

DESIGNING A HYBRID DOMESTIC VIOLENCE PROSECUTION CLINIC:

Making Bedfellows of Academics, Activists and Prosecutors to Teach Students According to Clinical Theory and Best Practices

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*Broken nose. Loose teeth. Cracked ribs. Broken finger.
Black eyes. I don't know how many; I once had two at
the same time, one fading, the other new. Shoulders,
elbows, knees, wrists. Stitches in my mouth. Stitches
on my chin. A ruptured eardrum. Burns. Cigarettes on
my arms and legs. Thumped me, kicked me, pushed
me, burned me. He butted me with his head. He held
me still and butted me; I couldn't believe it. He
dragged me around the house by my clothes and by my
hair. He kicked me up and he kicked me down the
stairs. Bruised me, scalded me, threatened me. For*

Clinical Professor of Law, Albany Law School (ALS), Co-Director, ALS Clinical Program. I am grateful to the following people for their invaluable insights and assistance to me in writing this article: Peter Joy, Rudy Stegemoeller and my colleagues at the ALS clinic especially Melissa L. Breger, Nancy M. Maurer, and Jennifer Tromblee, Adjunct Professors Carmello Laquidara and Lyn Murphy, and former clinic students, Lynn Welthy and A.J. Vickey, who also served as a brilliant research assistant. Thank you also to Stacy Caplow, Larry Cunningham, Vanessa Merton, Michael Millemann, Peggy Tonon and other clinicians who teach prosecution clinics and generously shared information with me about their clinics.

*seventeen years. Hit me, thumped me, raped me. Seventeen years.*¹

*In the clinical education universe, the prosecutorial cohort is small. While there may be only a few of us directly teaching and supervising students in this context, every year our former students pour into prosecutors' offices where they receive little reinforcement for a victim-centered approach.*²

*Despite a thicket of progressive policies and good intentions, the prosecution and punishment of domestic violence crimes remains a haphazard affair in jurisdictions across the nation . . .*³

¹ R DOYLE, *THE WOMAN WHO WALKED INTO DOORS* 175-76 (1996). Selected excerpts from this fictional work are also found in the textbook, *Battered Women and the Law*. See CLARE DALTON & ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND THE LAW* 68-74 (2001). I think those of us in the domestic violence field are amazed that some of Doyle's writing so eloquently mirrors the words and experiences of clients, victims and other women we have known. Thus, I have chosen to use this fictional work instead of similar phrasing from an actual person.

² Stacy Caplow, *What if There Is No Client?: Prosecutors as "Counselors" of Crime Victims*, 5 *CLINICAL L. REV.* 1, 44 (1998).

³ Allison Frankel, *Domestic Disaster*, *AM. LAW.*, June 1996, at 55.

I. INTRODUCTION

These three introductory quotes were published during the period 1996-1998 and describe the realities of many battered women, of many clinical teachers and of most prosecutions of domestic violence crimes both then and now. The idea of creating a clinical course at Albany Law School (ALS) focused on domestic violence prosecution was similarly born from: the concerns of battered women, the opportunity to teach students in an integrated, active manner on issues relevant to their eventual practice, and the “haphazard” handling of domestic violence crimes locally. As feminists often note, “*the personal is political*.”⁴ Thus, the story of the creation of the ALS Domestic Violence Prosecution Unit and my personal experience in facilitating its creation may offer political lessons for others. In addition, although some of the questions, issues and institutions which affected the development of my program are specific to my situation, there is a universal need to analyze the effect of political institutions and systems, educational choices and human actors on the creation and design of any “hybrid” prosecution clinic.⁵

⁴ This quotation was originally used to communicate that the social and legal distinction between public matters and private matters was both false and sexist. See WMST-L, “The Personal is Political”: Origins of the Phrase, at <http://research.umbc.edu/~korenman/wmst/pisp.html> (last visited Apr. 6, 2005); Amy Richards, What Does the 1960 Feminist Phrase “The Personal Is Political Mean?”, at <http://www.feminist.com/askamy/feminism/fem/53.html> (last visited Jan. 4, 2005). It has been used more expansively since then to also communicate the false nature of the subjective/objective distinctions made in law and reasoning which traditionally elevate “objective” analysis over “subjective” analysis. Feminist legal scholars have objected on similar grounds to this distinction as well. See Ann C. Scales, The Emergence of Feminist Jurisprudence: An Essay, 95 YALE L.J. 1373, 1374-76 (1986).

⁵ Clinical scholars have used the term “hybrid” clinic to describe a variety of programs. Some use it to describe the combination of a large traditional course with a clinical infusion of students, cases and faculty which create the basis for exploration

The fall of 1997 was my first time teaching a “Domestic Violence Seminar” outside of my teaching in our in-house clinic.⁶ Having just completed four years in our clinic's post-conviction project in which students and I represented incarcerated battered women who killed their abusers, it was exciting to take both the knowledge and the lessons learned in clinical teaching and sow them into the syllabus, discussion and format of my seminar class.⁷ During the semester, many

of the legal subject matter—the combination of both traditional and clinical so that “teachers and students continually use practice to criticize ethics theory and ethics theory to inform practice.” David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 *GED. J. LEGAL ETHICS* 31, 64 (1995); see also Lisa G. Lerman, *Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue About Goals*, 39 *WM. & MARY L. REV.* 457, 469-75 (1998). Others have used it in the immigration context to mean a program which combines asylum/immigration law with human rights practice. See Arturo J. Carrillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process*, 35 *COLUM. HUM. RTS. L. REV.* 527, 530-35 (2004); Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 *YALE J. INT'L L.* 505, 534-38 (2003). Still others use hybrid to mean “any clinical program in which law students receive at least some of their case supervision from law faculty.” Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 *S. TEX. L. REV.* 815, 817 n.5 (2004). For purposes of this article, I define “hybrid” as a “combination of the in-house and externship clinic models.” *Id.* (citing Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 28 (2000)).

⁶ This traditional seminar was first taught in 1987 by Albany Law School Professor Kathy Katz and has continued every year since. When I met Professor Nancy K.P. Lemon, author of one of the first law textbooks on Domestic Violence and Lecturer at the University of California, Boalt Hall School, she speculated that the course may have been the first of its kind in the country. But see Mithra Merryman, *A Survey of Domestic Violence Programs in Legal Education*, 28 *NEW ENG. L. REV.* 383, 384 n.3 (1993) (citing that in 1993, only one school, Miami University, offered a domestic violence seminar each year). In 1997, Professor Katz honored me with the offer to take over the teaching of this seminar.

⁷ For most of 1993 to 1997, the Domestic Violence Project consisted of a family court unit and a post-conviction unit. Students in the post-conviction unit represented incarcerated battered women on clemency matters, state post-conviction mo-

students in the class disclosed and used their personal, academic or professional experiences to enhance class discussion and to broaden perspectives. Despite the plethora of reading and class discussion addressing cultural myths, one seminar student asked over and over “Why doesn't she leave?” or would announce “I just can't understand why she puts up with it.” The student, who was enrolled in our District Attorney field placement course, exploded one day with anger about the “ignorant” level of the class discussions critiquing the criminal justice response to domestic violence. *He* knew the real world perspective from his five week experience in Albany city police court.⁸ He and his field supervisor were not going to let “these

tions, habeas corpus petitions and/or parole appeals. Since the early 1990s, several Albany Law School clinical faculty have taught two credit seminars which are co- or pre-requisites to clinical courses. These seminars are open to all students, but are required for those in particular clinics. Thus, although I had taught a post-conviction seminar, my teaching of domestic violence law had been restricted to the “class component” of our post-conviction project. For a good listing of domestic violence law courses and programs across the country, see the recent American Bar Association Commission on Domestic Violence report entitled, *Teach Your Students Well: Incorporating Domestic Violence Into Law School Curricula—A Law School Report*, available at <http://www.abanet.org/domviol/teachyourstudents.pdf> (last visited Apr. 6, 2005); see also Joel Landau, *Domestic Violence Courses Flourish: A Recognition of a 'Dire Need' for Courses*, NAT'L L. J., July 5, 2004, at 4 (detailing that 185 law schools now offer courses in domestic violence, which is up from fifty seven schools in 1997).

⁸ In Albany City police court, scores of domestic violence criminal cases are “processed” each day. See DAVID HEILBRONER, *ROUGH JUSTICE: DAYS AND NIGHTS OF A YOUNG D.A.* (1990) (describing an analogous procedure of “processing” in New York County). “The speed of the proceedings in calendar also kept me perpetually off balance. Each of the two to three hundred cases we handled every day received about a minute and a half of court time.” *Id.* at 24-26.

The lack of attention and resources to the Albany court and to domestic violence cases—so that the court resembled more of a dysfunctional factory than a community court—was an argument used by David Soares, who defeated the incumbent District Attorney by arguing for more community involvement and better attention to domestic violence. See Michele Morgan Bolton, *Domestic Violence Issue Rises in DA Race*, TIMES UNION, Aug. 13, 2004, at B4 (criticizing the then-District

women” determine what happens on these cases. Prosecutors were *not* victim's lawyers. They would do the *right thing*.⁹

This outburst presented a wonderful teaching opportunity both for my seminar¹⁰ and for the field placement program.¹¹ At the same time, my “inner clinical teacher” was smiling. How ironic it was that I was being perceived as the academic who had no idea how the real world operated.¹² What this

Attorney for not applying for federal domestic violence grants), available at 2004 WL 8857219. These problems with the court and the lack of prosecutorial resources was the impetus for the Albany County Coalition Against Domestic Violence's Judicial Services Committee to apply for federal funding for resources to create and better staff a domestic violence court. See description *infra* Part IV.D.

⁹ This second year student had made known his desire to be an assistant district attorney upon graduation. Although this student's presentation was extreme, his thinking was representative of one type of “would-be prosecutor.”

¹⁰ I will add that in-house clinical students contributed greatly to the discussion which followed. Also, in future years, I completely re-organized the seminar to make sure inspiring advocates, such as Karla DiGirolamo, and articulate survivors were featured as guest lecturers early on in the course. From 1981 to 1989, Ms. DiGirolamo coordinated domestic violence taskforces and commissions in New York State which led to New York's early efforts to implement legislative reform, secure funding for emergency shelters, advocacy programs and community outreach initiatives and provide training programs for police and health care professionals. The first Executive Director of the NYS Office for the Prevention of Domestic Violence, a cabinet member position under Governor Mario Cuomo, Ms. DiGirolamo has testified before Congress, lectured nationally, provided consultation to national and international organizations addressing domestic violence issues and testified as an expert witness in Massachusetts and New York.

¹¹ I was able to discuss this event and the need for more “institutional critique” with the director of the field placement program who oversees the adjunct and field supervisors and meets twice a semester with students. See *infra* note 60.

¹² Prior to my, at that time, eight years of work in the Albany Law Clinic, I had worked for four years as a prosecutor in New York County. The Christmas before this incident the clinic had been successful in a widely publicized case, in obtaining clemency for an incarcerated battered woman who killed her abuser. Thus, I was known to the students as the “feminist” defender of battered women killers and not as a former prosecutor. Also, there are some upstate-conservative/downstate-liberal cultural assumptions and biases which permeate discussions of New Yorkers

student needed was a “disorienting moment”¹³ so that he could examine in a more theoretical manner the pre-conceived notions of his field placement supervisor and critique the existing legal system.¹⁴ I also was feeling a little homesick for the in-house clinic. In-house clinics provide such fertile ground for integrating theory, law, reality, practice and disorienting mo-

on all sides of the divide and thus perhaps “dilute” in some way my experience as a prosecutor.

¹³ Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 *CLINICAL L. REV.* 37, 51 (1995). See her discussion of the work of Jack Mezirow and others as to adult learning based on “critical scrutiny” of their own and their culture’s values, assumptions and beliefs. *Id.* at 47 (citing JACK MEZIROU ET AL., *FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* (1990)). Also, see her description of an analogous student situation. Quigley, *supra*, at 53-54. I do acknowledge that when I cite the above example as a goal of what the student “needs,” I am utilizing my hierarchical role as teacher and walking the fine line between “instructor-as-facilitator and instructor-as-social advocate.” *Id.* at 61. However, some of our students, as the student above did, come to us with limited life experiences. In dealing with such students who present enormous experiential gaps, I am more inclined to adopt the views of those who argue that not every student benefits from a curriculum and/or teaching approach based solely on adult learning theory. See Linda Morton et al., *Not Quite Grown Up: The Difficulty of Applying An Adult Education Model to Legal Externs*, 5 *CLINICAL L. REV.* 469, 471-90 (1999) (discussing humanism, andragogy and pedagogy, adult learning theories and the clinical response to education theory).

¹⁴ “A third significant goal of clinical legal education-institutional critique-can occur when ‘substantive doctrine’ is combined with ‘field work experience’ and ‘the policy considerations implicated in legal doctrine.’” Linda F. Smith, *Designing an Extern Clinical Program: Or as You Sow, So Shall You Reap*, 5 *CLINICAL L. REV.* 527, 530 (1999) [hereinafter *So Shall You Reap*]. Smith gives attribution to Carrie Menkel-Meadow in footnote twelve for considering this a “macro” goal of skill acquisition. *Id.* at 530 n.12 (citing Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 *CLEV. ST. L. REV.* 555, 556, 571-72 (1980)); see also Laurie Morin & Louise Howells, *The Reflective Judgment Project*, 9 *CLINICAL L. REV.* 623, 625-36 (2003).

ments.¹⁵ Classroom discussions can lead to some epiphanies, but from my experience teaching both in and out of clinic, I knew that students' most transformative moments came from clinic.¹⁶ Moreover, adult students (or even adolescents) learn better when they actually *experience* conflict rather than just talk about it. How wonderful it would be to have students experience an in-house prosecution course.

Within the next two years, in the fall of 1999, I was presented with the opportunity to design and direct an in-house domestic violence prosecution project and have done so for the last four years. The complementary relationship between the development and design of the clinical project and the evolution of local domestic violence courts in the Capital Region of New York State is a hallmark of the ALS hybrid clinic. In the past four years, local coalitions of domestic violence activists/advocates, judges, probation officers, prosecutors, law professors, students, defense lawyers¹⁷ and family court law-

¹⁵ Best Practices of Law Schools for Preparing Students to Practice Law 52-53, at <http://professionalism.law.sc.edu/downloads/text1204.pdf> (last updated Dec. 7, 2004) (noting that one best practice is to "Integrate the Teaching of Theory, Doctrine and Practice"); see also Robert Dinerstein, Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 508 (1992); Leah Wortham, The Lawyering Process: My Thanks for the Book and the Movie, 10 CLINICAL L. REV. 399, 408-19 (2003) (discussing the framework for learning to be a lawyer).

¹⁶ Although I tell just one story here to capture my inner clinician's thoughts, my colleagues and I who have taught in and out of clinic have many more. To paraphrase, on any given day, there are a thousand stories in the naked "clinic."

