

THE NEW MEXICO DISTRICT ATTORNEY CLINIC: SKILLS AND JUSTICE

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I was panicking. Two years of law school behind me and I got lost looking for the courthouse. As I walked into the courthouse, security stopped me. I must not have looked like a lawyer. All the lawyers just walked passed security. I got stopped. I was going to be late to court! My heart was beating so hard in my chest that I thought it was going to jump out of my throat. I could hardly press the elevator button. I rode the elevator to the third floor. It was the longest elevator ride I had ever taken. As the elevator opened, I saw opposing counsel. He looked smart and successful. He looked experienced. I knew I was dead meat.

As I walked into the courtroom, I sized up my case. First, opposing counsel intimidated me. Second, my witnesses, the police, did not want to go to trial. In fact, they were mad at me for taking this case to trial. "It's only a misdemeanor," they said. To me, it was the biggest case in the world. Third, there was no victim on this case. Three strikes against me. With the exception of my professor, I did not feel like anyone was on my side.

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The author wishes to thank Associate Dean Antoinette Sedillo Lopez, for without her encouragement and support, this article would have not been written. The author wishes to express appreciation to William T. MacPherson for his vision and ongoing commitment to the success of the District Attorney Clinic.

Just before the trial was to begin, my professor whispered something to me. I could not understand a word she said. I did not know she spoke Japanese. With fear, I just nodded my head. The judge called for opening statements. My professor smiled at me with a sign of encouragement. I stood up and began to speak. I survived the opening statement. I hoped I could survive the trial. I just wanted District Attorney Clinic to end.

I was so thankful I was not accompanied by a client. I was able to panic without the fear of letting anyone down but myself. No one was counting on me. No one depended on my expertise. Even my witnesses did not care about the outcome of the case. They had worked all night and they were tired. My witnesses wanted to go home and sleep. It was "only a misdemeanor." I was allowed to make mistakes, I was allowed to stumble through the trial, and I was eventually allowed to succeed.

By the end of the semester and several trials later, I walked past security with confidence. I pressed the elevator button without anxiety. My blood pressure was under control. My supervisor spoke English and I actually understood what she was saying. I could do this! I picked my own jury. The voir dire seemed to flow naturally. I laughed with the jurors. I did my own opening statement, it wasn't bad. It wasn't great, but not bad. I conducted the direct examination of two officers. I cross examined the defendant, AND I did the closing. At the end of the trial, it had been confirmed; I did not make a mistake by going to law school. I belonged in the court room. I had found my place. I did not waste the past two and a half years of my life. District Attorney Clinic had just become one of the best experiences of my law school career. I could do this. I could be a lawyer. I found my niche.

During my semester in the University of New Mexico District Attorney Clinic, I grew as a trial attorney. I left the District Attorney Clinic knowing I can be competent in the courtroom. Today, I am a better lawyer because of this educational experience. District Attorney Clinic was meaningful and worth-

*while. It helped to shape who I am as a lawyer today.*¹

Clinical scholars in the United States tend to agree on some basic goals of clinical education.² While they may be labeled something slightly different by different scholars, it appears that the longstanding goals of clinical education are skills training and the teaching of social justice.³ These goals do not change in a prosecution clinic.

Likewise, the goal of the University of New Mexico School of Law Clinical Law Program is to provide a quality educational experience in both skills training and social justice. This goal does not change with the type of case handled. The specific goals of the University of New Mexico Clinical Law Programs remain skills training and social justice regardless of whether the clinic centers on business transactions or criminal law. This paper will examine the objectives of clinical legal education in the context of the New Mexico District Attorney Clinic and how the University of New Mexico School of Law District Attorney Clinic applies these objectives.

¹ These are reflections on the author's personal experience while a student in the University of New Mexico School of Law District Attorney Clinic in 1990. In my present experience as an instructor of the District Attorney Clinic, I talk to many students who share similar insecurities about their purpose in law. Many students seem to have doubts about the decision they made to go to law school, and many feel frustrated as they search to find their "niche" in law.

² See Kimberlee K. Kovach, *The Lawyer as Teacher: The Role of Education in Lawyering*, 4 *C L. REV.* 359 (1998)(describing the value of using education as a model for the objectives of clinical teaching); Peter Margulies, *Re-framing Empathy in Clinical Legal Education*, 5 *CLINICAL L. REV.* 605 (1999)(describing empathetic engagement as an objective in clinical education), cited in Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 *CLINICAL L. REV.* 307 (2001).

³ Jane Harris Aiken, *Striving to Teach "Justice, Fairness and Morality,"* 4 *CLINICAL L. REV.* 1 (1997); Sedillo Lopez, *supra* note 2, at 309 (citing Nina Tarr, *Current Issues in Clinical Legal Education*, 37 *HOW. L.J.* 31 (1993)).

I. THE NEW MEXICO EXPERIENCE: A HISTORICAL OVERVIEW

The University of New Mexico School of Law is among the growing number of law schools that strive to reassess and redefine clinical education.⁴ The University of New Mexico offers a wide variety of clinical programs.⁵ Among these programs is the District Attorney Clinic. When the clinical programs first began at the University of New Mexico School of Law, the original focus was to help students acquire the necessary skills to practice law in New Mexico.⁶ This focus has evolved and expanded to the current philosophy skills training and justice awareness.

⁴ Sedillo Lopez, *supra* note 2, at 308-11.

⁵ Other clinical offerings include, but are not limited to, the Southwest Indian Law section, employment law, criminal defense law, and community lawyering. For articles describing the University of New Mexico's Clinical Law Programs, see Margaret Martin Barry et. al., *Clinical Legal Education for this Millennium: The Third Wave* 7 *CLINICAL L. REV.* 1 (2000); Don J. Benedictis, *Learning by Doing, the Clinical Skills Movement Comes of Age*, 76 *A.B.A. J.* 54 (1990); Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 *CLINICAL L. REV.* 41 (1994); Alfred Dennis Mathewson, *Commercial and Corporate Lawyers 'N the Hood*, 21 *U. ARK. LITTLE ROCK L. REV.* 769 (1999); Margaret Montoya, *Academic Mestizaje: Re/Producing Clinical Teaching and Re/Framing Wills as Latina Praxis*, 2 *HARV. LATINO L. REV.* 349 (1997); Margaret E. Montoya, *Comment, Voicing Differences*, 4 *CLINICAL L. REV.* 147 (1997); J. Michael Norwood & Alan Paterson, *Problem-Solving in a Multidisciplinary Environment: Must Ethics Get in the Way of Holistic Services?*, 9 *CLINICAL L. REV.* 337 (2002); J. Michael Norwood, *Requiring a Live Client In-House Clinical Course: A Report on the University of New Mexico Law School Experience*, 19 *N.M. L. REV.* 265 (1988); Michael Norwood, *Scenes from the Continuum: Sustaining the Maccratte Report's Vision of Law School Education into the Twenty-First Century*, 30 *WAKE FOREST L. REV.* 293 (1995); Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 *J. LEGAL PROF.* 149 (2001); Sedillo Lopez, *supra* note 2; Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical legal Education*, 6 *CLINICAL L. REV.* 127 (1999); Nancy L. Simmons, *Memories and Miracles—Housing the Rural Poor Along the United States-Mexico Border: A Comparative Discussion of Colonia Formation and Remediation in El Paso County, Texas, and Dona Ana County,*

One feature that made the University of New Mexico's law clinic different than most other early law clinics was that from the inception the supervision of law students was performed by full time, tenure track faculty members as opposed to adjunct professors or practicing lawyers.⁷ In about 1985, the law school changed all of its clinical programs to a six-credit hour format, which is about one third of each student's course load for a semester, and required all law students to enroll in a clinical course.⁸ From 1969 to the present, the University of New Mexico law clinic has continued to expand and to innovate clinical teaching.⁹

The law school began many clinical experiences for law students as early as the late 1960s, but none of these programs offered a comprehensive court room experience. A desire for courtroom experience led to the development of the District Attorney Clinic.¹⁰

One of the first clinical programs at the University of New Mexico School of Law began early in the 1970s¹¹ as a brain-

New Mexico, 27 N.M. L. REV. 33 (1997); Rennard Strickland & Gloria Valencia-Weber, Observations on the Evolution of Indian Law in the Law Schools, 26 N.M. L. REV. 153 (1996); Scott A. Taylor, Computer and Internet Applications in a Clinical Law Program at the University of New Mexico, 6 J. L. & INFO. SCIENCE 35 (1995); Lee E. Teitelbaum et al., Gender, Legal Education, and Legal Careers, 41 J. LEGAL EDUC. 443 (1991); Christine Zuni Cruz, [On the] Road Back In: Community Lawyering in Indigenous Communities, 24 AM. INDIAN L. REV. 229 (1999).

⁶ See Sedillo Lopez, *supra* note 2, at 313.

