the United States. Whether or not the techniques of community policing worked to reduce crime, the phrase, “community policing,” certainly worked politically; and others within the criminal justice system noticed, including judges, prosecutors, and researchers.

If the use of the phrase, “community prosecution,” represents an effort by prosecutors and those who study them to share in the political spoils of community policing, it also serves as the vehicle for a series of genuine reforms in the way urban American prosecutors approach their jobs. In Austin, Boston, Brooklyn, Denver, Indianapolis, Kansas City, Manhattan, Portland, Silver Spring, Washington, DC, and other cities, prosecutors are putting in place a range of practices that increase the engagement of their staff with local residents and merchants. In some cases, the caseloads of assistant prosecutors are being reorganized so that they specialize in cases generated from particular neighborhoods, rather than specializing in certain kinds of offenses or being assigned cases at random. This geographic specialization is usually accompanied by efforts—large or small—to encourage these assistants to get to know some of the residents, merchants, and conditions in their assigned areas. In other cases, community prosecution is a banner under which prosecutors are supporting enhancements to their offices or to the criminal justice system itself, often leaving their core prosecution structures unchanged. These enhancements can be as simple as the creation of a community liaison office or placing an assistant prosecutor in each local police station. They can also be as complicated as sponsoring alternative dispute resolution programs or promoting citizen involvement in juvenile diversion

programs. Although there is at least a trace of electioneering in each of these initiatives, as committed public servants, the prosecutors in these cities are pursuing reforms that they hope and believe will produce an important advance in the quality of justice delivered by their offices.

Community policing is sometimes described as a correction to the overly strict adoption of professional policing. Police executives, it is said, in the pursuit of a professional model of police work, had lost touch with the communities that they were paid to protect, as they bundled their troops into radio cars from which they anonymously patrolled streets or raced to respond to 911 calls. Community policing, in this account, tempers the professionalism of the police with a renewed commitment to serve local communities. One major challenge for the modern police manager is to capture the benefits of the focus on service in community policing (better cooperation with local residents, better understanding of local problems, more effective responses to underlying problems causing crime), without losing the benefits that came with the professional model (less corruption of individual officers, less involvement in local politics, less brutality).

This tension is reproduced in community prosecution. On the one hand, we have the professional model of prosecution focused on efficiently and dispassionately assessing cases and pursuing convictions. Professional prosecutors work in their offices, reviewing police arrests, rejecting weak cases, directing further investigation of serious cases, and then prosecuting each in court to the fullest extent of the law. On the other hand, we have the new talk of service to communities, in which prosecutors are expected to focus on understanding the needs and aspirations of people in local communities and using all the powers of the state to fulfill them. In a strict community prosecution regime, assistant prosecutors may feel compelled to prosecute relatively minor cases because of their local importance—cases that they would previously have dismissed because of the weakness of the evidence and the lack of resources to pursue further investigation of routine crimes. This tension is not very interesting if prosecutors are simply asking for more resources in order to add to the collection of cases in which they are undertaking full scale, aggressive prosecution, in addition to everything they were doing before. It is more interesting if prosecutors are re-arranging priorities in response to new forms of engagement with community residents, merchants, and institutions: foregoing some opportunities that they would have pursued in the professional model in order to concentrate more heavily on priorities set in response to community forces.

In the case of community prosecution, this tension between professional service and community service is further complicated by the immediate concern with electoral politics. Like the urban police chief, the county prosecutor is politically sensitive and accountable; but unlike most urban police chiefs, the local prosecutor is actually elected. Of course, police chiefs do, on occasion, move into elected political office; but prosecutors are already there.¹ Where many police chiefs are at the height of their careers, county prosecutors are often on their way up to higher elected office, and this turns out to be particularly true of the prosecutors who are

¹ County sheriffs are also generally elected, but they have been less involved in community policing initiatives than appointed urban police chiefs.

presently pursuing community prosecution. Community prosecution is not merely influenced by politics; it is politics. The prosecutors who advance it are engaged in the delicate, simultaneous pursuit of electoral politics, public service, and the advance of the legal professional.

This analysis carries at least two implications for research on community prosecution. First, it means that we should recognize that we are not just studying the legal system or the process of administrative reform. Community prosecution is not a routine, bureaucratic function like charging, case processing, and plea-bargaining. We are studying politics, and scholars need to use the same techniques they would use to assure objectivity and accuracy in the study of other major, individual, political actors while they are in office. The study of elected leaders while in office is notoriously difficult, but it can be managed if the researchers have open access to, and rely heavily upon, internal documents, quantitative measures of performance, accounts from low-level staff, and critics of the officials both inside and outside their offices.

Second, we should recognize the way in which the political official and the researcher can become mutually dependent on each other for their own future success. The researcher will have difficulty studying the phenomenon without permission and great cooperation from the elected prosecutor. If that researcher then produces a written product that tarnishes the reputation of the prosecutor, the research may never win the cooperation of another prosecutor. Both careers will be damaged. A glowing written account, however, may actually help to advance the prominence of the prosecutor. Such prosecutors may even recognize the benefit of this kind of scholarly attention to their further advancement locally and nationally, and may therefore invite the researcher to return for further study. Both careers are advanced. Again, research that focuses on the assistant prosecutors and other staff on the front lines of the criminal justice system, rather than on the elected prosecutors themselves, may be less subject to these distortions. Front-line prosecutors may also have political ambitions, but they are usually far from political office. They, too, can withhold or grant access to researchers, but there are many more of them among whom to recruit research subjects.

We thus begin to explore this murky terrain with several lessons already in mind. First, the attraction of the phrase “community prosecution” is in part its association with the votes, funds, and professional advancement that “community policing” helped win for many (though not all) politicians, police chiefs, and academics. Second, the actual work of community prosecution represents the simultaneous and careful pursuit of electoral office, public service, and professionalism, and we must attend to all three aspects in any serious study of the subject. Third, we should be conscious of the rewards available for those who promote individual prosecutors as champions of good policies, as well as those who promote the policies themselves. We should, therefore, pay particular attention to accounts of the problems encountered in community prosecution programs and to the voices of its critics.

