

COMMUNITY PROSECUTION: CAN A LAW SCHOOL PROSECUTORS CLINIC ADOPT THIS APPROACH?

*Lisa C. Smith**

More than a decade ago Brooklyn Law School (hereinafter the Law School or BLS) created the Prosecutors Clinic. A year long, in-house clinic, it allowed third-year students to work as first-year Assistant District Attorneys (ADAs).¹ They prosecuted misdemeanor cases from the Office of the Kings County District Attorney in Brooklyn, New York.

I. BROOKLYN LAW SCHOOL PROSECUTORS CLINIC: THE EARLY YEARS

Assistant Clinical Professor of Law, Brooklyn Law School, 1988-present; Professor, Brooklyn Law School Prosecutors Clinic. The author also teaches the Brooklyn Law School Criminal Practice Externship and Criminal Justice Seminar.

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¹ The author would like to thank Professor Stacy Caplow, the creator of the Brooklyn Law School Prosecutors Clinic, for her constant support and encouragement of innovative ideas.

A. Clinic Structure

The Prosecutors Clinic was divided into three components: case conferences, a weekly seminar and courtroom appearances. The students, working in teams of two, were responsible for about five cases at any one time. The cases were assigned to the students immediately after arraignment, which occurs within twenty-four hours of the arrest. In New York City (NYC), almost all crimes result in detention. The defendant is fingerprinted, photographed and sent to the arraignment, where an attorney is immediately assigned.² The Kings County District Attorney's (DA's) Office then sets aside cases specifically for the Clinic.³

The clinic's first component, the weekly seminar, was originally designed to address criminal practice and procedure. The first class began with the drafting of accusatory instruments, and the semester continued with interviewing, plea bargaining, bail, discovery, fact investigation and motion practice.

The case conferences were usually two hours long and focused on the teams' pending caseloads, topics discussed included the theory of the case, prosecution strategies, counseling of witnesses and negotiating.

As to the third component, the students were responsible for all court appearances in each and every case to which they were assigned. Ultimately, the students were responsible for the final disposition, whether through a plea or trial. Although very few misdemeanor cases are tried, the Clinic students

² In New York City, a judge is always present at the arraignment. Bail is discussed, and there is plea bargaining. In Kings County, forty-seven percent of the cases were pleaded out at arraignments in 2004. Statistics provided by the Office of the Kings County District Attorney. Jerry Schmetterer, Director of Public Information, Kings County District Attorney's Office, 350 Jay Street, Brooklyn, New York, 11201. Phone: 718-250-2000.

³ The types of cases selected will be discussed in the body of this article.

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have had a few such trials. The students were always anxious to have the opportunity to go to trial; so when I first began teaching, I tried to select cases that seemed most likely to survive the plea bargaining process. I knew from experience that defendants on probation and parole rarely took pleas, because doing so might violate that sentence and land them back in prison. I attempted to locate cases in which there was less likelihood that a defendant would fail to appear in court, thus causing a bench warrant to issue. I also tried to locate cases in which the victim seemed very insistent about the particular outcome of the prosecution, reducing the likelihood of a plea. None of these strategies worked, and, after many years, I realized that random selection of cases was just as likely to produce a trial.