⁷ William T. MacPherson, An Overview of Clinical Legal Education in the United States and at the University of New Mexico School of Law (October 1996) (unpublished manuscript, on file at the University of New Mexico School of Law clinical education office).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* About the same time, the law school developed a criminal defense clinic called Centro Legal. This clinic filled the public defender role in the misdemeanor courts. Unfortunately, it dissolved in the 1970s. The University of New Mexico School of Law has had other criminal defense clinics over the years, but none with the same life-span, consistency and continuity as the District Attorney Clinic.

¹¹ Videotape: Oral history of Clinical Legal Education at the University of

child of Professor William T. MacPherson.¹² This was the District Attorney Clinic. It was believed that the prosecution of misdemeanor crimes offered all of the basics in trial skills to set the student on a successful path as a litigator. It offered trial preparation, oral advocacy and the opportunities for bench and jury trials. This clinic was the bridge to the practical aspect of law.¹³

The District Attorney Clinic met all the goals for a skills training clinical program. The clinic taught students to study and research case law and rules, prepare cases, investigate facts, problem solve and experience the rigors of the courtroom. It was a perfect environment for the student eager to learn and develop trial skills. Case and legal analysis, research, investigation and interviewing were basics to the course. Arguing motions, negotiating pleas, working with witnesses and trying cases was the pinnacle of the course. These comprehensive experiences lead to the popularity of this specific clinical program. Housed in the office of the Second Judicial District Attorney's office in Bernalillo County, New Mexico, the students handled most of the misdemeanor prosecutions for the office. At the time, these were non-record cases in a small magistrate court.

Even from the beginning, the primary mission of the District Attorney Clinic was to teach and train future trial lawyers. Moreover, at the time the local district attorney's office did not handle misdemeanor prosecutions. These cases were handled by the police officer or were not handled at all. Therefore, the clinic filled a much needed gap.¹⁴ After the two years

New Mexico School of Law: Interview of Professor Emeritus William T. MacPherson (Professor April Land of the University of New Mexico School of Law 2004) (on file with the University of New Mexico School of Law clinical education office) [hereinafter Oral History].

¹² Under the guidance of Dean Thomas Christopher.

¹³ Oral History, *supra* note 11. This clinic was developed to offer more courtroom time for the law students.

¹⁴ *Id.* This was an important factor in the law school's role in aiding and supporting the community.

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of the law school handling the misdemeanor prosecutions, the law school urged the District Attorney to develop a misdemeanor division.¹⁵ After opening the misdemeanor division, the District Attorney then contracted with the law school for handling the misdemeanor prosecutions. There was only one Assistant District Attorney assigned to the misdemeanor division and law student assistance was welcome. At that time, the misdemeanor court in Albuquerque New Mexico was not a court of record. The cases were such a small number that the law students could handle most of them. The light case load allowed the students to delve into an in-depth study and evaluation of the cases and gave the District Attorney's office a reprieve from the sometimes mundane processing of the misdemeanor case. Moreover, the misdemeanor cases were simple¹⁶ and could be handled in a single semester.¹⁷ All of the factors were ripe for the professor¹⁸ to develop a trial skills training course.

Over the past thirty plus years, the New Mexico District Attorney clinic has evolved to include new aspects to the program in an attempt to keep up with the changing nature of misdemeanor prosecution.¹⁹ The clinical education program changes as the role of the prosecutor changes. Now, in addition to skills training, the program facilitates independent thinking and community social problem solving. The focus is on the

¹⁵ Id.

¹⁶ Id. It was believed that handling complex cases would not meet the goal of teaching students the basics of trial practice because the students would only get to see a portion of the case during one semester. The original belief was that simple cases that began and ended in one semester would encompass the goal of teaching the basics of trial skills. In theory, the student would be able to handle all phases of litigation, from intake to closing the same case.

¹⁷ Id.

¹⁸ Id. Even in the early development of the clinical program, clinic instructors were tenure-track professors rather than staff attorneys or adjuncts.

¹⁹ See AMERICAN PROSECUTORS RESEARCH INSTITUTE, *THE CHANGING NATURE OF PROSECUTION, COMMUNITY PROSECUTION VS. TRADITIONAL PROSECUTION APPROACHES* (2004)

student lawyer and his role and obligations as a professional, not only to the individual case, but also to his community and to the entire criminal justice system, including, the defendant, the victim and, most importantly, to the prevention and solutions of crime. In keeping with the spirit of the University of New Mexico School of Law clinical education philosophy, the District Attorney Clinic emphasizes community lawyering, collaborative and interdisciplinary problem solving as well as the traditional skills training. It is an expansion of basic professional skills training in clinical education.

The current University of New Mexico District Attorney Clinic involves two components. These two components are the classroom component and the courtroom component. After an introduction to these two components of the District Attorney Clinic and how the skills are taught in the clinic, this paper will examine how the New Mexico District Attorney Clinic addresses the justice facets of criminal prosecution.

PART 1. THE CLASSROOM COMPONENT

Students at the University of New Mexico School of Law must complete a mandatory clinical course as a part of the graduation requirement.²⁰ Over the years, there have been a variety of clinical courses offered at the University of New Mexico.²¹ One of the courses offered since the beginning of the clinical programs at the University of New Mexico School of Law is the District Attorney Clinic. Founded in the early 1970s, this course has been consistently offered at the law school for well over thirty years.

As with all of the clinics at the University of New Mexico

²⁰ Oral History, *supra* note 11. The mandatory clinic requirement was implemented in the early 1970s. Prior to that, the students could substitute their work on the law review for the clinical requirement.

²¹ *Id.* The clinical programs at the University of New Mexico School of Law began with Centro Legal, a public defender clinic. Over the years, other clinics have been added and some have closed.

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School of Law, the District Attorney Clinic is a six credit course that satisfies the clinical graduation requirement. Students are required to attend ninety minute classes, five days per week, and during the first four weeks of the semester, the students must also attend a fifty minute evening class. The classes are designed to familiarize the students with the basics of the law relevant to the prosecution of misdemeanor cases in the Bernalillo County Metropolitan Court and to prepare them for the courtroom component of the clinic.

Unlike the other clinical programs at the University of New Mexico, the District Attorney Clinic is unique from the classically-styled In-House clinic. The District Attorney Clinic is located off campus within the Second Judicial District Attorney's office in downtown Albuquerque, New Mexico. Students attend classes and keep office hours in the District Attorney's office in the University designated clinical area. Since conception, the elected District Attorney has accommodated the program.²² The elected District Attorney has consistently made space available for the program. The space consists of student desks, computers, telephones, work area and a classroom.²³

The classroom work is extensive during the first month to six weeks of the program. It is a "front-end" loaded class with its primary focus during these first six weeks on academics in the quintessential classroom environment. During this first intensive part of the class, the students work from a textbook designed exclusively for the New Mexico District Attorney

²² The following is a list of the Second Judicial District Attorneys in office in Bernalillo County, New Mexico since the inception of the District Attorney Clinical Law program: Alexander F. Sceresse 1961-1972; James L. Brandenburg 1972-1977; Ira Robinson 1977-1981; Steve Schiff 1980-1988; Robert L. Schwartz 1988-1996; Jeff Romero 1996-2000; Kari Brandenburg 2000- present.

²³ Over the years, the space for the students has varied. Historically, the District Attorney supplies desks, telephones, copying and secretarial support. The University of New Mexico School of Law supplies and maintains the student computers and internet system.

Clinic.²⁴

The instructional manual developed for the District Attorney Clinic course is called *Crimestoppers*.²⁵ The original *Crimestoppers* manual for the class was only a few pages. Since that time, the *Crimestoppers* manual has grown to a four volume work that is hundreds of pages long. It is composed of case law, rules, statutes and other materials designed to aid the new practitioner. This four-volume set is also very popular among new attorneys practicing New Mexico misdemeanor criminal law.²⁶

The *Crimestoppers* manual is organized to set the flow for the course. Since the District Attorney Clinic is a misdemeanor prosecution clinic, the case law in the manual is directly relevant to New Mexico misdemeanor law. Driving while intoxicated cases and misdemeanor domestic violence cases are predominate on the student's case load, therefore, the *Crimestoppers* manual contains at least a chapter on each topic. Students study the cycle of domestic violence and other domestic violence issues. Information in the manual includes information from the National Domestic Violence Hotline²⁷ and focuses on the specific problem of children in domestic violence situations. Other substantive topics in the manual include reasonable suspicion for a stop, search and seizure and

²⁴ See Martin H. Belsky, On Becoming and Being a Prosecutor, 78 N.W. U. L. REV. 1485, 1509 (1984), wherein Professor Belsky calls for better prosecutor training and a better text for training young prosecutors.