¹⁷ The defense bar was often invited to but did not play a consistent role in developing or re-designing our local courts. This was unfortunate. The defense community can raise legitimate concerns about "problem-solving courts," such as domestic violence courts. See National Legal Aid and Defender Association (NLADA)/American Council of Chief Defenders, Ten Tenets of Fair and Effective Problem Solving Courts (2002), available at http://www.nlada.org/DMS/Documents/1019501190.93/document_info (last visited Apr. 6, 2005). Substantive defense criticism of domestic violence courts include: (1) the model is "inherently biased toward prosecution," is too dependent upon DA policies for identifying domestic violence cases, and is "too closely aligned with

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yers designed, created or redesigned domestic violence courts.¹⁸ At the same time, the ALS Domestic Violence Prosecution Unit formed and evolved.¹⁹ This article explores the

victim advocates to retain impartiality," LISA NEWMARK ET AL. (THE URBAN INSTITUTE JUSTICE POLICY CENTER), SPECIALIZED FELONY DOMESTIC VIOLENCE COURTS: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE 44 (2001); see also Greg Berman & John Feinblatt, (Center for Court Innovation through grant from State Justice Institute), Judges and Problem-Solving Courts 17 (2002) (quoting Susan Keilitz of the National Center for State Courts: "specialized judges can lose their neutrality, or the appearance of neutrality by becoming more educated to the effects of domestic violence and collaborating with the advocacy community."), (2) such courts and allied agencies lose perspective about where their cases fit into the broader range of offenses, exaggerating the seriousness of cases in the domestic violence courts, id., (3) practices such as making participation in batterer intervention programs a requirement of release on bail assume guilt and impose penalties without a conviction, infringing on defendants' rights, with the very title of the court presupposing the guilt of all defendants. Eric Lane, Due Process and Problem-Solving Courts, 30 FORDHAM URB. L.J. 955, 982-87 (2003); Robyn Mazur & Liberty Aldrich, What Makes a Domestic Violence Court Work? Lessons from New York, JUDGES J., Spring 2003, at 5, 41.

¹⁸ Note that domestic violence (DV) courts can refer to a wide range of court structures focused on domestic violence. For a description of New York's DV courts, see *One Family, One Judge: Integrated Domestic Violence Courts*, at <http://www.courts.state.ny.us/ip/domesticviolence/index.shtml> (detailing the structure of the New York Integrated Domestic Violence Courts (IDV)) (last visited Apr. 6, 2005). An IDV court was established in a county near our institution. Described as the "One Family-One Court" concept, the court assigned to the same judge all family, all criminal and some civil matters involving family members. See *One Family, One Judge*, supra. Because the first city criminal court with which we worked was also situated in the same county as the IDV court, the city court's domestic violence initiative was labeled a DV calendar. For simplicity in this article, I will refer to all domestic violence courts, whether operating as an IDV court or simply as a DV calendar, generally, as DV courts. Domestic Violence calendars refer to the process of organizing the domestic violence cases all at one time or all before one judge, without necessarily providing the full range of staffing, resources, training and services found in an IDV court.

¹⁹ The Albany Law School Clinical Program is organized into a number of projects focused on particular areas of law or particular kinds of clients. For example, we currently operate six in-house projects: Civil Rights and Disabilities,

educational, community and personal needs that led to the development and design of a hybrid prosecution project. It evaluates goals for a hybrid prosecution project and some alternative educational models, assessing their ability to be replicated at other law schools. Based on an evaluation of the experience of ALS, this article also offers some recommendations and suggestions for others and the future.

II. IDENTIFICATION OF NEEDS AND OPPORTUNITIES: EDUCATIONAL, COMMUNITY AND PERSONAL

Much has been written in the clinical literature about designing an externship or field placement program²⁰ and about the value and experiences of in-house clinical programs.²¹ However, a third form of clinical education has received less attention:

Domestic Violence, Health Law, Investors Rights, Litigation, and Low Income Tax. From 2000-2004, the Domestic Violence Law Project was further subdivided into two separate clinical courses and units: the Family Violence Unit (DVFU) and the Prosecution Unit (DVPU).

²⁰ See generally Symposium, Developments in Legal Externship Pedagogy, 5 CLINICAL L. REV. 337 (1999) and Symposium, Externships: Learning from Practice, 10 CLINICAL L. REV. 469 (2004) (describing various issues relating to clinical legal education). For articles that are particularly helpful in thinking about clinical design, see So Shall You Reap, *supra* note 14, and Mary Jo Eyster, Designing and Teaching the Large Externship Clinic, 5 CLINICAL L. REV. 347, 348 (1999). For a more recent update which thoughtfully evaluates contrasting models of supervision, oversight and training, see Barbara A. Blanco & Sande L. Buhai, Externship Field Supervision: Effective Techniques for Training Supervisors and Students, 10 CLINICAL L. REV. 611 (2004). For an excellent overview of materials relating to clinical legal education, see Clinical Legal Education: An Annotated Bibliography (J.P. Ogilvy & Karen Czapanskiy eds., 2004), at <http://faculty.cua.edu/ogilvy/BiblioO4A.pdf>. [hereinafter CLE Bibliography]; see also Robert F. Seibel & Linda H. Morton, Field Placement Programs: Practices, Problems and Possibilities, 2 CLINICAL L. REV. 413, 417-21 (1996).

²¹ In the section entitled "clinical design" (located in the CLE Bibliography), there are over ninety articles discussing in-house clinical issues. See, e.g.,

In addition to these two dominant forms of real client clinical programs [in-house and external/externship], there is a third type of clinical program often referred to as “hybrid” clinics, combining features of in-house and externship programs. In a hybrid clinic, a law school creates a partnership with a legal provider, such as a civil legal service office or public defender office, and the students enrolled in the clinic are supervised by both a full-time clinician and lawyers from the outside office.

In 1999, when I set out to design a hybrid project, with a few exceptions, little had been written or documented about hybrid clinics, in particular hybrid prosecution clinics.²³ Therefore, I

Susan Bryant & Maria Arias, *A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving Vision of Lawyering that Empowers Clients and Community*, 42 WASH. U. J. URB. & CONTEMP. L. 207 (1992); Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for “Facilitative” Lawyering?*, 1 CLINICAL L. REV. 639 (1995); Marjorie Anne McDiarmid, *What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y.L. SCH. L. REV. 239 (1990); Mary Helen McNeal, *Unbundling and Law School Clinics: Where's the Pedagogy?*, 7 CLINICAL L. REV. 341 (2001); Michael Meltsner & Philip G. Schrag, *Scenes From a Clinic*, 127 U. PA. L. REV. 1 (1978); 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 (1989); Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327 (2001).

²² Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLINICAL L. REV. 681, 682 n.1 (2004) (citation omitted). “When law school faculty assume full or partial responsibility for case supervision in an external placement, the clinic is sometimes referred to as a “hybrid,” as it blends features of both an in-house and external clinic.” Wortham, *supra* note 15, at 445. Also, see the reference to hybrid literature, *supra* note 5.

²³ See *So Shall You Reap*, *supra* note 14, at 534 (noting that in-house “criminal prosecution clinics are . . . rare within law school”). A few commentators have described themselves as teaching an “in-house” prosecution clinic and have written about those experiences or used those experiences to explore other issues. See Caplow, *supra* note 2, at 27-35. “Faculty-supervised clinics in which students personally handle the prosecution of the case are unusual. The more typical model is an externship that places students in local and federal prosecutors' offices . . .” *Id.*

resorted to my understanding of classic clinical methodology and of collaborative approaches found in both the field placement and the in-house traditions: examine the needs, goals and potential opportunities for students, the law school, the community (both grassroots and public sector portions) and the faculty member;²⁴ evaluate the methods of achieving those goals and the alternative models already designed by those mentors and teachers in the clinical community;²⁵ and attempt to use an integrated,²⁶ reflective,²⁷ holistic,²⁸ culturally competent,²⁹ problem-solving,³⁰ inter-disciplinary³¹ and “rebellious”³² approach to creation of the program.³³

at 1 n.2. “There are far fewer criminal prosecution clinics than there are criminal defense clinics. There appears to be an implied assumption that criminal defense clinics provide a better educational experience This article reexamines the assumption” Karen Knight, *To Prosecute is Human*, 75 NEB. L. REV. 847, 850 (1996). For brief references to prosecution clinics, see Stanley Z. Fisher, *In Search of the Virtuous Prosecutor: A Conceptual Framework*, 15 AM. J. CRIM. L. 197 (1988); see also Joan L. O’Sullivan et al., *Ethical Decisionmaking and Ethics Instruction in Clinical Law Practice*, 3 CLINICAL L. REV. 109, 154 (referencing a Child Abuse and Domestic Violence Prosecution Project).

²⁴ Wortham, *supra* note 15.

²⁵ *Id.*

²⁶ See generally Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLINICAL L. REV. 401, 410 (1994).

²⁷ See generally Richard K. Neumann, Jr., Donald Schon, the Reflective Practitioner, and the Comparative Failures of Legal Education, 6 CLINICAL L. REV. 401, 402-18 (2000).

²⁸ See International Alliance of Holistic Lawyers, at <http://www.iah.org> (last visited Apr. 6, 2005). “The idea of holistic lawyering, for example, suggests that legal practitioners should be client-centered in their approach, viewing their responsibilities as not just solving issues of law but also helping address the various problems (both legal and nonlegal) that have contributed to their client’s troubles.” Erik Luna, *Punishment Theory, Holism, and the Procedural Conception of Restorative Justice*, 2003 UTAH L. REV. 205, 283 (2003).

²⁹ See generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 78-99 (2001).

With respect to the first prong above, the desire to create a hybrid prosecution clinical opportunity arose from my perceptions of need in several areas: students' educational needs, community needs and personal/faculty needs. Complementing these needs, opportunities for collaboration and innovation existed because of the maturity of the ALS clinical program,³⁴ the loyalty of our alumni/ae base, the idealism, openness and expertise of the local and statewide domestic violence advocacy community and the flexibility of the clinical director at that time.³⁵ These overlapping needs and opportunities intersected to fashion the design of a hybrid domestic violence prosecution project.

³⁰ See generally Andrea M. Seielstad, Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education, 8 CLINICAL L. REV. 445, 448-49 (2002).

³¹ See generally Janet Weinstein, Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice, 74 WASH. L. REV. 319, 325-28 (1999).

³² See generally GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).

³³ It's harder to get all the terminology out than it is to be mindful of it in teaching and practicing! For an overview of current clinical approaches and thinking, see Barry et al., *supra* note 5, at 16-26.

³⁴ ALS's clinical program traces its roots back to approximately 1975. Clinical colleagues are currently working on assembling a history. When I discuss "maturity," I am also referring to the fact that there were established and longstanding clinical projects, an extensive field placement program and that the faculty contained three tenured clinicians with full voting rights and a long-term contract process for other clinicians.

³⁵ I am grateful for the flexibility of ALS Associate Dean and Professor Connie Mayer, Clinical Director from 1991 to 2001, and for her unwavering support of this initiative.

A. Examining Educational Needs and Identifying Educational Goals for a Hybrid Prosecution Project

In designing a project, *educational needs* should be examined on at least three levels: (1) examination of the overall institutional needs or gaps in the curriculum, (2) examination of the needs or gaps in the clinical program and (3) examination of student needs and desires. In examining my institution's needs and gaps, I concluded that there was good reason to design a hybrid prosecution project. For instance, there was a lack of diversity on our criminal law faculty. Moot court activities, trial advocacy classes and the field placement program³⁶ did not provide full opportunities to teach important clinical judgment in prosecution³⁷ or prepare students for the changing variables of real practice. Most importantly, there was a clear student desire for more prosecution placements.

At the time the clinic was being created, ALS's traditional or "stand up" criminal law faculty was exclusively male.³⁸ There was unquestionably a lack of diversity on that faculty and a perception among students that women's issues were not being addressed thoroughly.³⁹ This perception was in fact a national

³⁶ See *infra* note 60.

³⁷ Pace Law School Professor Vanessa Merton has informed my thinking about the teaching of clinical judgment in prosecution and is currently writing a piece on this topic.

³⁸ These professors are my colleagues and friends, whom I esteem greatly. Indeed, they were invaluable resources to my students and me during the years I directed the Post-Conviction Project. One professor even co-taught the contemporaneous seminar with me. However, it was unquestionably a white, male criminal law department teaching first year criminal law. Thankfully, our criminal law faculty has become more diverse with the addition of a wonderful colleague, Professor Lenese C. Herbert.

³⁹ During the 1990s, female students at Albany Law School often complained to clinical professors that issues of rape and domestic violence were either not being taught, not presented from a feminist perspective, or not discussed fully. At least one traditional faculty member learned of these complaints and reached out

reality.⁴⁰ Despite the “dramatic change in the legal system's response to women who have been battered,”⁴¹ traditional legal education had “virtually ignored” the reality and experiences of battered women.⁴² By teaching a hybrid domestic violence prosecution course, I desired further to emphasize not only the evolution of the law concerning violence against women but also ideas about the appropriate response of the criminal law to such violence. I also hoped to introduce a feminist criminal law/prosecution perspective and to provide a model for female students who desired to enter the machismo-saturated⁴³ world of criminal law.

There are numerous issues involved in the question of whether a hybrid prosecution clinic advances the school's existing professional skills, clinical and placement offerings. Prosecution projects generally focus on fact investigation, victim/witness interviewing, charging and evidentiary analysis, negotiations (offers for reduced charges and/or sentences) and trial skills. Arguably, the curriculum at ALS already provided good opportunities in fact investigation, negotiation and courtroom per-

to clinical faculty for ideas of how to better incorporate domestic violence issues into the class discussion.

⁴⁰ See generally Merryman, *supra* note 6.

⁴¹ *Id.* at 383.

⁴² *Id.* Albany Law Review, however, held a wonderful symposium on Domestic Violence issues in March of 1995. See generally Symposium, Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues, 58 ALB. L. REV. 959 (1995).

⁴³ See, e.g., Rena M. Atchison, A Comparison of Gender Bias Studies: Eighth Circuit and South Dakota Findings in the Context of Nationwide Studies, 43 S.D. L. REV. 616, 622-23 (1998) (“In the area of criminal practice, male attorneys in the Eighth Circuit outnumbered female attorneys eight to one” and in government men are more likely to be in the criminal positions); Elizabeth Erny Foote et al., Women Rainmakers When It Rains, It Pours, 45 LA BAR J. 422 (Feb. 1988) (noting criminal defense bar was and still is dominated by male attorneys and by the “macho mystique” associated with criminal defense work).

suasion.⁴⁴ If the project offered nothing more than simply another opportunity to learn about or be exposed to these skills, it would not be filling an unmet need.

Of course, clinics do much more than teach skills. In addition to teaching how to learn from experience and to think and practice like a lawyer, most clinical projects differ from simulated courses because they allow students to assume the role of a professional and deal with ever changing facts and people. Prosecution clinics do all that too. Prosecutor clinics, however, do *not* provide opportunities to represent individuals and practice client centered representation.⁴⁵ Thus, it is important to consider whether the existing curriculum and clinical program generally include adequate opportunity for students to represent actual clients and to teach client-centered counseling. If not, perhaps the program should consider adding a client-based clinic in which students form an attorney-client relationship with a flesh and blood human being before allocating faculty resources to a prosecution project.⁴⁶

⁴⁴ Albany Law School, like many other schools, had an extensive moot court and trial advocacy program which, in particular, taught good "courtroom skills." From 1995-2000, Albany Law School's Moot Court teams consistently reached the semifinals and finals of numerous interscholastic competitions around the country, including the ABA National Criminal Justice Trial Advocacy and Association of Trial Lawyers of America competitions. In 1996, the faculty had also adopted a voluntary professional Skills Competency program, pursuant to the MacCrate Report, which introduced new simulated skills courses, emphasized the value of skills offerings and certified students in skills such as drafting, fact investigation, alternative dispute resolution and persuasion. See Faculty Proposal (on file with author). That proposal also created a new year-long course in civil Pre-Trial and Trial Litigation (PTTL). *Id.*

⁴⁵ This is not to suggest that issues such as victim-centered counseling, the question of who is the prosecutor's client, and the contrast between prosecutors' and other lawyers roles cannot be explored in a prosecution clinic. See generally Knight, *supra* note 23; Caplow, *supra* note 2, at 44. Indeed, my students always participated in clinic-wide sessions on client-centered counseling and we used these skills and lessons in our work.

