Red Hook Community Justice Center: One Court’s Efforts to Incorporate Restorative Practices

Continuing Legal Education Materials

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CLE: 0.5 CLE in Ethics and 1 CLE in Areas of Professional Practice
Red Hook Community Justice Center: One Court’s Efforts to Incorporate Restorative Practices

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Biographies

**Amanda Berman** is the project director of the Red Hook Community Justice Center, the nation's first multi-jurisdictional community court. Amanda leads an interdisciplinary team of staff members who take a restorative and problem-solving approach to reduce the use of incarceration and address the underlying issues that bring people into the justice system. Prior to joining the Center for Court Innovation, Amanda served as the senior director of court advocacy for the Fortune Society, where she oversaw court operations for alternative-to-incarceration programs. Amanda began her career as a public defender at The Bronx Defenders, where she represented clients from arraignment through disposition and trial, on cases ranging from misdemeanors to violent felonies and homicides. She also served as a trainer, supervisor, and team leader at the organization. Amanda holds a J.D. from New York University School of Law and a B.A. from Brown University.

**Olivia Dana** is the Deputy Director of Research-Practice Strategies at the Center for Court Innovation. Research-Practice Strategies seeks to improve justice system responses to both defendants and victims and to promote racial justice. Olivia was previously the project director of the Staten Island Justice Center, which provides pretrial supervision, alternatives to incarceration, and other community-based programming to the Staten Island community. Prior to joining the Center for Court Innovation, she served as an Assistant District Attorney at the Kings County District Attorney’s Office in Brooklyn, New York. In that role, Olivia prosecuted criminal cases utilizing the many diversion programs offered at the Red Hook Community Justice Center. She holds a B.A. from Fordham University and a J.D. from the University of Michigan Law School.

**Alex Perlin** has been a public defender for over 8 years. After starting his career in Trenton, NJ, he moved to Brooklyn Defender Services, where he works in the Hook Community Justice Center. There, he provides clients with legal defense and helps connect them to mental health and drug counseling. The model of the court focuses on alternatives to incarceration and procedural justice, with many services that connect the community, defendants, and the court.

**Sherene Crawford** is the project director at Midtown Community Court where she is responsible for overseeing the court’s long-range planning and day-to-day operations. In this role, Sherene leads an interdisciplinary team of staff members who assess and link defendants with services, monitor compliance, oversee community restitution and early diversion projects, provide on-site social services and collaborate with government and community stakeholders to promote principles of procedural justice and community engagement. Prior to joining the Center for Court Innovation, Sherene worked for the National Network for Safe Communities at John Jay College of Criminal Justice as Deputy Director for the Institute for Innovation in Prosecution and as a Senior Policy Advisor. She also previously served as Assistant District Attorney at the New York County District Attorney’s Office. Sherene received her J.D. from New York Law School and her B.A. in Women’s Studies from the University of Minnesota. She is a licensed attorney in New York State.
Failure of existing rules is the prelude to a search for new ones.
—Thomas S. Kuhn

If you find yourself in a hole, stop digging.
—Will Rogers

Community courts are uniquely local institutions that strive to deliver a more responsive brand of justice. Although each program is “specifically tailored to reflect the needs of the neighborhood it serves,” all courts share a fundamental commitment to engaging communities and offering meaningful alternatives to incarceration. The model is deliberately flexible to account for a jurisdiction’s resources and constraints, allowing for recent replications in smaller towns like Milliken, Colorado, and in larger cities like Newark, New Jersey.

One of the enduring critiques of community courts is that they are perceived by some to deny defendants their constitutional guarantees of due process of law. Furthermore, it is often alleged that a less-than-zealous defense bar is complicit in the denial of these protections. However flawed, this critique has effectively stifled discussion about criminal defense practice in community courts. It has been nearly two decades since the launch of the first community court, and yet the role of the defender remains the proverbial elephant in the room for many proponents of the model. But the time is ripe for an open dialogue about this critical issue. Contrary to the familiar objections, community courts can actually enhance defense practice by providing opportunities for heightened advocacy and individualized case resolutions that go beyond the traditional sentencing options of jail and fines.

Upon closer inspection, the typical defense objections to community courts fall squarely into one of two categories: (1) concerns about a lack of adversarial process and (2) concerns about a lack of proportionate sentencing. This article focuses on the questions and criticisms most frequently raised by practicing lawyers—not academics; not straw men. To frame the discussion and provide a look at commu-
Community Justice Center, a community court in Brooklyn, New York:

- James is a 32-year-old male who uses heroin and has a criminal record dating back 13 years. He has 14 prior misdemeanor convictions but no felony record. James currently has an open misdemeanor warrant and has been arrested on a new charge of drug possession. This is James' first time in a community court, and he initially assumes that the judge will automatically set bail based on his record. However, his attorney advises him about treatment options, and James agrees to be assessed by a social worker prior to arraignment. Although James agrees with the social worker's recommendations for drug treatment, including a seven-day inpatient detoxification program ("detox") to safely withdraw from opiate dependence, to be followed by a 28-day inpatient rehabilitation program ("rehab") to begin the hard process of recovery, he doesn't feel ready to plead guilty to the charges just yet—even in exchange for a promise of dismissal from the prosecutor upon the completion of treatment. Pursuant to the advice of counsel, James agrees to enter detox and rehab as formal conditions of release; after successfully completing these programs and taking some additional time to discuss the merits of the prosecutor's case with his attorney, James accepts the terms of the plea bargain on the next court date. James is credited for the period of inpatient treatment, and he is mandated to complete the remainder of his sentence in an outpatient program.

- Natalie is a 24-year-old female in community court for prostitution; this is not her first contact with the justice system, but up until now she has managed to avoid a criminal record. After interviewing her, Natalie's attorney is concerned about cocaine addiction and the likelihood that she will soon obtain a criminal record, resulting in her eviction from public housing along with a host of other collateral consequences. Natalie agrees to be assessed; she then discloses to the social worker a history of childhood sexual abuse, recent engagement in sex work, and several years of cocaine use. The social worker recommends an outpatient program that specializes in the treatment of substance use and trauma. After speaking with her attorney, Natalie agrees to attend two mandated sessions at the outpatient program in exchange for a dismissal of the charges. Her attorney advises her about the benefits of continuing in the treatment program on a voluntary basis.

- Bonnie is a 40-year-old female with a lengthy criminal record dating back 10 years. She is being charged with possession of a crack pipe, though she vehemently denies guilt and refuses to even consider a plea—and there is "no way in hell" she is speaking to a social worker. Given the charges, her attorney successfully advocates for release without bond or bail. Bonnie returns to court on her next scheduled appearance and ultimately goes to trial before the community court judge. She loses at trial and is sentenced to complete community service and attend an on-site treatment readiness group. Bonnie reports that she is satisfied with the process and the outcome.

- Bruce is an 18-year-old male who received a summons for drinking in a local park, a noncriminal offense usually resolved with a $25 fine. The community court judge discovers after inquiring that Bruce recently dropped out of school and is planning on getting a GED "at some point." The judge tells Bruce that he would be willing to waive the fine and dismiss the case if he simply goes upstairs to speak with the on-site GED teacher about the program; there are no other requirements, and Bruce's attorney encourages him to take the offer.

Zealous Advocacy

Far and away, the most common defense objection to community courts is a perceived lack of adversarial process. Defense attorneys can be quick to cite the prevalence of plea bargaining as prima facie evidence of such paucity. This critique often frames community courts as "plea-bargain mills," churning out plea agreements at the expense of due process, compelling defendants to accept deals rather than fighting their cases at trial. For starters, as any follower of the criminal justice system could tell you, a very small percentage of cases in the American legal system ever make it to trial. In the regular criminal justice system, over 90 percent of criminal defendants end up taking pleas; in some jurisdictions, the number can go up into the high 90s. There is no quantitative evidence to suggest that community courts have increased the rate of plea bargaining—but they may have improved the quality.

Community courts are designed to provide attorneys on both sides of the aisle with a broader range of options and resources from which to craft plea agreements (certainly more than they would ever have in a traditional court setting).
With the exception of Bonnie, in the cases described above, the defense attorneys were able to negotiate pleas in the community court that were uniquely tailored to the needs and interests of their clients. Although the cases were all technically resolved through plea agreements, the substance of those dispositions varied significantly, responding to such complex issues as substance use, trauma, and access to alternative educational programs. Community courts raise the practice of plea bargaining to a more nuanced and individualized art.

Bonnie’s and James’ cases also demonstrate that there is a place for adversarial process in a community court setting. Defense attorneys tend to look skeptically on the fact that most community court jurisdictions are limited to misdemeanors and violations. Because these cases are not considered as serious and rarely go to trial in traditional court settings, some practitioners make an assumption that community courts are handling these matters without much in the way of due process. Additionally, the focus on social services and other alternatives to incarceration is somehow seen as diminishing the adversarial process. The view from the ground is rather different. Adversarial process and community court practice are not mutually exclusive; indeed, often they can enhance each other.

Defense attorneys tend to look skeptically on the fact that most community court jurisdictions are limited to misdemeanors and violations. Because these cases are not considered as serious and rarely go to trial in traditional court settings, some practitioners make an assumption that community courts are handling these matters without much in the way of due process. Additionally, the focus on social services and other alternatives to incarceration is somehow seen as diminishing the adversarial process. The view from the ground is rather different. Adversarial process and community court practice are not mutually exclusive; indeed, often they can enhance each other. At the end of the day, in any criminal matter, procedural protections are always a threshold consideration, but a community court adds additional capacity for attorneys to craft more meaningful resolutions—due process and “due outcomes.”

Before leaving the subject of plea bargaining, it is important to address the criticism that defendants’ due process rights are jeopardized if they are required to plead guilty in order to participate in a community court program. In fact, some community courts do require defendants to take pleas before accessing services, while others allow defendants to commence services as a condition of release (as in James’ case) or as part of a pre-plea diversion strategy. Inherent in this argument is the view that the defense attorney’s role is fatally compromised in these situations: If the attorney decides to contest the charges, he or she does so at the expense of a client obtaining much-needed help.

The reality is far more complicated. In state courts, these same defendants would almost always plead to receive short jail sentences without any type of social services. One criminal justice practitioner paints an even starker portrait: “Let’s face it, in the traditional urban criminal justice system, defense lawyers don’t have time to talk to their clients. You don’t have time to investigate. You have completely coercive plea setups.”11 Nor would these defendants have an opportunity to have their pleas vacated and records expunged, as routinely afforded to defendants in community courts.

Where a guilty plea is required for community court participation, a majority of defendants make an informed decision with counsel to participate. Furthermore, in many of these courts, if the defendant does well, the pleas are vacated, the charges are dismissed, and the defendant walks away without a criminal record.

In a similar vein, defense attorneys practicing in community courts are sometimes described as “setting their clients up to fail” by pleading them out to service requirements with which they will—presumably—not be able to comply. But no one can predict with any certainty which clients will succeed or fail ex ante. Moreover, this line of criticism seems to imply that pleading to a definite short jail sentence is somehow less of a failure than a plea that holds the prospect of avoiding jail altogether. Separate and apart from how the case turns out in the end, it also is important for attorneys to consider their clients’ perceptions of fairness and personal interests in justice. A 2006 study found that 85 percent of criminal defendants reported that their cases were handled fairly at the Red Hook Community Justice Center; these results were consistent regardless of a defendant’s case outcome.12 This suggests that attorneys may be too quick in calling a case a failure based solely on a calculus of wins and losses. As one defense-minded academic practitioner suggests, “lawyers may know what is best in the courtroom, but they do not always grasp what is best for the client.”13 Although Bonnie lost in the courtroom, she was satisfied with the way her case was handled and with a resolution that included a social service component.

The real issue that defense attorneys in community courts should be concerned with is ensuring that their clients are adequately assessed and connected with appropriate services, thereby maximizing their chances of success. If a defendant has repeatedly failed in drug treatment programs, for example, perhaps a more comprehensive assessment and holistic intervention would prove efficacious. Natalie’s clinical presentation is quite common: Substance use often signifies an attempt to cope with a history of traumatization; co-occurring mental disorders, such as depression, anxiety, and post-traumatic stress, are also pervasive among adolescents and adults who use substances. One defense-minded academic provides vivid insight into how she would counsel a client to avoid an inapposite service plan: “If you’re asking whether I would advise somebody who has jumped a turnstile to go into the mental health system, as it now exists, then my answer would be a flat ‘No.’”14 However, she goes on to describe a more nuanced calculus, balancing advocacy, on the one hand, with sensitive and informed counsel on the other: “If you ask me whether I would put this person in a program that somebody has investigated, that targets this defendant’s particular needs, and that gives this defendant a second chance if that type of treatment doesn’t work, then I might have a different reaction.”15

Along these lines, defense attorneys need to advocate for realistic expectations. Ultimately, if interventions like drug treatment are to be considered legitimate alternatives to incarceration, it is the responsibility of the defense attorney to help the court to understand that “relapse is a part of recovery” and that, for many defendants, a higher level of care is a more effective sanction than a short stint in jail. In the universe of community courts, these kinds of arguments need to be as much a part of a defender’s practice as hearsay objections and bail applica-
tions. For practical purposes, this is an issue that should either be thoroughly discussed in the planning process for a community court or used as a training opportunity in existing courts.

Finally, an overarching criticism of defense attorneys in community courts is that they are "team players" who have relinquished their ability to zealously advocate for their clients on a day-to-day basis. The argument typically goes something like this: Defense attorneys who repeatedly appear before the same judge and across from the same prosecutor in a smaller court setting are at risk of becoming chummy and less comfortable being argumentative. In our experience, a defense attorney's brand of lawyering is primarily influenced by the local professional community, such as the practices of their fellow lawyers, rather than their specific court assignment. Some places have historically had strong defense bars; others have not. Like any frontline practitioners, defense attorneys in community courts need to be on guard for complacency and falling into routines after years of dealing with large numbers of similarly situated cases and clients. Similarly, if there is ever a concern about, say, neutrality, defense attorneys may need to advocate for recusal of a judge during the sentencing process.

It is also important to note that community courts are not drug courts. Although many community courts connect defendants to drug treatment programs, the language of team play has never been a part of the model or the vernacular. There may, however, be some conflation of community courts with defense attorneys' objections to drug courts, but there is certainly no expectation that defense attorneys in community courts will comport themselves as members of a team, even if savvy defenders recognize an opportunity to obtain better deals for their clients by playing in the same "league" as the prosecution.

Proportionality
Defense attorneys worry that community courts engage in disproportionate sentencing practices; these apprehensions tend to center around a process of "net-widening." To avoid confusion, it is important to note that there are at least two distinct iterations of the net-widening concept—one of which concerns law enforcement tactics. For our purposes, "net-widening" describes the argument that community court practitioners inappropriately consider nonlegal factors in determining the length and scope of criminal sentences, thereby extending and expanding defendants' exposure to the criminal justice system.