Multiple Visions of Community Prosecution

What are the problems to which something called community prosecution might be the answer? In the case of community policing, a small but critical mass of police executives believed that random motorized patrol and rapid response to calls for service were dooming police departments. Rising levels of crime, the alienation of Black and Latino communities, and the growing investment in private police arrangements persuaded the pioneers of community policing that they had no choice but to change the way they organized and managed their departments. They saw more than an opportunity to change; they saw change as an imperative.

Some prosecutors have faced, and continue to face, some of these kinds of problems. Some talk about a growing dissatisfaction with the adversary system as a method for dealing with crime. Others talk about the growth of witness intimidation and the reluctance of witnesses to cooperate with prosecutors. Still others say they need to do something to reverse a rise in jury nullification: juries refusing to convict patently guilty defendants because they dislike or distrust the prosecution, its witnesses, or the judicial system as a whole. Where these problems are most pressing, they are often rooted in issues of race. The jurors refusing to convict and the witnesses too scared or angry to testify for the prosecution are often Black and Latino. Perhaps greater engagement with, and service to, these communities might reverse these trends, if trends they be.

Yet even in these communities, the push to community prosecution is not as urgent as was the push to community policing. For example, there is no threat to prosecutors that compares with the competitive threat that private policing posed for police departments. What would such a threat look like? Vigilante justice? Fortunately, vigilante justice remains relatively rare in the United States, and certainly is not competing with elected prosecutors as the preferred means of adjudication. In places like South Africa, where vigilante justice is a real threat and a new national prosecuting authority is trying to claim the allegiance of black citizens for the formal system of justice, community prosecution may take on a different character. In the United States, meanwhile, even the most ardent supporters do not talk about community prosecution as necessary to save prosecution itself. The problems are real, but almost nowhere do prosecutors believe they are facing a crisis.

They do see opportunity. Some talk about the opportunity to bring private sector management skills to bear in their offices, with greater emphasis on service delivery and customer satisfaction. Others see opportunity to “punish” criminals more effectively through asset forfeiture or civil injunctions. Still others see opportunities to build a stronger political base among the prosecutor’s electoral constituency, although this last opportunity contains the parallel danger that an assistant prosecutor working in a particular community will build an electoral constituency with which to challenge the boss.

Federal funding is also available specifically for community prosecution, well in advance of such opportunities in the development of community policing. As a result, only a very few prosecutors are shifting resources from traditional prosecution to community prosecution. For most, community prosecution is an extra: a collection of extra work that can be done in addition to the basics. It is not, in most places, a redefinition of the basics themselves.

Just as there is no consensus on the problem that is driving the adoption of community prosecution strategies, there is no consensus on what role the community should play with prosecutors or how formally community members should be involved. All of the community prosecution initiatives with which we are familiar purport to involve community residents or merchants in the identification of problems that the initiatives will address. Sometimes this is done through a formal committee structure, other times in open community meetings with the prosecutor, and in some there is little more in evidence than the prosecutor's account of community views. The flexibility of community involvement is so great that the establishment of a community relations office staffed with a single staff person could fall within some definitions of community prosecution, even without much other change to the basic operations of the office. Only some of the initiatives involve community residents or businesspeople taking part in the solutions to the problems. And only some involve a specific group of community residents engaged with the prosecutors over time.

With such a broad array of initiatives within this category, what has been the role of research to date? There has been very little research other than a few descriptive efforts. Some of this descriptive material has also tried to draw some common principles or features from groups of initiatives. In addition, researchers have played a promotional role, coaxing discrete initiatives into the community prosecution tent. Barbara Boland has produced descriptive accounts of developments in Portland, Oregon, and Manhattan, and is currently at work on a similar description of the pilot project in Washington, DC.² Catherine Coles and George Kelling have produced a descriptive study of community prosecution efforts in four counties: Travis County, Texas (Austin); Suffolk County, Massachusetts (Boston); Jackson County, Missouri (Kansas City); and Marion County, Indiana (Indianapolis).³ In addition, the National District Attorneys Association and the American Prosecutors Research Institute (APRI) have produced a set of short papers summarizing developments in some of these same jurisdictions as well as in Kings County, New York (Brooklyn), and Montgomery County, Maryland (Silver Spring).⁴ The production of each of these works has been funded by the National Institute of Justice or the Bureau of Justice Assistance, both agencies within the U.S. Justice Department's Office of Justice Programs.

Although APRI began to use the term, "community prosecution" as early as 1994, research in this tradition began with a slightly different focus, examining the role of prosecutors in

² Barbara Boland, "Community Prosecution: Portland's Experience" in Karp, David R. (ed.) *Community Justice: An Emerging Field* (1998); Barbara Boland "The Manhattan Experiment: Community Prosecution" in National Institute of Justice, *Crime and Place: Plenary Papers of the 1997 Conference on Criminal Justice Research and Evaluation* (1998); Barbara Boland, "Community Prosecution in Washington, DC: The Fifth District Pilot Project" (forthcoming).

³ Catherine M. Coles and George L. Kelling (with Mark H. Moore), "Prosecution in the Community: A Study of Emergent Strategies—A Cross Site Analysis" (September 1998, unpublished paper, available at the Vera Institute of Justice Library or from the authors through the John F. Kennedy School of Government, Harvard University).

⁴ See, for example, American Prosecutors Research Institute, *Community Prosecution: A Guide for Prosecutors*, (APRI, 1994); Heike Gramckow, "Community Prosecution in the United States," in *European Journal on Criminal Policy and Research* Vol. 5-4, pages 9-26; and Norma Mancini Stevens, "Defining Community Prosecution" 28 *APR Prosecutor* 13 (1994).

community policing.⁵ But proponents of the idea that criminal justice agencies should all engage more collaboratively with community residents did not want other agencies to be held back in places where community policing was lagging. Community prosecution, like community courts, began to be written about as an independent movement, complementing but not dependent upon community policing.

