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RESEARCH

# First-year Law Students in the Courtroom

An Experiment in Practical Legal Education at the Touro  
Law Center

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SUBMITTED TO THE TOURO LAW CENTER

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## **Executive Summary**

This report presents an evaluation of the Touro Law Center Court Observation Program. Beginning fall 2006, the Touro Law Center piloted this experiment in practical legal education, in which all first-year law students were required to study and witness courtroom practice in both the state and federal courthouses located in Central Islip (Suffolk County, New York). Program activities included background readings, first-hand courtroom observation, and intensive debriefings concerning the administration of justice in the courts that were observed. The program was developed in partnership with Suffolk County state and federal court stakeholders. Touro Law Center faculty and administration hope that this program will comprise a first step towards establishing a wide-ranging synergistic relationship between the Law Center and the Court Complex that can serve as a model for other law schools and courthouses nationwide.

The Center for Court Innovation evaluated the three-year pilot phase with a mixed methods research design, including an initial needs assessment in the fall of 2006; quantitative student surveys at baseline and two follow-up points; a student focus group; attendance at select courtroom observation sessions, and interviews with staff and stakeholders from both the Law Center and the participating courthouses. The student surveys examined attitudes and opinions regarding justice and fairness in the Suffolk courts, perceptions of attorney effectiveness, perceptions of courtroom dynamics, career aspirations, and beliefs about pro bono work.

### **Program Goals**

Touro Law Center administrators and faculty established the program primarily to facilitate early, practical exposure to the court system for first-year students. Staff hoped that this exposure might lead to a less naïve perspective on justice and the court system, as well as an increased interest in practicing law in a courtroom. Additionally, they hoped that the program would foster a collaborative relationship between the law school and the Suffolk County court and Eastern District federal court. A logic model detailing the proposed program goals and impacts is included in the body of the report.

### **Major Program Activities**

First-year students participated in two courtroom observations. In year 1, the first semester observation took place in the arraignment court at the Cohalan (Suffolk County) Court Complex, and the second semester observation took place in the adjacent federal courthouse. In years 2 and 3, the first semester experience included observations of both arraignments and another courtroom in the state or district court, while the second semester observation structure remained the same. Years 2 and 3 also included a visit to lock-up in the first semester and a luncheon or dinner with legal professionals in the second semester. These changes reflected student feedback from the first cohort. Across all three years, students were assigned brief reading materials and attended a class-wide orientation session. Most observations included a Q&A period with the attorneys and judge in the observed courtroom, and all observations were followed by a debriefing session with the program coordinator.

## Results

Data was collected through courtroom observation, stakeholder and faculty interviews, student survey data, and student focus groups.

### Courtroom Observation

- Program fidelity: Based on the observation sessions that were attended by the evaluator, the program adhered to the proposed components and activities, though there were minor changes from year to year.

### Stakeholder/Other Interviews

#### *Judges*

- Positive feedback: Judges' feedback concerning the program was uniformly positive. They believed that they learned from students, and one judge expressed that the program also served to remind the judges of appropriate procedures, of their obligation to educate the community, and of their need to enunciate better on the record.
- Hopes for students: Judges hoped that students gained some basic information (such as the roles of court personnel and the importance of treating officers with respect), greater practical knowledge about the application of law, a desire to practice in court, and the knowledge that they do not need to be an expert in every part of the law.

#### *Legal Aid*

- Challenges of public defenders: One Legal Aid attorney said that most people do not understand the inherent handicaps faced by public defenders. Through the program, this attorney hoped that students would witness the glaring difference in staffing and technology between the public defender and the ADA. (In the evaluation needs assessment, several Touro Law Center faculty echoed this same point.)

#### *Law Center Faculty*

- Positive feedback: Faculty were overwhelmingly positive in their discussions of the program. All faculty who were interviewed had actually attended an observation session. They believed that the experience of witnessing courtroom practice not only illustrated for the students what they had been reading about in their law books, but also showed them the importance of professionalism as they observed the program coordinator's interactions with court staff.
- Hopes for students: Faculty hoped that:
  - Students would witness practical courtroom encounters, as opposed to the sensationalized version they see on television.
  - Students would gain a comfort level and reduced levels of intimidation in court.
  - Students would have an opportunity to hear the language spoken in the courtroom.
  - Students could learn the importance of attorney preparation, demeanor, collegiality and professionalism, not only through being told, but also through the program coordinator's respectful and professional interactions with court staff.

## Focus Group Data

The evaluator conducted a focus group with eight first-year law students in April of 2007.

### *Seeing a Future Career*

- Belonging: Students described feelings of belonging to a “club,” of feeling they could do what other lawyers were doing, as though they were already part of the justice system.
- Logistics: Students liked learning the layout of the courthouses; they reported feeling comfortable knowing where to file motions, etc. when starting to practice in the county.