²⁵ The *Crimestoppers* manual is on file with the author and at the University of New Mexico School of Law Clinic office. The *Crimestoppers* name comes from the Old Dick Tracy comic strip.

²⁶ As an act of good-will, the law school gives the District Attorney's office copies of the manual each semester. The public defender's office and other district attorney's offices throughout the state also receive copies periodically. This manual is used by the District Attorney's office for training and for practical day-to-day work by the Assistant District Attorneys in the misdemeanor division.

²⁷ The National Domestic Violence Hotline is a project of the Texas Council on Family Violence, P.O. Box 161810, Austin, Texas 78716. It can be reached by calling 1-800-799-SAFE.

Miranda issues.

In addition to the substantive law in *Crimestoppers*, the manual is an edited compilation composed of rules and statutes and also of trial scripts, forms pleadings, and other handouts and flyers gathered over the years.²⁸ It is updated annually. Overturned cases are deleted from the manual and new case law added. New forms, pleadings and even telephone lists are added to the manual. The newest edition of *Crimestoppers* contains information on the national prosecution standards and prosecution misconduct cases. There are also two chapters devoted to professional responsibility and the special responsibilities of the prosecutor. The goal of the *Crimestoppers* manual is to be a complete and comprehensive book designed for the misdemeanor criminal law practitioner.

The New Mexico District Attorney Program is unlike most schools' prosecution externs²⁹ primarily due to the role of the New Mexico faculty supervision.³⁰ This difference is two-fold. First the New Mexico District Attorney Clinic has faculty housed off-campus who are both administratively and academically responsible for the success of the clinic. Second, the faculty member teaches the required classroom component and supervises the students in the courtroom. In this manner, the

²⁸ These materials were initially compiled in 1972 by Professor William T. MacPherson and have been edited and revised by Professors William T. MacPherson, Jose Martinez, Lisa Torraco and various students. As the case law, statutes and rules have changed, so has the *Crimestoppers* manual.

²⁹ The New Mexico District Attorney Clinic operates much like Nebraska's program. See Karen Knight, *To Prosecute is Human*, 75 NEB. L. REV. 847, 851 (1996).

³⁰ "Faculty-supervised clinics in which students personally handle the prosecution of the case are unusual." Stacy Caplow, *What If There Is No Client?: Prosecutors as "Counselors" of Crime Victims*, 5 CLINICAL L. REV. 1, n.2 (1998); see also Craig Mayton, *Misdemeanor Prosecution Practicum: A Clinical Experience*, 8 AM. J. TRIAL ADVOC., 219, 220 (1984) (stating that most schools farm out supervision of the prosecution clinics to the district attorney's offices, but the Ohio State University College of Law in 1983-84 had two course instructors who were both full-time faculty and responsible for courtroom supervision).

faculty member guides the experience from the classroom to the courtroom to ensure that the overall goals of the prosecution clinic are met.

The socratic method is alive in the District Attorney Clinic classroom. The first several weeks of classroom work is an intensive study of the case law relevant to misdemeanor prosecutions. The initial study is relevant to automobile stops, search and seizure and to driving while intoxicated cases.³¹ As the students progress through the semester, the classroom work is lightened as the courtroom work increases. As the need for trial skills comes into demand, the students participate in simulations, role plays and mock trials.³² After the student has mastered the foundational law necessary for successful work, there is a mock trial exercise. Supervisory personnel of the District Attorney's office observe the mock trials and offer critiques. Using both university faculty and practicing prosecutors provides a sensible balance between traditional legal educational values and the goals of producing lawyers with competent litigation skills.³³ The supervisory personnel have input into whether they are comfortable having the student represent their office in court. If the student does not meet the standard required by the District Attorney, the student must polish his or her skills until he is at an acceptable level of competence.

After the first six weeks and the completion of the mock trial, the students begin to work on finer points of law and evidence to complete their skills training. Classroom time is

³¹ See Crimestoppers manual, *supra* note 25.

³² See David A. Binder & Paul Bergman, Taking Lawyering Skills Training Seriously, 10 CLINICAL L. REV. 191, 216 (2003). Binder and Bergman state that simulations generate considerable student motivation. Students' understanding that the skills they develop in simulations will transfer into their work on actual cases tends to breed high levels of interest and enthusiasm.

³³ Mayton, *supra* note 30, at 223 n.2 (stating that including traditional faculty in the clinical program with University staff attorneys provides a sensible balance between traditional legal educational values and the goals of producing lawyers with competent litigation skills).

devoted to trial techniques such as examination of witnesses and trial objections. Students will conduct mock trial skits such as a practice voir dire, witness examination or opening statement. Other students are encouraged to assist in the critique. As the semester progresses, one class a week is dedicated to a staffing. At the staffing, students are encouraged to share experiences, insight and solutions with one another.³⁴

As the focus of the clinical program moves from the classroom into the courtroom, the students become energized. The courtroom component is about to begin and this promise offers the student the bridge to the practice of law. In the classroom, faculty can hypothesize about the role of the prosecutor, yet in the courtroom students bring in their actual experience of prosecutors' exercise of discretion. The faculty can consider the dilemma of the prosecutor and the domestic violence victim, and the students can share real-life experiences of triumph and defeats. The faculty can discuss the institutional problems of case management, while students search for a better way to problem solve and manage cases. The faculty can discuss theories of crime and punishment, and the students share justice and injustice experiences of bond hearings, trials, sentencing and probation revocations.³⁵ The classroom comes alive with life experience and the students move from theory to the real-world. The walls of the law school classroom have expanded beyond measurable increments.

³⁴ See Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinic*, 2 *CLINICAL L. REV.* 37, 57 (1995). The author demonstrates that adult learners find peer learning the most effective.

³⁵ Linda F. Smith, *Designing an Extern Clinical Program: Or As You Sow, So Shall You Reap*, 5 *CLINICAL L. REV.* 527, 549 (1999).

PART 2. THE COURTROOM COMPONENT

*An experienced prosecutor's advice to new assistant district attorneys: You will wield an amount of power over people's lives entirely disproportionate to your age and experience. Don't let it go to your heads.*³⁶

As the first six weeks of the semester come to a close, students change focus from the academics of the classroom to the practice of law in the courtroom. Students are assigned cases and begin to apply the academics they have learned in the early part of the semester to their cases. While the classes and course work continue throughout the semester, the evening classes come to a close and the classroom work is reduced to only a few times a week rather than every day.

The students begin their journey into the courtroom. Starting the seventh week of class, all students handle two dockets of active cases per week within the District Attorney's office. The quick pace of misdemeanor prosecutions provides ample courtroom and trial work. The cases are simple, straightforward and repetitive. They are easily managed in the ten remaining weeks of the semester. The majority of the student case load is composed of either the misdemeanor Driving While Under the Influence (D.W.I.) case or the misdemeanor domestic violence case. While there are other cases that may be handled by the student lawyer, this composes the lion's share of the case load.³⁷ These cases offer both a skills and a justice component to the clinic.³⁸

³⁶ DAVID HEILBRONER, ROUGH JUSTICE: DAYS AND NIGHTS OF A YOUNG D.A. 18-19 (1990).

³⁷ Other cases include: Driving on a Revoked license, Prostitution, Patronizing a Prostitute, Eluding or Evading an Officer, Resisting Arrest and Shoplifting.

³⁸ See Sedillo Lopez, *supra* note 2, at 310. The author states: "I believe that of all the pedagogical objective described by clinicians further the two key components of the mission of clinical legal education: 1) skills training mission . . . 2)

The D.W.I. case includes all facets necessary to a trial skills course. It has scientific evidence, foundational requirements, opinion testimony by experts and lay witnesses, qualifying witnesses as experts, and direct and circumstantial evidence. The prosecution model to clinical education offers a myriad of lawyering skills. Students negotiate case resolutions, interview witnesses and prepare their witness examinations. They make opening and closing statements, argue motion hearings and conduct voir dire. Students in the courtroom component of the District Attorney Clinic gain real life experiences in law that cannot be accurately replicated in the traditional classroom.³⁹

This clinical program offers one of the best opportunities for a law student to litigate cases. On the average, students leave the District Attorney Clinic having conducted approximately five to eight bench trials and often one or two jury trials. This breadth of experience allows the student to experiment with various trial techniques and styles. It gives them the opportunity to gain confidence and develop an ease in the courtroom. It gives them a broad range of trial experiences. Many times, these experiences are unexpected, and the ability to handle the unexpected helps the student to develop a sense of security and confidence in each of these new situations.

The University of New Mexico District Attorney Clinic diverges from other clinical programs in how it obtains its cases. Unlike most clinical programs, the University of New Mexico District Attorney Clinical Program does not have control over acceptance of cases. The students handle cases that appear on their assigned dockets. While there are always ethical considerations that guide whether the case shall actually be pursued, the cases are already active in the Metropolitan Court at the time the student accepts the file.⁴⁰

the social justice mission—teaching students about serving the needs of the poor and access to justice.” (footnotes omitted).