At various points throughout the life of a case, community courts deliberately pay attention to an array of variables, including the clinical and social service needs of defendants, the voices of crime victims, and the quality of life in communities. Although community courts can and do render legally appropriate case dispositions, there is a need for defense attorneys to remain vigilant around sentencing. It can be tempting for well-meaning judges or prosecutors to try to "fix" a defendant with a heavy-handed intervention. It is critical for defense attorneys to always—regardless of the court setting—remain alert for signs of disproportionate sentencing practices masquerading as good intentions.

But by and large, a savvy defender can often achieve a much more favorable resolution in a community court than would otherwise be available in a traditional setting. Although defense attorneys may consent to a longer period of court involvement than they would for a similarly situated defendant in a traditional court, they are often doing so in exchange for a promise of dismissal upon completion of the obligations. As Natalie's attorney clearly understood, dismissal of the charges precludes the collateral consequences of a conviction (eviction from public housing, deportation, barriers to employment, to name a few), which are typically far more severe and enduring than the
sentence itself. As one scholar observes, “collateral consequences of a misdemeanor or even a violation conviction can be substantial and are often inadequately explained to a defendant. They are also overlooked by most of the actors in the system and, if considered, may well violate our basic notions of proportionality.” In fact, historically, defense attorneys were trained to ignore legal issues that were not considered criminal in nature, and oftentimes would refer clients to civil attorneys to deal with so-called peripheral matters. When viewed in the context of collateral damages, pleas to short jail terms appear far more punitive and devastating than a period of court-monitored social service in a community court.

Ultimately, the length and scope of any disposition should be determined by a legal calculus, one informed by substantive law, concerns about collateral consequences, and “the going rates” in a particular jurisdiction. Natalie’s case is illustrative. Natalie presents with a range of complex and disconcerting clinical needs, but her criminal charges are relatively minor. Notably, Natalie’s lawyer is mindful of her role as attorney and counselor at law: Although she advocates for a legally proportionate sentence, she also advises her client to consider the benefits of treatment beyond the life of the court case. It is quite possible for defense attorneys to advocate for their clients’ legal rights while facilitating linkages to social services in community courts, as long as they remain mindful of their ethical moorings and the going rates.

By Way of Conclusion
At the end of the day, the community court model does not abrogate the primacy of due process and zealous advocacy in criminal matters. A recent article about alternative courts in Wisconsin sums up the point quite nicely: “Unchanged are the responsibilities to protect client confidences, to provide competent representation, including investigation of the facts and law, and to present an informed assessment of the case, enumerating the client’s choices and the likely consequences of each.” Of course, each jurisdiction has its own practice ethos for defense attorneys, and some are certainly more zealous than others. In our experience, the style of community court you end up with is largely dictated by the planning process that went into its creation. But regardless of local differences, expanded sentencing options need not and, more importantly, should not attenuate procedural protections or fair process.

But that’s not the whole story; community courts can actually enhance criminal defense practice. There are opportunities for zealous advocacy, to be sure, but also the resources and infrastructure for more substantive resolutions than would otherwise be possible in a traditional court setting. Why limit our notions of fairness and justice in criminal proceedings to process? Why advocate so forcefully for a robust process of determining guilt, only to then settle for such limited sentencing options as incarceration, fines, or supervision? And even for those attorneys who say, “why should I bother having my client do any services when I can get my guy off?,” the question remains: Get him off to what? The revolving door of the criminal justice system? A life of crime? Untreated addiction or mental illness? As one defender poignantly reminds us, “[j]ustice simply, the criminal justice system is the last stop for many clients.”

There are still questions to be answered, debates to be waged, chartalas to be confronted, and problems to be solved with respect to community courts and the zealous defender. This is an innovative area of practice, and as the old adage goes, nothing worth doing in life is ever easy. But whether one views the proliferation of community courts as a paradigm shift (i.e., a new way of doing business), or perhaps just a finer articulation of what the framers actually had in mind when it comes to criminal justice (i.e., a better way of doing business as usual), there is little evidence to document that they have fundamentally modified the defender’s role in criminal proceedings.

Endnotes
4. For a comprehensive primer on community courts, see Julius Lang, Ctr. for Court Innovation, What Is A Community Court? How the Model Is Being Adapted Across the United States (2011).
5. Milliken Community Court; launched in 2011.
7. Midtown Community Court (New York, NY); launched in 1993.
8. The following examples have been carefully written to protect privacy, and all names and identifying information have been changed.
9. GED is the common abbreviation for General Education Development, an alternative to traditional high school.
14. Kim Taylor-Thompson, quote in Feinblatt & Denckla, supra note 11, at 211.
15. Id.
16. For a more comprehensive discussion about the differences between community courts and drug courts, see Aubrey Fox, Ctr. for Court Innovation, A Tale of Three Cities: Drugs, Courts and Community Justice (2010).
17. See, e.g., Nat’l Ass’n of Criminal Def. Lawyers, America’s Problem-Solving Courts: The Criminal Cost of Treatment and the Case for Reform 12 (2009) (stating that “[d]rug courts seek to impose a team concept on defense lawyers, creating difficult ethical dilemmas and virtually no role for private counsel”).
20. Steinberg, supra note 13, at 626.
Lessons from Community Courts

Strategies on Criminal Justice Reform from a Defense Attorney

by Brett Taylor
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Introduction: Idealism Confronts Reality

I first met Robert in New York City in 1993. I was his public defender on a drug possession case. He was one of a seemingly countless sea of drug-addicted people caught up in the criminal justice system in Brooklyn back in the early 1990s. Due to New York’s harsh drug laws and Robert’s previous drug-related convictions, he was facing a minimum of two to four years in prison for possessing about a half-dozen $10 bags of heroin. He was barely 24 but looked much older as a result of years of drug use. After several court appearances, we were able to get a plea to a sentence of one year in jail, of which he would only serve about eight months. Robert was excited to take the deal and we both considered the resolution of the case a success.

Growing up in a blue-collar town, I encountered many people like Robert—people who got into trouble with the law as kids on minor offenses and began cycling in and out of the justice system. I saw how ineffective the justice system was in many cases. Instead of breaking the cycle of addiction and criminal behavior, the justice system was either too harsh or too lenient; some would receive the proverbial slap on the wrist while others wound up with stiff penalties. Judicial decisions sometimes appeared to be arbitrary and inconsistent.
When I made it to law school, I decided, like many other idealistic future lawyers, that I was not going to repeat those mistakes. I was going to protect people’s rights and keep the justice system working like the textbooks said it was supposed to operate.

Unfortunately, I lost my idealism pretty quickly.

My experience was typical of many public defenders. I found myself in a state court system juggling a large caseload, dealing with multiple cases in multiple courtrooms each and every day. Nearly every case was plea-bargained and many times little to no formal investigation of the case occurred. At arraignments decisions were made in minutes, but the repercussions on the defendant often lasted a lifetime.

And what happened to those big, glorious cases in which I imagined I’d be righting the justice system’s wrongs? I learned that the reality is that most cases in state court systems are low-level, non-violent cases that are almost always resolved with plea-bargained sentences ranging from “time served” to a few months in jail. Defendants often ask for these deals since they know that the trial process can take many months and pleading out their case allows them to get out of jail quicker—and for those suffering from substance use disorder, a quicker return to getting high.

Robert was a typical case for me. Drug courts were in their infancy back then, and receiving social service-related sentences was not the norm in criminal court, especially for low-level offenders. What was the norm was harsh collateral consequences from plea bargains. A conviction often impacted jobs, housing, the right to drive, or the ability to receive student loans.

I found it frustrating to work on cases where my clients’ problems—like problematic use of drugs and alcohol and mental illness—were obvious but were never addressed by the court.
Red Hook Community Justice Center

When I heard that an experimental project called a community court was set to open in Red Hook, Brooklyn, in the Spring of 2000, I asked to be assigned there.

Many colleagues asked why I would want an assignment that would consist primarily of misdemeanor charges and not trying cases before a jury. The answer was pretty obvious to me: the new court promised better outcomes for my clients, ones that went beyond adjudication and punishment to offer my clients tools to help them lead healthier, safer, and law-abiding lives. I knew the impact of these outcomes would go far beyond my clients: if you improve the life of one person, you’re also improving the lives of that person’s family and ultimately their community. These were the very things that I, as an idealistic law student, hoped to achieve when I entered law school.

The Red Hook experiment was inspired by the example of the Midtown Community Court, which opened in Manhattan in 1993 as the first community court in the U.S. Like the Midtown Court, the Red Hook Community Justice Center wanted whenever possible to replace short-term jail sentences with community restitution assignments and mandated participation in social services.¹

In the past, a client who pleaded guilty in New York City’s centralized court system to charges like trespass and simple possession of drugs usually received three days in jail. In the new Red Hook court, however, he was given the opportunity by the judge hearing the case to spend a day with a court-supervised group of defendants cleaning a local park and two days participating in short-term drug counseling.

Obviously, two days of counseling won’t change a life—but it’s more meaningful than sitting in jail. During those two days of counseling, a client might muster the incentive to continue treatment on his or
her own (an option the court encourages and facilitates for anyone interested). Whereas the only thing two days in jail ever did for my clients was let them rest up so when they returned to the street they could keep doing whatever they were doing that got them in trouble in the first place.
Robert Returns

As luck would have it, a couple years after I started working in Red Hook, I ended up representing Robert again. It was 10 years after our first meeting.

He’d been picked up for another drug possession case and had been in and out of jail many times since our first encounter. We remembered each other. He said he was expecting something in the six-month range as a sentence and was unprepared for what the offer turned out to be: long-term drug treatment. Although he had been in and out of jail for more than a decade, Robert had never been given an opportunity to enter treatment. After we discussed all his options, Robert chose to enter treatment for a year rather than seek out a shorter jail sentence. If successful, charges would be dismissed by the prosecutor. What a difference a decade makes and what a difference the community court sentencing options were for Robert. A successful outcome was now measured in real opportunity for change rather than the shortest possible jail sentence.

Today there are more than three dozen community courts across the U.S. that have adopted the model exemplified by the Red Hook Community Justice Center. I have since moved on to work at the Center for Court Innovation, which helped develop the community courts in Midtown and Red Hook and several other community courts in New York in collaboration with the New York State Unified Court System. As part of the technical assistance team at the Center for Court Innovation, I have helped spread the word about the Red Hook Community Justice Center’s approach to justice, which has been shown through a recent evaluation by the National Center for State Courts to contribute to reductions in recidivism and neighborhood crime.2

What I’ve seen and learned firsthand—and what a growing body of research confirms—is that many of the practices that community courts have developed
and honed can improve outcomes for offenders, victims, communities, and court systems. This is good news in and of itself; but even better news is the fact that mainstream courts are beginning to adopt these approaches. This means that whether or not a jurisdiction opts to create its own separate community court, its court system can still benefit from community court concepts.

For instance, an administrative judge in Newark, N.J., told me that he was initially reluctant to start calendaring cases for compliance hearings, fearing they would further clog already overburdened calendars but he came to see the long-term benefits, including a reduction in the number of warrants issued. And if a defendant is out on a warrant, the judge reasoned, there was the distinct chance he or she was getting into more trouble, harming the community and making work for the justice system.
Key Community Court Lessons

In the pages that follow, I highlight key community court takeaways that any court system can apply to lower-level cases to improve outcomes for communities, victims, and offenders alike.

1. Using Assessment and Screening Tools

One powerful way that community courts attempt to solve problems is by connecting offenders to services. To make informed sentencing decisions and match offenders to appropriate interventions, community courts have incorporated screening and assessment tools to evaluate defendants’ individual needs.

I’ve found that many people are confused about the difference between an assessment tool and a screening tool, so let me define them.

— A screening tool is a set of questions designed to evaluate an offender’s risks and needs fairly quickly. It usually takes no more than 10 or 15 minutes and is administered early in the justice system process. If a screening tool indicates that the defendant is at high risk for further offending, it’s important to dig a little deeper. That’s where an assessment tool comes in.

— An assessment tool is a more thorough set of questions administered before an offender is matched to a particular course of treatment or service.

Taken together, screenings and assessments provide court staff, defense attorneys, prosecutors, and judges with specific information about risk levels for different behaviors—specifically, the risk of failing to appear or the risk of re-offending.

In community courts, cases are often adjudicated at arraignment, so immediate screening and assessment
are essential. Even when a case is adjourned, community courts often mandate services in lieu of bail as an effective way to ensure that the defendant returns to court. Defendants are often more willing to engage in services immediately following an arrest rather than months later when a final sentence is issued.³

The best thing about using screening and assessment tools is that courts can accurately target their responses. For instance, someone arrested on a drug charge might not be a problematic user of drugs. Requiring that defendant to participate in drug treatment would be a waste of resources.

We’ve learned from experience and research that screening and assessment tools should be validated for accuracy. Validated tools help eliminate subjective bias. They can tell court staff who needs treatment most and who is at highest risk of offending, thus ensuring that scarce resources are reserved for those who need them most. (Check out ‘Evidence-Based Strategies for Working with Offenders,’ for more information on using validated tools.⁴)

Most validated assessment tools used by courts today were developed for felony offenders. Community courts around the country have identified a need for new and more flexible validated tools, especially ones customized for courtrooms handling a high volume of misdemeanor cases.

To fill that gap, the Center for Court Innovation is developing a brief risk-need screening tool: the Criminal Court Assessment Tool, designed to help judges, attorneys, and others make more informed decisions about the use of alternatives to detention and incarceration in high-volume criminal justice settings (e.g., a short screener for arraignment settings and a somewhat longer tool for assessment post-diversion). This tool is a valid predictor for general offender populations and is the first tool piloted and
validated for use with a misdemeanor population. This project addresses a significant gap in the field since misdemeanor offenders constitute about 70 to 80 percent of cases in urban courts.

The Center has been testing this tool, with the support of the Bureau of Justice Assistance, with misdemeanor populations in Brooklyn, the Bronx, and Manhattan. With this tool in hand, staff in any court will be able to identify which offenders are low-risk, and which have social service needs.

Community courts are also helping develop tools adapted to particular populations. The Red Hook Community Justice Center, for example, has added a trauma scale to its regular screening tool. The tool identifies those coping with both substance use disorder and trauma and allows Red Hook staff to match them to service providers best equipped to treat them. The South Tucson Community Court is developing a tool for addicted offenders living in a border area. Other tools are being created specifically for mentally ill populations.

2. Monitoring and Enforcing Court Orders
When I’ve asked about compliance monitoring, more than one judge has said to me, “I’ve already told them what to do; they should just do it!”

Community courts take a different approach. They recognize that courts have unique leverage to ensure that orders are carried out—and they’ve learned to use that leverage in ways that don’t make unreasonable demands on either court resources or defendants.

The main monitoring tool community courts use is compliance hearings, in which participants are periodically required to return to court to provide updates on their compliance. Sometimes they meet only with court staff; sometimes they appear before the judge. Either way, community courts require that
service providers supply the court with accurate and timely compliance information so that they can hold defendants accountable.

Compliance hearings don’t need to take a lot of time. Research has shown that their power isn’t in their length but in something called the “black robe” effect. This refers to the power of the judge. With just a few words of encouragement (for those doing well) or an expression of disappointment (for those doing poorly), judges tend to have an outsized impact on the offender’s behavior.5

This research confirmed my own first-hand impressions as a defense attorney working in the Red Hook Community Justice Center. It was clear to me that my clients felt more satisfied with their court experience when the judge and other court staff remembered them and showed that they cared about their fate. In fact, I always made a point of praising my clients who followed court orders and did well in treatment and offered whatever encouragement and help I could to those who were struggling.