### *Attention from Judges and Attorneys*

- Attention paid: Students valued the attention judges paid them by bringing them back into their chambers, explaining the case, and asking for their opinion.
- Insight and interactions: Students were stunned at the quantity and quality of their own interactions with judges and attorneys during the observation sessions, as well as the amount of insight they received on judicial decision-making.

### *Professionalism*

- Interactions with program coordinator: Several students remarked on how impressed they were by how the program coordinator was treated by court personnel.

### *Surprises*

- Role of court officers: Students were surprised by the sizable role of court officers in the arraignment part.
- RORs: Students were surprised by how few RORs (Released on Own Recognizance) there were in arraignment court.
- Appearance: Students were particularly surprised by how poorly some of the family members of defendants in arraignment court were dressed.

### *Comparison between courts*

- Atmosphere: When asked to compare the state and federal court experiences, students perceived that litigants were more adequately informed in federal court, and that the atmosphere on the whole was calmer.
- Representation: Students noted the inequality of representation for indigent defendants (i.e., the difference between those represented by public defenders and those who could afford private attorneys) in the state court.

Many students commented that they would like to return for more courtroom observation, even on their own time. Some students thought there should be a more intense court observation class where students go over to court twice a week.

## Student Survey Data

Due to the poor response rate in year 1 (33% at baseline, 14% at the single follow-up survey for that year), the survey results discussed below pertain exclusively to year 2 and year 3 (combined response rates 85% at baseline, 69% at first follow-up, and 44% at second follow-up).

### *Demographics*

- The student population consisted mostly of Caucasian students, the majority of which were under age 25.
- Nearly all students were born in the U.S. (84%)
- Most students (75%) expected to leave law school with over \$60,000 in debt.
- Across the three surveys, a private firm remained the most popular desired area of practice, although there was an increased interest in public interest and family law.

### *Intimidation*

- Students initially rated their level of intimidation with the courtroom and the judge at 4.4 out of 10. After the first semester observation, this figure increased to 4.9. After federal court observation, the rating further increased to 5.2.
- Qualitatively, students seemed to be in awe of the federal court itself, and this reverence may have affected their self-reported feelings of intimidation at follow-up.

### *Fairness*

- Overall ratings: Students rated the fairness of the Suffolk County courts positively, although these ratings declined after the criminal court observation.
- Representation: Student ratings suggested that most of them perceived meaningful discrepancies regarding a defendant's representation, as well as his economic status, ethnicity, and sex. These ratings marginally improved after the second semester federal court observation.
- Confidence in Suffolk courts: Ratings of overall "confidence" in the Suffolk courts significantly increased between baseline and the second follow-up survey (2.8 to 3.7 out of 4).

### *Professionalism and pro bono work*

- Attorney presentation: Students' agreement with the statement "attorneys are highly prepared" fell significantly between baseline and the first follow-up survey, while agreement that "well-dressed attorneys are more effective" increased significantly between baseline and follow-up 1 (3.6 out of 4 to 3.8 out of 4).
- Pro bono attitudes: While ratings on the item "How important is it for you to do pro bono work" did not change from baseline to the first follow-up survey, they did jump from 3.1 (out of 4) at the first follow-up survey to 3.9 at the second follow-up survey (after the federal court observation).

### *Program Activities and Logistics*

- Activities: Students gave high marks to the program itself. Observations and Q&A sessions with judges and attorneys, and observations and Q&A sessions with judges in all locations were rated 3.5 and above out of 4.
- Logistics: Convenience of getting to court and convenience of having a debriefing session the same day as the observation were rated highly (at least 3.5 out of 4 in both follow-up surveys).

## **Study Limitations**

The student survey data from year 1 turned out to be mostly unusable, meaning that survey findings had to exclude the pilot year. Additionally, in the program itself, students were broken up into small groups, and no two groups saw precisely the same courtroom proceedings. Accordingly, opinions that different students formed may have been affected by particularities of what they witnessed. Finally, two observation sessions in total comprised a limited introduction to the system as a whole. One would have difficulty hypothesizing that such an amount of observation could strongly impact students' attitudes regarding justice, fairness, and other aspects of the court system (although some significant changes were noted).

## **Conclusions**

All parties involved expressed high levels of enthusiasm about the program. The judges, attorneys, and faculty members interviewed expressed that they were invested in and supportive of the program. Further, because of her extensive relationships in both the state and the federal courthouses, the program coordinator was widely cited for her effectiveness. Going forward, the Touro Law Center might consider either including more courtroom observation sessions or expanding the program to second- and third-year students.