B. The Setting

Brooklyn, New York, is a county of approximately 2.5 million people living in seventy-one square miles.⁴ It is a county of neighborhoods divided by age, religion, socioeconomic conditions and ethnicity. Almost thirty-eight percent of the county is foreign-born, with 200 different ethnic groups.⁵ More than 100 different languages are spoken in the many communities.⁶ There are twenty-three police precincts covering the county. It is home to very large cultural institutions, eight colleges and one law school. There are communities of every economic class, with twenty-nine percent of families with children under the age of eighteen living below the poverty level.⁷ In Brooklyn, forty-six percent of the population speaks a language other than English at home.⁸ A decade ago, the Office of the Kings County District Attorney and the Law School were located next door to each other in a neighborhood known as "Downtown Brooklyn." Today, the Kings County District Attorney's Office is one block away from the Law School. The area includes all of the courts in the County, including the Family, Housing, Criminal, Surrogates, Matrimonial and Supreme Courts. The Supreme Court includes both the civil and criminal terms and has criminal trial jurisdiction over felony cases. Misdemeanor cases are prosecuted in the Criminal Court. The Appellate Court and the Federal Court are also located in the same five-block area. Many of the county social service agencies are housed in a variety of buildings in and around Brooklyn Law School. This centralization of all government agencies and courts within one square mile is often criticized by residents of other neighborhoods.⁹ It is against this backdrop that the Prosecutors Clinic operates.

⁴ Statistics provided by the Office of the Brooklyn Borough President and the Federal Census Bureau. Office of the Brooklyn Borough President, 209 Joralemon Street, Brooklyn, New York, 11201. Phone: 718-802-3700. United States Census Bureau has a searchable database of population statistics available at

C. Case Selection

In the late 1980s and very early 1990s New York City was in the midst of a horrific crime wave. In 1990, 158,000 felony crimes took place in Brooklyn. The breakdown was as follows:

- auto larcenies-19,000
- rapes-1154
- assault-16,000
- robberies-37,000
- burglaries-39,000
- other felony crimes—approximately 40,000.¹⁰

There were 765 homicides that year alone.¹¹ Prosecution offices faced with scarce resources were forced to choose to indict some felonies and reduce other felony cases to misdemeanors, prosecuting them in the lower criminal courts.¹² In New York, the Penal Code allows for twelve jurors in a felony case, but only six in a misdemeanor prosecution.¹³ Differences also abound in speedy trial requirements and sentencing.¹⁴ The maximum sentence in a misdemeanor case is one year, with many alternative probation and community service options. Therefore, the misdemeanor courts see a great deal

http://factfinder.census.gov/home/saff/main.html?_lang=en.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ See Sarah Glazer, *Community Prosecution*, C. G. RESEARCHER, Dec. 15, 2000, at 1011, 1011.

¹⁰ Statistics provided by the New York Police Department Crime Analysis and Program Planning Section.

¹¹ Id.

¹² Having worked as an Assistant District Attorney from 1979-1987, when assigned to the Intake Bureau, I made these resource decisions on a daily basis.

¹³ N.Y. CRIM. PROC. § 270.05

¹⁴ N.Y. CRIM. PROC. § 30.30.

more plea bargaining. Consequently, the prosecution of misdemeanors is much faster and simpler. Resource decisions were based on many factors, including the seriousness of the crime, the defendant's record, the strength of the evidence and witness cooperation. As those cases were reduced to misdemeanors, they became available to the students in the Prosecutors Clinic. Thus, a third year law student in the Brooklyn Law School Prosecutors Clinic could prosecute a variety of cases such as those involving auto theft, rape, child abuse, assaults with injuries involving as many as 100 stitches, commercial burglary or even drug sales. As the crime wave continued, the District Attorney's office remained resource poor, resulting in a continuous reduction of felony prosecutions to misdemeanor charges. Along with these reduced felonies, the average student caseload included a few actual misdemeanors such as shoplifting, driving while intoxicated (DWI) and prostitution.

II. PROSECUTORS CLINIC AND DOMESTIC VIOLENCE

A. Case Selection

Domestic violence and child abuse cases were also among the misdemeanor arrests, but, they rarely survived the second court date and were therefore unavailable for assignment. Until approximately 1996, a student in the Kings County Criminal Court would routinely see the domestic violence case called and a victim step forward. The alleged abuser would be nearby, and the victim would announce that she wished to drop the charges. The judge would then inquire as to whether she was coerced or threatened into the dismissal, and she would, of course, respond in the negative. The judge would then dismiss the case. I rarely saw a case survive to a third court appearance.