³⁹ See Smith, *supra* note 35, at 534.

⁴⁰ The prosecutor and the student lawyer have tremendous discretion

By not pre-selecting cases, the District Attorney clinical students are exposed to a broader range of case quality. This gives them an unsheltered view of prosecution. Students cannot “pick and choose” their prosecutions and many times get “stuck” handling cases that oppose their personal philosophical views.⁴¹ They may also find themselves in situations that lead to conflicts of interest or other ethical dilemmas.⁴² Both of these possible scenarios lend themselves to rich learning experiences. Most importantly, the students get a realistic view of the role of the prosecutor in a myriad of legal situations.

Case assignment in the District Attorney Clinic is almost identical to that of the other assistant district attorneys. Like the assistant district attorneys, the students are assigned to a judge in the Bernalillo County Metropolitan Court.⁴³ Students then handle all the criminal cases the judge is hearing on that given day. The students will appear before that judge for one week. The students then rotate from one judge assignment to another. The clinical goal in appearing before many judges in one semester allows the student to see justice disbursed differently depending on the trier of fact. The students may appear before as many as nine or ten different Metropolitan Court judges during a semester.⁴⁴

in case handling. Because the New Mexico student prosecutor is governed by the New Mexico Rules of Professional Conduct, N.M. RULES OF PROF'L CONDUCT 16-308 (2004), the student has discretion to dismiss actions not in conformance with the lawyers' professional responsibility.

⁴¹ For example a student active in drug reform may be required to prosecute a misdemeanor possession of marijuana case.

⁴² It has not been uncommon for a student to arrive at court and realize that the defendant she is prosecuting is her neighbor or colleague. Many times this conflict is not realized until the student sees the defendant, as many names may be common.

⁴³ See N.M. STAT. ANN. § 34-8A-4, Bernalillo County Metro. Ct., available at <http://www.metrocourt.state.nm.us> (noting there are sixteen Metropolitan Court Judges, thirteen of which are assigned to the criminal bench) (last visited Mar. 10, 2005).

⁴⁴ Id.

The logistics of the class center on the class size and the judge's docket. The class limit is eight students; thus, two students are assigned to attend court each day. Students do not attend court on Fridays. A faculty member supervises each group of two students at a time in court. The number of cases on each judge's docket ranges from four to sixteen cases. On an average docket, each law student would handle anywhere from two to eight cases with faculty supervision. Many of these cases are continued or a plea is negotiated. On occasion, a case will go to trial. Students often put a tremendous amount of time into preparing the cases in the event that it may go to trial. In the Metropolitan Court, it is never certain when a case will go to trial until the day of the hearing. This puts great pressure on the student to have each case fully prepared for trial. While most cases are resolved short of trial, the student benefits from trial preparation. On average, most students will prepare an uncountable number of trials per semester.

The most essential criteria and learning experience for the student in the courtroom component of the clinic is case preparation. Students must thoroughly review each case file as assigned. Students are responsible for applicable discovery and witness interviews and must fully prepare the case for trial. Each student must keep office hours and demonstrate an attitude of professionalism and a work ethic comparable to that of the most successful lawyer. Cases must be reviewed and analyzed with the professor well in advance of the court date. Many times, the initial review with the professor results in the student being sent away to conduct more preparation and a second, and sometimes third, review is scheduled. The students may not present cases that do not have the approval of the professor. In the event the student has not adequately prepared the case, the professor may be in the position of handling the case herself! Both the student and the professor are motivated to ensure that the case is adequately prepared.

The District Attorney Clinic is a course in applied ethics.⁴⁵ Discretion is promoted. Students dismiss actions that are not supported by probable cause. Students have discretion in plea offers and sentencing presentations. While discretion is encouraged, all of these actions must be performed under the direction of faculty supervision.

In the courtroom component, the students attend court twice a week. The law students' appearance in court is guided by the New Mexico Rules of Procedure permitting law student appearances.⁴⁶ This rule allows law students to act as if they are lawyers in the handling of cases in the New Mexico courts.

In the beginning of the courtroom component, the faculty member plays an active role in the adjudication of the case. The student role is that of a trial assistant or a second chair attorney. As time passes and the student's confidence and skill level increase, the student will begin to take more of a lead in the prosecution. By the end of the semester, the student should be able to handle all cases on the docket with some expertise and confidence while the faculty member can second chair the case. Most times, the faculty member can remain at counsel table, confident that the prosecution is in competent student hands. This spectrum of growth, from the student as a trial assistant to the student as lead counsel, has become predictable. By the end of the semester, most students master a level of competency equal to that of a well-qualified misdemeanor assistant district attorney.

At the conclusion of the courtroom docket, the faculty member and the student review the activities of the day. The faculty member "de-briefs" the student, reviewing each case and each oral argument, play by play. It is the hope that this type of detailed critique shall inspire and encourage the student to enhance their performance for the next docket day.

There are several factors that contribute to the success of the courtroom component of the University of New Mexico

⁴⁵ Knight, *supra* note 29, at 862.

⁴⁶ N.M. RULES ANN. § 1-094 (2004).

District Attorney Clinic. These factors include, but are not limited to: the commitment of the faculty and faculty supervision, the law school relationship with the District Attorney, the cooperation of the bench and the relationship with the police and other agencies.

Faculty Commitment and Supervision

The success of the long-standing University of New Mexico District Attorney Clinic is due to many factors. Faculty commitment and supervision is just one of these factors. The presence of faculty has been a stabilizing component of the New Mexico District Attorney clinical experience. The value of faculty is two-fold. First, stable and consistent faculty adds to the quality and longevity of the program and, second, faculty supervision is a key part of the success of the court and classroom components.

The faculty within the District Attorney Clinic has made long-term commitments to the program.⁴⁷ In this environment, the professor does not have to re-learn the District Attorney and court policies and procedures. Instead, the professors are proficient in these areas and can focus on ways to improve the clinical program. In practical application, the faculty of the University of New Mexico District Attorney Clinic have been working cases and setting misdemeanor policy longer than the elected District Attorney in office or much of her staff.⁴⁸ Retention of faculty protects the students from many of the stumbling blocks of early legal practice.

⁴⁷ Founding Professor William T. MacPherson still teaches in the District Attorney Clinic on Emeritus status. The author has taught in the District Attorney Clinic since 1996. Previous professors have made similar long-term commitments to the District Attorney Clinic.

⁴⁸ The current District Attorney was elected in 2000. Compare supra note 22 (relatively short election terms for district attorneys), with supra notes 1, 18, 47 (long term commitment of faculty and staff), and infra note 49 (long term commitment of faculty).

Stable and consistent faculty tends to isolate the program from many of the pitfalls of the prosecution practice. The faculty learning curve does not have to be redeveloped each semester. Faculty knows the staff at the District Attorney's office, knows the policies and procedures of the District Attorney and is not in a position to learn the protocol as the students learn the same. Moreover, the faculty has become culturally a part of the district attorney's office and of the court.

Stable and consistent faculty has greater expertise and working knowledge of the applicable law and rules. There is a historical knowledge that surpasses the case law. It is this historical and institutional knowledge that makes stable faculty worth much more than their years. New Assistant District Attorneys turn to the clinical professors for guidance and counsel. Likewise, many judges take the bench and turn to clinical materials for guidance and defer to the District Attorney clinical faculty. In sum, stable faculty has made the University of New Mexico Clinical Program an institutionalized part of the misdemeanor culture in Bernalillo County, New Mexico.

Faculty also has an important role in supervision of law students.⁴⁹ Faculty supervision is a valuable part of the program and a second aspect to the success of the clinic. The faculty closely supervises the student in court. It is well established that this supervision will be real and not perfunctory.⁵⁰ The clinical faculty is responsible for the competency of the student prosecutors and their compliance with professional obligations.⁵¹ The clinical program, the District Attorney and the courts demand it. The faculty is present and always available for questions. Without competent supervision the students' experience will amount to a "trial and error," "sink or

⁴⁹ See Stephen Wizner, *Beyond Skills Training*, 7 *CLINICAL L. REV.* 327, 329 (2001) (explaining what role clinicians might play in teaching social justice in clinics).

⁵⁰ E.g., *Montana v. Schwichtenberg*, 772 P.2d 853, 855 (1989).

⁵¹ MODEL CODE OF PROF'L RESPONSIBILITY R. 5.3(b) (2002).

swim” or another rapid training, or lack thereof, experience. None of these are consistent with the goals of legal education.⁵²

The Relationship with the District Attorney

A second factor in the success of the District Attorney Clinic is the relationship with the Office of the District Attorney.⁵³ Part of this relationship is ensuring that the clinic is a benefit to the District Attorney, not a burden. The District Attorney must want the program to exist as much, or in some cases more, than the law school.