## I. Introduction

In fall 2006, the Touro Law Center embarked on an ambitious new collaboration with the Suffolk County Court Complex, which included both state and federal courthouses. Beginning that semester, all first-year law students participated in a unique pilot program involving background readings, first-hand courtroom observation, and intensive debriefings concerning the administration of justice in these courthouses. Practicing judges, prosecutors, and defense attorneys made themselves available both for observation and question-and-answer sessions with the students. The students were expected to benefit from the integration of practical courtroom experiences into their first-year curriculum and from early exposure to the realities of today's justice system. The judges and attorneys at the Court Complex were also expected to benefit by participating in a project that would enhance the legal education of the next generation of lawyers and also by receiving student feedback that may lead to improvements in how the Suffolk courts operate. Looking more to the future, the Law Center faculty and administration hope that this program will comprise a first step towards establishing a wide-ranging synergistic relationship between the Law Center and the Court Complex that can serve as a model for other law schools and courthouses nationwide.

Nationwide, there exists one other court observation program for first year law students at Drake University Law School. The format of the program is quite different, in that students observe a single trial over the course of one week. Further, it does not appear to have been formally evaluated. Since Touro Law Center's pilot program format is unique to the field of legal education, its actual effects are unknown. Accordingly, the Center for Court Innovation conducted an evaluation of the three-year pilot phase. This report is a detailed description of project activities, evaluation activities, how any activities may have deviated from the original evaluation plan, and a discussion of data collected from surveys, interviews, and focus groups.

### *Project Description*

Beginning in the fall of 2006, the Law Center implemented the start of a three-year pilot program funded by a Byrne grant. In the first year of the grant, all first-year students ( $N = \sim 250$ ) participated in hands-on observations of criminal arraignments at the Suffolk District Court in the fall and court proceedings at a nearby federal courthouse in the spring<sup>1</sup>. Both semesters included: (1) brief background readings; (2) a question-and-answer session with the judge whose court part was observed and with attorneys who were practicing in that part; and (3) a debriefing session at the Touro Law Center. The first semester readings included information about factors that go into setting bail, as well as general information about the arraignment process. The second semester readings included basic information about the court, such as definitions of a jurisdiction, magistrate, and roles of judges.

In the first year, first semester, students attended one day of observation in the arraignment part, followed by a Q&A session with the presiding judge and the present district attorney and legal aid attorney. The classroom debriefing session, in which the program coordinator, Lynne Kramer, answered student questions about the proceedings, typically occurred one week after the

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<sup>1</sup> In the fall of the first year of the grant, program participation was limited to full-time entering students.

observation. Second semester, students attended one day of observation in the federal court. Originally the plan was for students to observe civil motion practice, specifically; however, students ended up observing a much broader range of activity in the federal court, depending on the day and the judge. Ms. Kramer had made arrangements with a small number of judges ahead of time and took students to one of their parts, depending on the day. Students saw whatever case happened to be on that judge's docket, then participated in a Q&A session with that judge and perhaps with the law clerk as well. Many of the judges spoke with students multiple times that day—once perhaps before the session, once sometimes during the session, and then after the session.

Beginning in Year 2, fall of 2007, students observed the arraignment part and one additional part in the Cohalan Court Complex, which includes the district court as well as several other parts. This additional observation varied depending on the day; students observed mental health court proceedings, domestic violence court proceedings, criminal court proceedings, and drug court proceedings, among others. This observation differed from the fall semester of Year 1, not only because students visited an additional part, but also because they did not see the same arraignment judge as students did in the previous year. Students also had the opportunity to visit lock-up, where they stood in the booth overlooking prisoners being transferred to and from the courtroom. This observation still included a Q&A session with the judge and attorneys, but the classroom debriefing session, as a result of student feedback gleaned during the evaluation activities in Year 1, occurred directly after the observation. Students therefore had an opportunity to discuss what they had seen that day while it was still fresh.

Beginning in the spring of 2007, in addition to the federal courtroom observations, students were invited to attend a weekly luncheon featuring two or three legal professionals, oftentimes one of them a judge, in the community. The guests would speak about their experiences and their career histories, and students would have the opportunity to ask them questions. Guests were invited by topic area (i.e., involvement in criminal law, family law, corporate law, etc.). On average, between 12 and 22 students attended these luncheons.

The only addition to the curriculum in the third year of the program was that the luncheons with legal professionals became dinners, and they also became mandatory. Students were given a sign-up sheet listing the scheduled dinners according to topic area, and asked to express their top preferences for which ones they wanted to attend. All other aspects of the fall and spring observations remained the same from Year 2 to Year 3.