In addition, proponents of these ideas also began to reinterpret existing programs that involved citizens in any way as examples of the new philosophy. In 1995, for example, the National Institute of Justice published a description of the Narcotics Eviction Program within the Manhattan District Attorney's Office that never refers to community prosecution; but in 1998 Barbara Boland described the same program as one of Manhattan's community prosecution initiatives. Nevertheless, efforts by Boland, Coles and Kelling, and APRI to give the term conceptual coherence remain quite tentative.

At this time, we can only speculate as to the future of community prosecution, either as a term or as a collection of strategies. It seems unlikely to enjoy the popular success of community policing, yet the strategies grouped within it do appeal to a wide constituency. Because it is not a response to a common crisis facing the profession, it is unlikely to become as widespread or as ambitious as community policing. Its proponents talk about it terms reminiscent of community policing, but their descriptive accounts do not yet match the ambitious rhetoric.⁶

We believe, instead, that community prosecution is best understood as a *sometimes thing*: a set of organizational and operational strategies that prosecutors might adopt, in whole or in part, when their communities seem ready for them and when they fit with the priorities of the office at that moment. We now turn to examples of how a few prosecutors have implemented community prosecution in varying ways and for varying ends.

Community Prosecution in Context

Denver, Colorado

In August of 1996, Denver District Attorney Bill Ritter announced the creation of a community prosecution program to be implemented on a pilot basis in four Denver neighborhoods: Globeville, Capitol Hill, Park Hill, and neighborhoods within the Southwest Improvement Council. Although there is some variance in the size and populations of each neighborhood, Globeville (where the program is most robust) is a good example of the scale with a population of 3,500. For each neighborhood, Ritter assigned two prosecutors. These eight prosecutors, described by Ritter as having been picked because they are the best in the office, continue to carry

⁵ Joan Jacoby and Heike Gramckow, "Assessing the Role of the Prosecutor in Community Policing" (1993, unpublished paper available from the authors through the Jefferson Institute for Justice Studies, Washington, DC).

⁶ See, for example, Boland, "The Manhattan Experiment" page 65 ("community prosecution is not a program...nor is it a mere collection of tactics and strategies.... [But rather it is] a highly flexible new organizational arrangement....for dealing with crime and disorder"); and Coles and Kelling, *supra*.

a full trial caseload, and for them, the work of community prosecution occurs “on the side.” Since its inception, however, the pilot has grown into a Community Prosecution Division, which is run by a director who takes on much of the responsibility for the program.⁷

The expressed goal of Denver’s initiative is to encourage citizens to take on a larger, more vocal role in community safety and criminal justice issues and to “identify and implement strategies, at all levels, for making the community in integral partner in the justice system.”⁸ As such, much of the actual work of both the director and the community prosecutors involves more than asking residents to identify problems or encouraging them to fill out surveys about their neighborhoods. While that work occurs, along with that of identifying active community groups and leaders, it is only the beginning. The more difficult work is closer to community organizing: actually persuading citizens and community groups to come to the table as leaders and active participants in decisions effecting safety in their neighborhoods.

This is operationally accomplished in two ways. One is by establishing *Community Justice Councils* in the community prosecution neighborhoods. These councils, comprised of a residents and neighborhood leaders, business owners, city agency representatives, social service providers, police and prosecutors, meet quarterly to establish short and long range plans for community improvement and crime prevention, to devise plans to accomplish the goals and to monitor progress toward them. As in all community organizing, progress here is slow going. Globeville is the only neighborhood that has established a council that meets regularly, and it has taken two years for it to reach this point. A Capitol Hill council is just getting underway. Overcoming community suspicion or skepticism, building the confidence of citizens to participate in this novel role, and developing the sort of substantial relationships that foster cooperative work all must occur before a council functions effectively.

The second method has been to engage community members in the “adjudication” of youthful offenders. Borrowing from the quiver of restorative justice practitioners, the Denver community prosecutors have established *community accountability boards* (CABs) in a number of the neighborhoods. Citizen volunteers, after training, participate as members and eventually facilitators of six to eight member boards that confront young misdemeanor offenders, most of whom have been diverted, about their actions and the effect they have on the community and the victim. Apart from their purported usefulness as processes for victim and community restoration, the hope for the Denver community prosecutors is that CABs have the additional favorable effect of empowering citizen volunteers to participate on a deeper, sustained level in the process of addressing their community’s crime and safety issues.

⁷ Most of the information on Denver’s program was gathered during a three-day site visit with Susan Motika, Director of the Community Prosecution Division, and her staff, February 10-12, 1999.

⁸ Letter to Margaret Escamilla, Globeville Community Justice Council member, from Bill Ritter, Denver District Attorney, September 30, 1997, at 2.

Austin, Texas

Although the aspirations are the same, Austin's program has developed differently, and is differently structured from Denver's. Until a few months ago, Earle did not have a community prosecutor on staff. He had taken another course. He instead hired a former community policing beat officer as his community justice coordinator to oversee the wide range of community justice initiatives he had spoken of and put into practice over the years. This diverse and scattered portfolio includes Texas' first victims assistance program, *neighborhood conference committees* (akin to Denver's CABs), and the *Neighborhood Protection Action Committee* (an early effort to provide structure for citizen input in the criminal justice planning process), among other things. As Earle has said on many occasions, "What we're in the process of doing is sharing power with neighborhoods. We want to give them ownership of their own system of protection."⁹ The deployment of a neighborhood prosecutor appears to be just the latest strategy he is using to engage the entire community in a collaborative relationship.¹⁰

Presently, Austin's community prosecution efforts are occurring on a number of fronts, but the hiring, with federal Weed-n-Seed grant money, of a neighborhood prosecutor has focused some of Earle's efforts on a particular geographic area. Austin's neighborhood prosecutor works out of a storefront satellite police station situated in a nine square mile area populated by 30,000 in northeast Austin. Unlike the eight Denver community prosecutors, she does not carry a trial caseload and she focuses exclusively on reaching out to community members, establishing relationships and addressing quality of life issues. Within that same area, prosecutors – with the help of community members who had formed a crime watch association – built a case against a group of drug dealers, filed and won a civil injunction against five gang members restricting them from gathering on a particularly heavily trafficked corner. Earle's office has also recently started experimenting with *circle sentencing* – another concept borrowed from the restorative justice handbook, akin to conferences and CABs but for adults.