The National District Attorney's Association encourages law school clinics within the District Attorney office.⁵⁴ From the viewpoint of the prosecutor, the clinical program serves two primary purposes: first, the law school has an opportunity to train students who gain real life experiences that develop their skills in preparation for practice. Second, the District Attorney's Office receives assistance from the law school in handling cases, research and legal writing. District attorneys' offices are in need of trained and skilled prosecutors and certainly could use help with their caseload. The benefit is an exchange of resources.

The students in the prosecution program can lighten the work load for the busy and sometimes overwhelmed assistant district attorneys. The court in which the District Attorney

⁵² See Sedillo Lopez, *supra* note 2.

⁵³ Caplow, *supra* note 30, at n.3 (stating that “[s]tudent prosecutor programs are wholly dependant on the cooperation of the office with which the clinic is affiliated”).

⁵⁴ NATIONAL DISTRICT ATTORNEYS ASSOCIATION, NATIONAL PROSECUTION STANDARDS 32:2 (2d ed. 1991). Standard 32.2 of the National Prosecution Standards states “[t]he prosecutor should actively cooperate with law school clinical programs for prosecution where they exist and actively promote their creation where they do not.” The prosecutors' interest in clinical education is “to foster and encourage interest in the prosecutorial field as a career choice and, secondarily, to supplement the resources of his own office.”

clinical program takes part is the Bernalillo County Metropolitan Court. It is the most voluminous court in the state of New Mexico, handling fifty percent of all cases in the state of New Mexico.⁵⁵ Much of these cases are handled by relatively new Assistant District Attorneys, who may not have all of the skills and expertise required for such a monumental task. In addition, the professional life of a new assistant district attorney is short lived. Once trained, most attorneys move on to a more glamorous professional life, either in the felony division or in private practice. What is left is a District Attorney's office that may be less than perfectly equipped to handle the large volume of cases.

One of the long-term benefits of a clinical program is that the District Attorney's Office has the opportunity to train and evaluate future hires. The supervisors of the District Attorney's office observe the students in the office, seeing how they interact with their colleagues, the staff and with supervisors. They observe the students to see if their personality will have the right "mix" for the office. Some students are very respectful of the needs of others, and unfortunately, there are also students who are unresponsive to supervision or are disrespectful to secretaries and other personnel.⁵⁶

The District Attorney observes the student's work and assesses their overall ethic. The district attorney supervisors watch the students and evaluate their skills and how they interact with the bench and the defense bar. They can assess the students' abilities, skills, ambitions and judgment. When these students become new lawyers and apply for a job in the District Attorney's office, the district attorney has a base from

⁵⁵ See N.M. STAT. ANN. § 34-8A-3, Bernalillo County Metro. Ct., available at <http://www.metrocourt.state.nm.us> (last visited Mar. 10, 2005).

⁵⁶ I had one student who yelled at a secretary for what he perceived as her incompetence and shortly thereafter he applied for a job in the office. Needless to say he was not hired. There have also been students who work overtime, are polite, considerate and excelled in court. I have had students bring donuts for secretaries and leave support staff 'thank-you' notes at the end of the semester. These are the students that are actively recruited by the office.

which she can fairly evaluate the applicant's skills. In addition, when the district attorney hires new attorneys who graduated from the program, the new lawyer is trained in much of the case law and the rules. The new lawyer from the clinical program has some experience in the courtroom and will already have an understanding of the process. New lawyers from the clinical program should be able to "hit the ground running" with minimal training after passing the bar.

A consideration for the District Attorney is the faculty component. The District Attorney must have a certain level of respect and trust in the faculty supervisors. Since the faculty has complete control over many of the District Attorney's misdemeanor cases, there must be confidence that the faculty will appropriately handle and dispose of cases in a manner consistent with the District Attorney's policies. If this respect exists, then there are additional benefits to the District Attorney and her office.

The clinical faculty offers training and support to the new Assistant District Attorneys. Faculty are available to assist new attorneys on difficult cases. They can serve as lead counsel or as advisors. In the past, faculty has handled conflict cases for the district attorney. They also conduct training and Continuing Legal Education courses for the Assistant District Attorneys.

Finally, the faculty-student team handles cases and lightens the caseload for the Assistant District Attorney. Under faculty supervision, students also research and write for the assistant district attorneys.

In one case, the defense brought the issue of the constitutionality of a criminal solicitation ordinance before the court. The young assistant district attorney was surprised by the motion and did not know how to respond. She asked for a continuance. The case was reset in a short period of time, and the attorney had a full caseload until that date. She had very little time to research the issue and much less time to fully brief it. The students energetically offered to brief and argue the motion. It was an excellent opportunity for the

students to study and apply constitutional principles and it gave a much needed relief for the assistant district attorney.

The students are able to make extra time to work with victims and build relationships with witnesses. Students can make telephone calls on behalf of the office and can meet with victims more frequently than the busy assistant district attorney. Students can gather facts and do additional investigation.

To date, the relationship between the District Attorney and the University of New Mexico School of Law has been a positive one but it is not a relationship to be taken for granted. The District Attorney Clinical faculty must constantly remind itself that it is a guest in the home of the District Attorney and leave that home better than it was when first visited. Students and faculty must respect the District Attorney's policies and abide by the procedures. The clinical program must set a standard of excellence that surpasses all others and must never stain or debase the reputation of the office. Everything must be handled in the utmost professional manner.

Cooperation of the Bench

A third factor in the success of the courtroom component is the cooperation of the Metropolitan Court bench. The judiciary is an essential part of the District Attorney Clinical Program. Without the cooperation of the bench and bar, the prosecution clinic would be a struggle. Most of the judges on the Metropolitan Court are former University of New Mexico School of Law alumni and are familiar with the District Attorney Clinical Program. As a result, judges in the Metropolitan Court look forward to having law students appear in their courtroom.⁵⁸ In New Mexico, there is an acceptance of the clinical programs by the courts and the legal community.⁵⁹

⁵⁷ Personal recollection of the author, Metropolitan Court case.

⁵⁸ I have had judges seek me out to ask me when the law students will

Many times, students are better prepared for court than the Assistant District Attorney. This is often true because the student's caseload is significantly less than that of the Assistant District Attorney. The Assistant District Attorney in the Bernalillo County Metropolitan Court is often a new and inexperienced attorney. The student, on the other hand, while also new and inexperienced, has the benefit of direct and close supervision of an experienced University of New Mexico School of Law faculty member. The supervision of the Assistant District Attorney is significantly less. Moreover, the student is often highly motivated by the grade and by other course expectations. The student is more apprehensive of the unknown and often over-prepares for every imaginable scenario.

In general, judges are impressed and pleased at the performance of the students. Students are not given differential treatment. In fact, differential treatment could be disastrous. A presiding judge cannot and should not help equalize what he perceives to be a disparity in the trial abilities of opposing counsel. This practice is apt to proceed from disparity in the rights of one side or the other, rather than the preparation or ability of counsel.⁶⁰ The court must have the same expectations of students as those of any other practicing attorney. While the court is aware that a law student is practicing before the court,⁶¹ there is no other distinction. Because the students are expected to perform at a level equal to, or surpass the competency of other attorneys, the judges welcome students in their courts.

be appearing before them, extending a welcome to the refreshing and enthusiastic experience that the law student adds to the courtroom dynamic. The reception has always been a welcoming one. But see Caplow, *supra* note 30.

⁵⁹ The Court must sign an 'Order Allowing Law Student Appearance' one each case for the student to practice. N.M. RULES ANN. § 9-902 (2004).

⁶⁰ Iowa v. Glanton, 231 N.W.2d 31, 35 (1975).

⁶¹ N.M. RULES ANN. § 9-901 (2004).

Relationship with the Police and Other Agencies

While the relationships of the clinical program with the District Attorney and with the judiciary are of paramount importance, they are not the only two that are worth mentioning. The third relationship is more problematic. That is the relationship of the District Attorney Clinical Program with the police and other advocacy agencies.⁶² While overall this relationship remains good, it is certainly not without its share of problems. In fact, it may be described as turbulent romance. The police are witnesses on most all cases prosecuted by the students. They are an integral part of the system. However, at times the actions of the police and the interests in the student prosecutor collide.

In recent history, there have been several instances that kept the police at odds with the student prosecutors. In one instance, the clinical faculty reported two officers to the internal affairs, resulting in removal of a sergeant.⁶³ This had a chilling effect on the police relationship with the faculty and students for a brief time. On another occasion, students prosecuted an active duty police officer.⁶⁴ Enthusiastic constitutional students have been known to tell officers how they violate defendant's constitutional rights. This happened one time when the stu-

⁶² CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 759-60 (1986) ("The office of the prosecutor can best be conceptualized as a lawyer with no client but with several important constituencies," including the police, victims of crime, other government agencies and the courts).