⁴⁶ I suppose other considerations such as clinically teaching important skills of advanced research and writing, civil discovery or the skills of working on large

The clinic's place in the larger community should also be examined. Do the law school and clinical program work together with the community on an adequate number of opportunities? If not, perhaps a clinical program should establish credibility in and linkage to its community.⁴⁷ Are there a good number of projects which enable access to justice, raise social justice awareness and instill a strong pro bono ethic? If not, perhaps scarce resources should not be devoted to assisting government or to imprison the poor.⁴⁸ As Karen Knight humorously points out: "Nebraska's prosecution clinic has been likened by some members of the faculty to providing free legal services to IBM."⁴⁹ On a more serious note, the dearth of well-funded and vigorous criminal defense does suggest that a criminal defense clinic should be considered before a prosecution one.⁵⁰

cases should also be considered. But, they fall lower down on the hierarchy of importance in my mind.

⁴⁷ See Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43 *HASTINGS L.J.* 1187 (1992); 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).

⁴⁸ See Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?*, 14 *GEO. J. LEGAL ETHICS* 355, 398 (2001) [hereinafter *Good Prosecutor*].

⁴⁹ Knight, *supra* note 23, at 865. Note that some other law school clinics do place students at private firms and businesses when pedagogical reasons warrant such placement.

⁵⁰ See *Good Prosecutor*, *supra* note 48 (describing the racism, classism and serious "justice" problems which are rampant in the prosecution of crimes); see also Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 *HARV. L. REV.* 1239 (1993) (calling for legal scholars to move beyond abstract justifications of criminal defense work to explore and develop motivations for lawyers to represent the indigent); see also John Gibeaut, *Defense Warnings*, *A.B.A. J.* Dec. 2001 at 35, 35 (2001) (describing counties where "public defenders are so swamped that they can't even dream of satisfactorily representing their indigent clients."). For an excellent outcome analysis of the favorable results obtained by three years of students in the NYU Criminal Defense Clinic and the significant contribution law students make to represent indigent people accused of crimes, see Steven Zeidman, *Sacrificial Lambs or the Chosen*

Examining the application of these questions to the ALS clinical program, I concluded that there were good reasons for forging ahead, in spite of other reasons suggesting reconsideration. ALS is fortunate to house a multi-faceted in-house clinic and an extensive field placement program which provides students numerous opportunities to learn about and practice client-centered representation and whose faculty and students work with and in the surrounding community. At the time of the creation of the hybrid prosecution clinic, the in-house clinic consisted of three community-based clinics⁵¹ and another long-standing clinic which received referrals from our local Legal Aid office.⁵² The community-based clinics were well known, worked with advocates and other community groups, and provided representation, training, information and referrals to local individuals. The bounty of client-centered opportunities for students,⁵³ the large number of clients represented and the extensive work done with community partners on social justice

Few?: The Impact of Student Defenders on The Rights of the Accused, 62 BROOK. L. REV. 853 (1996).

⁵¹ They were: the Family Violence Project in which students represented survivors of domestic violence in family court and on civil matters, an AIDS/HIV Law Project in which students represented clients on matters of custody, guardianship, health care and end-of-life decision making and a Civil Rights and Disabilities Project in which students represented individuals with disabilities on matters of education rights, employment rights and other discrimination issues. Since then, the clinic has expanded to include a Low Income Tax Project and an Investors Rights Project. In addition, the AIDS/HIV project was subsumed within a Health Law Project which has two units the AIDS/HIV unit and the Cancer Care unit.

⁵² The Litigation Project partners with the Legal Aid Society of Northeastern New York to provide representation to clients on unemployment insurance matters.

⁵³ In addition to the approximately thirty to forty slots in the in-house clinic, we also offered many client-centered field placements in local not-for-profits such as Disability Advocates, Legal Aid, and Mental Hygiene Legal Services. Since our clinic has expanded, so has the number of students.

matters gave me the “freedom” to consider a clinic that was not client-centered.⁵⁴

True, after the post-conviction project ended, we did not and still do not have an in-house criminal defense clinic, and that is certainly a gap in our program.⁵⁵ One of the reasons involves the politics of some members of our local public defense bar.⁵⁶ Another reason is that the level of criminal defense work in one public defender office was so substandard that we removed it from our field placement program since we believed students would learn how *badly* to represent individuals accused of a crime. Frankly, no clinician has yet had either the freedom to design such a project or the fire in his/her belly to take on the hard work to overcome these obstacles.⁵⁷ But criminal defense aside, a prosecution project would complement our existing civil in-house clinic nicely.⁵⁸

⁵⁴ For more of an exploration of this topic, see Mary A. Lynch, Can You Be a “Good Person,” a Good Clinician and a Supervisor of Student Prosecutors?, presented at the 2005 AALS Clinical Section Conference as a “Work in Progress,” which expands on and responds to Abbe Smith’s article, Good Prosecutor, *supra* note 48, at <http://www.aals.org/clinical2005/works.html>.

⁵⁵ The project had been funded by Title IX monies. For a history of the funding of clinical education, see Michael Meltsner & Philip G. Schrag, Report From a CLEPR Colony, 76 COLUM. L. REV. 581 (1976); see also Barry et al., *supra* note 5, at 19-20.

⁵⁶ We have some outstanding and zealous local public and assigned counsel defense attorneys. However, not all local criminal defense attorneys welcome assistance from the law clinic. Some local lawyers view free student work as cutting into the bread and butter of practice. See MCKINNEY’S NEW YORK RULES OF COURT 805.5(d) (stating law students “may render assistance to indigent persons in any matter in which a party does not have the right to assignment of counsel”). Note, however, that we arranged for an exception to this rule in the case of our Family Violence Unit.

⁵⁷ These obstacles are not just my own perceptions, but are shared by my colleagues in the clinic and in particular by my colleague who has far greater criminal defense experience, knowledge and contacts than I do.

⁵⁸ So, was I just “playing it safe” by designing a hybrid prosecution project? Probably. Am I terrified by the idea of a criminal defense clinic where my students and I are responsible for people’s liberty and life? Absolutely!

It was also true that Albany Law School, in theory, already provided plenty of opportunity for “institutional critique”⁵⁹ and exposure to law practice through its field placement program.⁶⁰ Our field placements provided wonderful opportunities for exposure to real life practice, to test the waters of certain subject matter areas, and to practice lawyers' skills. Some students have had life-altering experiences in the program: they gained a mentor for life, experienced an epiphany about a career path or engaged in the best educational experience of law school. Within this program, opportunities existed with at least four regional and geographically convenient district attorneys' offices, the United States Attorney's office and the New York Prosecutors Institute.

Something truly irked me, however, about the experiences of students placed in local district attorney offices. It may well be that my prior experience as an assistant district attorney in Manhattan made me more sensitive to—or judgmental about—the experience of students placed in these offices. The students seemed to swallow whole the culture of a particular office—to be unable to separate process, procedure and skills from viewpoint, strategy and political bent. At first, I thought the fault lay in our field placement model of having expert prac-

⁵⁹ See generally *So Shall You Reap*, *supra* note 14.

⁶⁰ Albany Law School runs an extensive field placement program with over 200 placement opportunities and over 100 students participating each semester. Albany, as a major capital city, provides a wealth of opportunity for field placements. Adopted in 1987, our current field placement model takes advantage of our location by offering students anywhere from seven to ten sections of placements clustered by subject matter: Environmental, Criminal Defense, District Attorney, Government and Public Service, Health Law, Judicial, Legal Aid, Science and Technology, and United States Attorney placements. Each placement cluster is taught by an adjunct clinical professor/expert practitioner. The director of our Field Placement, a full time faculty member, performs oversight over all placements and all ten or so adjunct clinical professors, holds orientation sessions, classes, panel presentations as warranted, requires journaling in appropriate situations for purposes of institutional critique and reflection and meets twice a semester with all 100-plus students. See also note 66.

titioners teach the classes. The discussion of institutional critique, reflection, and diverse perspectives that should be integral to the classroom experience were lacking. Working more closely with adjunct faculty to ensure appropriate discussion, however, did not solve the problem. Even when I attempted to initiate critical discussions in individual meetings with students, or in the periodic class sessions, something was missing.⁶¹ Comparing my discussions with field placement students to earlier discussion with in-house clinic students in which we critiqued our cases, our lawyering and the systems with which we were involved, I realized what was missing. Context. The shared mission. The joint understanding of facts.

This is where my sense of student needs and desires became the paramount reason for starting the clinic. I, like other commentators, believe not only that we clinicians should provide options to encourage students to engage in public interest or public defense work, but we need to meet students where they are.⁶² At ALS, large numbers of students desire to go into prosecution at some time in their career.⁶³ Each semester at

⁶¹ See Erica M. Eisinger, *The Externship Class Requirement: An Idea Whose Time Has Passed*, 10 *CLINICAL L. REV.* 659 (2004) (arguing that the externship classroom component should cease to be required and instead taught only if the class adds value to a field placement program).

⁶² See generally Eyster, *supra* note 20; Luban & Millemann, *supra* note 5.

⁶³ An argument could be made that rather than just accepting that students are not selecting criminal defense as a career, we should provide more opportunity and inspiration to practice criminal defense by setting up a criminal defense clinic. There is some merit to the argument. Certainly, in the Capital Region of New York, where ALS is located, there is a need for training more zealous criminal defense advocates. ALS did offer a post-conviction clinical project, which I ran for four years. Upon graduation, some students chose to practice criminal defense, but more students became prosecutors. The need for competent and committed criminal defense has certainly been documented. See Ogletree, Jr., *supra* note 50. None of these arguments, however, suggest that a prosecution clinic should not be offered. To be frank, I would be delighted if one of my colleagues with more experience in criminal defense would do so. See Good Prosecutor, *supra* note 48.

least twenty to twenty-five students enrolled in the prosecution placements. Our district attorney placements were and are consistently over-subscribed. Moreover, upon graduation, our students were “pour[ing] into prosecutors' offices.”⁶⁴ Nationally, NALP statistics show that approximately five percent of graduates, whose employment is known, become prosecutors. At Albany Law School we consistently surpass that national average and turn out large numbers of prosecutors, a number of whom staff the several counties surrounding ALS.⁶⁵

With so many students interested in prosecution, I wanted to offer an educational opportunity which provided more than our typical field placement experience.⁶⁶ I believed we needed to prepare these students better to assume the responsibility of prosecutorial discretion so early in their careers.⁶⁷ As recent graduates, these students would have enormous effects on the lives of victims and their families, defendants and their families, and communities. Had they been exposed to critiques of the justice system which challenged the policies used in the

⁶⁴ Caplow, *supra* note 2, at 44.

⁶⁵ The ALS Office of Career Planning statistics reveal that from the classes of 1997-2003, an average of seven to nine percent of students, whose employment was known, became prosecutors.

⁶⁶ Like many field placements, ALS boasts of some that provide learning equivalent to an in-house clinic with excellent teacher-practitioners as field supervisors who can teach to an enormous variety of learning styles. Other placements meet other goals and would not provide the same kind of learning experience. My work in ALS's in-house clinics from approximately 1989-1997 and then as Director of the Field Placement Program from 1998-2000 provided me with some perspective on our clinical program and the ability to compare the advantages and disadvantages of both types of program. It also provided me with the opportunity to perform an informal-needs assessment of our clinical program.

⁶⁷ Unlike offices in large major cities such as the Dade County (Florida) District Attorney's office or the Manhattan DA's office in which new prosecutors undergo intensive training programs which last a month or more, local counties provide little or no training to new assistants.

local district attorneys' offices in which they practiced?⁶⁸ Did they understand the difference between tactics that were acceptable for a civil attorney or a criminal defense attorney to use, but not appropriate for the prosecutor?⁶⁹ Had they encountered the difficult, if not insurmountable, tension between the "adversarial" nature of the system and the "do justice" mandate for prosecutors?⁷⁰

It seemed to me that we, as clinical teachers, too often left the students interested in criminal prosecution to the traditional faculty, the simulated skills courses, the moot court program, and the offices in which students are placed in the field placement program. Although there is great merit to substantive law and skills training, moot court, and field placements, none of these present the kind of opportunities an in-house clinic provides to integrate, discuss and practice problem-solving, clinical judgment, professionalism, interpersonal skills, ethics and morality while quickly applying facts to law in a particular procedural and cultural system. It is only in an in-house clinic that students have the dual goal of acting as the "lawyer on the case" while learning from an intellectual exploration of the dynamics of what happened and why. In order to teach future prosecutors best, I needed to create an in-house prosecution clinic which mirrored the best aspects of our community-based clinics.

⁶⁸ See Daniel S. Medwed, *The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence*, 84 B.U. L. REV. 125, 132-50, 170-71 (2004) (describing the institutional culture of prosecutors' offices and discussing the need for continued education and "re-orientation" of prosecutors).

⁶⁹ See MODEL CODE OF PROF'L RESPONSIBILITY EC 7-13 (1983). See also MODEL CODE OF PROF'L RESPONSIBILITY DR 7-103 (1980).

⁷⁰ See Fred C. Zacharias, *Justice in Plea Bargaining*, 39 WM. & MARY L. REV. 1121, 113-24 (1998) (exploring the ambiguities and tensions of the plea bargaining process since prosecutor's have an "undefined obligation" to "do justice" and yet at trials are considered to be participating in the adversarial role").

*B. Community Needs for a Better Approach to Domestic
Violence Prosecution*

Creating a network of coordinated, comprehensive, holistic community responses which support the victim and hold the batterer accountable⁷¹ is the most effective way to address the complex and difficult issues surrounding domestic violence crimes.⁷² Battered women survivors⁷³ and their advocates were rightfully troubled and frustrated by the local criminal justice response to domestic violence in the Capital Region. Although legal and statutory changes had been made in attempts to support the victim and hold the batterer accountable,⁷⁴ implemen-

⁷¹ My work in women's prisons with incarcerated, battered women who killed their abusers had indelibly impressed upon me the fatal consequences that occur when domestic violence goes ignored and when community systems fail to support battered women.

⁷² Notably, this goal is not inconsistent with educational goals. See generally Lois J. Kanter et al., *Northeastern's Domestic Violence Institute: The Law School Clinic as an Integral Partner in a Coordinated Community Response to Domestic Violence*, 47 *LOY. L. REV.* 359 (2001).

⁷³ I purposely use the term "battered woman survivor," "battered woman" and "victim" throughout this article and am fully cognizant of the controversy surrounding the terms. This is not because I disagree with scholars such as Professor Elizabeth Schneider who complains about the reductive nature of the term "battered women." See ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 60-62 (2000). Nor is it because I disagree with scholars who call for a redefinition of the issues. See, e.g. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 *MICH. L. REV.* 1 (1991). Rather, it is because I, like Professor Deborah Tuerkheimer, knowing full-well the falsity of the victim/agent dichotomy, use these terms to simply "emphasize the basic proposition that women are harmed by battering." Deborah Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 *J. CRIM. L. & CRIMINOLOGY* 959, 1031 n.3 (2004).

⁷⁴ I refer here to mandatory arrest, primary aggressor and stalking statutes, as well as to the elevation of crimes such as criminal contempt for repeatedly violating orders of protection. See Jessica Dayton, *The Silencing of a Woman's Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases*, 9 *CARDOZO WOMEN'S L.J.* 281, 282-83 (2003) (arguing that mandatory arrest policies take power away from women who are in abusive relationships); Tuerkheimer, *supra* note 73. See generally DALTON & SCHNEIDER, *supra* note 1, at

tation and attitudes at the grassroots level remained (and still remain) problematic.