These various strategies are designed to engage citizens and to respond immediately and effectively to their concerns. For Earle, they are necessary not only to respond to the public's growing dissatisfaction with the adversary system as a method of dealing with crime, but to his own sense of dissatisfaction. Although he touts his office's conviction record, he is also quick to assert that any strategy that relies upon law enforcement alone to solve the crime problem is one destined for failure. The only way to make serious headway against crime is to strengthen social fabric:

The most powerful way to realistically affect crime is to strengthen the community. We can best do that by reweaving the fabric of community, which consists of family, extended family, neighborhood, church, school, workplace – that matrix of threads

⁹ Dave Harmon, "District Attorney Pushes Legal Tools to the Limit: Two of Earle's Moves to Give Communities Power Raise Criticism," *Austin American Statesman*, August 16, 1998, at A8. See also, Ronnie Earle, "Reweaving Tapestry of Ethics Infrastructure," *Austin American Statesman*, April 7, 1997, at A11.

¹⁰ Most of the information about Austin's community prosecution project was gathered on a March 29, 1999 visit with Ronnie Earle, Darla Gay, the Community Justice Coordinator, and Meg Brooks, the Neighborhood Prosecutor.

carefully woven over the years that gives meaning to our lives. It is that web of relationships – the ethics infrastructure – that regulates behavior, not the law.¹¹

Neighborhood prosecutors, conferencing, circle sentencing and civil injunctions take up the task where the traditional criminal process fails. But moreover, they offer opportunities to build relationships and connections. These, in turn, strengthen social fabric, which in its own turn, so the theory goes, does what Earle believes law enforcement cannot do: succeed in affecting the crime rate in the long run.

Washington, DC

Community prosecution in Washington D.C. is farther developed and more focused (and perhaps better funded) than what we have seen in Denver, Colorado, and Austin, Texas. The Fifth District Community Prosecution Pilot, as the initiative is called, operates in one of the city's seven police districts and was officially launched three years ago by the United States Attorney's Office, which serves as the local prosecutor's office in Washington. The fifth district is slightly less than 8 square miles and has a population of approximately 100,000. It is notable for the variety of its neighborhoods, from those suffering from a great deal of drug-related violence and poverty to those which are predominantly middle income and relatively safe. Like the initiatives in Austin and Denver, the fifth district pilot involves increased attention to the minor offending that bothers community residents and active participation by prosecutors in local community meetings, in this case organized as part of a new community policing initiative. But the U.S. Attorney's Office has taken its version of community prosecution a step further, integrating a community orientation into the everyday work of the office and its trial attorneys.

Nineteen prosecutors, including two supervisors, comprise the fifth district unit. Two of the line prosecutors do not carry a trial caseload, and are based in the fifth district police headquarters where they focus primarily on community partnership and quality of life issues. Like their Austin and Denver counterparts, they solicit and answer community complaints, attempt to solve as many as possible, either on their own or in partnership with city agencies or citizens. They distribute surveys and attend community meetings so that citizens have forums to voice concerns, and they try to put the weight of the U.S. Attorney's office in support of solving problems citizens and police identify. The problems they deal with are the same minor offenses that people complain about in community meetings across the country: nuisance properties, public drinking, and abandoned cars. They also provide advice to police officers on legal questions.¹²

Where Washington's experiment with community prosecution departs from other initiatives is its integration into the traditional work of prosecutors. This is possible because of the reorganization of the office on a geographic basis. Fifteen of the unit's prosecutors are trial attorneys who are each assigned responsibility for a specific subsection of the fifth district – a

¹¹ Ronnie Earle, "Reweaving Tapestry of Ethics Infrastructure," *Austin American Statesman*, April 7, 1997, at A11.

¹² Most of the information on Washington's fifth district pilot was gathered in the course of visits in December 1998 and April 1999 and conversations with CP Unit Chief Cliff Keenan and AUSAs Stephanie Miller and Deborah Sines.

police patrol service area (PSA) – which contains, on average, 20 to 30 city blocks. Different from other prosecutors in the U.S. Attorney’s office and the majority of big city prosecutors in the country, these assistants handle only those cases that come from their geographically circumscribed area. The unit prosecutors handle the full range of cases arising from their PSAs—homicides to assaults, robberies to shoplifting—from arrest through final disposition. Beyond their case responsibilities, they also attend community group meetings in their PSAs when time and will permits and work in coordination with the police that patrol the area. All of these attorneys are based at the U.S. Attorney’s downtown office.

The thorough commitment to community prosecution in the Fifth District pilot project is explained, in part, by the severity of the threat to the traditional system that was felt by the chief prosecutor. Perhaps nowhere else in the country does the prosecutor who began the initiative speak as bluntly about the alienation that many residents—overwhelmingly African-American—felt from the traditional system. Eric Holder, the U.S. Attorney who launched the fifth district pilot, observed this mistrust from the bench as a Superior Court judge and, as an African-American himself, felt a particular obligation to improve the confidence that these District residents felt in the justice system. The shame of jury nullification is a special point of reference for him when he talks about the need for prosecutors to establish “strong bonds with the community and [open] lines of communication so that they can feel the pulse of the neighborhoods they serve.”¹³ Unlike most chief prosecutors, Eric Holder was not selected by the citizens of the District, but was part of the federal government’s oversight of local affairs in the District of Columbia, oversight that had in recent memory included the prosecution and conviction of a popular and democratically elected Mayor. Opening up channels of communication, increasing the frequency of contact, and promoting responsiveness and accountability to the citizenry are good ways to improve a relationship, build trust, and perhaps, reduce the rate of nullification, if such things can ever be measured in rates.