⁶³ Internal Affairs records are confidential. However, note that the Sergeant and patrol officer were removed shortly thereafter and transferred to a different unit.

⁶⁴ State of New Mexico v. Samiego, Bernalillo County Metropolitan Court, No. DV 3131-98 (1998) (unpublished). In this case, the defendant was a police officer accused of domestic violence. He was found not guilty and is still employed by the New Mexico State Police. He often appears in court when the students are present. Not only does this create an actual conflict of interest, it is just plain uncomfortable for everyone involved.

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dents attended a sobriety check point as a mandatory part of the course.⁶⁵ Their insight, accurate or not, was not appreciated by the over-zealous officers.

While the relationship with the police is not a success maker or success breaker, it is certainly a factor to be considered. Realistically, there will always be a tension between the police and the prosecution. However it is always best to keep communication lines open between faculty and police administration.

Other agency relationships contribute to the success of the clinical program. Probation officers, victim advocates and other activist groups can play a role in the success of the clinic. While the District Attorney has a tremendous responsibility to respond to diverse constituencies and often conflicting expectations, the student clinic does not have to appease each of these constituencies. However, it is the experience of the District Attorney clinical faculty that success lies in relationship building with the various community groups. The relationships with these groups may not always be positive, but communication is the key to success. It has also proven beneficial for the community to be aware of the role of students in the District Attorney's office.

⁶⁵

While versions of this event vary, it seems that while in the field with the officer, the students joked with the officers about the constitutionality of the road-block. Suspects and some member of the public were present and may have overheard. The officer apparently did not see the humor in the students' comment. Officers formally complained about the students' behaviors.

II. TEACHING JUSTICE IN A PROSECUTION CLINIC

Skills training is the classical goal of most clinical programs. The District Attorney Clinic is no different. The classroom, the manual and the courtroom experience are all designed to equip the student with the necessary skills to handle the misdemeanor case. The goal is that by the end of the semester the student can handle the misdemeanor case with confidence and ease. However, the District Attorney Clinic goes beyond teaching skills.

The student should leave the course with a heightened awareness of the role of the prosecutor in the community. The student should view the role of the prosecutor as a community leader and problem solver. The student should have a grasp of a deeper ideology of seeking the truth, seeking justice and a fair and equitable outcome. The student should be able to view the trial as an arena for seeking the truth. The student should understand the prosecutor's need to practice law with integrity and honesty. It is these types of moral values and ideology that should come into play in the training of prosecutors.

It has long been established that the prosecutor's duty is to seek justice.⁶⁶ The difficult question is how does one "seek justice" or rather "what is justice" in any given situation? Justice is a moral ideal, one that may not always be fulfilled, but one that may be sought.⁶⁷ Law is not necessarily just, but it does promise justice.⁶⁸ So with this backdrop, how can one teach "justice," if justice is such a complex thought that may or may

⁶⁶ E.g., *Brady v. Maryland*, 373 U.S. 83, 87 (1962) (stating that prosecutors should seek justice and not victory); *Berger v. United States*, 295 U.S. 78, 88 (1934) (stating "in a criminal prosecution is not that it shall win a case, but that justice shall be done"); AMERICAN BAR ASSOCIATION, MODEL RULES OF PROF'L CONDUCT EC 7-13 (1980).

⁶⁷ See Jeremy Waldron, *Does Law Promise Justice?*, 17 GA. ST. U.L. REV. 759, 788 (2001).

⁶⁸ *Id.*

not exist in reality? It is a tremendous task.⁶⁹

One goal of the District Attorney Clinic is to show the student how justice is applied and how the actions of the prosecutor impact the community.⁷⁰ The problem with this type of training is that “justice” is a subjective concept. It is difficult to teach “justice” as a moral principal or perception.⁷¹ The concept of justice may vary from person to person, with each individual having a different concept of what end result would constitute “justice.” Not everyone's ideas of righteousness, justice, goodness, and truth comport with one's own.⁷²

Justice takes on many forms in the prosecution clinic. One form is defining the role of the prosecutor in the pursuit of justice. While it is not clear exactly what justice in any given situation is, many have written on this complex subject.⁷³ Perhaps it is not so much of how to define “justice” but (i) how people decide what justice requires and (ii) who the “people” are

⁶⁹ But see Kaufman, *The Scientific Method in Legal Thought: Legal Realism and the Fourteen Principles of Justice*, 12 ST. MARY'S L.J. 77 (1980) (stating there are fourteen principles of justice – all of which are clear and concise and could be taught in a clinical course setting).

⁷⁰ The role of the professor in justice awareness is eloquently written about in Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 1 (2001).

I aspire to be a provocateur for justice. A provocateur is one who instigates, a person who inspires other to action. A provocateur for justice actively imbues her student with a lifelong learning about justice, prompts them to name injustice, to recognize the role they may play in the perpetuation of injustice and to work toward a legal solution to that injustice.

Id. at 287-88.

⁷¹ See Lisa G. Lerman, *Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialog About Goals*, 39 WM. & MARY L. REV. 457, 470 (1998).

⁷² See Raymond B. Marcin, *Justice and Love*, 33 CATH. U. L. REV. 363 (1984).

⁷³ See, e.g., Dennis E. Curtis & Judith Resnick, *Images of Justice*, 96 YALE L.J. 1727 (1987); Kaufman, *supra* note 69; WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* 26-76 (1998).

who decide what justice requires.⁷⁴ It is a goal of the District Attorney Clinic to instill in the students the principal that prosecutors are pursuers of truth and justice. This ideology is a principal that is woven into many different aspects of the course, from the classroom to the courtroom.

There are many definitions of "justice" espoused by various legal philosophers.⁷⁵ At the University of New Mexico District Attorney Clinic, we discuss three types of justice. They are: (i) ethics and professional responsibility, (ii) an analysis of individual case justice; and (iii) community justice.⁷⁶ This paper will examine all three types of justice and ways these concepts can be introduced, discussed and perhaps instilled in the prosecution clinical student.

⁷⁴ Thomas L. Shaffer, *Should a Christian Lawyer Sign up for Simon's Practice of Justice?*, 51 STAN. L. REV. 903 (1999) (comparing Professor Simon's definition of justice from the Biblical definition).

⁷⁵ Marcin, *supra* note 72, at 363.

⁷⁶ University of New Mexico School of Law Associate Dean Antoinette Sedillo-Lopez first articulated these three 'layers' of justice taught in the District Attorney Clinic.

Ethics and Professional Responsibility

The Code of Professional Responsibility⁷⁷ is a backdrop to the practice of law. This is the teaching of the law of legal ethics.⁷⁸ In addition to the Code of Professional Responsibility are the special responsibilities of the prosecutor and the basic principals of professionalism. All should be taught and modeled in a prosecution clinic. The University of New Mexico District Attorney Clinical Program assumes that part of the skills-training experience includes professional responsibility and the inculcation of professional values. While our duty as clinicians is to teach the law, additional educational objectives should include other skills, such as professionalism, that will affect their lives as future lawyers.⁷⁹

The American Bar Association states that the duty of the prosecutor is to "seek justice, not merely to convict."⁸⁰ This duty to seek justice⁸¹ should be a mission of the prosecution clinic. While the concept of justice can be a subjective and innocuous one, it is nonetheless an important one. One way to discuss the concept of justice is through the Code of Professional Responsibility.

Paramount in a prosecution clinic is the teaching of professional responsibility and ethics. This takes on many levels. The students are formally trained in the Code of Professional Responsibility and applicable case law. Socratic discussions regarding professional responsibility and prosecutions inevitably include moral and ethical decisions that are not outlined in the Code. Professionalism is part and parcel of professional responsibility.

Discussions about professionalism also include basic tenets of

⁷⁷ MODEL CODE OF PROF'L RESPONSIBILITY (1995).

⁷⁸ Lerman, *supra* note 71, at 469.

⁷⁹ Sedillo Lopez, *supra* note 5, at 152.

⁸⁰ MODEL RULES OF PROF'L CONDUCT EC 7-13; R. 3.8 cmt. 1.

⁸¹ *Berger v. United States*, 295 U.S. 78, 88 (1934).

professional behavior and professional values.⁸² There is an emphasis on the social duty to treat all persons, from judges to defendants with respect and dignity. This type of professionalism is a small part of disbursing justice. "People come to the court to be heard. They have a right to expect that in presenting their grievances they will be treated with respect."⁸³ "The poorest, weakest most hapless or illiterate defendant standing before an American court, is entitled to exactly the same respect, rights and hearing as would be the Chief Justice of the United States standing before the court and similarly accused."⁸⁴

Treating others with dignity and respect is so basic to human behavior it should not have to be taught. Sadly, sometimes it must be. So while formal codified professional conduct is taught, likewise are fundamentals of human interaction. The basics of professional human interactions can be taught through modeling or role playing and can be discussed in the classroom or as a part of an after-court de-briefing session. Whatever the method, the importance of professionalism in human interaction may need to be addressed as well as the Rules of Professional and Codes of Conduct.