Clinical colleagues who supervised students in family court throughout the region described unresponsive police officers and unresponsive or overzealous prosecutors. Field placement students related stories of judges, assistant district attorneys and defense attorneys who treated domestic violence cases as petty annoyances to be quickly resolved and removed from the court calendar. There was a preoccupation with exerting prosecutorial or judicial power and not letting the victim "abuse" and "control" the system.⁷⁵ Scholars, activists, some policymakers, some politicians and students (some of whom had personal or professional experience with domestic violence situations) all agreed on the need for a more holistic, coordinated, cooperative, community-based approach to the problems of domestic violence.⁷⁶

These community needs, which are not unique to the Capital Region of New York, provided opportunity for collaboration. Immediately east of ALS sits Rensselaer County. It had several characteristics which recommended it for the hybrid project. First, there was an excellent activist battered women's shelter which was part of a larger community services program and which appeared to have its fingers on the pulse of the struggling city of Troy, New York⁷⁷ and surrounding areas.⁷⁸

564-714 (describing the relation between the criminal justice system and domestic violence).

⁷⁵ This is different from not letting the abuser control the system through his control of the victim. See Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1555 (1998).

⁷⁶ See Model Domestic Violence Policy for Counties, at http://www.opdv.state.ny.us/coordination/model_policy/index.html (last visited Apr. 6, 2005) (detailing the model cooperative approach that was developed in New York State); see also Kanter, et al., *supra* note 72.

⁷⁷ Troy is the largest city in Rensselaer County with a population of nearly 50,000. See <http://quickfacts.census.gov/qfd/states/36/3675484.html> (last visited Apr. 6, 2005).

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Second, the city itself and the legal, social service, and public service community were small and centralized enough to be able to have students meet with, and form relationships with, a small set of key stakeholders, officials and courts. Third, innovative people working in a number of key stakeholder organizations were frustrated by the status quo and eager for change. Since many battered women had been well-served in family court by ALS students, the local battered women's activist community had already established links with our domestic violence clinic, had formed good impressions of the quality of work performed by ALS students and encouraged our involvement in efforts to improve the criminal justice system. In addition, a local activist probation officer,⁷⁹ who was well-trained on violence against women, and committed to improving the criminal justice response for battered women began to push for development of a new approach to handle domestic violence cases in Troy. It appeared that the community could be well-served by more and better prosecutorial staffing in domestic violence cases, and the students would be well-served by interaction with the community.

Based on the suggestions of community and government activists, the local city court judge who handled the criminal calendar called together an informal task force to discuss how best to meet the shared goals of providing more support and integrated services for victims, better monitoring of batterers, and encouraging victims to cooperate with the prosecution. He reached out to the local prosecutor, the local battered women's shelter and other community groups and organized a "field trip" to two domestic violence courts running in New York City—a misdemeanor court in Bronx County and a felony court in

⁷⁸ My impressions of the shelter-advocacy program as "excellent" was based on the evaluation of policymakers and advocates in the domestic violence community. These advisors included visionaries, state government types and grass-roots types who I had come to know well through clinical work on behalf of incarcerated battered women.

⁷⁹ He had received special training pursuant to the federal Violence Against Women Act.

Brooklyn (Kings County).⁸⁰ For all of the reasons cited earlier, this creative task force held promise for me with its focus on better prosecution of domestic violence. So I called up the local city court judge, informed him of my intention to create a hybrid prosecution clinic and became part of the design team for the court.⁸¹

⁸⁰ See supra note 18 and accompanying text.

⁸¹ I made clear the intentions to combine educational goals for students with the criminal justice and domestic violence communities' goals of "improving" the handling of domestic violence cases—that this was not just about student labor. Of course, I do not at all mean to suggest that the advocates and activists and the probation/law enforcement/prosecutors all had the same sense of what "improvement" meant. For example, the advocates wanted more deference to the victim's preferences and understanding of her situation and more "prosecution without the victim." The court wanted more "cases that didn't fall apart." The district attorney's office hoped to persuade more victims to "cooperate" with the prosecution. However, all did agree that the current system had many gaps and that a common goal was improved batterer accountability and better provision of support and services for the victim.

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C. Personal Needs for a Balanced Life

Some clinical authors remind us that it is “okay” to admit to having a need for a personal life and that teaching about practicing law without discussing such needs and balance is incomplete.⁸² I believe it is also important to document those challenges. For in addition to the educational and community needs for this hybrid project, it suited my personal needs as a faculty member. The spring semester of 2000 was a critical decision time for me. I had been teaching clinically since 1989. In the mid to late 1990s, I tried to do everything at once: teach seminars, handle difficult high profile cases, do excellent clinical supervision, respond to community needs, serve on community and statewide task forces, get tenure, serve on or chair important faculty committees, and raise two kids. I burned out. After going part-time, teaching seminars and skills classes, or directing the field placement program for a couple of years, I was approached by the then clinical director with the request to have me teach “in the clinic” again. I was ready to supervise students on cases again and teach clinical skills through real cases, but I was not prepared to take on the grant pressures, community pressures and case pressures which came with much of the in-house clinic work at Albany Law School.⁸³ Nor was I willing again to sacrifice my time with family, or a healthy balance of work and leisure.

⁸² For detailed discussions of the personal/professional balance, see generally Deborah L. Rhode, *Balanced Lives for Lawyers*, 70 *FORDHAM L. REV.* 2207 (2002); Joan C. Williams, *Canaries in the Mine: Work/Family Conflict and the Law*, 70 *FORDHAM L. REV.* 2221 (2002); see also Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Values, Motivation and Well-Being*, 22 *BEHAV. SCI. & L.* 261 (2004); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 *J. LEGAL EDUC.* 112, 122-24 (2002); Mary Helen McNeal, *Message From the Chair, ASS'N AM. L. SCHS. SEC. CLINICAL LEGAL EDUC.*, No. 1 (Apr. 2001) (describing her desire to set a positive professional/personal life balance for her clinic students).

⁸³ See generally Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons From My Clinical Sabbatical*, 9 *CLINICAL L. REV.* 879 (2003) (exploring the ups and downs of handling big cases in law school clinics).

At the American Association of Law Schools (AALS) conference in January 2000, I sat at lunch with longtime clinician Robert ("Bob") Seibel.⁸⁴ We were able to discuss clinical teaching, grant pressures, stand up and skills teaching, handling cases, stress and the joys and challenges of life. Bob listened carefully and empathetically made several memorable suggestions. Particularly appealing was his description of the rewarding work of co-teaching and collaborating with someone who was primarily responsible, along with the students, for the client's case. He suggested that I think about proposing a clinic in which I was responsible for designing or co-designing the program and curriculum, some direct supervision, classroom teaching, collaborations with field supervisors/adjunct, and instilling clinical methodology and a reflective approach.⁸⁵

III. SELECTING GOALS AND CHOOSING APPROPRIATE EDUCATIONAL MODELS FOR A HYBRID PROSECUTION CLINIC

Having identified the need for a hybrid domestic violence prosecution clinic, goal setting was next. This should be the part of the article in which I describe how I sat down and in an organized fashion, narrowed down which of many competing academic goals my new clinic would meet, and then carefully designed my program to meet those, and only those, goals.⁸⁶ However, a more candid description of the process which actually occurred closely mirrors that described by American University, Washington College of Law colleagues who wrote:

⁸⁴ Bob is currently a clinical professor of law at the City University of New York School of Law where he is co-director of the Elder Law Clinic.

⁸⁵ It is not surprising that Bob gave such sage advice about potential options for teaching. He is the author or co-author of many helpful articles about field placement design. See generally Robert F. Seibel et al., An Integrated Training Program for the Law and Counseling, 35 J. LEGAL EDUC. 208 (1985); Seibel & Morton, *supra* note 20.

⁸⁶ See *supra* notes 24-33 and accompanying text.

[C]ontrary to the way clinical literature often conceives of program development—we did not start by articulating a complete set of goals, around which we then built a program. Instead, goal formation and program development occurred together in a far more complex, interactive process. The steps we took in building a program led to the identification of our pedagogical goals, just as articulating those goals pointed the way towards next steps in program design.⁸⁷

⁸⁷ Peter Jaszi et al., Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University, 5 *CLINICAL L. REV.* 403, 404 (1999).

A. Goal Setting

Upon reflection,⁸⁸ there were four primary sets of goals. One set of goals involved teaching professionalism, prosecutorial ethics and professional duties in the context of making prosecutorial decisions. Another set of goals involved skills and the opportunity to practice skills in context: teaching good skills of victim and witness interviewing, fact investigation, charging, and plea negotiations, as well as hearing and trial skills, and providing opportunities to practice such skills in context. The third set of goals was interdisciplinary and involved exposing students to domestic violence social science theories and the interplay with prosecution at the same time that students were learning the governing law and procedural rules. This would enable students to observe disconnects between social science knowledge and the operation of law on behavioral /criminal matters, and view the interplay through the prism of the development of domestic violence law. The fourth set of goals was, frankly, social justice oriented. I wanted students and the clinic to engage not only in institutional critique but reform and to provide better access to justice for victims of domestic violence.

Moreover, it was very important to me that the hybrid clinic should have more of a “rebellious” than a “regnant” design.⁸⁹ By that I mean that it should not teach students to practice the status quo but rather should teach in a manner that challenged

⁸⁸ From attending clinical conferences, participating or viewing the clinical listserv and reading the Clinical Law Review, “thinking like a clinician” occurs almost by osmosis. The image that comes to mind is a spiritual one. Some spiritual writers describe an aspirational state of the soul in which “every breath is a prayer.” So too there seems to be an aspirational state for a clinical teacher in which goal setting, integration of theory and practice and reflection occur as naturally as breathing.

⁸⁹ Some might cringe when I use this word and the obvious reference to Gerald Lopez’s work in association with a prosecutor’s office. See LOPEZ, *supra* note 32. However, for more of an exploration of this topic, see Lynch, *supra* note 54.

the criminal justice system.⁹⁰ Perhaps, it would engender an attempt to “re-imagine” social arrangements so that the criminal justice system was encouraged to view the experience of women who encountered domestic violence, along with the experience of the domestic violence advocates, as the pivotal information in determining prosecutorial and judicial decision making.⁹¹ By “rebellious,” I also mean that I wanted the design of the hybrid clinic to grow from the needs of the local community members and to be heavily influenced by the wisdom of non-lawyer domestic violence activists.

⁹⁰ By admitting this design desire, I am certainly liable to the criticism of those like David Chavkin who propose we must choose between social justice work and clinical teaching. See David F. Chavkin, *Spinning Straw Into Gold: Exploring the Legacy of Bellow and Moulton*, 10 *CLINICAL L. REV.* 245, 261 (2003). However, my eye was always “on the ball” of teaching students. In addition, students who wanted to become prosecutors needed to learn not just skills but lifelong lessons about how to practice ethically and productively in a faulty system. In other words, learning to challenge and change the system should go hand in hand with learning to operate within the system.

⁹¹ Sometimes this “experience” would coincide with the victims articulated requests on a particular case and sometimes it would not. For example, the victim may not want to testify or cooperate with prosecuting the batterer. One question is should the prosecutor force her to testify? Another is should the prosecutor drop the case? However, there are less extreme approaches which respect the victim's view but do not allow the batterer to control the case through his control of her. See Hanna, *supra* note 76; Linda G. Mills, *Intuition and Insight: A New Job Description for the Battered Woman's Prosecutor and Other More Modest Proposals*, 7 *UCLA WOMEN'S L.J.* 183, 196-99 (1997); Donna Wills, *Domestic Violence: The Case for Aggressive Prosecution*, 7 *UCLA WOMEN'S L.J.* 173, 174-75 (1997); Sarah Buel, *Family Violence: How to Hold the Offender Accountable While Taking the Victim Out of the Danger Loop: Prosecute Without the Victim*, *TEXAS PROSECUTOR* 18 (Mar./Apr. 1997).

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*B. Selection of Educational Model*⁹²

⁹² By discussing only the Pace and Brooklyn clinics, I do not mean to suggest that other clinics could not also be used as the models. For example, Karen Knight's work seems to be the earliest on this subject and describes a very useful model. Indeed, while working on this symposium article, I have learned much about other models such as the "midternship" model used at the Baltimore City Child Abuse Prosecution Clinic in which a "teaching solicitor" (Professor Millemann) and a "barrister" (the prosecutor) worked together. Email from Michael Millemann, Professor, Baltimore City Child Abuse Prosecution Clinic to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Nov. 18, 2004) (on file with author). Professor Millemann notes that he "supervised the students and their work as fully and regularly (once a week regular meetings, in 2-3 student work groups, with lots of 'as needed' contacts) as I did, and do, in my in-house clinics, with the exception that the prosecutor did in-court supervision, as well as a fair amount additional out-of-court supervision. Id. Sometimes, we jointly supervised the students (were both physically present during the meeting), but more often it was separate." Id. This model most closely resembles mine. For a listing of other hybrid prosecution clinics of which I am aware, see *infra* notes 97, 102, 112 and accompanying text.

Although goal setting and “design” is usually a very dynamic process, the assessment of which educational models will work at which institution is generally more practical and concrete. This assessment will be important for anyone designing a prosecution project. Preliminarily, acquisition of a caseload is a very real problem for clinicians designing a hybrid prosecution project. Unlike other in-house projects, a prosecution project cannot simply announce itself open for business but must work with a local prosecutor and/or a district attorney's office. Each community has its own unique characteristics which will provide opportunities and/or obstacles to development of a hybrid prosecution project. Some law schools may be located far from the district attorney's office or courts. Others might be limited to working with a district attorney or a local judge who is disinclined to accommodate students' educational needs or is suspicious of clinic faculty involvement. In another case, the chief district attorney may be supportive, but the line assistants may only find students useful in limited circumstances. Still other law schools might find not only willing prosecutors and district attorneys, but engaged community activists eager to work with the law school in improving the delivery of criminal justice. As I will discuss later, the last scenario was the one in which I found myself.

As noted earlier, at the time my clinic started there was a great deal written about how to start and design externships and field placements and much less documented regarding hybrid prosecution projects.⁹³ There were some models from which to learn, however. Two clinicians who have had much experience in teaching and supervising prosecution clinics are Vanessa Merton of Pace Law School⁹⁴ and Stacy Caplow of Brooklyn Law School.⁹⁵ Their two models provided a framework

⁹³ See supra notes 22 and 23 and accompanying text.

⁹⁴ Professor Vanessa Merton is the Associate Dean for Clinical Education at Pace Law School.

⁹⁵ Professor Stacy Caplow is the Director of the Clinical Education Program at Brooklyn Law School.

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against which I could evaluate how to design an Albany model and against which others can frame their own design.⁹⁶

⁹⁶ I was fortunate to be able to discuss my proposed project with both Professors Caplow and Merton and learned much from their experience. I am very grateful to Vanessa Merton for generously sending me curriculum materials, her syllabus and other useful information to help with my first semester of teaching in this project. In addition to the clinics mentioned infra at notes 98, 103, and 113, Gabrielle Davis directs a hybrid domestic violence prosecution clinic at the University of Toledo. John "Aloha" Barkai has taught a prosecution clinic for the past fifteen years at Hawaii in which he does the out of court supervision of students and teaching while the deputy prosecutors supervise students in court. St. John's Professor Michael Simons coordinates adjunct professors/assistant district attorneys who have worked with him in developing the classroom program. There are many other prosecution clinics nationally. Apologies to teachers of any hybrid clinics whose programs I have failed to mention.

1. PACE: "Hiring" a Prosecutor/Teaching Partner and Bringing Her Specialized Caseload to the Clinic⁹⁷

⁹⁷ This model is similar to one used at Ohio State. At Ohio State, a fulltime clinical professor is sworn in as a special assistant district attorney and "takes the cases he wants" from the office. Under this faculty member's supervision, students mostly work at the clinic except for "court meetings and fact investigation." Students exercise prosecutorial discretion limited only by the supervision of the clinical professor (although they do try to "align [their] plea offers, etc. with plea offers [the district attorney's] would give."). Email from Ric Simmons to Mary A. Lynch and Jennifer Tromblee (Jan. 10, 2005) (on file with author). The main difference between PACE and Ohio is that Ohio does not use a model in which students are team-taught by prosecutors and clinicians.