In the mid-nineties the crime wave in the city began to

abate, the decline continuing to this day.¹⁵ With that crime drop the policies in the Kings County District Attorney's Office began to change, with far fewer felony arrests being reduced to misdemeanors. This eliminated the burglaries, larcenies, robberies, and rape cases available for assignment to the Prosecutors Clinic as those crimes were now being indicted. Without those cases, misdemeanors such as shoplifting, drug possession, prostitution and DWI became the majority of the clinic's caseload. At the same time, the criminal justice system and the legislature began to focus on the area of domestic violence. This resulted in large part from the work of domestic violence advocates. In 1996, New York became a "mandatory arrest state," creating a startling increase in misdemeanor assault arrests for domestic violence.¹⁶ In the late 1990s, the Kings County District Attorney's Office prosecuted almost 11,000 domestic violence cases per year.¹⁷ As a result of my own personal commitment to that area of law, and the precipitous drop in serious crime, the clinic began to focus on domestic violence prosecutions. Domestic violence cases always include victims in need of interviewing and counseling. They afford the student an opportunity to learn a great deal about prosecution strategy, creative motion practice and evidence collection. Courtroom argument with defense attorneys is aggressive because the defense, aware of the likelihood that a domestic violence victim will ultimately drop charges, rarely accepts a plea offer. This gives the student the opportunity for many court appearances, much plea bargaining and some argument before the court. To my mind, domestic violence

¹⁵ According to Statistics provided by the New York Police Department Crime Analysis and Program Planning Section, at the end of 2004, there were 231 homicides in the county. In 1990, one out of fifteen persons was a victim of a serious crime, and, in 2004 one out of sixty was a crime victim. In 2004, there were 42,000 serious crimes, a seventy-three percent decrease from the earlier described statistic.

¹⁶ See N.Y. CRIM. PROC. §§ 140.10(4) & 530.11.

¹⁷ Statistics provided by the Kings County District Attorney's Office, Domestic Violence Bureau. Phone: 718-250-3300.

cases still provide the best pedagogical experience for the clinic student. Over the years, many colleagues have told me that they would never handle domestic violence or child abuse cases in a clinical setting. They cite the difficulty in working with the victims and the inherent danger in giving students the responsibility for those cases. At the same time, many DA's offices are unwilling to allow a clinic to handle their domestic violence cases, fearing the exact same issues.

The Prosecutors Clinic was also awarded a Violence Against Women Act (VAWA) grant from the Office of Justice Programs. This grant intergrated appearances in the Family Court and the Criminal Court on behalf of domestic violence victims. The students worked on civil orders of protection, support and custody issues and the criminal prosecution of domestic violence cases.

B. Problems with Student Burnout

The rate of dismissal of misdemeanor domestic violence cases is very high in almost all five counties in NYC.¹⁸ The disposition in most of these cases is rarely a conviction for a misdemeanor and even more rarely a sentence of jail time.¹⁹ The Prosecutors Clinic student handled about five to seven cases at any one time. With a small caseload and a great deal of time to reach out to the domestic violence victims, the results were not markedly different from the experience of the Domestic Violence Bureau in the Kemp County DA's Office.²⁰ Although the students clearly understood the issues and pressures facing victims of domestic violence, they found it difficult to see so many cases proceed to dismissal. Victims often appeared annoyed at their phone calls, insistent offering of assistance and visits to the home. Although the students were simply trying to handle each case in a responsible manner, it did not always feel that way to the victim. The students often wearied of the lack of cooperation and sometimes outright hostility. I decided to re-think focusing exclusively in this one area.

¹⁸ Statistics provided by the Office of Court Administration, Administrative Judge for the New York City Criminal Courts. Phone: 212-374-5880.

¹⁹ Id.

²⁰ A discussion of this is being saved for my next article.