## II. Evaluation Activities and Methods

The research team visited the Huntington campus of Touro Law Center in September 2006 to conduct a needs assessment and finalize the research design. While at Touro they had the opportunity to speak with a number of faculty members, administrators, and school staff about their visions for the program, including Lynne Kramer, Brett Gilbert, Eileen Kaufman, Gary Shaw, Ken Rosenblum, Lauren Chite, Linda Howard Weisman, Larry Raful, Marianne Artusio, Richard Klein, Thomas Maligno, Nicola Lee, and Peter Davis. The research team took their feedback and suggestions into consideration when developing a logic model (see below) and a baseline questionnaire. Some of the topics Touro staff felt were important to measure were students' definitions of justice, the role that physical appearance and self-presentation plays regarding the treatment of attorneys, their expectations of the length of arraignments, and the disparity in resources between the DA and public defender.

In Year 1, for the most efficient data collection, Websurveyor, an online survey program, was used. The format of the program is user-friendly, for both survey developers and respondents. For each survey in that year, programming in Websurveyor was completed in the month prior to administration.

At the beginning of the first semester and toward the end of second semester, all first-year students received an e-mail from Ken Rosenblum, Associate Dean for Administration, notifying them of the existence of the pending survey and requesting their participation. The e-mail provided an internet address and required a unique password from each student, comprised of the first two letters of the participant's mother's maiden name, the date of the participant's birth, and the number of the respondent's siblings. The password ensures that only the recipient could respond (protecting confidentiality) and facilitated linking the different surveys completed by the same respondents (since each student re-enters the same password for all of their surveys). The e-mail also discussed data security and confidentiality issues. While the students were encouraged to participate, the e-mail made clear that participation was voluntary. At least two reminder e-mails were disseminated to non-responders at two- and four-week intervals. This process was repeated for the follow-up web-based survey. At the appropriate times, it was also recommended that a member of the Touro faculty encourage students to participate, while similarly adding that participation is ultimately voluntary.

The baseline questionnaire was developed in September 2006. The instrument (see Appendix C) included several measures for the topics mentioned above, as well as general demographic information, attitudes about the Suffolk courts, students' attitudes towards court staff, students' career goals, past experience in a courtroom and attitudes about the criminal justice system in general. Several Touro faculty members reviewed the baseline survey before its implementation and offered feedback and critiques. The survey took approximately 10-15 minutes for students to complete.

The follow-up questionnaire was developed in the winter of 2007 and was administered in April. A questionnaire regarding the experience observing first semester criminal arraignments was omitted. It was originally intended for administration in December of 2006, but research staff did not feel it would garner enough new information or measure changes given the short period of

time between the baseline and the scheduled time of this follow-up. However, this additional survey was implemented in Years 2 and 3. The final follow-up questionnaire, administered in April of 2007, included the same measures as the baseline with an additional module for questions about the two observation experiences and suggestions for future years (see Appendix E). Since research staff was unaware of the existence of the luncheon program until late in the spring semester, questions pertaining to the luncheon program were not added; however, they were included in the follow-up questions for Years 2 and 3 of the project. The protocol for survey administration was identical to that of first semester.

In Year 1, 46% (86 out of 187) of full-time students responded to the baseline survey; only 15% (36 out of 246) of all full- and part-time students responded to the follow-up survey. Eighteen people—7% of the total class population—responded to both the baseline and the follow-up surveys. The poor response rate renders these results unreliable and not generalizable to the student population as a whole, but some data, mostly demographic, will be reported from Year 1 for informational purposes. In Year 2, the response rate was much improved, with a 83% percent response rate (170 out of 205 full-time students) at baseline, a 72% response rate (138 out of 191) at follow-up 1, and a drop to a 39% response rate (75 out of 191) at follow-up 2. Similarly, in Year 3, 88% of full-time students (169 out of 191) responded at baseline, 74% (135 out of 183) responded at follow-up 1, and the highest rate of return at follow-up 2 in the three years was 62% (113 out of 183).

The surveys underwent minor revisions based on feedback from the pilot cohort and based on program changes that occurred from year to year. In Years 2 and 3, an additional follow-up survey was added and administered in January, at the start of the second semester, to capture students' attitudes regarding the first semester observation (see Appendix D). In these subsequent program years, surveys were also administered in a pencil and paper format during assemblies for the first-year students, which overall yielded a significantly higher response rate. Because no assembly takes place at the end of the second semester, the second follow-up surveys were administered in classrooms by staff unaffiliated with the project. During both years this survey yielded the lowest percentage of participating students.