Recently, a former client of mine stopped me on the street. I didn’t recognize him at first but he told me how much he appreciated the pats on the back when he appeared in court. He told me that he looked forward to those pats on the back and it helped encourage him to continue with his treatment. He thanked me for saving his life and I told him that he had saved his own life, that those of us in the court system merely pointed him in the right direction.

Judge Victoria Pratt, who presides over Newark Community Solutions, a community court in New Jersey, says former court participants will sometimes return to court voluntarily just to say hello and let her know how things are going. Former clients in Red Hook frequently walk in to show staff a paycheck, a diploma, or to report on other positive news in their lives.
Many judges have told me that compliance hearings have an energizing effect on their work and job satisfaction. When a judge sees a defendant only once, he is little more than a docket number. But when the judge sees a defendant over a period of months, watching him eventually succeed at fulfilling his requirements (even if he has a few backslides along the way), the judge can feel that she is finally having an impact on someone’s life.

A couple of years ago, Washington, D.C. reorganized its misdemeanor calendars to implement the community court model in all seven Metropolitan Police Department districts. As a result, more D.C. judges have experienced presiding over a community court, and many have asked if they can stay longer in their community court assignments because they find their interactions with participants so rewarding.

3. Using Sanctions and Rewards

The judge can do more than offer mere words of praise or disapproval. He or she can also issue more tangible rewards. Some might offer a round of applause in the courtroom. Judge Alex Calabrese in Red Hook will ask a defendant who is doing well to approach the bench so he can offer a handshake. Other community courts motivate defendants by giving away items ranging from coupons to local restaurants to movie tickets to a piece of candy from the courtroom candy bowl.

The judge can also issue sanctions. For instance, he or she can require defendants to return to court more frequently or submit to more drug testing or lengthen their amount of treatment. Jail sanctions are also an option but many judges prefer to use community-based sanctions if possible.

I’ve heard plenty of people scoff at the idea of applauding a defendant, but they often change their mind when they see the effect that kind of affirmation
has. Many people coming through the courts have never been recognized for their successes or achievements. When they get praise from a judge or hear a roomful of applause, their faces light up with an ear-to-ear smile.

Community courts have also learned the importance of being flexible. A court may require someone with a warrant history to come back the next day to show he signed up right away for services, whereas it might give someone without a warrant history a week to prove his compliance. For example, initially, due to his record and never having done treatment, my client Robert had frequent compliance-monitoring court dates. As his attendance became more reliable, and as he stayed sober, the time between updates increased.

Community courts also test strategies for keeping defendants engaged. Sometimes it isn’t possible to find an appropriate treatment program right away. But to wait too long increases the chance the defendant will fail to comply. Staff at the Orange County Community Court sometimes have the defendant participate in community restitution projects while waiting to start drug treatment—this is done to keep defendants engaged and to prepare them for the new routines he or she will follow once they begin treatment.

Yes, it takes a little extra time to conduct compliance hearings. But it pays dividends in the long run when courts don’t have to issue warrants, law enforcement doesn’t have to track down AWOL defendants, and the defendants don’t commit new crimes. In other words, rigorous monitoring might require the defendant to visit the court a few more times than normal, but if that increases the likelihood that a significant number of defendants will be successful with their mandates and not reoffend, it can save resources over the long haul.

4. Promoting Information Technology
Community courts have promoted the use of technology to improve decision-making. Technology planners
Lessons From Community Courts
Strategies on Criminal Justice Reform from a Defense Attorney

created a special information system for the Midtown Community Court to make it easy for the judge and court staff to track defendants. The Midtown Court’s software was so innovative that it won Microsoft’s Windows World Open in 1995.

How does technology improve decision-making? The key is the first initial in that acronym, IT. The “I” stands for information. Information that’s reliable, relevant, and up-to-date is essential for judges to make the wisest decisions they can.

Many of the problem-solving courts in New York State now use technology that builds on the prototype created for the Midtown Court, and courts far and wide—including in Cook County, Illinois, New Orleans, and San Francisco—have adapted similar systems to their needs. The technology allows all players involved in a case—judge, prosecutor, defense attorney, clerk, court staff, and on-site social service partners—to access and update information so that files stay current. Privacy settings can be created to limit who can see and update the files.

With Robert, his case manager regularly updated information about his progress in treatment in the court computer system. I could access his information from my office, but only the case manager and court clerk could input or change anything in the file. Having access to that information helps all the players in the justice system do their jobs better and more efficiently.

Technology allows court staff to record the results of drug screens and track compliance so that when a defendant stands before the judge, the judge knows immediately his or her status. I remember once in Red Hook, a defendant with a long criminal record was participating in drug treatment. The program said he’d refused to have his urine tested for drugs, but the defendant claimed he’d complied with all the program’s requests. When the judge accessed the latest information through his computer terminal—which is within arm’s reach on the bench—he found that the defendant had, in
fact, been in consistent compliance and had never missed a test since the start of his case. When the defendant realized that the judge was giving him the benefit of the doubt—based on concrete, up-to-date information—it was like a cloud lifted. The defendant’s demeanor visibly changed, and he went from being agitated and angry to feeling positive about the program and upbeat about his ability to finish.

With a computer terminal on the bench, many judges find it easier to keep personal notes. This allows them to individualize their responses to defendants and follow up on news and information gleaned during an offender’s previous appearance. Defendants are often stunned when a judge asks them about milestones in their lives—a job interview, a child’s birthday party, a move to a new apartment. This kind of personal interaction makes a defendant feel like the court cares about them as a person and in turn promotes procedural justice.

Sophisticated data collection systems also make it easier to measure outcomes and track results. Some of the questions a data system can answer are obvious: How many defendants are currently in treatment? How many are in compliance? How many have successfully completed treatment? But they can also answer more complicated questions: Which demographic group fares best in certain kinds of treatment? Which kinds of rewards and sanctions produce the best results? Answers to these questions can help everyone—including judge, prosecutor, and defense attorney—to fashion the most effective sentences and procedures.

5. Enhancing Procedural Justice
In the mainstream court, judges usually talk to the prosecutor and the defense attorney. Although the judge is usually talking about the offender, she hardly ever talks to the offender. Things are different in community courts. Judges often speak directly to the offender,
asking questions, offering advice, issuing reprimands, and doling out encouragement. This reflects an approach known as procedural justice. Procedural justice has attracted the attention in recent years of both practitioners and researchers. Its key components, according to Yale Professor Tom Tyler, are voice, respect, trust/neutrality, and understanding.6

At the Center for Court Innovation, we’ve interviewed judges about this different way of relating with offenders and virtually all of them say it’s an improvement over business as usual. Here’s what two judges in California said about this:

Judge 1: ... There is such a thing as a “black robe effect.” The mere fact that an authority figure shows ... caring and kindness can have a positive impact that is intangible but still [real].
Judge 2: If the person is doing well, I am going to tell them they are doing well.... It is the first time in their lives anyone ever told them that they were doing well, and it makes a difference.7

When we studied what factors shaped defendants’ perceptions of fairness, we found that the judge was the most important factor. Defendants who perceived that the judge treated them with respect, helpfulness, and objectivity were more likely to say their experience was fair overall.

Sometimes, procedural justice can take the form of a judge inquiring about a family matter the defendant had mentioned on a previous court date. One client in Red Hook was heard saying in the hallway to his friend, “That judge really cares about you. He asked about my kid’s school.”

A good example of procedural justice occurred during Robert’s case in Red Hook. After a few early struggles, Robert was doing well and had about nine months of his one-year mandate completed. He had received a job offer and asked me to request that the court allow him to complete his treatment in an outpatient setting. The
judge approved his request. Robert successfully completed his treatment, had the case dismissed, and is currently working a fulltime job. This is an example of allowing a defendant to have some input, or voice, on how to resolve a case in a manner that satisfies the court, the attorneys and the defendant.

Community courts have shown that procedural justice can take place both inside and outside the courtroom. In an effort to communicate concern and care, the San Francisco Community Justice Center has a “Client of the Week” who gets a $5 Starbucks card as a reward for good attendance and clean drug tests.

By giving the community a voice in shaping restorative sanctions, a community court opens a dialogue with its neighbors. A community advisory board can offer residents an institutionalized mechanism for interacting with the judge and court administrators. By allowing local residents to be heard on matters that impact their neighborhood, it also increases community trust in the justice system.

Community courts have also developed useful strategies for making courthouses more welcoming. For instance, they’ve learned a lot of lessons about signage. All too often, visitors to a courthouse can get lost or feel intimidated. The Red Hook Community Justice Center recently installed new easy-to-read signs to make the building easier to navigate. Clear signage—sometimes in multiple languages, depending on the makeup of the community—goes a long way to improving visitors’ experiences in the halls of justice.

Beyond signs, many community courts encourage everyone on staff to be friendly and welcoming. Judge Alex Calabrese at Red Hook Community Justice Center always says that procedural justice starts at the front door. And it doesn’t end there. I’ve seen court officers give defendants pep talks after their cases are heard. They say things like, “Don’t worry. Things will work out. You’ll be doing fine with this in a couple days.”
People always used to tell me that things are different at Red Hook. They’d say things like, “Court officers are way nicer here.” I’m a big believer that simple kindness leads to a huge increase in compliance with court mandates.

The good news for courthouses everywhere is that being nice doesn’t cost anything. It’s a low-tech, no-cost strategy that increases people’s confidence in the justice system.

I’ve seen officers in many big-city courthouses act brusquely toward both defendants and the public. They might yell, be impatient, tell folks to go elsewhere to have their questions answered. And I understand why: they’re busy, tired, unappreciated. That sort of thing can happen to the best of us. But if court officers infuse a bit of procedural justice into their daily routine—take the time to answer questions, offer a smile, make every effort to treat visitors with respect—then people will be friendlier in return, tensions will ease, and everyone will feel that the court system is more fair and legitimate.

As a defense attorney, I always tried to ensure my clients were treated respectfully in the court process, but it was challenging. In some courthouses, there wasn’t always a private place to confer or the time to explain things as thoroughly as I would have liked. At the Red Hook Community Justice Center, the judge gave me as much time as I needed to make sure my client understood what was going on so he or she could make informed decisions.

Procedural justice has a way of infusing even the busiest courthouse with a small-town feel, and that’s a good thing.

At Newark Community Solutions in New Jersey, staff has made a point of reaching out to everyone in the building so that they know how the program works, and the services it provides. This has reduced the chance that participants in the community court will get lost and
increased the chance that courthouse staff might refer those in need to the court’s many voluntary programs.

In Washington, D.C.’s six community court calendars, procedural justice is becoming a way of life. After an evaluation found a 42 percent reduction in recidivism among community court participants, the entire Superior Court underwent training in procedural justice.

But lessons learned in community courts about procedural justice go well beyond the courthouse. In Spokane, Wash., the police officers have a script they read to the defendants when they issue citations. They tell them all about community court and what it offers and give them the choice of going there or proceeding through the traditional court. One of the first defendants to appear in the Spokane Community Court said he appeared because of how the police officer treated him. He felt he was treated respectfully and in turn he wanted to show respect to the officer by showing up to court. Procedural justice works at every level of the justice system.

Police in Portland, Ore., have been working on a plan to offer people with housing or homelessness issues immediate assistance by voluntarily taking them to a service center ahead of their scheduled court date so they can access services right away.

When a criminal justice official shows signs of respect, the impact can be hugely positive. Judge Toy White of the Ventura Homeless Court is getting people on citation cases—the equivalent to a summons or other non-criminal charge—to engage in drug treatment not with legal leverage but with the power of her words. She will simply tell a problematic user of drugs, “You’re going to die if you keep this up.” And then her staff will offer assistance connecting to social services. The judge has told me that many defendants respond positively to this and appear to be moved
that a judge cares about them as a person rather than merely looking at them as a defendant.

6. Expanding Sentencing Options
With jails overcrowded and government budgets stretched to their limits, everyone is looking for better, smarter, and more cost-effective sentencing options.

Community courts have been using alternatives to incarceration for decades and are ready to share what they’ve learned with anyone who will listen. In addition to providing long-term drug treatment for those in Robert’s situation, community courts have also made use of shorter interventions.

Community service is an important sentencing option in community courts. Community courts believe community service fulfills several functions by:

— Providing an opportunity for positive engagement between the justice system and the defendant.

— Addressing neighborhood disorder.

— Reconnecting defendants with the community by making them feel as if they had contributed something back to the community.

— Strengthening links between the justice system and potential collaborators.

I learned first-hand that community service can do more than punish when a client said to me that community service was the “first time I felt part of my community again.” Sure, many clients are bored or resentful when they’re required to clean a park or paint over graffiti. But many become engaged in the work and proud of what they accomplish. On many occasions I’ve heard clients insist on finishing a project they had
started, even when the shift was over—asking to stay longer so they can paint the last couple of park benches, for example.

Community courts have learned that this feeling of ownership over the work is more likely to occur when offenders feel the work is meaningful. The Aneth Community Court in the Navajo Nation officially became part of the “adopt-a-highway” program near their community court and now sends community restitution crews to do cleanups there. Court staff and regular community members will work alongside the Aneth Community Court’s clients, which sends a clear and positive message that this isn’t “make work” and that it is important to the community as well.

The Seattle Community Court has done something similar by sending offenders to participate in neighborhood cleanup events. I once spoke to a neighborhood resident who was participating in the cleanup alongside court clients. He told me, “We don’t care what they did, but we’re here to work with them and we’ll tell them, ‘We’ll treat you like a member of our community, and we expect you to act like a member of the community while you’re here.’” The neighborhood volunteers told me that they were very happy with the program and welcomed the extra help.

Community service isn’t just a feel-good exercise. It has the practical side-effect of connecting the offender with agencies where they’re performing the community service. In Washington, D.C., many providers love their connection with the court because they not only get the benefit of a community restitution crew but many of the crew members are potential clients.

The Hartford Community Court sometimes sends defendants to perform restitution at an urban horse stable and one of the workers performed so well that the stable hired her as a permanent employee.

Vancouver’s Downtown Community Court sends clients to work at treatment centers that, according to
their screening and assessment tools, are a good match if the client chooses to pursue services voluntarily.

Another community court judge even allows continued attendance at a treatment program to be counted as community service on certain cases.

Community courts will also incorporate treatment directly into a sentence. With appropriate assessment tools, they can determine clients’ needs and require them to participate in services that can help them address obstacles—like a problematic use of drugs or mental health issues—to a law-abiding life.

Community courts have learned that having access to on-site experts to help connect defendants to services as soon as possible after the point of arrest is the best recipe for long-term success in treating chronic addiction issues.

Mainstream courts can also learn something from community courts about cultivating realistic expectations. After working with thousands of clients, community courts have a realistic grasp on what mandates can accomplish. Despite all the great things I’ve described, community courts expect that many offenders will eventually recidivate and return to court, so they plan for it.