⁸² See, e.g., Lisa Torraco, *Be Nice!—and Other Basics of Professionalism*, BAR BULLETIN, May 13, 2004, at 6.

⁸³ *In re Albano*, 384 A.2d 144, 146 (1978).

⁸⁴ *In re Yengo*, 371 A.2d 41, 56-57 (1977), cited in *In re Albano*, 384 A.2d at 146.

Individual Case Justice

A second form of justice is helping the student find a just and equitable outcome in each case. William Pincus identified the pursuit of justice as a primary educational value in clinical experience for law students.⁸⁵ Clinical education “can develop in the future lawyer a sensitivity to malfunctioning and injustice in the machinery of justice and other arrangements of society.”⁸⁶

This individualized justice seeks the prevailing standard of justice in the community, and treats like cases in a like manner. Faculty members spend considerable time with the student evaluating the case. In domestic violence cases, the student will have interviewed the victim and witnesses prior to meeting with the faculty member to discuss the proposed end result of the prosecution. The input of the victim may be valuable toward determining the “just” result of that case.

The teaching of individual case justice is not an easy task, as differing minds have differing ideas of what is a “just” result. Whether a defendant deserves jail time, counseling, probation or a dismissal can lead to a rich discussion. Since justice can be subjective, many times the goal of the faculty is merely to raise awareness as to the justice issues. Helping a student become sensitive to justice issues is as great a goal as defining the “just” outcome of the case.

Disciplinary cases of prosecutors can be a good segway into justice discussions. The District Attorney Clinic opens with the case of Daniel Lindsey.⁸⁷ This is a New Mexico case involving a

⁸⁵ Wizner, *supra* note 49, at 331.

⁸⁶ William Pincus, Educational Values in Clinical Experience for Law Students, II CLEPR Newsletters, No. 1, Sept., 1969, cited in Wizner, *supra* note 49, at 331.

⁸⁷ In re Lindsey, 810 P.2d 1237 (1991). In this case, a misdemeanor prosecutor is faced with the dilemma of his police officer witness having moved from the jurisdiction and unable to attend court. In re Lindsey, 810 P.2d at 1238. The

prosecutor who loses perspective of his work. This case is set upon a backdrop very similar to that in which the District Attorney Clinic is set. Both settings involve misdemeanor prosecutions in which a witness fails to appear, an unfortunately common scenario in the District Attorney Clinic. It is a case that subtly discloses the pitfalls of "prosecution by ego" or "prosecution for power." New lawyers often lose perspective of what their legal responsibility and goals are in the District Attorney's office. *In re Lindsey* is a perfect study of the real life consequences of our actions. It can also be a great illustration of the importance of professional reputation. *In re Lindsey* demonstrates the great value and need for integrity in prosecutors.

Another approach to learning about justice in any individual case is that of a "victim-centered" approach.⁸⁸ Being sensitive to justice many times includes understanding the needs and wants of the victim. When the interests of the victim do not conflict with preemptive justice goals, the prosecutor is often viewed as representing the victim's interest to the defense and to the court.⁸⁹ This victim-centered prosecution has the prosecutor consider the harm suffered by the victim and the victim's goals in calculations of "justice".⁹⁰

New Mexico has a constitutional amendment requiring the prosecutor to maintain contact with the victim and notify her of hearings.⁹¹ With cooperative victims, this is an ideal method in which to center the case. This is problematic with uncooperative victims. "Whether it is more noble to represent the indi-

prosecutor has another police officer come to court and impersonate the witness by taking off his name badge and representing himself as the other officer. *Id.* The prosecutor is able to secure a plea under this false representation. *Id.*

⁸⁸ Caplow, *supra* note 30.

⁸⁹ *Id.* at 10.

⁹⁰ *Id.* at 12.

⁹¹ N.M. CONST. art. II § 24 (stating that victims of certain enumerated crimes have certain rights outlined in this section, one of which is to be notified of court proceedings and the right to information about conviction, sentencing, imprisonment, escape or release of the accused).

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vidual charged with rape or to represent the state in prosecuting him is a question of personal values and philosophy. It is, at a minimum, not ignoble to seek to bring to justice people who have criminally victimized others."⁹²

Community Justice

The role of the modern day prosecutor has evolved and become more complex over the past years.⁹³ The prosecutor's office has been directly affected by the increasing complexity of the law, the justice system and the public's demand that the prosecutor be involved in the more public issues.⁹⁴ In addition to the traditional range of criminal cases, district attorneys are also becoming involved in welfare fraud, environmental law enforcement and rehabilitation programs.⁹⁵

Now viewed as a community leader, the prosecutor is more often held accountable for many social problems in the community. The publicly elected prosecutor is most often involved in process of helping to resolve the community problems.⁹⁶ There was a time when the prosecutor's job was simply to prosecute. Those days are gone. No longer is the prosecutor responsible for simply prosecuting the domestic violence case; she now helps

⁹² Knight, *supra* note 29, at 866.

⁹³ In the United States, district attorneys were provided for in the Judiciary Act of 1789. See Judiciary Act of 1789, ch. 20, § 35, 1 Stat. 73, 92 (1789). The statute, in language in which one may trace an echo of the Connecticut Act of 1704, made provision for the appointment in each district of a "meet person learned in the law to act as attorney for the United States" and made it his duty to "prosecute in each district all delinquents for crimes and offense cognizable under the authority of the United States." *Id.* The role of the prosecutor was, simply put "to prosecute." This was true even until the mid-to-late twentieth century. Perhaps it was sometime around the 1980s that the role of the prosecutor began to change.

⁹⁴ Martin H. Belsky, *On Becoming and Being a Prosecutor*, 78 NW. U.L. REV. 1485, 1509 (1984).

⁹⁵ *Id.* (citing the National District Attorney Association (NDAA) Standards).

⁹⁶ American Prosecutors Research Institute, *supra* note 19.

raise money for the domestic violence shelter. The prosecutor must not simply prosecute the drunk driver, but she must also know of sentencing and treatment options. She must know what alcohol treatments are available and which one are most effective.⁹⁷ The prosecutor seeks solutions to the problems and stays in touch with the vast array of counseling services. She participates in task forces, non-profit boards and other associations. Typically, the elected prosecutor plays an active role in neighborhood groups and associations.⁹⁸

The prosecutor must administer justice as well as represent the interests of the society and the community in which to she serves. She must be responsive to victims and community needs.⁹⁹ The prosecutor must be a proactive community problem solver and must serve not only as the chief law enforcement officer, but must also serve to find insightful and innovative ways in which to deal with social problems *before* law enforcement intervention is required. The prosecutor must have a desire to serve her community, not narrowly focused toward law enforcement, but rather in a multi-dimensional capacity of a community activist and seeker of social justice. Because the role of the prosecutor is much greater than to simply prosecute,

⁹⁷ Zuni-Cruz, *supra* note 5, at 576. Professor Zuni-Cruz provides an in-depth detail of the need for lawyers to understand their clients' communities. She states that knowledge of the community is essential in community lawyering

⁹⁸ For example, in New Mexico, Kari Brandenburg, the District Attorney for the Second Judicial District sits on the Metropolitan Criminal Justice Coordinating Counsel, participates in neighborhood collations and associations, and is a member of Weed and Seed, a federal funding program to revitalize neighborhoods, project SAFE neighborhood, H.I.D.T.A., D.W.I. task forces, Domestic Violence Task forces, and other proactive community-based problem solving committees. She works with project S.A.N.E. and rape crisis. When she is unavailable to attend, she involves her Deputies and other Assistant District Attorneys. Each Deputy District Attorney is involved in a separate myriad of community-based projects and all individual Assistant District Attorneys are encouraged to participate in community as well as Bar Association activities.

⁹⁹ Morris Ploscowe, *The Development of Present-Day Criminal Procedures in Europe and America*, 48 HARV. L. REV. 433 (1935).

the role of the prosecution clinic must also be greater than teaching students to simply prosecute. The clinic experience should parallel the real-life demands.

Prosecution clinics are traditionally not viewed as an avenue for public service or for social justice. However, with the recent social trend toward community-based prosecutions, this view may change. The prosecutor's role is not to simply deter crime by successful convictions, but to also deter crime by means of social programs, addressing the cause of crime, imbalances of power, poverty, racism, hate and other tolerance issues. The prosecution clinic should ground the student in community-based issues as well as skills and legal training.¹⁰⁰ The student prosecutor must learn to collaborate with other professionals and utilize available community resources.