But the urgency that Holder felt explains only some of what we find in Washington. Surely Holder could have tried to build trust or win points with the citizenry in a less thorough way, perhaps by deploying a few neighborhood prosecutors or even hiring community liaisons. Why did he go further to create a robust nineteen-member unit prosecuting cases geographically? Why did he take on the far more difficult work of integrating a community orientation into the traditional day-to-day work of prosecutors? In addition to the need he felt to respond to citizen dissatisfaction, he had the resources to act. The U.S. Attorney’s Office in Washington is the largest in the nation and receives its funding from the federal government, not local taxpayers. So Holder had access to resources that are not as easily available to district attorneys. Although he originally planned the project to work within existing funding, it quickly demanded additional funds, and these were made available.

Finally, in addition to the urgency he felt and the resources he commanded, Holder and his staff believed that reorganizing on a geographic basis would allow the office to improve its

¹³ Eric Holder, Remarks at the Formal Announcement of the Fifth District Community Prosecution Project (June 3, 1996), p. 3.

performance on traditional measures such as conviction rates in serious cases. The goal for community prosecution's proponents in Washington was to pursue the traditional objectives better and "smarter."¹⁴ Geographic integration was a tool to achieve those goals. In the 1980s, long before community prosecution had a name, the members of the office who now lead the community prosecution pilot unit were struggling to figure out how to investigate and prosecute the new generation of complex cases spawned from the crack trade. They learned that having one prosecutor be responsible for all cases arising out of a limited geographic area from beginning to end enables her to see the links between cases, or how a certain type of criminal activity has a major impact on the quality of life in that PSA. These insights gained in the crack-era prosecutions laid the foundations for the strategies that became community prosecution.

What, then, is the role of the community in all this? On one level, working with the two prosecutors stationed in the fifth district, community members identify problems on a case-by-case basis. They fill out the forms that tell the prosecutors that this house is abandoned or that that one is a shooting gallery. They call to complain about a new open-air drug market, squatters, or aggressive panhandlers.¹⁵ The prosecutors, in turn, respond to those concerns, either handling them themselves, leveraging the assistance of other city agencies, or explaining why nothing can be done. On another level, the community is an aid to the traditional work of winning cases at trial. The closer relationships that community members develop with the prosecutor in their PSA may lead to improved intelligence in active investigations, greater willingness to testify in court, production of letters to judges urging long sentences after conviction of offenders, and a level of empathy that may make jury nullification less likely.

The Washington experiment is not a total success. At a recent national meeting on community prosecution, a panel discussion on the Fifth District pilot project included a neighborhood resident who spoke about the results from her own perspective. Although she had been carefully picked for the role, she told the audience that she rated the project an eight on a scale of one-to-ten. She explained that the project had helped make the neighborhood safer and that she appreciated the dedication of the prosecutors involved. The reason she did not give it a ten, however, was its failure to address the need for alternatives to incarceration when neighborhood youths are drawn into trouble and face convictions for serious crimes. Her complaint would resonate with any careful observer of community policing in working class neighborhoods as well.

Brooklyn, New York

The Brooklyn district attorney's community prosecution program is touted as one of the oldest in the country. It shares with Washington's pilot a geographic organization, but on a substantially larger scale. In 1991, District Attorney Charles Hynes divided the borough, which is 75 square miles and populated by 2.5 million people, into five *public safety zones*. Each trial attorney is

¹⁴ Interview with Cliff Keenan, Chief, Fifth District Community Prosecution Unit, April 7, 1999.

¹⁵ Kristan Trugman, "Prosecutors Down Neighborhood Bully: Program Strives for Proactive Tactics" The Washington Times, Friday, November 13, 1998, at C11.

assigned to prosecute cases out of one of the zones; unlike the fifth district pilot, Brooklyn prosecutors remain organized by case-type bureaus within the zones. Community involvement is difficult or even unattainable at the public safety zone level. All of trial prosecutors remain based in a central office in downtown Brooklyn, often far from their zones. In this sense, Hynes' 1991 shift can perhaps be understood as a reorganization of his office into manageable units.

While Hynes requires his trial attorneys and supervisors to attend police precinct councils in their zones on a monthly basis in order to learn about community concerns, there are other means employed to strengthen community involvement. Six non-legal staff –*community liaisons* – from the office's community affairs unit attend precinct council, community board and other civic association meetings to provide a forum for citizens to voice concerns. They, in turn, report back to the central office, and efforts are made to respond, either by leveraging effort of other city agencies or on the part of the DA's office alone. The liaisons also educate citizens about the criminal process in a forum called the People's Law School.

Beyond this, the office has initiated a series of high-profile initiatives designed to address quality of life concerns and other issues that fall outside of the traditional case-processing domain. Included in these is a partnership with the board of education, police, the city child welfare agency, parents and community groups to address truancy. Another is "Legal Lives," a project that brings assistants into borough middle schools to teach students about criminal law.¹⁶

Lessons from Community Policing

Community prosecution initiatives share several ambitions with community policing. Both seek to reduce the distance, social and physical, between law enforcement and the community. Both seek to expand, in varying degrees, the role of the community in maintaining public safety. Both encourage front-line staff or officers to take initiative in reducing minor infractions of the law, from public drinking to vandalism. Both aim to collect more information from the public for law enforcement purposes. Both promote problem-solving techniques that encourage pattern analysis followed by the strategic use of a variety of government powers and citizen action, in contrast to traditional case work that responds with arrest and prosecution to individual crimes and arrests. Of course, both also contain great variety under their banners.

The two phenomena have their differences as well. Community prosecution is not generally perceived of as a reform of a failing system in the way that community policing was seen as a corrective to the unresponsive, detached and bureaucratic professional policing model. The signs of trouble in the traditional system occasionally appear in discussion of community prosecution: jury nullification, the refusal of witnesses to cooperate, disenchantment with the adversary system. But there is a greater opportunistic thrust to community prosecution than was present in the early days of community policing.

¹⁶ Information on Brooklyn was gleaned from a series of conversations and visits with Michael Frett, Deputy District Attorney and head of the Kings County Community Prosecution Bureau in December, 1998.

In both cases, there is a reluctance to confront publicly the problems within the new strategy. That reluctance is understandable in a set of activities so new, fragile, and politically charged. In light of the prosecutor's direct role in electoral politics, the reluctance may be greater in the case of community prosecution than that of community policing. Some of the difficulties encountered during the growth of community policing may therefore contain hidden lessons for both the practitioners and students of community prosecution. We describe four of those lessons here, acknowledging that there are many others as well.