Because mandates in a community court are usually short (they need to be proportionate to the low-level nature of the offenses), court staff try to think long-term. They know they can’t address all of a client’s problems in a single intervention; after all, no one is going to solve 20 years of problematic drug use in a two-hour counseling session. So community courts try to find ways to deepen the interventions each time a client returns to court.

At the Red Hook Community Justice Center, for example, a first intervention might include getting the client an identification card. That way, if the person returns to court again on a new charge, it will be easier to link him or her to services.
7. Engaging the Community
Community courts emphasize working collaboratively with the community, arguing that the justice system is stronger, fairer, and more effective when the community is invested in what happens inside the courthouse.

But engaging with the community is a useful strategy for all justice players, including conventional courts. Courts are one of the pillars of our democracy and only function well when their activities are transparent, their buildings welcoming, and their activities respected.

It is not enough to point out that courthouses are public. That fact doesn’t address the distrust or lack of interest that so many communities direct toward their courts. If you think about it, how many members of the public really know what goes on inside a courtroom (other than what they see on TV)? When people get jury duty notices, do they race to the courthouse to participate or do they tend to do anything they can to avoid service? When people are called as witnesses to crimes, especially in low-income, high-crime neighborhoods, are they eager to take the stand or do many prefer to keep their mouths shut and their stories to themselves?

Too often I’ve attended community meetings around the country where people will say things like, “I don’t know what the courts do.” Or they’ll complain that a particular criminal who was arrested one day is back on the street the next—which is a reasonable concern but shows a lack of understanding about how court systems work. This lack of understanding contributes to diminished confidence in the justice system.

Community courts have learned how to reverse some of these attitudes by building trust. One way they do this is by sending court representatives, including judges, to community meetings to listen to people’s concerns and explain court operations. In Red Hook, Judge Calabrese might explain why someone is still on the street following an arrest, this way: “Just because you see
him on the street doesn’t mean he isn’t complying with court sentencing, dealing with issues, and that we aren’t watching him carefully.”

Community courts also go out of their way to communicate outcomes, including social service and treatment success stories. For over a decade, the Hartford Community Court has been publishing newsletters that document the results of community service work and how many hours of labor defendants have performed in the community. The newsletters are archived on the court’s website, serving as a resource for anyone who wants to learn more about the court.

Community courts also use their powers to solve problems. When a community court judge asks representatives of organizations and agencies to attend a meeting, people usually show up. This convening power allows the community court to play a role in coordinating multi-agency solutions to neighborhood problems. In the Brownsville neighborhood of Brooklyn, N.Y., garbage had collected at one spot for more than 15 years, creating a mound more than 10 feet high and 20 feet long. Staff of the Brownsville Community Justice Center identified the problem by regularly meeting with local residents and business owners to ask them about their concerns. The Justice Center staff brought together all the relevant players—the owner of the lot, the city’s Sanitation Department, the Police Department, New York City’s public housing authority, homeless advocates (a mentally-ill person was living among the debris), and concerned citizens—and were able to coordinate a removal of the trash, a total of 7 tons.

Community courts can also help generate enthusiasm for solving problems. The homelessness problem in Spokane, Wash. wasn’t getting a lot of attention until the community court came along. They convened a group to brainstorm solutions. Over time, members of the planning team offered to tackle an aspect of homelessness. For example, one organization offered
to coordinate job training; another offered to bring free lunches to court days. Slowly, the group raised awareness about homelessness. Now, rather than think of homelessness as a problem to ignore or tolerate, there are concerted community efforts underway to tackle it.

There are numerous ways that community courts actively assess community concerns. The Midtown Community Court hosts a monthly panel where representatives of government agencies (police, transit, education, for example) and local organizations (including providers of mental health services, shelters, faith groups, and civic groups) discuss their concerns and brainstorm solutions. Sometimes the problems are more obvious. After the devastating flooding in low-lying areas of Brooklyn caused by hurricane Sandy, the Red Hook Community Justice Center played an active role in coordinating relief efforts. Although this isn’t a traditional responsibility of a courthouse, it went a long way toward building good will for the justice system—not to mention that it may have contributed to the remarkable absence of crime the during those weeks of distress and hardship.
Conclusion

The last time I ran into Robert was at an outdoor community event about four years after his case had been dismissed. We both smiled upon seeing each other, and he told me he was still working the same job, and had his own place. He said to me a bit excitedly, “You need to tell people about that court. It saved my life. They need to have more courts like that.” As he walked away I couldn’t help but think about how many Roberts are still languishing in the criminal justice system.

Some critics of community courts say that helping people with substance use disorder, mental health issues, and other social service needs is not the job of courts and should be handled by other entities. In a perfect world, I would agree. However, in the reality of the world today, people with social service needs continue to end up in the courts. Court systems across the country have realized that if defendants with social service needs are not given treatment options, those defendants will be stuck in the revolving door of justice and continue to clog the court system.

By employing some of the tools and practices outlined in this paper, courts can help those cycling in and out of the court system to achieve stability and become contributing members of society. In other words, people like Robert.

Although it may not comport with the vision of success that many defense attorneys had upon entering this work, I can tell you that nothing beats seeing a sober, healthy person approach you on the street and hearing, “Thank you for helping me get my life back on track.”
Endnotes

1. Residents of the neighborhood played a role in planning the Justice Center and have continued to be involved.
6. Voice: Offenders have an opportunity to be heard, either directly or through their attorney. Respect: Offenders are treated with dignity and respect. Trust/neutrality: Offenders perceive decision-makers as neutral and competent and their decisions as unbiased and accurate. Understanding: Offenders understand decisions, including the reasons for those decisions, and understand any future responsibilities they have to comply with court orders. See, Tom Tyler, ‘Procedural Justice and the Courts,’ American Judges Association Court Review 44:1&2, available at http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2Tyler.pdf.
INSPIRED by PEACEMAKING

CREATING COMMUNITY-BASED RESTORATIVE PROGRAMS IN STATE COURTS

an implementation guide
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- Erika Sasson, Center for Court Innovation

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Foreword

In recent years, a number of state courts have been inspired by indigenous practices that focus on healing and restoration, as opposed to conventional adversarial models of justice. In particular, courts and communities are starting to explore whether and how to use lessons from Native peacemaking to improve stateside processes. Some of the programs discussed in this guide have been inspired by Native peacemaking and employ traditional Native peacemakers in their training and implementation. In no way are these programs considered replications of Native peacemaking. Rather, they represent sincere attempts to learn from Native American traditions in order to improve the resolution of controversies in state court systems. In using this guide, it is important to be mindful of the history, traditions and culture that underlie these concepts and their significance to their home communities. Whenever possible, people interested in learning more should reach out to neighboring Native communities as well as to Native American organizations that specialize in peacemaking.

With this guide, we hope to continue to build bridges across communities and promote wellness and healing in all of our communities.

Dedication

Justice is sacred in the Native worldview. The obligation to ensure justice means more than going through rote motions. Peacemaking and Native justice ideals, principles, practice, procedure and process have meaningful application for all human communities. They focus upon giving life to community values by respectfully coming together and talking things through. Relationships are maintained, or even enhanced, by avoiding the destructive effects of the adversarial trial model. A focus can be maintained on the “real” problems and issues, which leads to reconciliation and healing. Everyone’s voice is important and equal because each has part of the wisdom, which will lead to consensus. Community harmony is maintained because matters are put to rest.

–Michael Petoskey, Chief Judge, Pokagon Band of Potawatomi, Michigan & Indiana

If the goal of adjudication is to reduce recidivism, peacemaking gets to the heart of the issues that brought the offender to court, taking a holistic and effective approach, and exploring triggers which would never be part of the conventional case but which go to the very heart of the defendant’s behavior. Peacemaking is true community justice, where the court system sends cases to the community to resolve and trusts their results, bringing court and community together.

–Alex Calabrese, Presiding Judge, Red Hook Community Justice Center
Introduction

Peacemaking is a traditional Native American form of justice that focuses on healing and restoration. Although peacemaking varies across tribes, it generally brings together the disputants, along with family members and other members of the community who have been affected by the dispute. Peacemakers allow each participant to speak about how the event, crime, or crisis affected him or her personally, without restricting what is said according to evidentiary rules. The purpose of peacemaking is to reach a consensus to resolve the dispute and, more generally, “to talk it out in a good way.” The Navajo Nation, which operates a well-known and extensive peacemaking program, describes the process as the “reparation or mending of controversies through harmony.”

Peacemaking differs significantly from the Western, adversarial justice system. The adversarial system typically focuses on assigning guilt and meting out punishment, while peacemaking seeks to achieve the long-term healing of relationships. Most often, the adversarial system tends to isolate the defendant, assigning an attorney to speak for the defendant in court and to negotiate with opposing counsel. The defendant is encouraged to remain silent, for fear that anything said may be used to incriminate. Indeed, most defendants go through the Western criminal justice system never having told their story to anyone, except perhaps defense counsel. If sentenced to jail, the defendant is then physically separated from the community, furthering his or her isolation. By contrast, peacemaking encourages defendants (as well as victims, family members, and community members) to express themselves freely, and the entire process is premised on each person’s equal participation. It emphasizes the defendant’s relationship with the broader community, and tries to rebuild those relationships instead of severing them further.

Peacemaking is also different from other methods of alternative dispute resolution, such as mediation. Although mediation brings parties together to settle their disputes outside the adversarial model, it focuses on resolving the issue at hand and typically requires each party to give something up in order to reach a compromise. By contrast, peacemaking focuses less on the present dispute, and more on healing relationships and creating long-lasting harmony. According to Judge Barbara A. Smith of the Chickasaw Nation, “mediation is about an issue, whereas peacemaking is about relationships.” As Chief Justice Herb Yazzie of the Navajo Nation has stated, “when people leave a peacemaking session, they leave talking to each other.” Indeed, the Navajo Nation’s Peacemaking Guide explains: “Peacemaking encourages people to solve their own problems by opening communication through respect, responsibility and good relationships . . . Rather than judge people, peacemaking addresses bad actions, the consequences of such actions and substitutes healing in place of coercion.”

1. In the Western adversarial system, rules of evidence are designed to limit what witnesses say in court, based on, for example, issues of relevance, prejudice, privilege, hearsay, etc. These rules result in a greatly circumscribed version of the witness’ original narrative.
3. JUDICIAL BRANCH OF THE NAVAJO NATION, supra note 2, at 1.
4. In most jurisdictions, more than 90 percent of criminal cases are resolved through plea bargaining, during which the defendant usually does not speak in any public way. Even in cases that go to trial, defendants seldom testify.
7. JUDICIAL BRANCH OF THE NAVAJO NATION, supra note 2, at 1.
PART I

What are the purposes and benefits of peacemaking in state courts?

“The Indian tribal courts’ development of further methods of dispute resolution will provide a model from which the Federal and State courts can benefit as they seek to encompass alternatives to the Anglo-American adversarial mode.”

– Justice Sandra Day O’Connor

Peacemaking: Beyond Mediation

While there are many similarities between peacemaking and other dispute resolution and restorative practices, differences should be noted. The goals of peacemaking focus on healing relationships and restoring the participant’s place in the community, while mediation focuses on the issue(s). Peacemaking is also a fully restorative practice, as it involves all three restorative justice stakeholders: victims, offenders, and communities of care. Furthermore, peacemaking involves direct citizen participation.

I like to define peacemaking in comparison to other alternative dispute resolution processes to clarify differences. Similar to mediation, it is the parties in peacemaking who make the decisions as to outcome. However, although mediation is excellent for resolution of specific issues, peacemaking goes much, much deeper and allows people to heal wounds and repair relationships. Peacemaking fosters a longer lasting repair and healing to relationships and community than mediation provides.

– Susan Butterwick, Washtenaw County Peacemaking Court
To provide an overview of the differences between peacemaking and mediation, Michigan’s Washtenaw County court developed the following helpful resource (See Figure 2).  

**Involving the Community and Building Trust in the Courts**

Peacemaking programs empower local communities, through the active involvement of community volunteers in the peacemaking process, to respond to conflicts and play an active role in repairing relationships. Involving the community also helps build public trust and confidence in the courts.

**Becoming a Trauma-Responsive Court**

State courts have regular interactions with vulnerable populations, such as victims of violent crime, victims of familial and interpersonal violence, children who have experienced developmental trauma, veterans suffering from post-traumatic stress disorder, and human trafficking victims. State courts are seeking to become more trauma-responsive to the communities they serve. Many courts can accomplish this by (1) realizing the widespread impact of trauma and understanding potential paths for recovery; (2) recognizing the signs and symptoms of trauma in defendants, juveniles, families, staff, and others involved with the court system; (3) fully integrating knowledge about trauma into policies, procedures, and practices, and (4) seeking to actively resist re-traumatization. The traditional adversarial court process is not necessarily conducive to meeting the needs of victims of trauma. Peacemaking, on the other
hand, focuses on healing, promotes an environment of respect for all, and strives to build long-lasting harmony for individuals and communities. Peacemaking is one of the many strategies courts are utilizing to become more trauma-responsive.