III. THE BROOKLYN LAW SCHOOL COMMUNITY PROSECUTION CLINIC

Students at Brooklyn Law School come from all over the United States. In the early years of Brooklyn Law School, it was considered a commuter school. This began to change, and as the student body shifted, their knowledge of Brooklyn and its communities diminished too. The students live primarily in the neighborhoods within walking distance or a very short subway ride to the Law School and rarely venture, if ever, into many of the neighborhoods in Brooklyn. In fact, the vast majority live in about eight of the twenty-three precincts. Therefore, at the outset of any school year, the students in the Prosecutors Clinic have no visual, historical or cultural sense of the neighborhoods in which their cases occur. In addition, language barriers and the 200 different ethnic and immigrant groups cause the problems to multiply. Teaching empathy, social justice and cultural competence was a daily struggle. Additionally, the lack of familiarity with each neighborhood made it difficult for the students to understand why a particular type of misdemeanor deserved attention. Why does graffiti matter? Shouldn't prostitution, "the world's oldest profession," be legalized? Why should they waste time on low-level drug possession? I decided to re-think the focus of the Prosecutors Clinic and began focusing on how to address these problems, provide the best pedagogical experience and consider student burnout. The concept of a community prosecution clinic emerged from these issues.

A. *Sunset Park: The Setting*

This year, students worked with the Sunset Park community, a neighborhood whose population represents virtually every age, socio-economic and ethnic group. Sunset Park was a traditionally Irish-Italian-Norwegian working-class neighborhood that eventually became largely Hispanic, and now has a burgeoning Asian population. There is a large industrial zone employing a significant percentage of the neighborhood. "Mom and Pop" businesses populate two shopping avenues; churches abound; and a multitude of social service agencies exist.

Sunset Park was selected for a variety of reasons. The first consideration was proximity to the Law School. Since few of our students own cars, there had to be easy access to public transportation. The clinic students would also be expected to visit the neighborhood in the evening, which also had to be taken into consideration. Selecting a community with a heterogeneous population and a need for our services was also of paramount importance.

Crime has been on a steady decrease in this area, mirroring the entire county and the city. However, there are still many misdemeanor and felony arrests. Domestic violence remains a major problem in this area. The industrial zone is deserted at night and a few strip clubs and adult video stores have sprung up, providing a comfort zone for prostitution. The shopping avenues wage a constant battle with graffiti, drug dealing and commercial burglaries. The area has many private homes along with some large apartment buildings. Many of these homes have been converted into three-family dwellings. Residential burglaries are therefore a problem, and DWI's also commonly occur.

B. Structure of the Clinic

The three-component structure of the Clinic remains the same. The students are assigned in teams of two and handle about six cases at a time. There is a two-hour weekly case conference and a weekly seminar. The cases come from arrests made by the 72nd Precinct in Sunset Park.

The structure of the clinic allows the students to come to know and understand the concerns of the neighborhood. We began the year with a walking tour of the area, led by the Director of the Community Board. He also gave us an overview of the community and the board's most significant concerns. Our next meeting was with the Fifth Avenue Merchants Association. There, the students had an opportunity to hear about the retail establishments in Sunset Park and their business issues. On another day, the Director of the Southwest Brooklyn Industrial Zone explained the problems faced by manufacturers in Sunset Park. Such concerns included their need to keep that area safe for their workers, encouraging the businesses to stay in Brooklyn, providing jobs for the local residents and revenue for the City. Our next visit was to a community group, the Center for Family Life, which provides counseling to victims of domestic violence and families in crisis. On another occasion, we spent a day with the Brooklyn Chinese American Council learning about the concerns of the many Asian immigrants in Sunset Park and visiting their vibrant merchant strip.