Lesson One: Community Participation and Partnership is Hard to Produce and Harder to Sustain

Perhaps the most salient element of community policing was its emphasis on the new role of the community as “partner and co-producer of neighborhood safety.”¹⁷ Of course, “partner and co-producer” mean different things in different places, but where this notion of a substantive partnership was taken seriously, police expectations were largely unmet. The literature on community policing generally explains it this way: forging superficial police-community bonds was not difficult; law enforcement's great challenges and frustrations lay in organizing communities and in enlisting active, lasting participation. As Weisburd and McElroy wrote,

Perhaps scholars have romanticized the concept of community in their effort to develop a more community-oriented policing strategy. The community is often identified as a resource waiting to be mobilized. Yet ... community police officers are often confronted with settings of severe social disorganization ... not easily transformed into the kind of community organization envisioned by the community policing philosophy.¹⁸

Similarly, Randolph Grinc, in an article describing difficulties stimulating community involvement in eight jurisdictions, observed that “unleash[ing] the potential for effective organization lying dormant in communities will prove itself to be the greatest challenge facing community policing.”¹⁹

The experience of the New York Police Department's earliest community police officers can be taken as emblematic of the community policing experience in many jurisdictions.²⁰ Most of New York's community police officers (CPOs) succeeded in building relationships with established community groups, participating in and organizing community social events, and initially getting community members to identify problems. Church groups, businesses and neighborhood associations welcomed CPOs. Officers planned Halloween parties that attracted

¹⁷ Randolph M. Grinc, “‘Angels in Marble’: Problems in Stimulating Community Involvement in Community Policing” at 441, in *Crime & Delinquency*, Vol. 40, No. 3, July 1994. Pages 437-468.

¹⁸ David Weisburd and Jerome McElroy, “Enacting the CPO Role: Findings From the New York City Pilot Program in Community Policing” at 100-101, in *Community Policing: Rhetoric or Reality*, eds. Jack R. Greene & Stephen Mastrofski (New York: Praeger, 1988). Pages 89-101.

¹⁹ Grinc at 441.

²⁰ See Grinc, Weisburd and McElroy, and Michael J. Farrell, “The Development of the Community Patrol Officer Program: Community-Oriented Policing in the New York City Police Department,” in *Community Policing: Rhetoric or Reality*, eds. Jack R. Greene & Stephen Mastrofski (New York: Praeger, 1988). Pages 73-88.

hundreds and built trust. Community members were quick to identify a range of problems – abandoned lots, broken streetlights, and drug dealing and prostitution areas – for CPOs to focus on. Community boards representing neighborhoods without CPOs demanded that they get their own. But the gap between police expectations of partnership and its reality emerged after this early work of rapport building and problem identification, when CPOs had great difficulty enlisting further participation. Even worse, in neighborhoods where there was little pre-existing organization to work with, CPOs encountered the disjunction almost immediately in their efforts to encourage organization. Witness the story of the CPO who distributed 250 leaflets door-to-door to encourage formation of a citizens group but got only two inquiries in response. As Weisburd and McElroy wrote, community police officers

were generally unsuccessful in developing new community groups . . . even where [they] expended a great deal of time and effort on the community-organizing. . . [They] felt as well that they were least successful in developing problem-solving actions that relied on the assistance of individual community members . . .²¹

The same was true outside of New York City. Take, for instance, the example of Tempe, Arizona police-sponsored trash pick-ups that failed to attract community members, save for those drinking beer and watching from the sidelines.²²

What should those involved in community prosecution take away from this? Some might say the lesson is that prosecutors simply should not expect the community to be a true “partner and co-producer of neighborhood safety” and initiatives that aim for this are likely to fail. After all, it is clear that some of the reasons for disappointing levels of community involvement and substantive partnership—the historically poor relationship between law enforcement and the community; community skepticism of about fleeting “programs”; fear of retaliation; and poor law enforcement understanding of communities—still persist. Indeed, some community prosecution initiatives, like many community policing programs, already operate on the assumption that they cannot count on community participation, viewing the community’s role as passive recipient of services and information.

The more challenging lesson to draw is that building a partnership in which law enforcement agencies engage communities in solutions and foster community organization is intensely difficult work. It will take time, but it is achievable, albeit in different forms in different communities. In some neighborhoods that partnership may be with block and crime watch associations. In others, it will be with precinct councils and church groups. In these places, partnership with the community feels just like that: partnership *with the community*. In other neighborhoods – often the most troubled – the partnership will be difficult to develop and will feel thin. Like the experience of the New York’s CPOs, it will take distributing 250 fliers door to door to generate interest of two people in organizing a community group. But as we have learned from the example of grass-roots community anti-drug programs, with the assistance of law

²¹ Weisburd and McElroy at 100.

²² Grinc at 451.

enforcement, a small group of people – sometimes just two people – can band together and have a positive impact on crime and disorder in poor, disorganized neighborhoods.²³

These difficulties of engaging community residents also suggest lessons about the strategy of selecting sites for community prosecution initiatives. The neediest, most disorganized neighborhoods are the ones where community prosecutors are likely to encounter the most frustrations and the most difficult work. For jurisdictions committed to substantial community partnership but also looking for a big win relatively quickly, these communities may not be good places to start a community prosecution project. For jurisdictions less concerned with enlisting the community as a “partner” and which view community prosecution as an opportunity simply to improve communication, responsiveness, and service to the community, this lesson may be less important.

This sort of strategic thinking is apparent in some of the community prosecution initiatives described above. The Denver community prosecutors picked Globeville as the first neighborhood to create a community justice council precisely because it had some of the characteristics that would make such an undertaking a more likely success. While the poverty rate hovers at close to 50 percent and the crime rate is higher than in other parts of the city, the neighborhood has a number of powerful assets such as home ownership in excess of 50 percent, an active civic association and a substantial business presence.