**Figure 2. Washtenaw County’s comparison of mediation and peacemaking.**

<table>
<thead>
<tr>
<th></th>
<th>Mediation</th>
<th>Peacemaking</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Facilitator</strong></td>
<td>Mediator (usually one)</td>
<td>Peacemaker/Circle keeper (usually two)</td>
</tr>
<tr>
<td><strong>Role of the</strong></td>
<td>Impartial as to the parties. Neutral as to the outcome. Creates the structure.</td>
<td>Impartial and often encouraged to share their experiences and opinions. Circle keeper holds and monitors the integrity of the circle. Participants may help structure the discussion.</td>
</tr>
<tr>
<td><strong>Participants</strong></td>
<td>Parties with authority to settle the case, attorneys. Parties occasionally, but rarely, bring support people, if all parties agree to their presence.</td>
<td>Parties involved in the conflict, sometimes attorneys, family and/or community members who have been impacted by the dispute and can help with the solution, professionals where needed or relevant. Participants may bring support people; the peacemaking program also offers to provide trained peacemakers as support people to the litigants to help them think about ways to work through the problem and ways to approach the conflict with the other party. In delinquency or criminal cases, probation officers, attorneys, judicial or law enforcement representatives may also be present.</td>
</tr>
<tr>
<td><strong>Process</strong></td>
<td>Mediation may be ordered by the court. Mediator and parties make opening statements and mediator facilitates and assists in negotiation process, but does not follow a script. Mediator is very active in helping parties reach consensus. Parties may meet in joint session or mediation may be conducted by mediators in caucus or separate rooms. Parties usually sit around a conference table with mediator at head of table leading the discussion. May be one or more sessions. If mediation fails, parties rarely will return to mediation after the court’s decision (unless the case is on appeal).</td>
<td>Peacemaking may be ordered by court, but is voluntary from perspective that participants have to want to resolve the case, and to heal relationships. Peacemaker / facilitator opens session with ceremony including traditional stories, words that explain the circle process. Peacemaker opens with an agenda based on pre-meeting preparation work with the parties and asks specific questions that focus on relationship, impact of the dispute, repairing harm, healing, as well as resolution. Guiding principles of peacemaking are: respect for one another, taking responsibility for actions, healing or repairing relationships, and redirection onto a new path and with reintegration back into the family or community through understanding and participation in the discussion. Everyone sits in a non-hierarchical circle and a talking piece is used to allow all participants to speak uninterrupted and for others to focus on listening. All participants are allowed to speak when talking piece is passed to them. The role of the facilitator is less than in mediation and the role of the participants, including family or community, is greater, in reaching a consensus. Participants stay in same room for the entire session. May entail multiple sessions. (With juveniles, it can entail several follow up circles to check in on progress). If peacemaking fails or the parties do not want to try peacemaking in lieu of a court decision, parties may opt to return to peacemaking again after the court’s decision to determine how to implement the court order and to repair relationships post-court.</td>
</tr>
<tr>
<td><strong>Goal</strong></td>
<td>Settlement of the case.</td>
<td>Settlement of case, repairing harm, increasing understanding, healing relationships, and reintegration into community (where applicable) are equal goals.</td>
</tr>
<tr>
<td><strong>Preparation</strong></td>
<td>None or brief contact with attorneys and / or parties, screening for DV where applicable.</td>
<td>Extensive work and preparation with all participants prior to circle. DV screening, in-person visits occur in some kinds of cases. Some cases may be sent back to court for a court decision, based on intake discussions, and will be handled by judge using same or similar principles as the peacemaking session.</td>
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</tbody>
</table>

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11. Note: the term impartial can be misleading. In peacemaking, the peacemaker may know the parties personally and — as a member of the community—the peacemaker may even express the desire to reach a positive resolution of the controversy. That being said, the peacemaker still approaches the issue without judgment.
<table>
<thead>
<tr>
<th>Who sets the rules?</th>
<th>Mediator – participants are expected to follow the ground rules set by mediator</th>
<th>The circle participants and facilitators create the rules by consensus.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How long is the dialogue managed?</td>
<td>Mediator manages discussion with open-ended questions and hypotheticals to assist with negotiation.</td>
<td>After facilitator begins with agenda questions, the circle participants manage and continue the dialogue by passing the talking piece.</td>
</tr>
<tr>
<td>Understanding of the conflict</td>
<td>Between the parties who are in litigation.</td>
<td>Between all members of the circle, including those who are impacted by the conflict – family or community members – not just the litigants.</td>
</tr>
<tr>
<td>Court involvement (this program)</td>
<td>Does not involve the court system itself, except to settle its cases. Court orders parties to mediation (or other ADR processes). ADR is conducted apart from the court.</td>
<td>Involves a system's change in the court and how it views and handles its cases. Judge asks parties if they want to participate in peacemaking and asks them to explain why before making a referral to the program. If the parties do not opt for peacemaking or if they do not resolve their differences in peacemaking, the court uses the same principles (respect, responsibility, relationship, and redirection) in hearing and deciding the case in the courtroom. In some cases, judge and recorder begin the circle with parties and facilitators before intake begins and before the actual peacemaking session.</td>
</tr>
<tr>
<td>Benefits</td>
<td>60-80% of cases settle out of court. High rate of durability of agreements kept (approximately 80-90%).</td>
<td>No final data yet on settlement rate for this program in Washtenaw County, but tribal sites indicate very high settlement rates. (See sentence fulfillment rates of Alaska Kake tribal peacemaking compared to state court system - 97.5% vs. 22%.) This program has resolved cases that have tried and failed to resolve in mediation and other ADR processes.</td>
</tr>
</tbody>
</table>
The Red Hook Story

*Red Hook, Brooklyn, NY*

In January 2013, the Center for Court Innovation launched the Red Hook Peacemaking Program. Operating out of the Red Hook Community Justice Center in Brooklyn, NY, the Red Hook Peacemaking Program was set up as a diversion program for criminal and family court matters.

**Background**

Since 2008, the Center for Court Innovation’s Tribal Justice Exchange visited dozens of tribal communities and collaborated with hundreds of tribal justice practitioners. Much of this work focused on assisting tribes in planning and implementing new problem-solving justice initiatives. Equally important, however, was the opportunity to observe and learn about Native approaches to justice, such as peacemaking. While participating in the 2nd Annual Indigenous Peacemaking conference, held in Green Bay in October 2008, Center staff heard numerous first-hand accounts of how peacemaking
had succeeded in reaching formerly “unreachable” offenders and in healing the deep wounds suffered by victims of crime. Although used for centuries in many Native communities, peacemaking clearly represented something new for state court systems. Center staff began to explore the possibility of working with Native peacemakers to develop a peacemaking-inspired program in a non-tribal setting.

In 2010, the Center received a grant from the United States Department of Justice’s Bureau of Justice Assistance to support the planning of a pilot program inspired by peacemaking but designed for a state court system. The project would include a multi-stage planning process involving intensive research on the history and uses of peacemaking in tribal communities, a roundtable discussion with peacemaking experts from around the country to explore the use of peacemaking in a non-tribal setting, and a feasibility study assessing whether peacemaking could work in the New York State court system and what such a program might look like.

Center staff began intensive research into peacemaking, reviewing dozens of publications, including manuals and forms from the Navajo peacemaking program and other restorative justice programs around the country. In addition, Center staff interviewed peacemakers and tribal justice system officials about how peacemaking is used in their communities and whether it could be adapted for a state court setting. The Center summarized this research in a practitioner monograph, Widening the Circle: Can Peacemaking Work Outside of Tribal Communities? 12 This paper also served as a briefing paper to prepare participants for the Center’s roundtable discussion on peacemaking, which was held in December 2011 at the Fort McDowell Yavapai Nation in Fountain Hills, Arizona.

The peacemaking roundtable was a carefully-planned event that included a total of twelve participants: seven Native American peacemaking experts from diverse peacemaking traditions around the country, three practitioners who operate restorative justice programs in non-tribal jurisdictions, and a judge and administrator from the New York State Unified Court System. These participants, facilitated by Center staff, spent a day and a half discussing the key elements of peacemaking, some of the challenges associated with planning and operating peacemaking program, and whether peacemaking could be used in a state court system.

The peacemakers and restorative justice practitioners were unanimous in their belief that peacemaking could work in a diverse, urban community. They suggested that community norms and shared values would surface during the peacemaking process, and that each community has natural peacemakers who can do this work. Participants believed that the most significant challenge would be securing the buy-in of justice system stakeholders, who might be uncomfortable with the idea of using an alternative, non-adversarial method to resolve disputes and respond to crime. In January 2012, the Center for Court Innovation produced Peacemaking Today: A Conversation among Tribal and State Practitioners, 13 a publication that summarizes the lessons learned from the roundtable discussion and begins to outline some of the issues that should be addressed in planning a new peacemaking program. Following the roundtable discussions, Center staff visited and observed a number of peacemaking programs to see the principles in action.

After careful consideration, the planning team determined that the Red Hook Community Justice Center was best suited to host the peacemaking pilot. The Brooklyn District Attorney’s Office expressed strong support for this project. In addition, the Red Hook Community Justice Center arraigns both

12. Wolf, supra note 2, at 3.
13. Wolf, supra note 5.
felony and misdemeanor cases for youth and adults. This diverse caseload would provide the peacemaking program with access to a variety of case types and would allow the program to test how peacemaking works in different scenarios. Red Hook’s presiding judge, Alex Calabrese, had participated in the peacemaking roundtable discussion and expressed enthusiasm for locating the pilot program in Red Hook.

Finally, Red Hook is a geographically unique neighborhood in New York, bordered on three sides by water and cut off from the rest of Brooklyn by the Brooklyn-Queens Expressway. It is also home to one of the largest housing projects in the United States. As a result of these factors, Red Hook is a close-knit community—many community members live their entire lives in the neighborhood, and there are many respected community members who actively volunteer in the community. A number of these individuals had expressed interest in getting involved with the peacemaking program and—once it launched—many of them in fact became active peacemakers in the program.

Current operations
Since its launch in 2013, the Red Hook Peacemaking Program blossomed from a small pilot program taking a handful of cases and using a small cohort of community-based peacemakers, to a much more robust program that is integrated into the fabric of the Red Hook Community Justice Center as well as the Red Hook community at large. Scores of residents have been trained in a three-month intensive program that always includes direct training from Native American peacemakers. The program began by accepting referrals solely from the local court, but has since expanded to accept referrals from other criminal courts, public housing managers, police officers, school officials, and regular community members.

Goals
To fulfill its mission, the Red Hook Peacemaking Program outlined the following goals:

*Healing relationships:* Peacemaking is concerned with healing the relationships that were harmed by a dispute or crime. Instead of merely punishing the past act, peacemaking looks to the future, focusing on healing the relationships involved and correcting harmful behavior to ensure that it is not repeated. Peacemaking emphasizes the development of participants’ sense of identity and commonality with members of his or her community.

*Giving victims a voice:* Peacemaking provides victims with an opportunity to express how the crime has affected them, their families, and their communities. In a peacemaking session, the victim can actively participate in the discussion that leads to a resolution.

*Holding participants accountable:* Peacemaking requires participants to accept responsibility for their actions and fosters a sense of accountability. Participants face other members of their community, recognize the effects of their actions, and participate in determining how to repair the harm they have caused.

*Empowering the community:* The peacemaking program trains community members to serve as peacemakers, giving the community a direct and active role in addressing the conflicts and crimes that affect their community. In addition, the peacemaking program invites other community members to participate in peacemaking sessions, offering them an opportunity to talk through and resolve disputes and demonstrating that the community shares responsibility for repairing the harm caused by conflicts.
Figure 3. Red Hook Peacemaking Program Case Flow

Defendant in court

Referral sources

Prosecutor, probation

Defense attorney, Judge

Peacemaking explained

Victim rejects

Defendant rejects PM program

Defendant returns to criminal court

Defendant opts out of PM program or does not comply with PM process

Case completed

Defendant final court appearance

PM staff informs the court of final PM agreement

Case returned to court for final appearance

Defendant accepts PM program

Disposition in court

Plea

Pre- or post-plea diversion

Defendant assessed for PM program

PM preparation session

PM sessions are held

Consensus reached

KEY:

People

Processes

Decisions
Court process
Once the program receives a referral, and if the judge and both attorneys agree to proceed with peacemaking, the program coordinator will meet with the defendant in order to explain how the program works. The program coordinator will also confirm whether the defendant meets all eligibility criteria. The defendant will decide whether to participate in the peacemaking program. In cases involving a victim, the prosecutor will speak with the victim to ensure the victim’s consent to send the case to peacemaking. The victim will be invited—but not required—to speak with the program coordinator to learn more about the peacemaking process. Generally, victims may decide whether to participate personally in the peacemaking sessions, or whether to have their interests represented by the peacemakers or another participant in the peacemaking session. The court will then recall the case to enter the disposition consistent with the plea offer. This disposition may include a guilty plea, the reduction of the charge, or a dismissal as a form of pre-plea diversion.

The peacemaking process in Red Hook
During peacemaking sessions, participants are encouraged to bring family members, friends, and others who were affected by the dispute and/or who can support them through the process. Everyone in the peacemaking circle has an opportunity to speak and respond without interruption. The community peacemaker is available to ask questions about the event and its underlying causes, to share their own stories of harm, loss, adversity and success, and to reflect on how the event impacted the community. During peacemaking sessions, the parties in the circle discuss what the participants could do to heal the relationships damaged in the conflict, provide restitution, or improve their own lives in order to avoid future conflicts. Usually, more than one session is required to resolve the conflict, and between sessions participants commit to taking steps to advance the healing process. Those healing steps might include obligations like letters of apology, volunteer work, or résumé writing, or promises to communicate respectfully, work on impulse control, or abstain from illegal activity. The peacemaking process is concluded when everyone—including peacemakers and participants—can reach consensus for a peaceful resolution, at which point any court-referred case is sent back to the courts for a dismissal or any other agreed-to disposition.

The community peacemakers
One of the differentiating features of the Red Hook Peacemaking Program is its reliance on community volunteers to train as peacemakers and then lead the peacemaking sessions. There are two fundamental aspects to the training program:

• First, it is always provided free of charge to Red Hook residents. Each year, program staff undertake an intensive recruitment effort within the Red Hook community in order to provide this training for the volunteers. This ensures that the training remains accessible and attracts volunteers with a range of experiences and from all walks of life. Many volunteer-based programs charge significant fees for their training programs. As a result, the cohorts of volunteers are comprised mostly from higher socio-economic brackets. By contrast, the practice of peacemaking in Red Hook is successful because the volunteer peacemakers come from the same community as the participants and can share life experience that is relatable, familiar, and accessible. Indeed, by providing free training, the Red Hook

14. Eligibility criteria include: Defendants must accept responsibility for their actions related to the dispute or crime; All participation must be voluntary; The defendant understands the intensive nature of the peacemaking process and is willing and able to commit the time and effort to complete the process; Parental/Guardian consent is required for defendants under the age of 18; The defendant does not suffer from a severe and/or untreated mental illness and is not in need of intensive drug treatment; The case does not involve any history of or allegations of intimate partner domestic violence, elder abuse or sexual assault.
The program builds skills and capacity within the very community it aims to serve.

- The second significant aspect of the training is its connection to Native American peacemaking trainers. Program staff have sought to maintain a close relationship with its Native American roots. Every year Native trainers are invited to Red Hook to introduce the volunteers to traditional practices and to give them a sense of its history and heritage. This ensures that volunteers remain connected to the origins of peacemaking, while building important cultural bridges between tribal communities and urban New Yorkers.

SNAPSHOT:
Washtenaw County, MI

What court and case type?
The Washtenaw County Peacemaking Court was launched in October 2013 out of Judge Timothy Connors’ courtroom in the Washtenaw County Trial Court, with the “blessing and encouragement of the [Michigan] state Supreme Court.” The program was inspired by Judge Connors’s relationship with Tribal Judge Michael Petoskey, who has been active in reviving peacemaking traditions across the country, and who was also a mentor for the creation of the Red Hook Peacemaking Program. In its materials, the Washtenaw County Peacemaking Court Program describes itself in the following terms: “It is a model created to replace the limitations of an adversarial court system with more comprehensive, harmonious and balanced solutions that integrate the repairing of harm, healing of relationships, and restoration of the individual within their family and community.” The Washtenaw County Peacemaking Court Program is heavily connected to tribal court traditions, and focuses on four “intrinsic values,” which include relationships, responsibility, respect, and redirection. The program uses these values as the framework for resolving conflicts. Importantly, any agreement that is made during the peacemaking circles is considered as binding as a contract. It mostly sees cases involving probate, domestic relations, child welfare cases, and other civil cases.

How are cases selected and referred to the program?
The Dispute Resolution Center’s (DRC) trained peacemakers receive referrals to peacemaking from the court. The Dispute Resolution Center was opened in 1983 and is one of 19 nonprofit community dispute resolution centers in Michigan operating under the supervision of the Michigan State Court Administrative Office. In 2015, a peacemaker referee was assigned to the trial court’s child welfare docket to further integrate peacemaking practices throughout the court system. Friend of the Court, juvenile probation, and county detention staffs are trained to use peacemaking in their cases as well.