The Pace model was designed by Professor Vanessa Merton, director of the Pace Law Clinical Programs.⁹⁸ In 1994, Pace Law School began operation of their Prosecution of Domestic Violence Clinic. Under a creative arrangement with the Manhattan District Attorney's office, the clinic was co-taught by Vanessa Merton and a full time assistant district attorney (ADA); the students were designated as special assistant district attorneys (SADA's) who specialize in Domestic Violence. The model works by having the Manhattan DA's office "lend" a prosecutor to Pace for one year while Pace Law School pays her salary. The prosecutor then brings a misdemeanor domestic violence caseload with her to the school. Both Vanessa and the co-teacher/ADA directly supervise the students and appear with the students in court on behalf of the People of the State of New York. Students are assigned individual cases and make all decisions on cases—whether to dismiss, what plea to offer, or whether to demand jail time for the accused. In early conversations with me, Professor Merton emphasized how important it was for her model that the district attorney's office agree to give the clinic total control over the cases, so that it operates like an in-house clinic with students assuming the lawyer/prosecutor role. She said that students often make decisions with which she or the ADA might disagree. For example, students might offer an accused batterer a lenient plea with no jail time in contradiction to the wisdom of the domestic violence community or the wishes of the victim.⁹⁹ Professor Merton saw that as a necessary part of the clinical experience.

The Pace model offers many advantages. Students handle whole cases and are supervised by a collaborative team of a

⁹⁸ Professor Merton discusses the work of the clinic and the provocative issues which arose in one case. See Vanessa Merton, *What Do You Do When You Meet a "Walking Violation of the Sixth Amendment" If You're Trying to Put that Lawyer's Client in Jail?*, 69 *FORDHAM L. REV.* 997 (2000).

⁹⁹ See generally LUNDY BANCROFT, *WHY DOES HE DO THAT?: INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN* (2002) (concluding that batterers abuse because society lets them and because they get more from other people when they inspire fear).

professional prosecutor and a professional reflective practitioner. Students presumably benefit from more direct supervision, feedback and reflection opportunities than in a traditional field placement. At the same time, students share in a public interest mission around the issue of domestic violence and battered women. Administratively there are benefits as well. Students work on an appropriate level of cases (misdemeanors) and an appropriate number as assigned by the professor/prosecutor teachers. The clinical professor does not become overwhelmed by the caseload because of the collaboration with a full time paid practitioner. The prosecutor-supervisor is provided time to truly supervise and mentor.

If one's teaching goal is to replicate as much as possible the advantages of the in-house clinical experience, then the Pace model, to my mind, is nearly ideal. Its chief disadvantage is that very few law schools will have the opportunity to create such an arrangement. Many law schools or their clinical programs simply do not have the endowment or the budget to add on the salary of an ADA to the program without cutting back on other essential costs or programs.¹⁰⁰ Thus, although Pace's model appears to be ideal for their circumstances, and certainly aspirational, it simply is not practical for many schools.¹⁰¹

¹⁰⁰ That is not to say that we clinicians shouldn't continue to advocate for more of the law school budget pie and propose such arrangements when the political timing is ripe.

¹⁰¹ In addition, as discussed *infra*, turning over decisionmaking is a different issue for larger district attorney's offices. The Manhattan (New York County) District Attorney's office is one of the largest, and is frequently referred to as the premier D.A.'s office in the country. "Growing up in Manhattan, I had seen the New York County District Attorney's Office—the Manhattan DA—cited as perhaps the most competent and honest state prosecutor's office in the country. The office had a reputation for giving its members wide leeway in exercising discretion, and faced with a deluge of crime there was reputed to be no time for pursuing dubious charges." HEILBRONER, *supra* note 8, at 15. The office employs more than 550 assistant district attorneys and investigates and prosecutes approximately 130,000 criminal cases a year, many of which are misdemeanors. The District Attorney, Robert Morgenthau, has been District Attorney since 1975 and up until this year ran a

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2. Brooklyn: Clinical Professor and Students Become the Prosecution on Selected Cases¹⁰²

practically uncontested race every year. Fear of “backlash” on a relatively insignificantly small number of misdemeanors is not a likely concern. David Heilbroner quotes his deputy bureau chief as saying: “For the first year, no one cares about what you do. You’re only dealing with misdemeanors.” *Id.* at 21. To lend an assistant to Pace for a year, receive a budgetary break in the salary of the assistant, know that the cases will get the kind of attention which clinic students provide and which generally is not provided by misdemeanor assistants would appear to become a win-win situation for everyone.

¹⁰² Two other law school models similar to that used in Brooklyn are the ones used at Montana and Nebraska. Montana’s model is described *infra* at note 134. In Nebraska’s model, a full time faculty member becomes a specially appointed county attorney who selects cases for students and guides students on all aspects of the prosecution, including exercise of prosecutorial discretion. Email from Alicia B. Henderson, Associate Clinical Professor of Law, University of Nebraska-Lincoln to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Jan. 14, 2005) (on file with author) (responding to survey sent by author). Students perform all their work out of the district attorneys office. *Id.* Although this model provides extensive opportunities to students, it does make it difficult for the faculty member to be integrated with the rest of the in-house program and the law school and it does not provide opportunities for prosecution students to learn from other in-house students and faculty.

Although it was organized in the reverse of the Pace program, Brooklyn Law's model contained many of the same advantages as the Pace model. Instead of the prosecutor coming to the academy, the academy went to the Brooklyn District Attorney's office¹⁰³ and provided a full-time faculty member to supervise students on cases from the office. Like the Pace model, the students were sworn in as special assistants and were provided with a caseload. The clinical professor designed the curriculum and student opportunities. An experienced former prosecutor, and also director of the Brooklyn Law School clinical program, Professor Caplow and her students proceeded to work on the cases as the lead prosecutors without much interaction or oversight by prosecutors.¹⁰⁴ She found the clinic to be an excellent experience for students.¹⁰⁵

I saw great value in the Brooklyn Law model as well. However, the Brooklyn Law model was possible, I think, because of the confidence the district attorney's office had in its former colleagues, first Professor Caplow and then Professor Lisa Smith,¹⁰⁶ who now directs the clinic. My situation—and that of many other clinicians—is different. Some may come out of defense practice and have to address perceptions of bias.¹⁰⁷ Others

¹⁰³ Brooklyn also runs a prosecutor clinic in conjunction with the United States Attorney's office of the Eastern District of New York. Professor Caplow describes that clinic as a "hybrid" since "AUSA's supervise and teach the class but they have agreed to be more involved than the typical fieldwork supervisor." Email from Stacy Caplow, Professor of Law and Director of the Clinical Education Program, Brooklyn Law School to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Dec. 14, 2004) (on file with author).

¹⁰⁴ Id.

¹⁰⁵ Caplow discusses the clinic a bit in her article, *supra* note 2.

¹⁰⁶ Lisa C. Smith is an assistant Professor of Clinical Law at Brooklyn Law School. She is the former Executive Assistant District Attorney for Domestic Violence, Sex Crimes and Child Abuse in the Kings County (Brooklyn) District Attorney's Office.

¹⁰⁷ Professor Michael Millemann taught and co-supervised a Baltimore City Child Abuse Prosecution Clinic. See O'Sullivan et al., *supra* note 23, at 154 (discussing Professor Millemann's experiences with the clinic). In a discussion with the

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may not have practiced as either a criminal defense attorney or a prosecutor. In fact, even though I was a former prosecutor, I was not a prosecutor from a *local* office and to make matters worse, my former experience was from *downstate*.¹⁰⁸ The experience my colleagues and I had with the field placement program led us to believe that the local district attorney's offices wouldn't simply hand over a caseload to me.

I suspect the reluctance of the district attorney's office to turn over control may be problematic in other localities as well.¹⁰⁹ Most of us whose law schools are located in smaller cities and/or rural areas know how tough local politics can be.¹¹⁰ Many non-spectacular local trials, even at the misdemeanor level, are covered by local newspapers and television. There is more scrutiny over decisions made by prosecutors in everyday cases because there is less anonymity for victims, witnesses, defendants and their families. Local people usually know someone connected to cases – law enforcement, jurors, court personnel, jail personnel, or teachers of kids connected to cases. Thus,

author, he noted that the fact that he is an “aggressive criminal defense lawyer” and does capital cases in the same jurisdiction in which he taught the clinic was an issue with the supervisors of the prosecutor with whom he worked. Millemann, *supra* note 92.

¹⁰⁸ This upstate/downstate distinction does not only apply to cultural assumptions as discussed *supra* note 12, but also in the fear that what works for a Manhattan jury would not work upstate. On the other hand, local prosecutors were always very respectful of the fact that my former office was known to have a program/process for really “training” its district attorneys.

¹⁰⁹ Although in some overburdened counties, perhaps students and their instructors would be seen as cheap labor and welcomed to handle a caseload. In contrast to the actions in larger offices, however, I would be surprised if in most smaller district attorneys offices extreme limits were not put on the exercise of prosecutorial discretion as to charges, pleas and sentences. See generally HEILBRONER, *supra* note 8.

¹¹⁰ See Peggy Tonon, *Beauty and the Best—Hybrid Prosecution Externships in a Non-Urban Setting*, 74 *Miss. L.J.* 1043 (2005). Although every year, ALS sends students to the Manhattan District Attorney's office and other large urban prosecution offices for summer or permanent jobs, many of our students face a dramatically different experience as prosecutors in local offices.

prosecutors generally demand more control over cases and are not inclined to simply hand over part of the misdemeanor case-load when they will be held responsible in the media for any perceived unfairness.¹¹¹

¹¹¹ In fact, over the years district attorneys have had concerns about students in our field placement program. One county's former district attorney said "he didn't want students in the office." He told me at one point that not only were they annoying but that they would be "checking over" and "second guessing" what the office was doing. Another former district attorney demanded that all case files pass through his public relations person—this included certain misdemeanors—before an offer was made. Of course, we have reverse situations as well in which the district attorney's office wants to just throw students alone into night court in distant town courts in order to relieve overworked assistants.

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3. Albany: Coordinating with the Community, the Courts and Clinical Alumni¹¹²

¹¹² Other law schools also use models which partner prosecutors and clinical faculty to share supervision of students. For example, at New Mexico, the clinical professor teaches the classes and accompanies the students to court fifty percent of the time. Email from Lisa Torracco, Visiting Assistant Professor of Law, University of New Mexico Law School to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Dec. 3, 2004) (on file with author). At Stanford, the fulltime faculty member prepares students on cases, observes students in court and “arranges for prison tours, police ride alongs and discussions with ex-inmates, defense attorneys and police officers.” Email from George Fisher, Judge John Crown Professor of Law, Stanford Law School to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Jan. 10, 2005) (on file with author). At Boston College, Evangeline Sarda teaches a hybrid prosecution clinic in which she supervises “students case prep out of court and [i]n court” when she has no conflicts in scheduling. Email from Evangeline Sarda, Associate Clinical Professor, Boston College Law School to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Nov. 18, 2004) (on file with author). Minnesota offers several prosecution opportunities. Beverly Balos teaches a hybrid domestic assault prosecution clinic in which she primarily teaches the classes (she co-teaches some classes with prosecuting attorneys) and meets with the students to “discuss the cases, theory of the case, strategy, evidentiary questions etc.” Email from Beverly Balos, Clinical Professor of Law, University of Minnesota Law School to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Nov. 18, 2004) (on file with author). She also meets with them to review and discuss drafts of their trial briefs while “the final trial brief and the in-court appearances are supervised by the prosecuting attorney.” Stephen Simons’s prosecution clinic at Minnesota utilizes more of a traditional field placement model with some creative matching of criminal defense attorneys and students with prosecuting attorneys and students for skills simulations. Email from Stephen M. Simon, Professor of Clinical Instructor, University of Minnesota Law School to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Jan. 10, 2005) (on file with author). He also utilizes “student directors in prosecution” to obtain and assign prosecution cases to students. Email from Stephen Simon, Professor of Clinical Instruction, University of Minnesota Law School to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Nov. 19, 2004) (on file with author); see also *supra* note 108 and accompanying text (discussing Professor Millemann’s clinic at Maryland); Larry Cunningham, *The Use of “Boot Camps” and Orientation Periods in Externships*

For the Albany clinical program, a more collaborative model was needed with a practitioner/partner who would love the idea of this project and this kind of teaching and a criminal justice and advocacy community that would provide broadly based support for an organized focus on domestic violence prosecution. By collaborating with community organizations, court personnel and the district attorney's office, pieces of a hybrid model came together.

a. Principal Participants

The teaching team includes a “philosopher-lawyer”/faculty member¹¹³ to encourage institutional critique and critical reflection, and provide the kind of supervision, planning opportunities, evaluation and feedback that most field supervisors are too busy to offer consistently. The next key design component is finding the appropriate prosecutor with whom to work, and from whose caseload the students learn and practice,¹¹⁴ the mentor/supervisor idealized by Liz Ryan Cole. In other words, one needs to find *expert practitioners* selected for “excellence, their experience, their love of their work, and their passion to convey what they know to others.”¹¹⁵ This is the most difficult part of this hybrid model. As Larry Cunningham points out in his article on “boot camps,” prosecutors are busy and

and Clinics: Lessons Learned from a Criminal Prosecution Clinic, 74 Miss. L.J. 983 (2004) (describing his redesigned Texas Tech clinic).

¹¹³ So Shall You Reap, supra note 14, at 534.

¹¹⁴ The co-teacher/field supervisor is carefully selected as someone who is expert on D.V. prosecution, a good teacher, and willing to take professional time to accommodate the educational goals. Note, this a difficult part of the proposal as explained infra at note 117. One way we found to compensate our ADAs was to find money to fund them as adjuncts through ALS and/ or grants.

¹¹⁵ Liz Ryan Cole, Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers, 19 N.M. L. Rev. 163, 164 (1989).

do not have the time or resources to train students extensively . . . Criminal prosecution, particularly at the misdemeanor or petty violation level , is a highly technical, procedure-focused and routine practice. Junior prosecutors typically have a volume practice, where they handle many cases over a period of time

No matter how generous and understanding a field supervisor may be, the fact is that interns are more of a burden to the supervisor than an asset.¹¹⁶

It is important to find someone who is a good co-teacher, allows students to exercise discretion on her cases, and who is comfortable working with a clinical faculty member. Contacting alumna of the school who worked in key prosecution positions eventually led me to my partners.¹¹⁷ In addition, under this

For a more detailed discussion of this article, see Blanco & Buhai, *supra* note 20, at 617-18.

¹¹⁶ Cunningham, *supra* note 112. Professor Cunningham also notes the need for having teachers prepared to learn from their busy field supervisors. Particularly, at the misdemeanor level, students can be confused or alienated by the highly technical procedure, jargon and swift pace—or worse just learn the administrative bureaucrat-speak without fully understanding what's happening in a case.

¹¹⁷ My first partner (2000-2002) and second partner (2002-2004) were interns in the field placement program years before and wanted to provide the next generation with ample opportunity to explore decision making and to get into court. When we discussed my ideas over the phone or in lunch meetings, I could sense they had the good non-interventionist and mentoring instincts of a clinical teacher and passion for this project. I also determined that my partners view of domestic violence prosecution and reputation in the domestic violence community would enhance the project. In an informal email discussion with me about the importance of finding the right partner, Professor Michael Millemann noted:

Good working relationship with prosecutor is essential. We agreed on what students would do; talked regularly about the students and their work, and in those respects, about the cases as well; worked hard to avoid, even unconsciously, undermining each other; identified our views about substantive matters, e.g., about charging, sentencing, disclosure/discovery, recurring ethics issues. Where we agreed, we taught, me in the classroom and she in her working relationships with the students,

model which focuses on a specialized caseload in domestic violence, it is equally important to find someone whose view of prosecution allows for introduction of a wide range of information and perspective to students, particularly in the area of social science and the dynamics of domestic violence. Although the prosecutor and the advocates may differ over the wisdom of some of the district attorneys office policies and decisions, those tensions make for fabulous teaching moments.

