

**PERSPECTIVES IN CRIMINAL JUSTICE
CONCURRENT SESSION**

**PROFESSORS LAURA BEREND, UNIVERSITY OF SAN DIEGO,
AND LISA C. SMITH, BROOKLYN LAW SCHOOL**

The roots of the criminal justice system are anchored in the lives of the participants - the lawyers, judges, defendants, victims, law enforcement, and the community as a whole. Each has a unique perspective. This session examines a prosecution and a defense clinic that offer students the opportunity to examine the human beings involved in the judicial process.

BROOKLYN LAW SCHOOL COMMUNITY PROSECUTION CLINIC

The communities surrounding a law school in a large urban area provide myriad exciting clinical opportunities for law students. Understanding the cultural, social, economic and political issues within these communities can provide law students with a window into how complex the practice of law has become, and can greatly enhance their legal skills.

The Brooklyn Law School Community Prosecution Clinic, taught by Professor Smith, developed from a general prosecution clinic which focused on misdemeanors and domestic violence cases. In this clinic, the students are allowed to perform all of the functions of an Assistant District Attorney. They are assigned a caseload and are responsible for all aspects of the prosecution of that case, including arraignment, interviewing, discovery, plea bargaining, hearings and trial. Students are not generally from their client's communities, so teaching cultural competence, visions of social justice, and empathy are a daily struggle.

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 which 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 there are a multitude of social service agencies.

The structure of the clinic allows the students to come to know and understand the concerns of the neighborhood. The clinic students walk the streets, and meet with educators, and social service providers. The students attend Community Board, precinct council, PTA and merchant association meetings, gaining a first hand understanding of the dynamics of the community.

The ultimate goal is to teach the role of the prosecutor, "to do justice," but 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 the community, victim and defendant 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, to a model that has a direct relationship with and impact on the life of the community. The presentation at the conference will focus on this expanded vision of social justice, teaching cultural competence and the realities of creating a new community-based clinical program.

From the perspective of the law school, it provides us 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.

***PERSPECTIVES IN CRIMINAL JUSTICE -
A BAIL PROJECT AND EXPUNGEMENT CLINIC***

Perspectives in Criminal Justice, taught by Professor Berend, is a bail project and expungement clinic that provides an introduction to the criminal justice system immediately after an arrest and following a conviction. As interns with the San Diego Department of the Public Defender, students interview new male (women are booked at another facility) arrestees in the San Diego County Jail who have not made bail and who are not represented by counsel. These interviews occur in the booking area of the jail. Students provide advice regarding an arrestee's constitutional and statutory rights, address an arrestee's concerns arising from his incarceration, and obtain and investigate information relevant to the issue of bail, such as the arrestee's length of residence, his current employment status, and ties to the local community.

The information obtained by the students is made available to the deputy public defender handling the felony arraignment calendar in the downtown courthouse. Students assist in counseling and arraigning newly charged defendants in this department. Students also argue for a reduction in bail or release on a defendant's own recognizance. Some defendants have been interviewed in jail by the students, and the information gathered is used in their bail presentations.

The San Diego Department of the Public Defender receives over one hundred requests for expungements a month. Students represent persons convicted of crimes who are eligible for an expungement of their convictions by interviewing them and preparing the legal documents in support of an expungement motion. So far, the length of the semester has precluded the students from arguing their expungement motions in court.

The clinic was initially intended to allow us to broaden our students's exposure to the range of proceedings in the criminal trial courts. In contrast to this clinic, students enrolled in a defense placement through the criminal clinic typically meet a client after an arraignment, and terminate that relationship at a sentencing hearing. Several semesters of experience has shown that, because this clinic does not have the trial practice and procedure pre-requisites of our criminal clinic, it is serving as an introduction to the criminal practice clinic, and to the criminal justice system in general.

This clinic allows students to develop their own style in creating a professional relationship with people who are in crisis (new arrestees) and who have repaired their lives (post-conviction clients who are eligible for expungements). Because students in this clinic will not be doing trials, the class coverage focuses on social, ethical, and policy issues in more depth than is possible in a trial-based clinic that must address evidence and the procedural stages in a trial court. In class, students examine the legal, procedural, ethical, social, and cultural issues that arise in the course of their clinic work. Interviewing and counseling skills, law enforcement and prosecutorial discretion, arrest, arraignment and bail process, access to and relationships with counsel, and post-conviction expungement procedures are considered. The MBTI is used to explore each student's view of the world. A prosecutor with experience in issuing cases, and a defense attorney with experience in high profile cases as well as more typical court-appointed cases discuss their perspectives of their functions. A deputy with the San Diego Sheriff's Department who is a graduate of USD and a lawyer facilitates an exercise in police decision-making, and offers hands-on demonstrations and simulations to present some of the dilemmas faced by law enforcement in making use-of-force decisions.

Students hand in several journals of their experiences throughout the semester, and prepare a final reflection paper. They also lead a class discussion on an article or a case of interest to them relating to any subject matter raised in the course at the end of the semester. The most striking results of this clinic have been an increase in empathy, a better understanding of the point of view of people with whom the students are interacting, and an interest in pursuing a career in the criminal justice system.