What issues in a case would be appropriate for peacemaking?
Figure 4 illustrates the stages and issues in a child protection case where the court in Washtenaw might utilize peacemaking.

What is the relationship with the community?
The program trains volunteers through its partnership with the Dispute Resolution Center. The court’s

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partnerships with various local organizations such as neighborhoods, schools, law enforcement, juvenile detention and child welfare providers allow them to utilize peacemaking with cases in court but also with disputes not currently in the court process.

Is it working?

Preliminary evidence suggests positive results. Survey responses from the first year of the project, across a variety of probate and family cases, demonstrate that 94% of cases resulted in an agreement from both parties, and of those agreements, 82% agreed or strongly agreed that the results were fair as compared to what might have occurred in a court setting. In addition, 91% of participants agreed or strongly agreed that after listening to everyone speak, they had a better understanding of other perspectives. Lastly, 94% agreed or strongly agreed that they would recommend peacemaking to others. These numbers are promising indicators of the success of the process both in terms of the ability to come to resolution and in terms of participants’ satisfaction.

“Our courts have a history of compartmentalizing cases and focusing on caseflow processing and time management guidelines….and we keep seeing the same people come back again and again, whether it is in criminal cases, domestic cases, or in juvenile cases. And those who have been with the juvenile court see generations coming again and again, sometimes the second and third generation. So it is clear that we need to do something different….We need a more holistic approach. We are so fortunate that we have Judge Tim Connors to bring the peacemaking model to Washtenaw County….I'm a big believer in this alternative dispute resolution process because I've seen it work. Since the court started in October of 2013 with a grant from the State Court Administrative Office, I have been referring cases and I've seen how lives have been transformed – not just the litigants, but the families and workers who bring them through the process.”

– Hon. Darlene O'Brien, Washtenaw County Trial Court Judge 19

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SNAPSHOT:
Near Westside Peacemaking Project, Syracuse, NY

Note: The Near Westside Peacemaking Project studied the model of the Red Hook Peacemaking Program and expanded the reach to a high-crime neighborhood in Syracuse, NY.

Why a neighborhood model?
The Near Westside Peacemaking Project runs a neighborhood-based peacemaking center with the goal of diverting cases from the justice system and empowering the community to heal relationships. Cases can originate (1) in the justice system, including from criminal court, family court, or police, (2) prior to involvement with the justice system, such as school-based disciplinary cases or neighborhood disputes, or (3) through community corrections, such as parole or probation. The Near Westside Peacemaking Project began accepting cases in March of 2015.

How and why did the program begin?
The Near Westside neighborhood in Syracuse, NY, represents the 9th highest-poverty census tract in the United States and has the highest percentage of residents on community supervision in the city. All five city schools that serve the neighborhood are deemed “failing” or “in need of improvement” by the New York State Department of Education. Residents identified quality of life crimes and social disorder as the issues that most troubled the neighborhood. When residents were presented with peacemaking during focus group discussions, they asked that cases not only come from justice system stakeholders but also directly from residents, churches, schools, and community agencies.

Through a one-year planning process, the Near Westside Peacemaking Project worked with a restorative justice architect, residents and justice system stakeholders to design the Peacemaking Center, a free-standing, neighborhood-based restorative justice center. During the first year, twenty community members completed peacemaking training.

How are community peacemakers selected?
Project staff reached out to community groups, including churches, community agencies, and school staff, for names of individuals who may be interested in volunteering as peacemakers, and held informational sessions and mock-circles. In order to become a community peacemaker, volunteers have a connection with the neighborhood, whether through residency, work, volunteering, school or church attendance. Volunteers also commit to completing a twenty-hour peacemaking training, which was developed in consultation with Native American peacemaker experts and the Red Hook Peacemaking Program. This training brings in Native American peacemakers to facilitate the training and includes the fundamentals of peacemaking, storytelling, understanding the criminal and family court systems, the importance of trauma-informed practices, and practicing mock-circles.

What are the program benefits to the community?
The Near Westside Peacemaking Project empowers a high-needs community to solve problems and heal relationships on their own, using the strengths of the neighborhood’s residents to find solutions and address poverty, trauma, and violence. Justice system stakeholders use the Near Westside Peacemaking Project as (1) an alternative to arrest in neighborhood disputes, (2) as a voluntary restorative-based sanction in misdemeanor and juvenile delinquency cases so that offenders can address the harm they have caused, and (3) as a tool to promote the best interests of the child and restore families during a family court case. Neighborhood schools have also used peacemaking as an alternative to suspension and churches have used it to address physical altercations at services.
SNAPSHOT:
Cook County, IL

Note: The following program uses restorative processes to improve state court cases, but differs from the Washtenaw County and Red Hook examples in that it is not directly inspired by Native peacemaking. Rather, it serves as an example of the ways in which courts are incorporating restorative practices in order to mitigate against the limitations of the adversarial process.

What court and case type?
The Parentage and Child Support Court (PCSC) in Cook County, Illinois determines the issue of parentage for unmarried parents. The mission of the court is to “help parents ensure that children have two loving and supportive parents who are not caught in the middle of parental hostility or court proceedings, that the children receive financial support, and that court assistance is available if needed to assist parents so that the children may grow up having a positive view relating to parents and families.” The court began a restorative justice project in 2008.

How and why did the program begin?
The PCSC had one of the most crowded dockets in the Cook County Circuit Court system, including a very high percentage of pro se litigants from high-poverty areas. Furthermore, in many parentage cases, unlike dissolution cases between married parents, there is no relationship history which can be rebuilt around a child. This often results in the child serving as liaison or messenger and often kept from the non-custodial parent as punishment. Often, the parents in parentage cases never learned to communicate with each other or cooperate in any meaningful ways.

In 2008, Judge Martha A. Mills had a case before her in the PCSC in which she saw an opportunity for a restorative solution. She located two attorneys who were knowledgeable about family law and who were skilled in restorative processes. Attorneys Peter Newman and Elizabeth Vastine agreed to serve as circle keepers for this case, and the family, including the child, agreed to try the circle process. Afterwards, the family shared that their experience in the circle process helped them communicate better than they had in years, and perhaps ever. Judge Mills referred several more cases to Newman and Vastine, and the outcomes were promising. Judge Mills wished to move the process to all other judges in the PCSC. To take the project courtwide, Newman and Vastine suggested a partnership with DePaul College of Law’s Schiller DuCanto and Fleck Family and Child Law Center where they hoped to teach a course in Restorative Peacemaking Practices to upper level law students and train them to become circle keepers for cases referred by the PCSC. The first class was held in the spring semester of 2010 and has continued every spring semester since. This partnership between the court and the law school was the first of its kind to apply restorative processes in the family law setting.

How were cases selected and referred to the program?
When the program expanded to all judges in the PCSC, Judge Mills, Newman, and Vastine first educated the other PCSC judges on the restorative justice philosophy and circle process. They collectively

22. Supra, note 20, at 55.
23. Judge Martha A. Mills served as the Supervising Judge of the Cook County Parentage and Child Support Court from 2009-2012.
decided what cases would be referred to the program, including cases where parties were able to communicate, but had gotten stuck on a particular issue; where the children were telling each parent what that parent wanted to hear, but had never had the opportunity to talk to both parents at the same time; or, where the parties had exhausted every legal, financial and emotional resource, and were willing to try a new approach. The judges also explored cases they thought would be inappropriate for a circle process, including disputes where one of the parties was “fixated” on a particular result, or cases where the mental or physical capacity of a party might prevent them from responsibly participating in a restorative circle process.25

Once judges referred a case to the program, Vastine or Newman reached out to each parent individually to share the restorative process philosophy and describe the circle process and what they might expect from it. The parents were informed that participation in the program was voluntary and not court ordered and that the process was confidential unless the parties otherwise agreed.26 At the completion of the process, the families were invited to return to the program to address future issues or to make adjustments to their agreements to meet the changing needs of their child.27

What are the program benefits to the families?
Benefits of the project for families include an increase in the family’s ability to problem solve and make their own decisions. It increased the likelihood that the parties would remain accountable to each other, and that agreements reached were durable and more likely to be successful over time than those imposed by a court. Any agreement reached by the parents was further strengthened if the children participated in the circle. The vast majority of cases that were referred to the program where the parents agreed to participate resulted in an agreement. Some cases never had to return to court, and others returned for resolution of other issues, such as child support modification.28

What are the program benefits to the court?
Because of the success the program has in helping families reach agreements and often avoid lengthy litigation, court time was freed and available for those cases not suitable for a circle process.

Potential expansion
Once judges outside of the PCSC learned of the value of restorative practices and their successes, they also wanted the program to be available as a resource throughout the Domestic Relations Division of the Circuit Court. The Domestic Relations Division has 43 judges and a docket of over 10,000 pending cases, not including cases from PCSC. To take the restorative process from the PCSC to the entire Domestic Relations Division would require a substantial change in the program, including the addition of an overall program administrator or coordinator, as well as considerably more trained circle keepers.29 The court would likely have to look for circle keepers beyond those graduates of the law school partnership program.

25. Id.
26. Id. at 62.
27. Id. at 65.
28. Id.
29. Id. at 67.
“Think big, start small, go slow, keep moving.”

– Advice on implementation from the Red Hook Peacemaking Program

Each planning process is unique, and should be designed to respond to the idiosyncratic needs of the local justice system and communities. With that in mind, the following section sets out a series of steps that planning teams can undertake to create a successful new program inspired by the principles of peacemaking.

Phase I: Planning

1. Find a champion
   For most state court systems, peacemaking represents a major departure from business as usual. Resistance and skepticism can be expected. To develop a successful program, it is critically important to find a champion who has the interest, energy, ability, and influence to rally others to the cause. Often, a judge or prosecutor is the most persuasive advocate for change. In some cases, though, innovative programs have been successfully driven by the defense bar, probation, community-based agencies, and other stakeholders. Whoever takes on the mantle of champion must be willing to exhibit both tenacity and patience: the process for creating change can take time.
2. Identify essential partners and a lead planner
One of the champion’s first jobs is to identify the key partners who should be included in the planning of this project. Typically, partners should include all of the major justice system stakeholders (judges, court administrators, prosecutors, defense counsel, probation, etc.) as well as representatives from impacted communities (community advocates, religious leaders, school officials, etc.). Next, the champion should identify a lead planner. This person may or may not be the champion. Often, when the champion is a central court player like a judge or prosecutor, daily responsibilities can overwhelm the person’s ability to coordinate the planning and implementation process. The lead planner should be someone who can set up meetings, engage community partners, attend community meetings, research other peacemaking programs, apply for grant funding, and draft preliminary materials. An effective lead planner can mean all the difference between successful implementation and failure.

3. Identify funding for start-up costs
Small grants in early stages can provide the foundation for future success. For example, small grants can be used to pay the lead planner for his/her time on a part-time basis until more funding is acquired. Small grants can also be used to pay for food for meetings when convening partners or the planning team. Some courts have small sets of funds that can be allocated as seed money towards program planning. Private foundations may also be able to make a small grant towards this end.

In its first year of operations, the Kindle Foundation provided the Red Hook Peacemaking Program with a $5000 grant to provide food for the training program and the peacemaking sessions. Prior to receiving the grant, program staff had been individually cooking in order to provide food for volunteers, a key aspect to peacemaking. This modest grant had a large impact: it allowed staff to focus on training and implementing, and provided food for a whole year of operations.

4. Assemble a planning team
At a minimum, the planning team should include:

- Lead planner
- One or more judges
- Prosecutor representative
- Defense counsel representatives (public and private)
- Probation
- Court administrators
- Court staff (determined by the types of cases being considered for peacemaking, e.g., family court staff, criminal court staff, small claims court staff, etc.)
- Community-based organizations
- Respected community members (often elders)

Other individuals to consider for the planning team might include:

- Elected officials (mayor’s representative, city council member, etc.)
- Law enforcement representative
- Probation/parole representative
- School official (if working with youth)
- Researchers to document process and impact (could be a local university)

5. Conduct a study trip to an existing peacemaking program
Whenever possible, planning teams should observe other peacemaking programs in action and speak
with those involved in the planning and operation of other programs. Given costs, the team may elect to send one or two people to travel on their behalf and report back what they have learned. There are many tribal communities practicing peacemaking. The best way to learn about peacemaking is to build bridges with Native communities and humbly seek to learn about the role of peacemaking in their cultures. In addition, visiting peacemaking programs in other state courts can help planners think through how best to adapt peacemaking to a non-Native setting.

6. **Identify mission and goals**
   There are many different reasons for starting a peacemaking-inspired program in a state court system. Peacemaking can elevate the role of the community in helping to resolve disputes and build capacity for a community-based approach to resolving disputes. Likewise, peacemaking can provide a more effective approach for resolving conflicts, healing relationships, and restoring harmony. Some research suggests that peacemaking leads to higher rates of participant compliance and reduces recidivism.
   The planning team should take the time to develop a clear mission statement and set of goals for the peacemaking program. The mission and goals will guide the planning and implementation of the program and will help define appropriate performance measures with which to evaluate the program.

7. **Identify case types for the program**
   Peacemaking-inspired programs have been used in a variety of state court matters, including criminal cases, juvenile delinquency, civil disputes, child protection and guardianship cases, and other family matters. One of the planning team's most important decisions is what kinds of cases to accept into peacemaking. To a large extent, this decision will be driven by local politics and concerns. For example, prosecutors may insist on excluding cases involving violence or injury. Court officials may indicate that staffing limitations or administrative challenges make it impractical to implement peacemaking in a particular court. Defense counsel may discourage clients from entering peacemaking in low-level cases where a dismissal or minor sanction is standard. The planning team should take these considerations into account and identify the kinds of cases that are most appropriate for peacemaking in light of local resources and concerns.

   *One strategy is to start small by piloting the program with a single case type, and then expanding to other case types as staff gain experience in the process.*

8. **Define target population and eligibility criteria**
   Once case types are identified, it becomes easier to identify the target population: these decisions usually go hand-in-hand. The eligibility criteria will depend on the case types. For example, some jurisdictions will opt for handling assaults, but will make intimate partner violence ineligible. In addition, program staff may want certain factors to be present before accepting a case into peacemaking. For example: Is there an ongoing relationship at stake that would benefit from peacemaking, or would parties prefer to simply move on and away from the relationship? Does an offender accept some level of responsibility for his/her actions? Is there acute mental illness or drug intoxication that would preclude open discussion? Is there a threat of future violence that would make participants feel unsafe?

9. **Clarify the role of the court and define the court process**
   It is important to establish expectations with court players early in the process. If a program is intended to be community-based, court players need to be prepared to trust the wisdom of communities in resolving controversies, and they need to be mindful not to micro-manage the program. To that end, program staff should clearly establish processes for communicating with court
players, such as eligibility requirements, referral process, status updates, compliance monitoring, and final resolutions. For example, the program should establish clear expectations regarding who will decide whether to accept participants into peacemaking, how participants’ compliance with peacemaking will be monitored, and when cases will be sent back to the court for non-compliance.