Finding a good specialized prosecutor with whom to collaborate does not resolve all issues and problems. An important part of the design is to negotiate strategic cooperation of the “Top Dog”—the district attorney—so that students are able to perform a full range of prosecutorial activities on cases. The ability to control the caseload, and the allocation of prosecutorial discretion, can be delicate issues of negotiation.¹¹⁸ In my negotiations with the district attorney's offices, I emphasized the need for our students, once trained by my partner and me, to be able to handle cases alone, conduct plea negotiations, hearings and trials. The result was that although our students would not have the kind of discretion that Pace and Brooklyn students had, as long as my partner, the specialized domestic

with our common views. When we disagreed, we identified our positions with each other, disclosed the arguments we would make, and taught with the disagreements. We co-taught a few classes, including in this way. This requires trust, full prior disclosure (no got-ya advocacy), and both real and demonstrated mutual respect.

Email from Michael Millemann, Professor, Baltimore City Child Abuse Prosecution Clinic to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Nov. 18, 2004) (on file with author). I could not say it any better.

¹¹⁸ I wanted my students to appear in court on cases and at hearings and trial as much as possible. I also knew that there had been inconsistent opportunities for such activities in our field placements at that office. Over the years, I met with each district attorney and was able to promote the idea of ALS students assisting my partner-prosecutor in staffing the court.

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violence prosecutor, “okayed” what the students were doing, the district attorney would not oppose.¹¹⁹

The other “teachers” under this model are the advocates, the court, and the other policy makers involved in fashioning the court. Thus, it is helpful to reach out to them for support of the involvement of students and for ideas of training for students. This is not to suggest that all parties agreed about how to prosecute domestic violence crimes or how to fashion the court.¹²⁰

The story of our collaborative is probably typical. Predictably, each player pointed to “failures” in other parts of the system. The police complained about the prosecutor not communicating with them and lack of equipment, while my prosecutor-partner pointed to lack of staff and resources and to poor evidence recovery by the police. Advocates complained that the courts and the prosecutors ignored the voice and experience of battered women and domestic violence advocates. Lack of resources, lack of coordination and distrust among players was a pervasive problem.¹²¹ Nevertheless, and with varying levels of ambivalence, this community coalition moved forward to work together to design a court and to apply for joint funding for additional resources. Most importantly for the educational project, the idea of having well-trained law students work with criminal victims, staff the court, and prosecute certain domestic violence crimes under appropriate supervision was warmly ac-

¹¹⁹ In the initial county in which we worked, I signed a confidentiality agreement, as did each of my students. The district attorney required victims' consent to students prosecuting, but agreed to allow my partner-prosecutor to abide by the educational parameters of the program.

¹²⁰ In one county, I often became an intermediary between the district attorney's office and the domestic violence advocates when they misinterpreted each other's jargon or viewpoint.

¹²¹ This distrust and tension can be viewed as fertile teaching material with opportunities for guest seminars by a number of professionals to broaden student perspective on the project. I also recognized it as a good beginning for reform; problems and lack of communication must be named before attempts to remedy and change can occur.

cepted by all the parties. The design of the court and my clinical program began in tandem.¹²²

b. Educational Parameters

In addition to the organization of the teaching team, the course itself is structured in order to achieve the goals described earlier. First, the clinic is offered as a year-long course to allow for building of skills, achievement of more goals, integration of different methods of instruction and increased opportunities to practice and reflect. The year-long commitment allows students to build skills and knowledge, and supervisors to obtain confidence in the students' abilities.¹²³ It increases the likelihood that students see cases through to verdict or plea and sentence, as well as the likelihood that students engage in the full range of prosecutorial duties¹²⁴ including hearing and trial opportunities.

Second, "clinical methodology" is used by the full-time faculty member, the field supervisor and students.¹²⁵ Students and the faculty team utilize planning documents and reflective learning

¹²² The criminal court judge was excited by the idea of having students help staff the court and work to better prosecute the cases. He agreed to schedule court on Fridays, which would work best with student schedules. Thus, students would be assured of a steady stream of domestic violence cases coming from the court.

¹²³ For a detailed discussion of clinical design, see Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277.

¹²⁴ Professor Cunningham points out that the "quicker students learn the procedure and language of misdemeanor prosecution, the quicker they can learn and practice the more important skills and values such as making charging decisions, deciding on plea offers, and trying a case to verdict." Larry Cunningham, *supra* note 113, at 1001-02.

¹²⁵ Clinical methodology jargon has become "mainstreamed." At the ALS Clinic Holiday party this year, Professor Joseph Connors created a clinic jeopardy game in which the category of "Clinical Methodology" included answers such as "active listening," reflection opportunities, and "cultural competence;" "Bellow and Moulton" was also an answer.

skills. Students are evaluated and given letter grades under our in-house clinic grading system which emphasizes planning, performing, reflection, ethics and team building.¹²⁶ Students' performances during simulated exercises and during victim interviews, trials, hearings or court calendar calls are observed in most cases by both the in-house clinical faculty member and the prosecutor-supervisor, and immediate feedback is provided.

Third, students enroll in a weekly two hour Domestic Violence Seminar as a co- or pre-requisite so that students can be steeped in the special issues and special knowledge of the dynamics of domestic violence¹²⁷ and of the development of laws pertaining to domestic violence.¹²⁸ In this course, domestic violence advocates and policymakers, survivors, health professionals, and law enforcement personnel share their interdisciplinary perspectives on the issue of domestic violence and the history and development of domestic violence law-both civil and criminal.

¹²⁶ For a detailed description of the evaluation process for the Domestic Violence Clinic, see *The Evaluation Process*, at <http://www.als.edu/faculty/mbreger/evalprocess.html> (last visited Apr. 20, 2005).

¹²⁷ It has been accepted that the general lay-person is still ignorant about this issue and that so many myths and stereotypes surround domestic violence. Indeed, that is why expert testimony is needed in courts. See generally Audrey Rogers, *Prosecutorial Use of Expert Testimony in Domestic Violence Cases: From Recantation to Refusal to Testify*, 8 COLUM. J. GENDER & L. 67 (1998). There has also been an emphasis in law schools to train students in handling domestic violence cases. See generally John F. Mahon & Daniel K. Wright, *The Missing Ingredient: Incorporating Domestic Violence Issues Into the Law School Curriculum*, 48 ST. LOUIS U. L.J. 1351 (2004).

¹²⁸ The Albany Law School Course Catalog explains that the Domestic Violence Seminar "[e]xplores in depth the legal issues and discrete phenomena of domestic violence. Topics generally include intimate partner violence, criminal prosecution of batterers, child abuse and neglect, gay and lesbian battering, elder abuse, and the basis for intervention of the state." Albany Law School Course Descriptions, at <http://www.als.edu/academics/course-listings.cfm?ID=5%2E1> (last visited Apr. 20, 2005). This course was also required for Family Violence Litigation clinic students and open to non-clinic students.

Fourth, the “clinical class component”¹²⁹ consists of some front-loaded instruction, courthouse tours/observation sessions at the beginning of the first semester, and a two hour weekly session throughout the rest of the semester.¹³⁰ During the first semester, students read about pertinent statutes and skills needed to engage in domestic violence prosecution and receive lectures/problems on procedure. In addition, students read codes, cases and articles discussing professionalism, ethics, and institutional critique of prosecution policies and approaches. They also perform case rounds.

Fifth, a closed case of the prosecutor-supervisor is used as the basis for a series of simulated activities and assignments including simulated victim interviews, plea negotiations, court calendar calls, bail hearings, and to draft simulated charging documents and memoranda to a “supervisor” analyzing the facts, evidence, and applicable law and recommending how to proceed with the case. Given the other goals for class, class time generally is used to teach about the skill and each student arranged for one-to-one time with the faculty-member professor to conduct the simulations and receive feedback. Both simulation and feedback sessions are videotaped so the prosecutor-teacher can review and comment if s/he disagrees and to observe student progress.¹³¹

Sixth, the faculty member/philosophy lawyer¹³² also assists students in preparation for intensive experiences such as hearings and trials in order to both encourage the practitioners to provide students with more challenging opportunities and to

¹²⁹ See generally Eisinger, *supra* note 61.

¹³⁰ Cf. Cunningham, *supra* note 112.

¹³¹ Since students generally performed very well once prepared, these videotapes provided the supervisor with more information about the strengths of the student. It also provided another opportunity for the faculty member and supervisor to discuss needs and goals of students and clinical methodology. Another unintended benefit was that supervisors appeared to become more confident in students and allowed greater latitude on cases after viewing the tapes.

¹³² See *supra* note 113 and accompanying text (discussing the “philosopher/lawyer” faculty member).

help students excel in performance.¹³³ After such experiences, students meet individually with the faculty member for reflection and future planning. Students also meet the faculty member at the beginning of the semester to identify educational planning goals, at mid-semester (to listen to student feedback, provide general evaluative feedback to the student and to review/revise goals), and at the end of semester (to review proposed grades and reflective end of semester memos).

Seventh, caseload and/or prosecutorial assignments are selected and parsed for educational value.¹³⁴ We purposely linked ourselves to a specialized caseload and restricted ourselves to working at district attorney's offices staffing domestic violence courts.¹³⁵ Such courts streamline and organize the processing of such cases and thus reduce the learning curve and "transaction costs" for students.

¹³³ Practitioner-supervisors often do not have the time to "moot" students or assist students in planning their tasks.

¹³⁴ In addition to my conversations with Pace Law Professor Vanessa Merton described earlier, I have also learned that Montana Professor Peggy Tonon finds case parsing, selection and assignment critically important. She has arranged to have office hours at a local district attorney office. While there, she reviews case dockets and files in order to select appropriate cases for her students. Telephone Interview with Professor Margaret A. (Peggy) Tonon, Director for Student Affairs and Clinical Supervisor, University of Montana School of Law (Fall 2004).

¹³⁵ There was only one office in the first year.

IV. LESSONS LEARNED FROM THE ALBANY LAW SCHOOL EXPERIENCE: RISKS, SUCCESSES, REGRETS AND REWARDS

The Domestic Violence Prosecution Unit evolved over the past four years to meet student demand, changes in domestic violence prosecutors and personnel, and my sense of improving pedagogy. For example, it started in affiliation with one district attorney's office. Last year, however, students were working with three different district attorney's offices.¹³⁶ The project started as a collaborative teaching effort with one volunteer prosecutor-attorney. Now there is a paid adjunct-partner and networking among and between the adjunct, the other prosecutor-field supervisors, and the clinical professor.¹³⁷ As the educational project became better known and the offices became more comfortable with the expertise of the students in domestic violence cases, more opportunities opened up for students; they tried cases, conducted felony preliminary hearings and exercised increasing discretion in plea negotiations and case decision-making.

Over the past four years, we have partnered with different counties, cities and agencies to assist in the prosecution of domestic violence crimes, the creation of other domestic violence courts, and the acquisition of funding to provide better staffing and resources on domestic violence matters. However, not every evolution has been progress. In one case, looking to expand, I overlooked the District Attorney's tendency to treat domestic

¹³⁶ Since the Capital Region is easy to traverse, it was convenient enough for me to attend court sessions in the three participating counties.

¹³⁷ The Albany Law School faculty approved the clinical course in the spring of 2000. Beginning in the fall of 2000, it has been offered for four years running. As I write this article, I am on sabbatical and, hence, the hybrid project was not offered during the 2004-2005 academic year.

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violence crimes less seriously.¹³⁸ I thought the fact that the assistant district attorney who specialized in domestic violence was eager to partner with us was a good enough link. The District Attorney's disdain, however, permeated the working and resource structure of the entire office, resulting not only in ineffectiveness in the criminal justice response to domestic violence but also a less than ideal experience for the student assigned to work in that county.¹³⁹

From reviewing student evaluations and community input, and from my perch as "founder," I see continued success in meeting two original goals. The project brought some of the rich experience and perspective of an in-house clinic to students working on prosecution cases and improved, at least on the cases on which students and advocates worked, the criminal justice system's response to battered women. Along the way, some lessons have been learned which may be of use to others considering a hybrid prosecution project. The lessons divide like a compass into four directional areas: (1) there are risks inher-

¹³⁸ As I explain later, I often felt internal pressure to expand the program to meet student demand or to make sure that the numbers justified the assignment of a full-time faculty member.

¹³⁹ That is not to say that working with this office did not offer other kinds of educational opportunities. For example, one of the victims was arrested and kept in jail for failing to respond to a subpoena because the office suspected she would not show up for trial. Her children were thrown into the social services system and the actions made the news. Carol DeMare, Victim Jailed for Own Safety, *TIMES UNION* (Albany, N.Y.), Sept. 13, 2003, at B5, available at 2003 WL 59896200 (detailing the events which led up to the victim being jailed). We were able to have both the prosecutor who sanctioned the action come "defend" her decision and have the DV police officer who expressed concern about arresting the victim speak in class. This same district attorney's office was eventually challenged on its drug, community and domestic violence policies, and a candidate beat the incumbent district attorney in the Democratic primary based primarily on lack of response to community issues. See Mr. Soares' Victory: His Election Should Be a Lesson for Those Who Cling to the Machine Era, *TIMES UNION* (Albany, N.Y.), Nov. 3, 2004, at A10, available at 2004 WL 88584024 (describing the issues that helped to elect David Soares Albany County District Attorney).

ent in the model, (2) the difficult teaching experiences need to be celebrated, (3) know my regrets so you can have different ones, and (4) the rewards *are* worth the effort.

A. Risks of Using a Flexible Partnering Model

Unlike the models utilized at some other schools including Pace and Brooklyn,¹⁴⁰ our model did not require turning all discretion over to the students and the clinic. Instead, it relied on a more flexible approach in which the faculty member partnered with the prosecutor to encourage increased use of students as the lead prosecutor/decisionmaker, but did not require the relinquishment of the partner-prosecutor's discretion as a pre-condition of the project. The partnership also was intended to provide more consistent and extensive use of clinical methodology and supervision than was typical in our field placement program. However, there are several risks inherent in this flexible approach.

First, choosing a partner is a difficult and risky task. Unlike a traditional in-house clinic in which faculty/staff is determined for the academic year, we were subject to the actions of the outside office which were often unrelated to the academic semester and our needs. For example, turnover of the prosecutor-partner is a significant problem which can prevent the kind of teacher development that is ideal.¹⁴¹ Student work and much domestic violence work mostly involves a misdemeanor caseload. Experienced assistants are often lured away from the domestic violence misdemeanors by offers of more senior positions with more resources and less hassle. Felonies simply have more prestige within the criminal justice world. In fact, over the

¹⁴⁰ See discussion *supra* Parts III.B.1-2 (discussing selection of Albany educational model by describing Pace and Brooklyn models).

¹⁴¹ In the first year of the project, internal employee turmoil within the district attorney's office threatened us with the loss of our co-teacher. In the end, fortuitously, we kept the services of the co-teacher, who was promoted to head a newly formed domestic violence unit in the office.

course of four years of working with one particular office, at least five different prosecutors rotated out of the assignment to the domestic violence court.¹⁴²

Another lesson concerned the characteristics of a good partner when specializing in a particular area of prosecution, and my assumption that someone who had worked in this area for years would be more likely to be an ideal candidate. My initial instinct had been to work with the senior prosecutor of the "Special Victims Unit."¹⁴³ I assumed that someone in that position must not only be an expert in domestic violence but must be enthusiastic about the social science of, and the feminist perspective on, domestic violence. However, this is not always the case. One special victims prosecutor, for example, also handled child abuse, sexual assault, and other "special victims" cases. Domestic Violence advocates warned me that her heart lay with the child abuse and sexual assault cases and they perceived her to be judgmental about battered women with children in the home. When I spoke with the prosecutor in greater depth about the project, to her credit, she was completely candid with me. After further discussion, she concluded that she lacked both the passion and time for the domestic violence project I envisioned; she admitted that she was "burned out" from "dealing with domestic violence victims."