The Principal investigator interviewed Hon. Paul Hensley (Suffolk County District Court) in January of 2007. She then made a court observation visit in the spring of 2007, during which time Ms. Kramer walked her through a typical observation students would experience in the arraignment part in district court, as well as an observation students would experience in the federal court. During this visit she interviewed Hon. Joseph Bianco (United States District Court, Eastern New York) and Sab Caponi, an attorney from the Legal Aid Society; she also attended a luncheon featuring Hon. Leonard D. Wexler (United States District Court, Eastern New York) and conducted a focus group with a group of Touro students participating in the program. In the fall of 2008 she attended a court observation at the Cohalan Court Complex, during which time she observed an arraignment part and a mental health part. In the spring of 2008 she interviewed six Touro faculty members. Subsequently she attended a federal court observation in spring 2009, during which time she observed a jury selection.

### **III. Program Goals and Logic Model**

First and foremost, the Touro Law Center aimed to facilitate early exposure to the court system for its first-year students. Having an opportunity to sit in a courtroom is a rarity even among second- and third-year law students. Indirectly, faculty hoped that this exposure might lead to a less naïve perspective on justice and the court system, as well as an increased interest in practicing law in a courtroom. More directly, faculty hoped that this program would foster a collaborative relationship between the law school and the Suffolk County courts and Eastern District federal courts. Eventually, the student participants who go on to become lawyers in those courts are better informed and have a better understanding of how the courts work. The logic model below details the proposed goals and impacts of the project.

## Logic Model

| <b>Program Goals</b>                                                                                                                                                            | <b>Inputs</b>                                                                                                     | <b>Activities</b>                                                                                                                                                                                                                                                                                                                                               | <b>Outputs</b>                                                                                                                                                 | <b>Outcomes</b>                                                                                                                                                                                                                               | <b>Impacts</b>                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>*infusing the Law Center's curriculum with more practical educational experiences</p> <p>*fostering a spirit and reality of collaboration with the Suffolk Court Complex</p> | <p>*grant funding</p> <p>*Program Coordinator at Touro Law Center</p> <p>*buy-in among Judges and court staff</p> | <p>*arraignment and federal courtroom observation</p> <p>*background readings</p> <p>*Q&amp;A sessions with judges and attorneys</p> <p>*debriefings with L. Kramer</p> <p>*luncheons with legal professionals and judges</p> <p>*surveys and focus group with students</p> <p>*stakeholder interviews</p> <p>*faculty and stakeholder conference Oct. 2008</p> | <p>*approximately 200-250 students complete the program per year</p> <p>*essential data collected</p> <p>*feedback gathered for improvement of the program</p> | <p>*change in student attitudes, beliefs, aspirations, or other perceptions due to program participation</p> <p>*increased student comfort interacting with judges and court staff</p> <p>*increased professional networking for students</p> | <p>*student career decisions (i.e., increase in desire to practice in a courtroom)</p> <p>*impacts on the Suffolk courts (i.e., more qualified, prepared attorneys)</p> <p>*increased future quality of justice</p> <p>*increased recognizability of Touro Law Center due to project success</p> |

## IV. Results

After first describing courtroom observation sessions that were joined by the evaluator, results are presented from stakeholder and Touro faculty interviews and from a focus group held with participating students.

### A. Courtroom Observations: A Description of Two Sample Sessions

#### *State Court*

The state court observation by the Principal investigator took place in the fall of Year 2. In the session that was observed, Ms. Kramer and a court officer introduced the students to the court layout. The part to which they had been assigned that day, in addition to the arraignment part, was the mental health part. The sitting Mental Health Court judge, Hon. Madeleine Fitzgibbons, addressed the students before session began, explaining the definition of a problem-solving court and the court's attempt to de-stigmatize mental illness with this specialized part. She also argued that law students could benefit from learning psychology in law school.

Students observed several appearances, some including successful defendants, some including defendants who were having more difficulty. At some point during the appearance, the judge called most defendants up to the bench to privately discuss the specifics of their circumstances or some issue in greater detail. The judge had explained ahead of time to the students that she may do this, so as not to embarrass a defendant in front of the court. She was firm, but also often laudatory with defendants who were doing well. The ADA, a Touro alumna, spoke to the students after the session. She talked with the students about her large caseload, and also discussed the competitiveness of ADA jobs and of the advantage Touro students have in obtaining a position in the department. Students also had an opportunity to speak with a parole officer and the Mental Health Coordinator about their positions.

Students were then brought to the arraignment part. On this particular day, the Hon. Paul Hensley was presiding. Students were able to see the rapid pace at which arraignments are conducted. As many have historically complained, it was somewhat difficult to hear what was going on, but there was a microphone for the judge, enabling observers to hear a good portion of the proceedings. The Legal Aid attorney explained that they are constantly multitasking and often "have to wing it," as minutes before the appearance they are given only one piece of paper with the defendant's information, then handed a stack of paperwork with the charges.