At its first training program for volunteers learning to be community peacemakers, the Red Hook Peacemaking Program invited Judge Alex Calabrese of the Red Hook Community Justice Center to address the group. He welcomed everyone to Red Hook and thanked them for their service to the community. He then stated that he trusted the community to do this work and said he wouldn’t stay any longer so that the court wouldn’t be interfering with the important work that needs to be done by community members. This was a valuable statement from a person in authority, setting the tone for this to be a community-based and community-run program, without undue interference from the court.

10. Create an MOU to define the use of confidential information
Courts may need status updates as a peacemaking process unfolds, but confidential information disclosed within a peacemaking session should not be shared. The program should develop a memorandum of understanding (MOU) between program staff, court players, and other partners that outlines the confidential nature of peacemaking sessions and any exceptions to that rule, such as mandatory reporting requirements. The MOU should also indicate that program staff and community volunteers cannot be subpoenaed to testify about anything disclosed during the sessions. Those same expectations should be communicated to all participants of a circle process, who should also sign forms indicating they understand the confidentiality requirements. An MOU should specify what types of information will be disclosed, with whom it will be shared, and under what circumstances.

11. Identify the referral process
The planning team should work together to set out a process for how a case that has entered the court system can be referred to the peacemaking program. Use of a grid or case flow chart to illustrate the referral process can help communicate both processes and expectations. A referral process will also take into account whose job it is to explain the peacemaking process to a potential participant, how long that will take, whether a case is adjourned in the interim, and at what point screening tools will be administered.

12. Create screening tools
With eligibility guidelines in place, the planning team should select (or develop) screening tools to ensure that appropriate cases are identified for peacemaking. If, for example, the program excludes participants with severe mental illness, a screening tool should be employed to assess participants’ mental health. Similarly, if a program wants to exclude intimate partner violence, program staff should work with appropriate victim services to ensure that the screening tool includes questions designed to flag these issues. The planning team should also determine who will administer the screening tool and at what point in the court process.

13. Identify peacemaker qualifications
Peacemakers need not have any specific credentials—the most important qualification for peacemakers is that they be respected members of the community who have wisdom and a desire to give their time for the good of others. Different programs may decide to require certain qualifications, but it is important to ensure that a community-based program does not become “professionalized” such that it resembles an exclusive membership.
14. Identify peacemaker stipend
   Although peacemakers may be recruited as volunteers, some programs offer peacemakers a stipend (ex., $100 a month) to offset the costs of travel, phone calls, and other costs associated with the position. In some Native communities, the peacemaker is paid like other professionals, in recognition of their wisdom and expertise. In the Navajo Nation’s plan of operations, for example, it states that peacemakers should be paid a “yeel”, which is essentially a fee-for-service. 30

15. Develop written materials
   These are examples of the kinds of written materials that may be necessary:
   • Program factsheet
   • Screening tools
   • Policies and procedures manual
   • Participant’s handbook
   • Defendant’s consent and acceptance of responsibility (note: this will not amount to a legal admission of guilt)
   • Parental consent, when necessary
   • Victim’s consent, when necessary and appropriate
   • Peacemakers’ roles and responsibilities
   • Justice system stakeholders roles and responsibilities
   • Confidentiality agreement for defendants, victims, and peacemakers.
   • MOU for the treatment of confidential information
   • Declaration of delinquency form
   • Notice of termination
   • Compliance-monitoring form for status hearings
   • District Attorney’s offer for resolution upon completion of the program
   • Evaluation protocol

Phase II: Launch

1. Recruit peacemakers
   Each program will be different and will recruit from their communities in unique ways. With that in mind, however, a robust and representative cohort of community peacemakers will be instrumental in the program’s ultimate success. The planning team, and especially the lead planner, should make extensive efforts to recruit from many sectors of the community. Some methods for recruitment include attending community events and monthly community meetings, police precinct meetings, and civic association meetings. The planning team might also post flyers at local community-based organizations and the local library, senior citizens center, veterans’ association, and other community centers. It is also important to recruit active citizens who are well-known to—and respected by—their communities, and who have a good sense of the issues facing the neighborhood. The recruitment process should be ongoing throughout the life of the program, in order to ensure that many sectors of the community are represented, and not just the loudest and most easily recognizable voices.

2. Train peacemakers
   Creating a training curriculum for community-based peacemakers requires significant planning. Given the origins of this tradition, connecting community members with Native peacemakers and experts is the best way to communicate its fundamental tenets. Some other topics to focus on in a

30. Judicial Branch of the Navajo Nation, supra note 2, at 1.
training program include the importance of storytelling, the elements of restorative justice, steps in a peacemaking process, the importance of self-care, and identifying trauma in both participants and peacemakers. Some Native peacemakers have suggested that training programs should be spread out over a long period of time, to ensure that volunteers demonstrate that they can stay the course and thus self-select into the program.

Phase III: Sustainability

1. **Identify long-term funding**

It is never too early to start planning for long-term funding. Planning teams should scour both the local and national landscape for funding opportunities, looking at both public and private spheres. One method is to have one funder pay for part of the program and look to a second funder as a match. The best way to ensure long-term sustainability is to integrate the program into court operations and ask the local court system to absorb part or all of program staff costs, looking to outside funders to sustain the community peacemakers’ stipends and training costs. An evaluation that outlines effectiveness as well as cost savings will also assist in convincing funders to invest in this work.

2. **Craft an evaluation plan**

Evaluations help planners discover what is working and what’s not and allow court leaders and program managers to make adjustments as needed, e.g. moving around resources, staff, etc. Evaluations can demonstrate program effectiveness and showcase success to funders and the community. Finally, evaluations demonstrate a commitment to continuous improvement.

When conducting an evaluation of your court’s peacemaking program, consider the following research questions:

1. Are the goals and objectives of the peacemaking program being met?
2. Is the peacemaking program being implemented as designed?
   • What are the characteristics of the participants being referred to peacemaking?
   • What are the characteristics of the volunteers and how are they performing?
3. What is the impact of the peacemaking program on the participants, the community, and the court?

In conventional evaluations, the metric is usually focused on whether a program reduces recidivism. For peacemaking and other restorative justice programming, the goal of reducing recidivism is only the tip of the iceberg. By creating a positive, future-oriented, and healing space for defendants, victims, their families, and community members, these processes can have far-reaching and unpredictable impacts. It is important that pilot programs take the time to quantify how different people are affected by the process (including every community volunteer and every support person who sits in a session to support a victim or defendant). The planning team should also consider all of the different steps that are taken to resolve a dispute and heal the relationships. For example, in pursuit of self- and family- improvement, a participant might decide as a result of a peacemaking session to complete an educational degree or apply for a job. These improvements should be tracked both short- and long-term and measured wherever possible. Similarly, community volunteers may also be inspired to make improvements to their lives and to their communities as a result of learning about peacemaking. All of these improvements need to be tracked in order for funders, court players, and the public to gain a true gauge of the breadth of impact.
Participant Outcomes

The following are examples of measurable participant outcomes.

- Reduce recidivism for this particular type of behavior
- Resolve conflicts that are related to and may aggravate the issues at hand
- Illuminate how third parties are affected by conflict
- Increase restitution collected
- Reduce the use of conventional outcomes (e.g. jail, fines, etc.)
- Reduce costs paid by litigants (e.g. court fines, fees, etc.)
- Improve victim satisfaction in the court process
- Improve offender satisfaction in the court process
- Have participants take responsibility for resolving the matter
- Increase accountability
- Improve relationships

Community Outcomes

The following are examples of measurable community outcomes.

- Increase public trust and confidence in the court system
- Bring conflict resolution skills to members of the community
- Increase community engagement with the criminal legal system
- Replace the focus on process with a focus on healing
- Imbue community members with a sense of responsibility to their fellow citizens in crisis

Court Outcomes

The following are examples of measurable court outcomes.

- Reduce pending caseload
- Improve court processing timeliness measures
- Improve court staff job satisfaction, as the revolving door of justice is replaced with more long-term and sustainable solutions

To plan an evaluation, identify the needed data elements including both quantitative and qualitative data. Quantitative data could be gathered from the court’s case management system, case file reviews, and surveys. Qualitative data could be gathered through interviews and/or focus groups with participants, peacemakers or circle keepers, program staff, judicial officers, court staff, and stakeholders.

What evaluation design will be used?

Courts often lack the resources to engage an independent evaluator, but when possible this is recommended; see Figure 5. The evaluator should be involved in the planning process as early as possible to help identify measurable goals and objectives and to assist in the design of a data collection process and tools. An evaluator may be available through the state court administrator’s office, county/city government, or through a local college or university. Schools of criminal justice, sociology, or social work are often interested in participating in program evaluations of this kind and make effective partners.
## Figure 5. Comparison of Evaluation Methods

<table>
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<tr>
<th>Evaluation Method</th>
<th>Process or Outcome Evaluation</th>
<th>Steps</th>
<th>Strengths</th>
<th>Weaknesses</th>
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<tr>
<td>Planned program design vs. actual implementation</td>
<td>Process</td>
<td>Measure over or under targets</td>
<td>Least costly</td>
<td>Measures process and not outcomes</td>
</tr>
<tr>
<td>Before and after comparison</td>
<td>Outcome</td>
<td>Measure criteria (e.g., offender attitudes and behavior before and after peacemaking)</td>
<td>Low cost; low expertise needed</td>
<td>Low credibility; difficult to correlate inputs/program activities to outcomes</td>
</tr>
<tr>
<td>Time series designs of pre/post program</td>
<td>Outcome</td>
<td>Measure criteria over several intervals and project future trends</td>
<td>Moderate costs and expertise needed</td>
<td>Extreme variations may falsely imply a trend</td>
</tr>
<tr>
<td>Quasi-experimental designs</td>
<td>Outcome</td>
<td>Measure changes in similar groups with one group assigned to peacemaking and the other group assigned to standard procedures</td>
<td>Low to moderate costs and time if data is available; otherwise moderate to high costs and time needed</td>
<td></td>
</tr>
<tr>
<td>Randomized</td>
<td>Outcome</td>
<td>Some defendants are randomly assigned to peacemaking; identical groups are then compared</td>
<td>Systematic and methodologically robust</td>
<td></td>
</tr>
</tbody>
</table>
Peacemaking affects those in the circle in unpredictable ways. Sometimes the victim is the one who benefits the most. Other times it might be a support person who is finally able to express how a conflict is affecting them. Peacemaking will often have long-lasting and unquantifiable effects. Here are some stories to illustrate the impact of the Red Hook Peacemaking Program. These stories also illuminate the need for creative thinking about performance measures that respond to the breadth of impacts of this type of work. All names have been changed to respect participants’ privacy.

**The neighbors**

This case involved two Spanish-speaking women who were neighbors. They were both arrested in a cross-complaint and charged with assault, although the complaint against one was dropped by the police. Both women wanted to engage with the program to find a way to continue living in peace.

At the first session, Dolores (the defendant), brought her husband for support, and Aleida (the victim)
brought her brother. They both stated unequivocally that they would never be friends and they would barely look at each other. For the second and third sessions, the women came alone. Throughout the sessions, each woman had a chance to speak in great detail about the incidents leading up to the assault. They also spoke about underlying issues in their lives. Dolores was able to speak about the grief she was going through as a result of the recent deaths of both her son and her mother. Once Dolores felt heard by those in the circle, she was much more capable of recognizing what she had done to Aleida, and she apologized.

The peacemakers encouraged both women to make small steps to acknowledge each other, encouraging them to make eye contact, speak directly to one another, and say hello to each other. Although they both initially resisted making contact, after the second session both women felt safe and comfortable enough to go home together in a cab. By the third session, the peacemakers noticed that during the meal (served before each peacemaking session), the women were sitting next to each other quite naturally, chatting and eating. The peacemakers knew that the worst had passed and that the women were ready to make amends, which they did. Upon departure, Aleida left to take the bus home while Dolores was being picked up by her husband in a car. When Dolores realized this, she rushed out to catch Aleida at the bus stop in order to give her a ride home.

One year later: Both Dolores and Aleida report that there have been no further incidents. Aleida’s child likes to go to Dolores’ house to play with her son’s toys. Their doors are open and they live peacefully. When things were volatile before peacemaking, Aleida had considered moving because she could not handle the tension, but now she feels comfortable staying in her home.

The bar fight

Originally, Jacquie, Vanessa and Luis came to the peacemaking program after having been charged with assault for allegedly beating up Rachel at a club. Jacquie and Vanessa used to be very close friends but stopped speaking after the arrest, blaming each other for speaking to police. Luis and Rachel were friends before the arrest but had also stopped speaking. During the first peacemaking session, which included all three defendants and the victim, the situation was tense. Each person was given a chance to speak and they went around and around, blaming and interrupting each other. Rachel cried about the impact that the incident had had on her and on her mother, who was horrified when she heard her daughter had been hurt in a fight. It was difficult to get them to respect the rules of peacemaking, which include speaking only when holding the talking stick. Luis, whose sister was still friends with Rachel, said that if Rachel ever came to his house he would have her thrown out.

For the next three sessions, just the defendants came, and they slowly unpacked what had really happened that night. They began to process their individual responsibility for letting that night get out of control. Both Luis and Jacquie were able to talk about some of the very difficult issues in their lives and make progress towards resolving them. They all undertook to start going to therapy. Jacquie and Vanessa also spoke in depth at what had happened to their friendship and how they could work towards making amends. During one of the sessions, Vanessa’s daughter attended and participated, and asked her mother and Jacquie to make amends because she knew how much her mother missed and needed Jacquie as a confidante. She said she was also affected by the dispute and that she was tired of being her mother’s replacement confidante.

By the last session, Jacquie and Vanessa had made great strides towards mending their relationship. They were Facebook friends again and were joking together before and after the session, and asking about each
other's kids. Luis and Rachel had also made amends and had resumed their friendship. Each defendant apologized to Rachel, and she accepted their apologies. She told the District Attorney that she no longer wanted an order of protection against any of the defendants and the charges were dismissed.

The students

Michelle and Kendra were referred to the Red Hook Peacemaking program from their local high school. Both girls were 17 years old and had been suspended after fighting at school, which had a zero tolerance policy for fighting and was in the process of transferring the girls. Both girls had learning disabilities and had struggled in other schools in the past.

Each girl expressed remorse and indicated they wanted to stay at their current high school. The school allowed them to participate in the Red Hook Peacemaking Program during their suspension to give them the opportunity to resolve their conflict, make amends, and reintegrate into the student body.

Michelle and Kendra had been friends before the incident. Michelle lived with her older sister in public housing. Her mother was a drug user and had abandoned her children, and she never knew her father. Kendra lived in an apartment with her mother and several other family members. She had been sexually abused by an uncle but no one in her family believed her when she told them. She spent most of her time with a boyfriend with whom she felt safe because he had stood up to her uncle and beat him up. He later began to physically and emotionally abuse Kendra, which upset Michelle who wanted Kendra to leave him. This eventually led to the altercation and assault at school.