At the outset, the students are assigned to attend community meetings in Sunset Park. The students attend the 72nd Precinct Council, Community Board, Human Services Cabinet and Public Safety meetings. These are often in the evening; thus, the schedule for the entire year of meetings is provided at the beginning of the year long clinic. Since Sunset Park is not far from Brooklyn Law School, the students can arrange transportation on their own. The assigned student takes minutes at these meetings and then distributes them to the clinic

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to be discussed in our next seminar meeting. By attending these meetings, the students get a first-hand understanding of the dynamics and problems of this community.

C. Case Selection

The Domestic Violence Bureau and a Trial Bureau in the Kings County District Attorney's Office set aside 72nd Precinct misdemeanor cases for the Brooklyn Law School Prosecutors Clinic, post arraignments. I then attempt to insure that each team is assigned some cases involving victims, enabling them to learn interviewing and counseling techniques, as well as some quality of life crimes. The caseload includes crimes such as domestic violence, sexual misconduct, shoplifting, DWI, assault, drug possession, prostitution and graffiti.

IV. ADVANTAGES TO THE COMMUNITY PROSECUTION MODEL

There are numerous benefits to a prosecution clinic working within the community prosecution model.

A. Practical Benefits

In a large urban setting, the bureaucracy of the criminal justice system can be daunting for the law students, the victims and the professor. By prosecuting only arrests from a particular neighborhood, cooperation increases between the traditional players in the system. For the most part, the cases will only involve police officers from one precinct. After a time, the students come to know the officers and gain their cooperation in returning phone calls, appearing for interviews and court dates. As the police officers are patrolling Sunset Park on a daily basis, they can assist the students by checking up on witnesses and complainants. At the monthly precinct council meetings, which are presided over by the Commanding Officer of the precinct and attended by many of his subordinates, the clinic representative can address issues the students are having with any officers in the precinct.

The community prosecution model also increases the cooperation between the victims, other witnesses and the Clinic. By attending monthly meetings, the Clinic students come to know many members of the community who can assist in reaching out to those involved in our cases. The students are more at ease when interviewing the victims. The victims are more at ease with the students because of their understanding of the setting of the crime and ability to discuss locations and streets in a comfortable fashion. There was no longer a blank look from the student when a victim was trying desperately to describe the scene.

As previously described, a large percentage of Brooklyn's population does not speak English, including those in Sunset

Park. Instead, the primary languages include Spanish and a variety of Chinese dialects, including Mandarin, Cantonese and Fukkianese. Finding interpreters for the cases is very difficult. By working closely with the community, the Clinic has come to know many of the social service agencies. Their staff frequently cooperates with the Clinic and acts as our translators. The students can then go to the agency and meet with the victim nearer to his or her own home, in a location with which the victim is more comfortable.

B. The Students

The ultimate goal of the BLS Prosecutors Clinic is to teach the role of the prosecutor, "to do justice" in an innovative way. Justice needs to be understood as applying to both victims, defendants and the community as a whole. The community model helps the students understand the needs of these parties by better understanding the people with whom they are working and their everyday concerns. This clinical experience transforms prosecution from managing a caseload in a purely reactive mode into a model that has a direct relationship with and impact on the life of the community.

As a result, the two student issues previously discussed, burnout and detachment, are no longer problems. The students have a greater understanding of the community and its residents. This is evident both in the seminar and in their discussions of the community meetings. They often scour the newspapers for articles about Sunset Park, concerned with troubling reports and delighted with good news.

Student reaction to this Clinic has always been positive, and every year there are many more applicants than available openings. This has created many problems in terms of student resentment, and I have been told many times, "I am paying \$30,000 a year to come here; therefore, I should be able to take the clinic that I want." Over the years we have addressed this issue in numerous ways, gradually increasing the number of student slots from eight to eighteen by hiring an adjunct

instructor who is a prosecutor in the Kings County District Attorney's Office. One year when demand was incredibly high, we created a hybrid clinic. We placed half the students in the first semester in an in-house clinic setting. The other half of the students were placed in the Kings County District Attorney's Office in an extern-like setting and worked with a variety of ADAs. Both groups attended the seminar together. The current enrollment is eighteen with an adjunct instructor.