Lesson Two: Internal Work May be as Critical to Program Survival as External Work

Community policing has been described by some as a battle for the hearts and minds of police officers. Yet in many jurisdictions insufficient attention was paid to the internal persuasion and education necessary to generate support for the program among police officers themselves. A substantial amount of research indicates that the proponents of community policing underestimated the level of resistance within their departments and failed to make education and training of police officers a priority. As a result, officers both inside community policing units and outside of them had little understanding of its tenets and dimensions. Without more information, most officers naturally associated community policing with its most visible aspect: community outreach and neighborhood organizing. Because this was so removed from the patrol and arrest priorities with which officers were most familiar, it was easy to resist and caricature as “social work,” “smile and wave,” and “Officer Friendly.” Several accounts report that it was common for officers not involved in community policing to develop a strong resentment of community police officers in the belief that they were part of a special program that was significantly easier than traditional police work.²⁴

²³ Barbara Smith & Robert Davis, “Successful Community Anticrime Programs: What Makes Them Work?” in *Drugs and the Community: Involving Community Residents in Combating the Sale of illegal Drugs* (Springfield, IL: 1993), 123-137.

²⁴ Susan Sadd & Randolph Grinc, “Innovative Neighborhood Oriented Policing: An Evaluation of Community Policing Programs in Eight Cities” in *The Challenge of Community Policing*, 27-52 (Thousand Oaks, CA: Sage Publications, 1994).

An obvious lesson to take from this would be to inform and train everyone in a prosecutor's office, not only those involved in community prosecution, about its objectives, theories, and methods. But that is too simplistic. As was true of early experiments in community policing, community prosecution is often introduced on a small-scale basis and with little money behind it. Office-wide training is rarely possible on small budgets. So, what else can be done to encourage acceptance and minimize intramural hostility to new initiatives?

One important lesson is that community prosecution's proponents must find ways to connect its elements to the everyday work of traditional prosecutors. The typical assistant district attorney probably has to find something useful in community prosecution – better intelligence for her cases, improved witness participation, less jury nullification – in order to buy into it. Holder and the leaders of Washington's fifth district pilot appear to have been more successful than most on this level. Yet, geographic organization is not the only answer. In fact, some literature on the prevention of witness intimidation even suggests that community prosecution has an important role to play in intimidation prevention. On one level, community-based prosecutors are well positioned to establish a presence in a neighborhood, interact with citizens and groups, and build the sort of trust needed to facilitate witness cooperation. Not only does a presence promote greater trust of prosecutors on the part of community members, but it also helps prosecutors become more attuned to victim and witness needs.²⁵

The other lesson in this literature is that attempts to persuade traditional prosecutors through community justice rhetoric are unlikely to succeed. Not surprisingly, the temptation is great among oral advocates to rely on the powerful rhetoric of community prosecution to convert non-believers. After all, the language of community policing and prosecution

has appeal because it evokes powerful metaphors that play to contemporary cultural themes. It responds to an affection for less conflict and greater personalized treatment of an imagined past. [It] . . . taps a nostalgia for the U.S. democratic grass-roots tradition of citizen initiative and melds it with impatience with an unresponsive law and cumbersome government bureaucracy. It offers instead a government that acts to enhance the "natural" mechanisms of social control peculiar to a locale rather than imposing an inflexible alien order.²⁶

Yet, as the example of community policing demonstrates, and as anyone who is familiar with prosecutors can attest, the cultures in law enforcement offices are powerfully rooted and deeply cynical about idealistic rhetoric.

This lesson may be just as important for conversation among the believers. The rhetoric of community prosecution should not be allowed to obscure or "shroud" the difficulties involved in

²⁵ Kerry Murphy Healey, *Research in Action Victim and Witness Intimidation: New Developments and Emerging Responses*, 11 (Washington DC: National Institute of Justice, 1995); see also, Healy and Peter Finn, *Preventing Gang- and Drug-Related Witness Intimidation*, 49-55 (Washington DC: National Institute of Justice, 1996).

²⁶ Stephen D. Mastrofski, "Community Policing as Reform: A Cautionary Tale" at 47, in *Community Policing: Rhetoric or Reality*, eds. Jack R. Greene & Stephen Mastrofski (New York: Praeger, 1988). Pages 47-67.

its daily practice. In *Community Policing as Reform: A Cautionary Tale*, Stephen Mastrofsky made a similar point, noting how appealing rhetoric obscured contradictions and complexities. Seductive rhetoric, if not balanced with talk of the practical obstacles, can blind those doing the work of community prosecution from the difficult realities of their jobs. Expectations blown out of proportion by rhetorical excess may lead to disappointment, poor morale, burnout, and even political failure. For example, one account of community policing usefully quotes an officer early and later in his experience with community organizing.

My major role will be as an organizer . . . I'm out there to organize and get everybody to cooperate together . . . I feel once they see me on a regular basis, the laws themselves will be enforced by the people in the area.

* * * *

I expected the community to be a lot more involved than they are. I figured, you know, in the beginning, everybody was high on it . . . I thought more people would want to get involved and have block association meetings. The energy just isn't there and there was nothing I could do to make them get involved.²⁷

This may prove a particular danger with young assistant prosecutors who, like the untested community police officers before them, are in this respect impressionable.

Lesson Three: The Definition of Community and its Role Will Have an Impact on Program Success

Prosecutors should choose the locations for their community prosecution initiatives strategically and with great care. Not only should the communities be relatively small, but their boundaries should correspond with local understandings.

Success in building sustainable community links often relates to the size of the territory one is responsible for. In the case of the community policing officer pilot in Brooklyn's 72nd precinct, beat officers were given small areas of coverage, 14 to 18 blocks, which enabled them to get to know, and take their cues directly from, members of the community.²⁸ Evaluations of community policing have told us that *visibility* (e.g., active, recognizable beat officers, storefronts) was a critical feature of initiatives that were more successful in strengthening bonds with the community. Smaller sites optimize this effect.