After the girls were referred to peacemaking, they each had individual intake sessions with staff to prepare them. They did a total of four peacemaking sessions together over the course of two months. In addition, they each did a re-entry circle with school administrative staff and school counselors, and one with peers at their school. Michelle also did a separate circle with her older sister to work on some of the issues that had come up about her home life. While the girls were taking part in peacemaking, they also received individualized academic support from peacemaking staff. They would pick up their packets of take-home work from the school and bring them to the peacemaking office daily for tutoring and support. It gave them a structure to their days and ensured they didn't fall too far behind in school. Kendra was connected to trauma-focused counseling and rape crisis services. Peacemaking staff also helped both girls apply to summer jobs. Finally, both girls were re-admitted to the school. Michelle decided to become a peacemaker herself. After Michelle was readmitted to school, she continued to struggle and fell further behind in credits. She later dropped out but came back to the peacemaking program for help in finding a high school equivalency program. Kendra remained in school and is on track to graduate.

Michelle and Kendra remain close friends and critical support systems for one another today.
Image Left:
Peacemaking circle in progress, Red Hook, Brooklyn, New York

Image Below:
Peacemaking talking piece
PART V
Conclusion

The traditional family court process can be hard on families. Recognizing this, many state courts are looking to develop innovative ways to resolve disputes. This includes helping families become more self-sufficient and functional, and avoid future conflict and trauma. The experience of the programs in Brooklyn, Syracuse, Chicago, and Michigan suggests that peacemaking can play an important role in improving the delivery of justice to families with complicated disputes, complicated lives, and complicated relationships.

Peacemaking can also provide valuable assistance for those engaged in criminal justice reform. Criminal courts are recognizing that in order to stop the revolving door of crime and disorder, and in order to create interventions that contribute to lasting change, they need to address underlying issues and ongoing relationships. To that end, the Native tradition of peacemaking, with its future-facing emphasis and intent to heal relationships provides reformers with an opportunity to change existing practices and structures.
Resources


A former Prosecutor's view on using Peacemaking in a State Court setting http://www.courtinnovation.org/sites/default/files/documents/KindleProject_Sasson.pdf


Native American Rights Fund compilation of Peacemaking codes http://www.narf.org/peacemaking/codes/index.html


Red Hook Peacemaking Program video http://www.courtinnovation.org/research/red-hook-peacemakingprogram?url=project%2Fpeacemakingprogram&mode=project&project=Peacemaking%20Program

Tribal Justice Exchange homepage at the Center for Court Innovation http://www.courtinnovation.org/topic/tribal-justice

Tribal Access to Justice Innovation http://www.tribaljustice.org/

Widening the Circle: Can Peacemaking Work Outside of Tribal Communities http://www.courtinnovation.org/sites/default/files/documents/PeacemakingPlanning_2012.pdf

Technical Assistance

Peacemaking comes from Native American traditions, and Native-run organizations are best placed to provide guidance on how to understand and incorporate those teachings. The following Native organizations provide technical assistance on peacemaking:

National American Indian Court Judges Association: http://www.naicja.org/

Indigenous Peacemaking Initiative of the Native American Rights Fund: http://www.narf.org/

In addition, the Center for Court Innovation’s Tribal Justice Exchange can provide technical assistance on methods of adapting peacemaking processes to state court settings. http://www.courtinnovation.org/topic/tribal-justice
PEACEMAKER CONFIDENTIALITY AGREEMENT

All participants’ information is to be treated as confidential, including the fact that he or she participates (or has previously participated) in Peacemaking Sessions. The privacy and confidentiality of our participants are of paramount importance. No participant’s information may be disclosed without the explicit informed consent of the participant and authorization by the Peacemaking staff.

The following would be inappropriate, and a violation of confidentiality:

- Discussing/revealing participant’s information (legal, personal, medical, etc.) to anyone outside the Peacemaking session. (e.g., friends, family, etc.).
- Removing any participants’ information from the session for any purpose (including working from home) without explicit authorization from the participant and the Peacemaking staff.
- Discussing/revealing participant’s information to another Peacemaker who has no legitimate need to know.
- Obtaining access to a participant’s information not directly necessary for performing your duties.

GENERAL EXTENT AND LIMITS OF CONFIDENTIALITY

The Peacemaking Program is following the statutory guidelines for social service providers. As such, information about a participant will be kept confidential except for two types of information and/or situations. Those exceptions are:

- Safety: The danger of imminent harm to self and/or to others.
- Abuse: Suspicion of abuse, which can include neglect, hurt, verbal abuse or sexual molestation of another person.

If any of these situations arise, you must immediately notify the Peacemaking staff and/or another mandated reporter. You may not disclose this information to anyone else.

PEACEMAKING CONFIDENTIALITY AGREEMENT

I hereby acknowledge, by my signature below, that I understand that any participant’s information to which I have access is considered confidential, including clinical records, financial records, or any other identifiable information about a participant. I understand that confidentiality must be maintained whether the information is stored on paper or on computer, or was communicated orally or through any other means.

I understand the non-disclosure guidelines of the Peacemaking Program. I know that that the Peacemaking Program authorizes me to have access to certain participant information in the performance of my routine duties. I understand that further authorization would be needed for me to disclose that information to anyone for any other purpose. I agree to disclose no participant’s information without being informed by the Peacemaking staff.

I understand that unauthorized disclosure of participant’s information or any other confidential or proprietary information is grounds for disciplinary action, up to and including my immediate dismissal. I understand that this duty of confidentiality and non-disclosure will continue to apply even after the case is closed and/or I am no longer a Peacemaker.

Peacemaker’s Name (Print): _____________________________________________________________
Peacemaker’s Signature:_________________________________________________Date:___________
Witness Signature:_____________________________________________________Date:___________
PARTICIPANT CONFIDENTIALITY AGREEMENT

Confidentiality in the Peacemaking Session

Before you tell anyone about yourself, you have the right to know what information can and cannot be kept confidential. Please read this and initial each item only if you understand and agree to the conditions described. If there is anything you don’t understand, please let us know so we can explain it in more detail.

General Extent and Limits of Confidentiality
The law requires that all information about a participant be kept confidential except for certain types of information and situations. Those exceptions are:

1. Client’s desire: If you want the Peacemaking Program to give information about your case to anyone outside this program, you must sign a release of information giving written permission for this disclosure.

Acknowledgment: I understand that if I want this agency to give information about my case to any outside person or agency, I must sign a release of information.

Initials: _________

2. Safety:

a. Risk of self-harm: If your words or behavior convince the Peacemakers that you are likely to harm yourself, either deliberately or because you are unable to keep yourself safe, your Peacemakers must do whatever they can to prevent you from being harmed. If this situation comes up, the Peacemakers will discuss it with you before taking action unless it appears that this would be unsafe or immediate action is needed to keep you from being harmed.

b. Risk of harm to others: If you threaten serious harm to another person, the Peacemaker must try to protect that person. He or she would report your threat to the police, warn the threatened person, and try to prevent you from carrying out your threat. If this situation comes up, the Peacemakers will discuss it with you before taking action unless it appears that this would be unsafe or immediate action is needed to keep you from acting on your threat.

Acknowledgment: I understand that the Peacemaking Program is following the statutory guidelines for social service providers. As such, if the Peacemakers believe there is a serious risk that I will hurt or kill myself or another person, the Peacemakers will report it to the Peacemaking Program staff, who are legally required to report this, warn the endangered person if someone other than myself, and take whatever action seems needed in his or her judgment to prevent harm to myself or others.

Initials: _________

3. Abuse: If the Peacemakers obtain information leading him or her to believe or suspect that someone is abusing a child, a senior citizen, or a disabled person, the Peacemakers must report this to Peacemaking staff, who will report to a state agency. To “abuse” means to neglect, hurt, or sexually molest another person. The Peacemakers cannot investigate and decide whether abuse is taking place: if the suspicion is there, they must report it. The state agency will investigate. If you are involved in a situation of this kind,
you should discuss it with a lawyer before telling the Peacemakers anything about it unless you are willing to have the Peacemakers make such a report. If this situation comes up, the Peacemakers will discuss it with you if possible before making a report.

**Acknowledgment:** I understand that if the Peacemakers believes or suspects that a child, a senior citizen, or a disabled person is being abused or neglected, the Peacemakers must report this to a state agency who will then investigate the situation.

Initials: _________

4. **Peacemaking Session:** In the peacemaking session, the other Peacemakers of the group are expected to maintain your confidentiality but other members are not. To avoid problems in this area, it is our policy to ask all participants in a session to agree to protect one another’s confidentiality, and to remove from the group any person who violates someone’s confidentiality.

**Acknowledgment:** I understand that in a peacemaking session, other participants that are not Peacemakers are not bound by the ethical rules on confidentiality. I also agree that I will not share information shared by others during the session outside of the session.

Initials: _________

5. **Independent disclosure by client:** Any personal information that you share outside of the peacemaking session, willingly and publicly, will not be considered protected or confidential.

**Acknowledgment:** I understand that if I myself willingly and publicly disclose personal information, that information is no longer confidential or legally protected.

Initials: _________

Our signatures here show that we have read, understood, and agreed to the conditions presented above.

**Participant Name:** ___________________________ **Date:** ________

**Signature:** ____________________________________________

**For youth participants:**

**Parent/Guardian Name:** ___________________________ **Date:** ________

**Signature:** ____________________________________________
At Kindle we’re always looking for projects that take a new approach to existing problem. Peacemaking in many forms is also a perpetual interest of ours. We have supported an array of peacemaking projects over the years. For example, with the Salam Institute for Peace and Justice we saw how Mohammed Abu-Nimer took peacemaking from academia to the Middle East. With Be Present we’ve learned how personal and social change stem from internal peacemaking. Now, with the Center for Court Innovation’s (CCI) new Peacemaking Program we’re learning how one organization is taking a traditional peacemaking approach and applying it to the court system in Redhook, Brooklyn.

Meshing a Native American method of problem solving with the contemporary court system, CCI’s unique modus operandi intrigued us. How could this work? What judge would agree to this? Could lawyers really be trained in peacemaking? These questions were not skeptical in nature, but rather came more from a place of genuine curiosity.

By training community members as peacemakers to offer their services to court cases involving young adults and teens, CCI practices this alternative adjudication process publicly, demonstrating a model of healing and community restoration within a system accustomed to models of power and opposition. With one formal process already underway, the CCI’s program is making big headway in the Brooklyn community. All involved participate on a voluntary basis, and this in itself an alterative model to traditional justice systems.

Below, CCI’s Peacemaking Program Director, Erika Sasson, has shared with us her story of transitioning from being a criminal prosecutor in Canada to her current work spearheading this unique project. Erika’s words serve not only as testimony of how we can bring peacemaking into court systems, but also as a testament to how effective these methods are. This work is breaking the molds of what we imagine justice to be, and is reshaping them.

Red Hook Peacemaking Program: A different voice
by Erika Sasson

I’m currently sitting in the Red Hook Community Justice Center in Brooklyn, N.Y. Once a catholic school, the building is now home to an innovative courthouse, one that specializes in applying new solutions to some age-old problems.

One of the newest solutions we’re testing is our Peacemaking Program. It’s a Native American-inspired approach to conflict resolution that we’re using to resolve criminal cases. Our program came into being after years of work with Native American tribes in the United States, and through the mentorship and generosity of many tribal judges and peacemakers who encouraged us to pursue the study and implementation of peacemaking.

Over the course of many months, we trained local volunteers to become peacemakers, and those volunteers are now working on their first cases. If the case has a victim (i.e. an assault between brothers or neighbors), our peacemakers will bring the conflicting parties together to discuss what happened and seek a consensus resolution; or, if it’s a crime against the community (drug sale, prostitution, etc.) the peacemakers work with the defendant to develop strategies for moving forward and out of a life of crime. At the start of each session, everyone is invited to share a light meal, in order to relax our...
participants and bring everyone together. The peacemakers then open the discussion with a non-religious ceremony to set the tone, such as a moment of silence. The peacemakers ask questions in order to understand the incident, as well as the background and any underlying issues. Each person is given the chance to speak, and slowly the peacemakers help the participants move towards a concrete resolution by way of consensus.

Although we’re just at the beginning of this journey, our peacemakers have already demonstrated the extent to which they have internalized the approach to peacemaking taught by our Navajo mentors, including listening, showing empathy, sharing personal stories and scolding when necessary. Our peacemakers are also committed to the notion that the solution must originate with the participants—defendants and victims—for it to be long-lasting.

Although I find this work intuitive, my own path to peacemaking actually began in the conventional adversarial courtroom. My first job out of law school was for the Canadian federal government, where I eventually became a criminal prosecutor, mostly dealing with drug cases, and often involving small to medium-sized gangs, as well as guns. I worked in a very busy courthouse and learned to process cases as fast as I could. Even though the volume was tremendous, I was lucky to have a supervisor who instilled in her front-line prosecutors the importance of doing the right thing (as quickly as possible, of course).

Spending days and nights in a courthouse, I learned about how we organize our society and the inflated role played by the criminal justice system. Many of us suffer from a host of social ills, personality conflicts, physical and mental illness, addiction, power and abuse, and somehow these issues are packaged and rolled up into a singular notion of crime, and sent to the courts to solve. Needless to say, our criminal justice system can only do so much. Despite the best of intentions, it is necessarily limited in the types of remedies at its disposal, and in its ability to penetrate the surface, especially given the high volume.

In the course of prosecuting, I also learned about myself, and the kinds of interactions that appealed to me. I was, on the one hand, seduced by the power dynamics of the courthouse, especially the degree of power exercised by the prosecuting authority. But, as time went on, I began to seek different types of interactions with the people whose lives were being affected by our criminal process.

The courtroom is designed for the prosecutor to speak directly to a judge, most often with her back to the defendant. I started to feel that like I couldn’t keep talking about someone without even making eye contact. I began to give my back ever so slightly to the judge, in order to face the defendant when speaking about her. I began to ask defense counsel to hear more about the people they were representing, and subsequent to sentencing, I would want to know how people were faring. I started to realize what a small piece of the picture I was getting, and I felt that the process placed too much emphasis on separation.

A few years later, and before embarking on the peacemaking project, I came by Carol Gilligan’s In a Different Voice. I had read the book a few years earlier, but I had a new opportunity to revisit it, and the words jumped out at me. In the book, which examines young Amy and Jake and their perceptions of the world around them, Gilligan wrote that Amy’s world was “a world of relationships and psychological truths where an awareness of the connection between people gives rise to a recognition of responsibility for one another, a perception of the need for response.”

Since joining the Center for Court Innovation’s Tribal Justice Exchange in 2011, I can finally incorporate into my work with the courts “an awareness of the connection between people.” Peacemaking is, in a sense, that different voice. It allows our communities to recognize the connections between people and the responsibility we have for one another. By seeking to respond as a community to the problems we share, to restore relationships that have been damaged by crime, to resolve problems using consensus, to focus on listening to the stories underlying the issues, we allow an opportunity for different types of solutions. Although I’m still a firm believer that the courtroom is necessary to establish boundaries for certain types of cases and offenders, I’m grateful to be working with a different voice.

¹ We are indebted to the Kindle Project for providing the funds to ensure we can provide food at each peacemaking session.

² Carol Gilligan, In a Different Voice (Harvard University Press: Cambridge, Massachusetts, 1982) p.30