C. The Law School

From the perspective of the Law School, a Community Prosecution Clinic provides an opportunity to engage a neighboring community with a substantial outreach effort, thereby breaking down some of the barriers between the school and its surrounding neighborhoods. It also provides an opportunity for student associations at the Law School to interact with the Clinic and with a neighborhood. For example, the Brooklyn Law School Latino Student Association and the BLS Asian American Law Student Association have been involved with the evolution of the Community Prosecution Clinic.

D. The Sunset Park Community

The Clinic provides numerous benefits to the people of Sunset Park. The most obvious benefit is that their prosecutions are handled by a clinic where each student has five cases as opposed to an Assistant District Attorney with a typical caseload of 100. We are therefore able to pay much closer attention to insuring that the appropriate plea and sentence are negotiated. Students also pay very close attention to the needs of victims of domestic violence and their children. If restitution is appropriate, the student sees that it is ordered by the court and is responsible for monitoring that case to closure.

As a result of working with advocacy groups and social

service agencies, victims can be provided services near their homes as part of the case management. Our case conferences always include a discussion of other legal issues perplexing our victims and an attempt to resolve the problem. We can frequently point the victim to a local agency willing to work with the family, a decision that works equally well for the defendants. In the misdemeanor cases where a variety of treatment options are frequently part of the sentence, the Clinic students are able to suggest actual neighborhood based providers to the court. This makes excuses less acceptable to the presiding judge, for example, that language barriers, location, hours and cost are preventing the defendant from getting the help needed.

V. DISADVANTAGES: TIME, TIME, TIME

This type of clinic also presents several disadvantages. The greatest disadvantage to directing a Community Prosecution Clinic is to the professor teaching the Clinic, no small matter to the readers of this article. The problem is in the amount of time needed to insure the proper prosecution of the cases and involvement with the community.

The community meetings are very time consuming, requiring many nights of attendance. In the fall, at the beginning of the semester, I attempt to attend as many meetings as possible with the students. As the semester progresses, students attend on a rotating basis and report back. The optimum situation is for the professor to attend every meeting with the Clinic student, providing visibility in the community and an opportunity to interact with community leaders. However, with one community meeting almost every day in Sunset Park, that is impossible.

Professional relations with the law school may suffer, as well. Sunset Park is a short distance from the Law School, and, in order to participate in the life of the community, it is necessary to be there on a routine basis. This means that there is a good deal of time spent away from the Law School

community, which is a problem for any faculty member and likely worse for clinical faculty, who may miss Law School meetings from time to time as a result of this issue.

Case conferences are even more time consuming. The victims, more comfortable with the Clinic because of our presence in the community, very likely may ask for assistance with a multitude of legal issues. The students are instructed to attempt to assist with these problems by, at the very least, providing another referral.

Limited time may also affect topics covered in the seminar. The seminar must focus on criminal practice, as the students are handling a misdemeanor caseload and have varying degrees of experience in the criminal justice system. The seminar must also include information about the community. While some of the classes are devoted to reporting on community issues, there is not enough time in the semester to adequately cover both areas.

In addition, the community at large places time constraints on the Clinic. The community comes to view the Clinic as the community law firm and brings many issues to our attention with a request for assistance. These have included sanitation, waste management, environmental, landmarks, zoning, section 8 and housing, gentrification, education and insurance. The Clinic is not equipped to advise on most of these topics; thus, I try to provide referrals as often as possible.

CONCLUSION

The evolution of the BLS Prosecutors Clinic from a general misdemeanor Clinic to the BLS Community Prosecution Clinic has been an enriching experience. My goal in this Clinic is to teach the role of the prosecutor while at the same time providing an expanded vision of social justice, cultural competence and creative approaches to the legal system. The outcome of this dual approach will hopefully produce prosecutors who truly understand their mandate "to do justice."

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