The final stop on the tour that morning was lock-up, which is a holding area for prisoners coming from everywhere, from Sing Sing to the West End. Students all crowded into the booth that separates the cells from the main area of the courthouse to witness the transfer of prisoners in and out of their cells. The court officer explained that the deputies all wear Kevlar-lined gloves for searching prisoners, but they do not carry weapons.

Students then returned to the law school for an animated debriefing session. The Mental Health Court observation sparked an interesting discussion, where students debated the difference between compassion towards the defendants and "babying them." Ms. Kramer explained that once these

defendants take a plea, they can slip up only once or twice before receiving a higher sentence. Students also remarked on a number of interesting things they saw in the arraignment observation, such as an order of protection being issued against a 17 year-old, and a 14 year-old who tried to convince the judge that her parents did not need to be present at her arraignment. Students also remarked on the unequal access to justice that they witnessed; they were able to see a distinct difference between the vast majority of defendants with public defenders and the one or two with private attorneys.

### *Federal court observation*

The federal court observation by the Principal investigator took place in the spring of Year 3. Students met in the foyer of the federal courthouse, which is a large, airy, newly constructed building. The security is much stricter in this building, as only attorneys are permitted to carry their cell phones; everyone else must check theirs at the door.

On this day, students attended a jury selection conducted by the Hon. Leonard Wexler's clerk, Peter Ausili. Mr. Ausili held a conference with the attorneys beforehand, where he discussed the questions he planned to ask potential jurors. Different judges have different rules, but generally speaking the attorneys have little or no ability to conduct questioning during this procedure in federal court. Mr. Ausili said that, time-permitting, he would allow each of the attorneys to ask a few questions. Mr. Ausili also explained that the attorneys would be permitted to eliminate jurors by cause, meaning there is an actual reason why the attorney believed the juror could not be impartial, and after the questioning was complete, each would be permitted to eliminate four of the 16 jurors peremptorily (without cause), leaving a total of eight jurors.

Originally students and faculty in attendance were split up evenly so that half were sitting behind the plaintiff and half behind the defendant. During this time, Ms. Kramer instructed students how to construct a jury sheet—essentially a giant chart where one can keep track of each juror, specific notes about each juror, and who fills the seat if someone is dismissed (and for what reason). She later explained that no one ever showed her how to do such a thing in law school, but in fact it is the same format that attorneys use. Chairs were also set up at sidebar for students. Once the first sidebar was called in the midst of the proceedings, students and faculty took seats at the sidebar and remained there for the duration of the jury selection process. Students, therefore, were able to hear all of the discussion between Mr. Ausili, the attorneys, and, if applicable, the juror in question.

Mr. Ausili asked all of the jurors if they were acquainted with the plaintiff or either attorney, if they themselves or family members worked for the defendant, if they recognized the names of anyone who might come up during the course of the trial, if anyone had been involved in a suit related to the medical field, if anyone had an impairment which would prohibit them from serving on this jury (two potential jurors were dismissed due to language barriers). He then asked more questions specific to the case. Once he had finished with his general questions, he then questioned each juror one by one about their age, where they live, with whom, their education level, their occupation, and any hobbies or associations to which they belong.

Once Mr. Ausili had completed his questioning and once the attorneys completed theirs, the attorneys sat for a few minutes and debated who they would select as their peremptory eliminations.

The attorneys conferred with Mr. Ausili, then Mr. Ausili read off the names of those who were selected.

After the prospective jurors had all left the room, Ms. Kramer asked the students to indicate whom they would have eliminated, had they been attorneys for the plaintiff or the defendant. The attorneys then spoke to the students about whom they opted to eliminate and why. The answers were often surprising to the students, and included juror facial expressions, having too much or not enough identification with the plaintiff, education level, and whether or not the person was a churchgoer.

Because the process was so lengthy and because so much discussion had taken place with Ms. Kramer and the students, as well as with both of the attorneys, there was no separate debriefing session after this observation.

### B. Stakeholder Interviews

Two judges, one Legal Aid attorney, and the Program Coordinator were all interviewed during Year 1 of the program. They were asked a similar set of questions involving their impressions of the program so far, the types of questions they received from students, whether they felt the program was beneficial to the courts, what they hoped students learned from the observation experience, and what misimpressions they felt could be corrected by a good court observation program (see Appendix B).

#### *Hon. Paul Hensley*

Judge Hensley was appointed to the bench in 2002 and then elected the same year. He was a Suffolk District Court judge for five years, then was reelected in 2008 and is now an Acting Court Court Judge. He previously sat in outlying courts, dealing with land issues and landlord-tenant issues, and has been in the arraignment part for the past two years. Judge Hensley likes the observation program because he enjoys speaking with community members. Judges, he feels, should be leading figures in educating the community, especially regarding drugs, alcohol, errors in judgment, jobs in the court system, and the opportunities one gains when staying in school. Through this program, Judge Hensley believes that Touro is broadening and helping to produce more educated students. He also believes that he learns from the students through their questions and feedback.