Another risk concerns the conflict between asking students to be partnered with a specialized prosecutor to do justice while at the same time, asking the students to be institutional critics in community reform. Earlier I alluded to my mistake in expanding the program into an office not known for its utilization of a community-based approach to domestic violence. It was in

¹⁴² The prosecutor assigned to staff the DV court was not necessarily my co-teacher/partner. It would be that caseload, however, from which we worked.

¹⁴³ Terminology in some local district attorneys' offices for units that handle sexual assault, child abuse and/or domestic violence cases. As the chief of the "Special Victims Unit," this prosecutor was responsible for assigning domestic violence misdemeanors to other assistants and was, and is, a loyal alum. My initial hope was that she would assign cases to us just as she would to other assistants.

that context that one student became troubled by the conflict between what she learned at the office and what she learned from the clinical professor and other “teachers.” The activities of the prosecutor, with whom she was learning about the hotseat of real life prosecution, were being seriously questioned in the domestic violence seminar by domestic violence experts, in the news by our advocate-partners in the battered women's community, and in the clinical class component by the clinical professor and other clinic students.¹⁴⁴ The student appeared to be flustered and very defensive in class and in one-on-one sessions. She eventually requested faculty permission to drop the course midway through the year—albeit for other logistical reasons.

An alternative risk is that in attempting to avoid the kind of difficult tensions this student encountered, the clinic can fail to truly perform institutional critique or thoughtfully engage in a theoretical analysis of the subject matter area.¹⁴⁵ I wonder if at times, rather than bringing cross-cultural ideas, new models, and other perspectives to enhance the dominant view held by those in the district attorney's office, the students and I may instead have become pulled into their culture. This risk stemmed from two factors inherent in the model: (1) we genuinely liked our prosecutor-partner and felt sympathy for the difficult position assistant district attorneys found themselves in, and (2) we first learned of the domestic situations, not from

¹⁴⁴ Hopefully, the hybrid project blended the hotseat experience of prosecution with the “hot-house” of an in-house clinic. See Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 *CLINICAL L. REV.* 123, 133 (2000) (describing how “in-house law clinics are alternately praised and damned for their ‘hot-house’ character”).

¹⁴⁵ I am cognizant that this statement flies in the face of my earlier attempt to not divide the world into objective and subjective ways of thinking. See *supra* note 4 and accompanying text. My only defense is that I went to law school and teach at a law school. As a result, I am not immune to the law school's cultural reinforcement of those distinctions.

victims—or even defendants—but from police reports which certainly colored our view of cases.¹⁴⁶

There were risks in the community as well. Sometimes, the domestic violence advocates would trust the district attorney's office or give them a benefit of the doubt because of the clinic's reputation or work. Were we inhibiting a more vigorous attack on that office? Or, I suppose, the students might have been exploited for other political purposes.¹⁴⁷ If some or any of this happened, it was not observed by me to any significant extent.¹⁴⁸

In addition, there were potential conflict issues with our Family Violence project. Would we have to identify a conflict of interest with every potential family violence client who had a criminal matter in the counties in which the prosecution project operated? That is not what we concluded and instead came up with a way of addressing the issue internally, with clinic clients, and with the selected offices.¹⁴⁹ Although we cannot know if there were potential clients who distrusted the clinic's relationship with district attorney's offices and hence failed to access assistance from the clinic's Family Violence Project, that project's reputation seems fairly untarnished by its proximity to the prosecution project.

¹⁴⁶ We were subject to the critical effects of primacy. One can overcome that by spending a lot of time with the victim or advocate, becoming knowledgeable about the dynamics of domestic violence, and by listening with an open ear to the defense perspective.

¹⁴⁷ We did not encounter the problem of students being assigned inappropriate tasks as cheap labor. I believe this is because of the partner model in which the clinical faculty member was intensively involved.

¹⁴⁸ I did observe, however, that some government agencies/actors became more focused on the "budget relieving" opportunities of the grant funding and less focused on truly changing the system as it existed.

¹⁴⁹ See *infra* note 156 and accompanying text.

*B. Celebrate the Difficult Moments and the Inherent Tensions-
They Are Often the Best Teaching "Text"*¹⁵⁰

The attempts to integrate characteristics of an in house project were successful in many ways. Concerning professionalism, students were exposed not only to the codes and obligations but to the reality of activities such as disclosing material to the defense or trying to effect the prosecutorial ethical mandate to "Do Justice" in a case in which the victim wants the charges dropped. Not that these lessons were learned in a beautifully orchestrated manner. In fact, it was just the opposite.

For example, early on in the project, one student lost contact with the victim, so "taking some initiative" as we encouraged in our fact investigation teaching, she decided to leave a message at the defendant's home in case the victim had gone back to the defendant. When she announced this to me in a mentoring session, it was all I could do not to fall off my chair and shout "You did what?" I know I wasn't at my best in handling this teaching opportunity. I'm sure I looked upset and concerned and I can't promise that my voice was calm. I did manage to ask her what she thought might happen to the victim if the defendant/batterer deduced that the victim was cooperating with the prosecutor. I reminded her about our discussions of victim safety. Also, I asked what she had learned in her professional responsibility course about the prosecutor talking with the defendant/opposing party who had counsel. She informed me they "hadn't gotten to that yet" in her ethics course. We quickly called the prosecutor-supervisor and the domestic violence shelter to report what had happened. Unnerving as that experience was for the student and for me,¹⁵¹ the

¹⁵⁰ See Peter Jaszi et al., *supra* note 87, at 404 (describing how "[s]tudents bring their field experiences back to the law school as the 'text' for critical analysis").

¹⁵¹ I mentally kicked myself a hundred times for that incident - had we failed to properly prepare the students? Fortunately, once we discovered that the

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experience was memorable for the students and the class and led to much discussion of safety of victims and obligations of prosecutors in fact investigation.

In terms of skill-building opportunities, the hybrid project did provide students the anticipated numerous integrated learning experiences with progressive skill-building and reflective opportunities. Students were able to focus on self-identified goals under structured and direct supervision of a clinician. They were more involved in cases and were offered more independence on cases than the typical prosecution externs I had supervised. Students appeared in court weekly, interviewed and worked with more victims, negotiated more pleas, and prepared for more hearings and trials than those not working with the project.

Once again, this didn't always happen in the perfectly organized chorus line of the simulation course syllabus. Early on in the semester, a case no one expected to go to trial was suddenly set for trial. The assigned student was a second year student who had yet to complete a course in either evidence or trial advocacy.¹⁵² The other students, my partner, and I all worked feverishly with her but when the student was mooted, it was clear to everyone that she just wasn't ready for the complexity of a trial on what had turned into a very complex and difficult case early in the first semester of her second year.¹⁵³ She stepped back from the case. However, we ended up using the case as a simulated one for the second semester and had all the students prepare it. It was a great exercise and became more meaningful as a simulation because the students had experienced the ways in which witnesses disappear and contradict themselves and facts change without notice. They also had

victim had not been harmed as a result of the call, my "kicking" soon turned into the healthier reaction of analyzing how to better prepare the students in the next year.

¹⁵² In the clinical class, we had only gotten as far as bail offers and plea negotiation.

¹⁵³ In addition to other complexities, this was a case (typical for domestic violence) in which we were not quite sure what the victim would admit or deny on the day of trial.

experienced the “panic” of attempting to prepare for trial on that case and brought that motivation¹⁵⁴ into their class preparations and simulated exercises.

As in true clinical form, it is impossible to control all the factors which affected the educational model. For example, as we planned our modest little city domestic violence court in Troy, New York, little did we know that the Chief Judge of our highest court was about to announce a pilot project for the region in which family and criminal matters would be heard almost all at once. One of the locations for the court was New York State Supreme Court in Troy, New York.¹⁵⁵ Suddenly, the Troy city criminal court was thrown in confusion, our co-teacher was re-assigned out of the city court, a new assistant was hired, and all was in flux. This sudden chaos put my “flexible planning” and “rely on a good partner” approach to the ultimate test. It was a terrifying prospect at the beginning of the second semester of a year long clinic. It turned out to be a thrilling opportunity and teaching moment. The opportunity now presented itself for us to work more closely with our family violence colleagues who were to represent clients on family matters in this new integrated criminal/civil domestic violence court. We were able to plan joint skill training exercises, to have family violence clinic students learn from our prosecution students, and *vice-versa*.¹⁵⁶ By broadening our goals and teaching approach, we were able to change the range of cases for students to include both felonies and misdemeanors, to teach students to handle cases in city court and assist on the cases in supreme

¹⁵⁴ See supra notes 13-14 and accompanying text.

¹⁵⁵ In New York, the Supreme Court is the trial level court, not the state's highest court. DAVID D. SIEGEL, NEW YORK PRACTICE § 12 (3d ed., St. Paul, West Publ'g Co. 1999) (1978).

¹⁵⁶ We also had to be even more careful of conflicts, so we set up a system in which my clinic students put the victim and batterers name through our conflict system. In addition, my colleague and her students in our family violence project informed all of their clients about our project and had them give informed consent to representation. Furthermore, we make it a practice to inform the prosecutor-teacher of cases to avoid assigning to prosecution clinic students.

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court, and to work with a number of primary and secondary supervisors. By the next year, we were able to open up more student opportunities. By responding in an inclusive and positive way to changes (and there were personnel “adjustments” almost every year) we were able to provide more students with wonderful experiences.¹⁵⁷

With respect to integrated learning and thinking, students were able to come to informed opinions about issues such as mandatory arrest of batterers, use of prosecutorial subpoena power to force victims to testify, and whether and how to consider victim's requests to excuse batterers in determining plea, dismissal and/or sentence offers. They had not only learned the law and procedure well, they were able to theorize about it and had acquired the skills to actually practice well under those procedures. In the end, the most beneficial learning experience was handling the unexpected exigencies of real practice, observing their work have a real effect on real cases and real human beings motivated students to excel.

¹⁵⁷Cf. *infra* Part IV.D (discussing the potential rewards of clinical educational projects).

*C. Regrets : Couldn't We Have Done It Better?
Couldn't We Have Done More?*

My main regret was that I couldn't figure out how to consistently offer enough opportunities for students. Unlike our field placements which broadly offer at least twenty five prosecution placement opportunities in four or five different offices, I only offered this opportunity to four students in the first experimental year. Of course, the domestic violence seminar was open to all students and generally averaged around twenty students. In later years, as the hybrid clinical program expanded to work with other prosecutors and linked to other domestic violence courts, it was able to accommodate more students. However, given how strictly I constructed the parameters of the project and how much I tried to replicate an in-house experience, it could only serve an average of six students. The primary limitation was finding willing and appropriate prosecutor-partners. When I did expand the program into several counties in an attempt to find more willing partners and an appropriate level of case activity, I played more of a facilitator role and somewhat less of a role as direct case supervisor.¹⁵⁸

Upon reflection, if I had been more comfortable with a broader view of grading and evaluating, and more confident in articulating that view when proposing the course to our curriculum committee, I would have been able to be more flexible in my choice of partners. Since students were graded according to the same rubric as our in-house students,¹⁵⁹ fairness required,

¹⁵⁸ During this time of expansion, it appeared to me that the clinical project lost some of the "battered woman advocacy perspective." In addition, I sensed the students became more annoyed with my "critical" philosophy-lawyer role when I was not as involved in their cases.

¹⁵⁹ At Albany Law School, field placements students are graded pass/fail and students in in-house courses are graded on four major areas: Pre-performance Skills/Planning, Performance Skills, Post-performance Skills: Correction and Reflection, and Professional Responsibilities. See *The Evaluation Process*, at

to my mind, providing approximately similar opportunities in the differing counties and equally involved prosecutor-partners.¹⁶⁰ In the last year of the project, when last minute changes in district attorney personnel resulted in two new prosecution partners/supervisors and it was unclear to me that I could appropriately negotiate the caseload and opportunities in one office, I taught the project as a pass/fail field placement course. Of course that presented all the problems that occur when clinical programs are ungraded, including I think a feeling by the students of being asked to do too much for simply a “P.”

In retrospect, I should have developed a separate grading rubric and approach for the hybrid project and requested the faculty to approve the course as different from both our in-house and field placement program—as a true hybrid. From the rich resources written about designing field placement clinics, one can more flexibly consider the “dynamic and fluid task [of design] in which students' desires, the placement agencies' needs and work, and the law school's evolving curriculum must be coordinated and adjusted with one another.”¹⁶¹ Clinical scholars have identified a variety of educational goals for field placements such as “exposure to law practice,” skills training, “assumption” of lawyering roles, “acting professionally,” learning to learn from experience¹⁶² and institutional critique and have documented the challenges in meeting these goals.¹⁶³ Be-

<http://www2.als.edu/faculty/mbreger/evalprocess.html> (last visited Apr. 20, 2005).

¹⁶⁰ I also felt responsible to personally observe as much student activity as possible. I know that not all clinicians agree with this view of grading and would argue that clinical grading should be based on planning and reflection more than performance.

¹⁶¹ See *So Shall You Reap*, supra note 14, at 527.

¹⁶² See generally supra note 15.

¹⁶³ I find Linda F. Smith's article, *So Shall You Reap*, supra note 14 and Eyster, supra note 20 particularly helpful in thinking about clinic design. For a more recent update which thoughtfully evaluates contrasting models of supervision, oversight and training, see Blanco & Buhai, supra note 20.

cause of its emphasis on replicating as much as possible the in-house model, the Albany model underestimated the value of other goals found in the field placement tradition and the additional opportunities available when broadening the goals.

Another regret is that I didn't work on more of the interdisciplinary initiatives that could have enhanced the project. Students did participate in theoretical discussions and reflective critique about law/social science, using the clinical experience to enhance the domestic violence seminar and the seminar work to enhance the clinical learning and practice.¹⁶⁴ However, the project could have benefitted from a more structured collaboration with a social scientist and her students. With such collaboration, the clinic may have been able to perform statistical research on the effectiveness of the domestic violence court initiatives which would have been an ideal interdisciplinary learning experience for the students, helpful to the courts, and a wonderful research and scholarship opportunity for the faculty.¹⁶⁵

A final regret is that the project did not achieve any significant "rebelliousness."¹⁶⁶ What happened to my desire for a

¹⁶⁴ When domestic violence advocates, health professionals and policymakers came to sessions with ideas from other disciplines, they became resources for the students to use in working on their cases. Our students' experiences and hypothetical descriptions of their cases also became fabulous discussion material in the seminar.

¹⁶⁵ For a more detailed discussion of the topic, see the work of Professors Suzanne Tomkins and Catherine Cerulli at the University of Buffalo, MONROE COUNTY FAMILY COURT DOMESTIC VIOLENCE INTENSIVE INTERVENTION COURT EVALUATION, MAR. 1999-MAR. 2000 (Suzanne Tomkins ed., Spring 2000) (published by Family Violence Clinic, SUNY at Buffalo School of Law). Our planning for a domestic violence court was an ad-hoc process and although early on I made efforts to systematically evaluate outcomes by reaching out to social scientist friends at a local college, I got caught up in the teaching and other activities and did not pursue such an evaluation. Nor did the court ever pursue a victim evaluation of its efforts, which would have been wise.