As for how the community is delineated, it can be detrimental if the community is selected based on criteria of administrative ease – for example, if it is defined by precinct or district lines merely because that is the easiest way for the implementing agency. As Christopher Murphy noted in his study of two Toronto community policing districts, they bore “little resemblance to a ‘natural’ conception of community [and] . . . had little meaning to residents.”²⁹ The lesson here is

²⁷ Weisburd and McElroy at 98.

²⁸ Farrell at 83.

²⁹ Christopher Murphy, “Community Problems, Problem Communities, and Community Policing in Toronto” at 398, in *Journal of Research in Crime and Delinquency*, Vol. 25 No. 4, November 1988, Pages 392-410.

a simple one: chances for engaging the community are better when it actually is a community. How this plays out for Earle's initiative in Austin will add to the learning. On one hand, the nine square mile section of northeast Austin for which the neighborhood prosecutor has responsibility is sprawling. On the other, it is composed of a number of discrete neighborhoods – St. John's, Coronado Hills, Windsor Park, University Hills and Pecan Springs – that have strong associations and senses of identity, two things that could foster success.

What of the roles given the community? Whether the work of community prosecution is to be done in organized and vital neighborhoods, or those lacking vitality, prosecutors should find innovative and meaningful ways of engaging community members. Token opportunities to volunteer or just talk with local prosecutors at meetings, for example – will do little to instill in a community member a sense of ownership (if that is something the prosecutor is interested in encouraging).

Rob Davis and Barbara Smith's look at what makes successful grass roots anti-crime programs work lends support to this point about the import of citizen ownership. As noted earlier, one of their most important findings was that even in some of the poorest and least organized neighborhoods, citizen anticrime initiatives are capable of functioning successfully. One of the important ingredients for their success and maintenance was the support of law enforcement. But where citizens are already active, law enforcement should be careful not to co-opt or overrun citizen-based efforts. Community members often devise legitimate responses to their own safety concerns that indeed benefit from law enforcement assistance, but may in fact wilt under assumed or unwelcome law enforcement authority and control.³⁰

Lesson Four: Build Early Partnerships with Other Agencies

Community policing often developed as an isolated phenomenon within police departments, making it difficult for officers to enlist the help of other agencies when a problem lent itself to solutions out of the hands of the police. In an evaluation of eight community policing sites – Hayward, California; Houston, Texas; Louisville, Kentucky; New York, New York; Norfolk, Virginia; Portland, Oregon; Prince George's County, Maryland; and Tempe, Arizona – Susan Sadd and Randolph Grinc noted that in all but one site, there was a failure to “establish adequate problem-solving links between the police department and other city agencies.” The researchers found that community policing, in general, was “an isolated police department phenomenon” that did not include city agencies.³¹ In light of the rhetorical commitment in community policing to creative problem solving and responsiveness to community concerns, this was a perplexing finding.³²

Almost universally, community police officers – and community prosecutors, for that matter – like to talk about an early epiphany that goes like this: “We thought we knew what the

³⁰ Smith and Davis.

³¹ Grinc at 441.

³² Gary W. Cordner, “A Problem-Oriented Approach to Community-Oriented Policing” in *Community Policing: Rhetoric or Reality*, eds. Jack R. Greene & Stephen Mastrofski (New York: Praeger, 1988). Pages 135-152.

community cared about: homicides, rapes and other violent crime. But we were wrong; they're concerned about graffiti, overgrown yards, trash, poor lighting on the streets, barking dogs, and abandoned houses." But most of the solutions to these more mundane problems lie beyond the traditional law enforcement domain. Certainly, a jurisdiction that promises to work with the community to solve its problems needs to be able to deliver on its promises or risk the loss of credibility. And for many of the things community members complain about, delivery requires the cooperation and efforts of city agencies. The city or county attorney, the housing authority, or the sanitation department are examples. It is not uncommon that community residents fail to distinguish where the jurisdiction of one city agency begins and another ends, but it is not particularly helpful for prosecutors or police to respond to these requests with a lecture about the limited reach of the prosecutor or the police department.

Even if community prosecution is organized entirely within the district attorney's office, it makes sense to form working relationships with government agency partners early, ideally in the planning process.

An example of both this quandary and its solution can be found in Austin. In her early work in northeast Austin, Earle's neighborhood prosecutor has observed that most of the issues that community members raise involve ordinance and misdemeanor violations, which lie outside of her office's jurisdiction and with the city and county attorneys' offices. She cannot address these issues without the assistance of the city and county attorneys. Because Earle has engaged those entities in earlier initiatives, such as the Travis County Community Justice Council, the groundwork of cooperative work has already been established and may be available for her to tap into.

Implications

What are the implications for research of these early experiments in community prosecution, and of the dangers they confront?

First, just as community prosecution can be understood only by reference to the particular purposes it serves in a jurisdiction, research on community prosecution must be clear about its own purposes. Are we trying to understand this phenomenon as a piece of contemporary politics? Are we trying to promote community engagement and accountability throughout the justice system, including in prosecution? Are we trying to build a body of technical knowledge about the implementation of this reform (or reform generally) within a prosecutor's office? Are we trying to understand the changing nature of criminal justice in the United States as it confronts a series of fundamental challenges to its professional competence, to the adversary model, and to its accountability to communities?

Second, whatever its purpose, research on community prosecution ought to take seriously the critical commentary available already in the literature on community policing. Especially in light of the pressures to emphasize the positive and downplay the difficulties, the research literature on the problems in the implementation of community policing represents a valuable store of

knowledge useful to the practitioner and crucial for the formation of more general theories about the meaning of this movement.

Third, we need more descriptive research on the meaning of community prosecution at the front lines of the justice system. Have any of these initiatives made a difference in the way individual cases are prosecuted on a broad scale? How are they understood by line prosecutors, police, and neighborhood residents other than those deeply involved?

Fourth, it would be useful to stand back and assess the appearance of community prosecution in the larger context of challenges to the justice system more generally at the end of this century. Perhaps the importance of community prosecution in the long run will not be the particular programs that it creates, but the deeper criticisms to which it is responding, at least in some jurisdictions. Rather than a movement, what we may be seeing is the opening of some political space into which one or two prescient public officials may be able to insert the seeds of a radically new approach to justice.