He has positive impressions of the program so far. He wishes that he had a similar opportunity in law school; he did observe court while interning at the U.S. Attorney's office, but not until his third year of law school. He thinks that it is useful for the students to see where a lawyer stands, and what s/he says when a case is heard. When asked what types of questions he fielded from students, he reports that students often challenged procedure (i.e., why he did or did not set bail on a defendant). He feels that through having to respond to such questions and challenges, the program reminds judges of appropriate procedures, and of their obligation to educate in the community. He also believes that the program may remind judges to enunciate better on the record. He hopes that students take away some basic information from the program, such as where everyone stands, the layout of the building, the roles of court personnel, the importance of treating court officers with respect, a little bit about the law, and a sufficient level of interest to look up some of what they saw.

The judge also tried to convey how drugs and alcohol can affect a person's law career. His main recommendation for improving the program is to find a way to sustain it through the entire three years of law school.

*Hon. Joseph Bianco*

Judge Bianco was appointed to the federal bench in January 2006. Prior to this position, he worked at a prominent law firm, served as a law clerk, and worked at the U.S. Attorney's office in the Organized Crime and Terrorism Unit. He also served as the Deputy Assistant Attorney General in Washington, DC. His background is primarily in criminal law. As of January 2007, Judge Bianco was teaching at St. John's and was about to start teaching at the Touro Law Center.

During his interview, the judge said that he was shocked that other schools have not thought of this program. For first year students to go to a courtroom—or even a courthouse—is not something that many schools facilitate. In the courtroom, the students have a chance to see real legal proceedings (i.e. civil procedure, summary judgment). The judge likes to extend his schedule on days students are observing by bringing them in before the proceedings to give them a preview and answer any general questions. Otherwise, he feels, it takes too long for them to figure out what is actually happening in a particular case. After the observation, he brings them back to his chambers and asks them how they would rule on a given issue, their thoughts on the lawyers' performances, then he makes some comments. He feels the best thing as a young lawyer for him was to see really good lawyers at work.

He was interested in participating because he likes teaching and mentoring and feels that this component is almost a civic responsibility for a judge. He could sense that the program was run in an organized, focused way. He claims that he has never come in contact with such an organized, stimulating, and thorough program.

Judge Bianco suspects that other schools are afraid that judges, especially older judges, would not embrace this type of program; in fact, he claims, older judges really love it. He feels that students' enthusiasm is good for the judges to see as well. From a mentoring perspective, it is good for judges to see what students think, what interests them, and what worries them. Further, students become less intimidated when they see lawyers who cannot put something into evidence, for example. They think, "I could have done that!" He hopes that students took a few things away from the experience, namely: less intimidation going through law school, a desire to practice in court, and the knowledge that they do not need to be an expert in every part of the law—that's what libraries are for, he says.

*Sab Caponi, Legal Aid Society Attorney*

Sab Caponi is the Director of Training and CLE for the Legal Aid Society (LAS) of Suffolk County. Mr. Caponi has been with the Suffolk county LAS since 1988, prior to which he was at the Nassau County LAS. From the LAS perspective he feels it is good for students to get a realistic view of the courtroom experience. Mr. Caponi pointed out that there are limitations to the arraignment observation; even though students sit in the front pews, they are still 30-40 feet away from the action. He believes that it is difficult to put the experience in perspective without a detailed commentary from the Judge and DAs. He suggests maybe having two to three people at a time get up closer.

In general, Mr. Caponi believes that having an audience in the courtroom forces attorneys to be on their best behavior. He also said that most people do not understand the inherent handicaps facing public defenders, and though the arraignment part might not be the best place for gaining such an understanding, it is still a beginning. He feels that it would be better for students to see more of the dispositional process. He also fears that students may think that an arrest equals guilt, and expressed that it is important to disabuse students of such a perception. According to Mr. Caponi, the more students who observe, the more support can be generated for court reform for indigent defense, which he refers to as the “bastard child of the defense system.” For example, Mr. Caponi believes that through their observation, the students can witness the glaring difference in staffing and technology between the public defender and the ADA.

Mr. Caponi strongly supports the notion of attorneys and judges devoting time to the Q&A session after the observation. He feels it will be a better experience for both students and attorneys, and that the law students will not be afraid to ask tough questions of judges and attorneys in the future.