¹⁶⁶ As I write this, I am reminded of the humorous words of our Dean and my friend Tom Guernsey to his daughter Allison after her successful organization

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“rebellious” versus “regnant” design? Remember my hopes that the new court in Rensselaer County

should “come out of an attempt to `re-imagine' social arrangements so that the women who encountered domestic violence along with their shelter domestic violence advocates would be the primary problem-solvers in determining prosecutorial decision making . . . it would grow from the needs of the local community members and be heavily influenced by the wisdom of non-lawyer domestic violence activists”¹⁶⁷

Ah well, life happened. At first, great things happened. We found funding so that a battered women's advocate was hired to work out of the police station and be available on call to victims. Another battered women's advocate was assigned to the court itself. This had a two-fold effect: (1) victims reluctant to talk to the prosecution were, at least, hooked into services and a support system, and (2) the advocate performed court-monitoring and kept the court “honest.”¹⁶⁸ Partners worked

of an anti-war protest sponsored by Women Against the War to which I belong, “So did they end the war, yet?”

¹⁶⁷ See supra Part II.A.

¹⁶⁸ A typical example of proactive and comprehensive victim advocacy occurred in one case in which the victim first met the advocate at the police station. Together the advocate and victim filed the police report that led to the arrest of the batterer. When it came time for the preliminary hearing to establish probable cause to proceed, the victim was reluctant to testify in front of her batterer. She only agreed to testify after the same advocate answered her questions, and with the agreement that the advocate could be nearby in court during her testimony. Rather than falling apart from lack of victim testimony, the case proceeded. The offender ended up serving jail time, after which he was released on electronic monitoring. The victim remained safe through it all, in part, because of the careful safety planning coordinated by the advocate and herself.

The other kind of intervention occurred when the defendant was present but the victim was not. In such cases, many defendants attempting to obtain a better plea deal lied about victims. Defendants claimed in court, when the victim was absent, that the victim wanted the case dropped, was “luring” the defendant back to the

collaboratively on cases and in court; there was energy, coordination and progress. Then, bureaucracies did not continue to appropriately staff the domestic court initiatives. Communication broke down.¹⁶⁹ The domestic violence prosecutor got burned out and joined the homicide unit. The chief district attorney resigned. The city court judge was removed from the bench. That story is for another day.

D. Rewards: Why You Might Want to Consider This Kind of Educational Project

In the midst of writing this article, a former DVPU student and recent alumna contacted me for some career advice. As she learned about this article and the questions it raises about the success of the project, she described what the course meant to her:

I can honestly say that my greatest learning experiences through law school occurred during my time in the law school's Domestic Violence Prosecution clinic. No where else did I have real facts to work with, real situations constantly unfolding, real people behind the facts, and a real reason to care . . . Being part of the clinic also afforded a wonderful opportunity for me because I worked with two clinical professors who could not have been more different than one another except for one thing: their desire to do justice and to teach others to do the same. The professor who is an assistant prosecutor taught the value of straight

house, or that the victim was crazy. On one occasion, a defendant produced a letter he said was signed by the victim. However, the victim advocate had worked so closely with the victim from the moment the first police report was filed that even though the district attorney's office had not yet heard from the victim, the advocate was able to immediately contact the victim, convey accurate information to the specialized assistant district attorney and reveal the fraudulent nature of the letter.

¹⁶⁹ One source of problems came from the misunderstanding of the roles of lawyers and advocates for battered women. In particular, some government actors perceived domestic violence advocates and lawyers as "non-cooperative" when they refused to betray client confidences.

talk and the importance of being objective. Yet because of her regular duties and her teaching responsibilities, time with her was short and in demand My trial was something I knew the assistant prosecutor could have handled in her sleep, but for me, it was the biggest and most exciting event in my law school career The verdict in this case would be for real and would genuinely impact those persons involved. For the batterer, he faced up to a year in jail. For the victim, this verdict would offer her validation for the abuse no one else seemed to believe, or further reinforce her perception that the “system” worked only to protect batterers.

That's where the clinical professor was invaluable. As a former prosecutor herself, Mary knew what we were trying to do—and helped us to actually learn how to do it ourselves as opposed to just telling us how to do it. As I prepared for the trial, I spent hours with Mary, refining the sequence of my direct, going through the evidentiary issues. Those hours were necessary, and because that was her role in the clinic, she was able to give me the time I needed to prepare for the trial.

Nowhere else in law school can a student see such tangible results. Other classes swirl on throughout the semester with no sense of what type of learning was occurring. In those classes, it was not until the final exam grades were posted did I feel I could judge my performance in any meaningful way. However, with the clinic, every day provided another opportunity for self-assessment . . . In case anyone is wondering, I won my trial. It was then, and still is now, my proudest law school accomplishment.¹⁷⁰

Clinicians who teach and direct hybrid prosecution clinics elsewhere also find them rewarding and most agree that they provide students better feedback/supervision and more opportu-

¹⁷⁰ Email from Lynn Welthy, Albany Law School alumna and clinic participant to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Dec. 17, 2004) (on file with author). Ms. Welthy, who was highly honored academically throughout her law school career could have chosen many other moments as her proudest.

nities for skill building than the typical field placement.¹⁷¹ Students in such clinics are more receptive to faculty introduction of ideas contrary to the culture and policies of their assigned prosecutor or office. I too found the hybrid prosecution project very rewarding. I was able to balance the project with my other faculty work, family and personal life. I could focus my clinical teaching on the students' case planning, skill-building, and reflective practice, undistracted by a clinic caseload, grant requirements or intake concerns. With less time pressure, I was able to be much more "non-interventive." At the same time, since the students were working on real cases, they were exposed to the dynamic and unexpected situations that come with real victims, witnesses, and judges, versus the less dimensional ones found in simulated courses or hypothetical situations. Thus, our class sessions were much more intense and dynamic than those I taught in the field placement program. This was because I was privy to all the facts of the cases and had observed parts of cases so the students and I shared common experiences.

I was also able to integrate my social justice reform work on domestic violence with my teaching.¹⁷² Despite the eventual break up of the original coalition in one county, the students and I experienced a great sense of reward for the work done in the community. First, students made a difference in particular cases. They were able to spend more time concentrating on their cases and in contact with the victim than the average prosecutor or in some cases more time than an advocate could

¹⁷¹ While writing this article, I had the opportunity to discuss my opinion by email and telephone with several other clinical professors. "Here are my thoughts about the experiences that I had in developing and teaching (Baltimore City Child Abuse Prosecution clinic): 1) Great learning experience for the students, especially insofar as it allowed the students to participate in exercising prosecutorial discretion, which our students did. This produced some wonderful teaching moments . . ." Email from Michael Mille-mann, Professor, Baltimore City Child Abuse Prosecution Clinic to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Nov. 18, 2004) (on file with author).

¹⁷² Cf. Chavkin, *supra* note 90.

obtain (e.g., cases in which the victim does not identify herself as being in a violent relationship or needing an advocate). Student's work with victims had real and tangible effects on the outcomes on cases.

One case typifies the difference students made. The victim's estranged husband attacked her at a shelter-sponsored apartment, the location of which she had promised not to disclose to the batterer as a condition of living there. The victim was afraid of many things: the batterer retaliating, cooperating with the prosecution, speaking with the domestic violence advocate, and losing her housing. The prosecution student consciously employed tools of client-centered counseling¹⁷³ and spent much time in contact with the victim obtaining a full picture of her life.¹⁷⁴ She also linked the victim to a student-lawyer from our Family Violence Clinic, who represented the victim civilly in family court and assisted the victim in finding a divorce lawyer. The two students worked together to assist the victim in facilitating a safe housing situation and repairing relationships with the domestic violence shelter.

In addition, the prosecution student used a "victim-centered approach" to the prosecution of the case. Because of the victim's history of going back to the defendant, there were times when actors in the system interpreted the victim's failure to appear or late appearance as ambivalence. The student knew so much about the client's life—about the nine-month pregnant daughter who needed attention and the boss who would not allow the victim to place or receive private phone calls. Ultimately, the student had such belief in the victim that she did not assume that the victim was "backing out," but empathized with the

¹⁷³ See generally DAVID CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK OF LAW SCHOOL CLINICAL PROGRAMS (2002).

¹⁷⁴ The victim was a long-term survivor of domestic violence visited upon her by her husband, from whom she had separated several times only to allow him back in her life again. In the past, she had also been afraid to cooperate because the batterer/defendant had threatened her with his "high-priced" lawyer who, according to the victim, lodged cross-petitions against her in family court.

logistical difficulties the victim was having in attending repeated court appearances and interviews. She convinced court actors to give the victim the benefit of the doubt. The student turned out to be right: the victim cooperated; the defendant was forced to accept a plea; and the victim saw the system work in *her* favor for a change.

Further, the clinic was a positive part of the domestic violence court planning process. Students offered recommendations about procedures for the new court which clearly came from viewing the process through victims' eyes.¹⁷⁵ Because of our ties with local community activists, we were in closer contact with the victim/victim-advocate perspective and were able to lend support to their suggestions and recommendations. In addition, because we were assisting with prosecution of cases, and thus able to understand the prosecution perspective, we were able to hear both sides and have credibility with both prosecutors and advocates. In addition, I believe that our focus on domestic violence encouraged one local district attorneys' office to create a specialized unit for domestic violence crimes.¹⁷⁶

As a clinic, we used our experience in developing one domestic violence court to assist in the development of others and to facilitate the acquisition of grant monies and other funding to provide better staffing and resources on domestic violence mat-

¹⁷⁵ They identified physical problems with the court hallway waiting area and the contact between victims and defendants and communication problems involving the victim being confused about the role of the DA's "victim liaison/advocate" and the advocate from the domestic violence community organization. I was also able to do so because of my knowledge of the court system, which came from repeated observations of the students in the court.

¹⁷⁶ We also performed a "court monitoring" function. "Truthfully, judges were on their 'best behavior' when I was in the courtroom. I felt like I was a supervisor for the judges at times, in that their behavior was tailored to my presence. I am unsure if this improved the DV courts in general, but am sure it did on the days I was there." Email from Christina Nolan to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Jan. 5, 2005) (on file with author) (response from a former DVPU student to the survey sent out by the author).

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ters.¹⁷⁷ Just as one coalition was dying, another blossomed with new energy. A clinic alumnus recently became the district attorney of our home county of Albany and his platform was premised on improved response to domestic violence.¹⁷⁸ A young city court judge, also an alumnus, has expressed the desire to institute a domestic violence court. At about the same time, the Albany Coalition Against Domestic Violence, of which the clinic is a member, received funding from the United States Department of Justice to develop and staff a comprehensive domestic violence court.¹⁷⁹ There is more learning and work to be done.

V. CONCLUSION: WORK WITH THE BEST YOU HAVE TO CREATE A COMMUNITY BASED APPROACH TO PROSECUTION AND TEACHING AND HAVE FUN

The dynamic confluence of events, people, and issues which created the students' experiences over the past four years in the hybrid prosecution project were often unplanned and unanticipated.¹⁸⁰ Thus, I do not proscribe *pro forma* protocols¹⁸¹ or

¹⁷⁷ Recently, we partnered with Albany County and its service providers to form a city court calendar. The partnership was successful in obtaining federal funding.

¹⁷⁸ "Soares said he will also focus on domestic violence, and faced television cameras to address victims directly: 'I want you to know you have a friend in the DA's office. You are no longer imprisoned by the four walls you call home.'" Michele Morgan Bolton, Soares, in *Grand Style, Becomes County DA*, TIMES UNION (Albany, N.Y.), Dec. 28, 2004, at A1.

¹⁷⁹ Albany Law School received funding for a domestic violence prosecution adjunct to train students during the academic year and for student stipends for summer positions with the city's new domestic violence court.

¹⁸⁰ See *supra* Part IV.B.

¹⁸¹ For an analogous critique of attempts to enforce detailed requirements on the elements of a field placement program, see Seibel & Morton, *supra* note 20. "[T]hese courses, like all others in the curriculum, [should] have adequate supervision by faculty members who are given the time and resources to structure their programs in ways that fit with the constraints and opportunities in their particular schools and geographical locations." *Id.* at 417.

insist there are prerequisites for success. I do, however, recommend some approaches for creating such a project.

First, law school clinics are in a unique position to foster community collaboration both as a bridge between the activist and government sections and through its alumni.¹⁸² One of the advantages of running a hybrid prosecution clinic in a community in which your larger clinical program has deep roots and a good reputation is the ability to forge alliances among “clinic indoctrinated” alums.¹⁸³ As described throughout this article, ALS Clinic's longstanding domestic violence project and other community-based clinics marked it as “community-oriented” while the statewide reputation of the traditional criminal law faculty helped secure respect from prosecutors. Each law school's story and history can shape a community-orientation to prosecution. There are many types of community-based prosecution projects worth exploring.¹⁸⁴ Perhaps the home clinic's focus on representing people with disabilities or the elderly would

¹⁸² See, e.g., Kanter et al., *supra* note 72.

¹⁸³ In 2000, the activist battered women's shelter I described earlier started a law project to assist its clients with legal matters or in referrals for legal matters and hired a former Domestic Violence family law clinic alumna. Another clinic alumna, from the Domestic Violence Postconviction Project, was hired to work with the New York State Coalition Against Domestic Violence. A third alumna, who had been working in New York City prosecuting domestic violence, was hired laterally by one of the participating district attorney's office to provide experience in a Domestic Violence court. Thus, three clinic alums who knew each other or knew about each other from the clinic, were able to interact over important domestic violence issues with a shared background and vocabulary. They were also able to support the work of my project and provide valuable supervision and/or resources. I should also add that it is very rewarding personally to see a network of former students doing good work together in the community.

¹⁸⁴ For example, clinics might focus on the prosecution of child abuse, sexual assault, elder abuse or fraud, environmental crimes or collaborate with problem solving courts such as Drug Courts. See *The Birth of a Problem-Solving Court*, 29 *FORDHAM URB. L.J.* 1758, 1759, 1768 (2002); Lane, *supra* note 17. Clinics should also follow developments of Family Justice Centers for other opportunities to collaborate. See generally Casey Gwinn, *Dreaming Big: Creating Justice Centers Across America, Part II*, 10 *DOMESTIC VIOLENCE REP.* 17 (Dec./Jan. 2005).

enhance the appeal of a prosecution project and provide good partners from outside the district attorneys office.

Before a clinic initiates a *domestic violence* prosecution project, it is essential to have worked closely with the local domestic violence community to gain a full understanding of battered women's and advocates' specific complaints about law enforcement and prosecution issues in the local community. This is important both for identifying needs and for gaining the trust of those partners. Perhaps doing some pro-bono work, serving on an advisory board, or pairing up with a respected civil attorney for battered women or a domestic violence advocate would be useful in establishing these connections.¹⁸⁵

Finally, make it fun. Find people in the community and in the prosecutors' office who are good to work with, who have a holistic view of prosecution, believe in the complexity of human beings' lives and their capacity for goodness,¹⁸⁶ and who are passionate about what they do.¹⁸⁷ The infectious nature of that kind of passion is synergistic: it will sustain you, it motivates your students, and it gives succor to those in the community and in prosecutors offices who try to do good and hard work day after day and year after year.

¹⁸⁵ See generally LOPEZ, *supra* note 32.

¹⁸⁶ "The fact the prosecutor had a Masters of Social Work degree, as well as a law degree, made it even better by adding some interdisciplinary perspective." Email from Michael Millemann, Professor, Baltimore City Child Abuse Prosecution Clinic to Mary A. Lynch, Clinical Professor of Law, Albany Law School (Nov. 18, 2004) (on file with author) (discussing the positive attributes of his clinical partner). In addition, I would think that her social work background led to her having a more "holistic" view of prosecution.

¹⁸⁷ "To be able to be exuberant about something is one of life's greatest gifts. Never take it for granted. Nurture it. Give in to it at all times, no matter who goes tsk, tsk behind you." Written by my favorite feminist author on spirituality, JOAN CHITTISTER, *GOSPEL DAYS: REFLECTIONS FOR EVERY DAY OF THE YEAR* 154 (1999).