One criticism of the prosecution model is that it does not teach social justice or community based lawyering. The argument that a district attorney clinic is not a public service is flawed. Social justice goes alongside the public service component of the prosecution clinic. At least forty percent of the prosecutions conducted by the students in the District Attorney Clinic are domestic violence cases. These cases have real-live victims who are struggling to make sense of their situations. Many struggle economically. Many do not know of the community resources available to them. Many do not know of, or understand, restraining orders or other legal resources available to the victim. Many victims of crime are members of traditionally underrepresented groups who are very much in need of legal assistance.¹⁰¹

Assisting victims is often consistent with public service. Assisting victims of crime takes on a wide range of activities. Assistance can also be as simple as talking to the victim and

¹⁰⁰ In the New Mexico District Attorney Clinic, the student is required to participate in various community activities such as the Domestic Violence Impact Panel, the D.W.I. impact panel and other activities conducive to teaching students broad ramifications of prosecution.

¹⁰¹ Knight, *supra* note 29, at 866.

providing reassurance and support. Assistance can be more complicated. The student prosecutor has the resources to arrange for transportation to and from court, providing telephones,¹⁰² assisting in finding shelter and referring the victim to other legal resources for further assistance. The student prosecutor has the time to develop a relationship with the victim.¹⁰³ Counseling and domestic violence programs, shelters for battered women and resources for the family should be a part of the student prosecutor's problem solving and assistance.

For its success and failures, public service serves an important educational value, exposing students to how our justice system functions—or fails to function—for poor people and minorities in our society.¹⁰⁴ This goal is best achieved if such experience is gained during law school, early in one's legal career.¹⁰⁵ There is certainly a need for prosecutors to be sensitive to justice issues and to view their careers in context of the larger picture of “public servant.” Along these lines, there is a need for law schools to educate and train future prosecutors in the socio-political dynamics of the community.

Training future prosecutors in these dynamics can be done by supplementing the typical criminal justice curriculum with lectures on important social issues relevant to the community. A major issue in the New Mexico District Attorney Clinic is the multi-cultural environment. Many times, the student prosecutor crosses cultural boundaries in their clinical experience. The student must be made aware of the need to understand the

¹⁰² The Second Judicial District Attorney's office in Albuquerque, New Mexico has 911-cellular telephone available for victims who fear immediate danger. These phone are lent to victims on request.

¹⁰³ All District Attorney's offices in New Mexico have victim assistance advocates to help the student prosecutor obtain resources for the victim. The victim advocates can provide transportation in state owned vehicles.

¹⁰⁴ Robert E. Precht and Suelyn Scarnecchia, *The Pro Bono Priority: The University of Michigan's Approach to Instilling Public Service*, 80 MICH. B.J. 70, 70 (2001) (requiring students to complete pro bono hours at the University of Michigan).

¹⁰⁵ *Id.*

influence of the “entered” culture in order to problem solve.¹⁰⁶

The University of New Mexico District Attorney Clinic has taken other steps to incorporate socio-political dynamics into the classroom. This clinic has incorporated immigration issues.¹⁰⁷ This raises awareness of the importance of the federal immigration issues and demonstrates how such issues may determine the outcome of the case. In New Mexico, this is a huge social and political dynamic that effects criminal prosecutions. To ignore this dynamic would be negligence, at best. Other supplemental topics that focus on equal access to justice include mental health issues, domestic violence topics, training in working with victims in the community, and awareness of the resources available to the community.

Sometimes, the lessons learned in the District Attorney's office are lessons of how the prosecutor fails to properly serve its community. These lessons can include how over-zealous or ineffective prosecution can obtain results contrary to justice. Lessons can also include insensitivity to racial or cultural differences. A blindness on the part of the student prosecutor can lead to surprising results.

In one case, the defendant was charged with eluding a police officer. He had taken the police on a high speed chase through the city of Albuquerque and then into the county. He drove many miles into a rural area, all the time being followed by the police. He endangered many people, almost hit pedestrians, side swiped cars and was generally reckless. The defendant drove up to a home, and ran inside. He

¹⁰⁶ Zuni-Cruz, *supra* note 5, at 569. Professor Zuni-Cruz discusses the important issue of multi-culturalism as it affects community lawyers.

¹⁰⁷ University of New Mexico Professor Gloria Valencia-Weber frequently guest lectures in the District Attorney Clinic. She provides an intensive one class lecture to introduce the student to the fundamentals of immigration law, specifically designed to educate the prosecutor to potential consequences of cases. While the students could not possibly learn all about immigration law in this lecture, Professor Valencia-Weber makes the student aware of issues and provides resource materials for the student prosecutors. Because Albuquerque is a multi-cultural city, and New Mexico is a border state, immigration issues arise frequently.

locked himself in the home and wouldn't come out.

The case was set for a jury trial and the students spent long hours preparing for trial. They had the elements of the case; they prepared their opening and closing and were determined to win.

When we got to trial, we, for the first time, met the defendant. He was an elderly, frail gentleman of Hispanic descent. The state's witnesses were four county sheriffs who were all very young, physically fit, light-skinned Caucasian men. The students narrowly focused on the fact that the defendant had violated the ordinance. The students completely ignored the racial underpinnings of the case.

Before trial, the faculty supervisor discussed the racial differences in the case. The faculty alerted the students to overtones that could dramatically change a perception of the facts. The students did not think it would matter. The students refused to see how race could affect the facts of the case. They narrowly focused on the legal elements of the case.

The jury acquitted the defendant, and the students were bewildered. After the jury was dismissed, the students had the opportunity to talk to the jurors. The students finally made the connection to facts in the case that were never spoken; the elderly man was Hispanic and the four sheriffs' officers were young, burley fair-headed Caucasian men. The jury had reasoned that the frail elderly gentleman may have had life experiences that led him to believe that he was not safe stopping for the police on the streets. They reasoned that the elderly man had fears and wanted to be in the safety of his own home. Some jurors reasoned that the police may have been racially biased. The jurors saw a discrepancy in power and control. Had the students fully comprehended the racial and cultural undertones, they may have analyzed the case differently.

The jury also expressed concern that the defendant should not go to jail. The students were surprised that the jurors focused on the consequences of their verdict. There was a specific jury instruction informing the jury not to consider the consequences of their verdict. This was the first time these students had dealt with jury nullification.

In this case, the students learned lessons beyond what they had been taught in the classroom. The students learned of the social concerns of their community and they became more sensitive to social justice issues. They learned that justice can reach beyond the elements of the case.

If the faculty guides the student to reflect on the justice issues, a lesson can have more value. It helps professional development and also raises awareness of the prosecutor as a public servant. Discussion of racial and cultural differences in the community can help the student develop awareness to various constituent needs.

Teaching community justice also trains leaders. The prosecutor is a community leader actively involved in community problem solving on a local, state and, sometimes, a national level. A good prosecutor does not limit her duties to merely "prosecution." The prosecutor must be searching for solutions and options. The prosecutor should be a community leader searching for the common community goal of peace. Likewise, prosecution students should be encouraged to explore their own future role in community problem solving.

Once the student is working in the prosecution clinic, the student has made an investment in the success of the system. For a person who has always been outside the system, this can be very empowering.¹⁰⁸ Being a part of the criminal justice system generates a personal investment in it.¹⁰⁹ This is a commitment to the entire system, not just to a single case. This can be the beginning of the students' commitment to public service and community justice.

¹⁰⁸ Knight, *supra* note 29, at 861.

¹⁰⁹ *Id.* at 862.

IMPACTING THE COMMUNITY

The effects of the District Attorney Clinical Program can be far reaching. For those students not ultimately employed by the district attorney, the clinic gives the future lawyer an appreciation of the perils of important community issues, such as driving under the influence and domestic violence. Students choosing a criminal defense practice learn to better negotiate the maze of the District Attorney's office; they learn the inner workings of the office and they learn to understand a prosecutor's reasoning.

The District Attorney Clinic gives the future lawyer an appreciation of the role of the attorney as a protector of the public, and it gives the student a vision of the work of the prosecutor as a public servant. It is not uncommon that a student would create an innovative program idea or want to participate in a community activity on behalf of the district attorney. If structured correctly, the prosecution clinic can be a community-based program that enhances awareness and appreciation of the prosecutor's role as a community leader and public servant.

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CONCLUSION

Clinical legal education should help to make the future lawyer sensitive to the broad issues going beyond the immediate case. It should give him practice in how to make constructive change in justice in the course of his professional work.¹¹⁰ Clinical education should equip the future lawyer with skills transferable to the practice of law. This can be achieved in a prosecution clinic. It is the goal of the University of New Mexico District Attorney Clinic to shape and encourage a mastery of trial skills as well as to develop a justice sensitivity on which to practice prosecutions. The prosecution clinic can offer rewarding clinical skill experiences as well as a rich professional beginning.

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Pincus, *supra* note 86, at 83-84.