#### *Lynne Kramer*

Lynne Kramer is the coordinator of the Court Observation Program. Ms. Kramer was a matrimonial attorney in Suffolk County for over 25 years and joined the faculty of the Touro Law Center in fall 2006 specifically to run this program. She facilitated all courtroom observations, coordinated all Q&A sessions with judges and attorneys, conducted classroom debriefings post-observation and started a luncheon program for legal professionals in the county to come and speak to the first-year students.

Faculty and staff at Touro had essentially set up the program before Ms. Kramer was hired, and she had little time before the school year began to prepare. Though she knew that the acoustics were poor in the arraignment courtroom and that she would have up to 40 students observing at one time, there was little she could do this first time around. Nonetheless, she felt that the arraignment observations were well-received on the whole. She believed that the federal observations went extremely well; students watched a range of interesting trials—many of which they were also reading about in the newspaper—and had direct conversations with the judges. The feedback that she received from students was that the experience was exciting, interesting, and made them enthusiastic about participating in the system.

The Q&A sessions in federal court were “terrific,” she says. One attorney went so far as to take the students to lunch and tell them about the case. All of the judges and attorneys were forthright and shared information, and all were willing to explain and answer nearly any question. The Q&A in the arraignment part was in open court, so although the judge was receptive, not every student was as willing or eager to ask a question.

One of the aspects of the program that Ms. Kramer emphasized most is the comfort level that students gain through the experience. Entering the courtroom at such an early stage in their law careers, students will have a different vantage point when they do their readings. Practicing in court when you have never been there before is “terrifying,” she says. Through the observation program, the students learn the language that is spoken in court and the layout of the buildings. When these students graduate and come to court, they will have a much better sense of what needs to be done.

In the long run this will be beneficial to the courts as well; if the lawyers are well-trained, they will be prepared to function competently and effectively at the outset of their legal careers.

In a larger sense, Ms. Kramer expressed a desire to teach the students about the non-legal aspects of lawyering. In particular, Ms. Kramer hoped that through their observation, the students would perceive the differences between prepared and unprepared attorneys. She explained that the outcome of a case is radically affected by preparation. Accordingly, students watched and learned about methods of questioning, proper versus improper questions, personal demeanor, attire and presentability of witnesses. She said that she hopes they can overcome the intimidation factor when they realize that with some training, they can be out doing what the attorneys they observe are doing. She also hopes that the students will see that judges will treat attorneys they do not like accordingly. She is trying to teach the students to learn to be congenial and collegial, and that doing so is part of the practice of law. "A judge will treat me the way I would like to be treated in front of a client. I go out of my way to do the same thing," she explains. She also feels it makes a difference that she is not just a person who "takes" them to court; because of her history and familiarity with these courts, students are receiving a full experience.

The program represents Touro's aspiration of distinguishing itself as a law school, Ms. Kramer thinks; its accessibility to the court and ability to turn out lawyers who are immediately ready to be effective is something that not every law school is going to have.

#### *Summary of Themes and Findings*

All stakeholders expressed a generally positive view of the observation program. All believed that it was beneficial in a variety of ways to students, giving them exposure and knowledge about the courts in their first year of law school that many attorneys do not receive until they have graduated. All stakeholders also believed that it was beneficial to have judges and attorneys involved in the program, both for the students and for the judges and attorneys themselves. The judges interviewed both felt strongly that it was their civic duty to educate students and that they enjoyed doing so. All hoped that students would become more comfortable in a court setting and in speaking with attorneys and judges, and hoped that they would gain a realistic perspective of court proceedings.

#### Law Center Faculty Interviews

The Principal investigator interviewed six professors, whose time at Touro ranged from one to 25 years. All but one practiced law for at least two years, and four have taught at other schools. None were part of the planning process.

Initial impressions were overall positive, though one professor thought it was wrong to claim that Touro was the only law school in the country doing this type of program. (Drake Law School has been independently confirmed to operate a roughly analogous program.) All had positive experiences during their observation visits, and many remarked on how valuable it was that students were exposed to the things they saw in the courtroom. One professor expressed that students having this experience made classroom discussion easier since they had a frame of reference. Another appreciated how the program takes advantage of Touro's proximity to the courts.

All faculty members interviewed reported that they thought the program was valuable. One believed it was critical to students' development as lawyers. Another wished that the students could be exposed to more, as one day was just a tiny microcosm of the activities that could be going on in the courtroom. One indicated that students have brought questions to her class based on what they saw in court, which delighted her. Many also felt that the program could be beneficial to the courts. One professor remarked that it was "an investment" on the part of the judges and administrators, as the process will yield lawyers who are more professional and who understand the importance of good relationships in the courthouse. Others felt that the program was a good opportunity for the judges to reflect and to "keep them on their toes." All who attended a Q&A session with the judge and attorneys believed this component was valuable as well. One believed that this was the point at which students began to feel as though they were being taken seriously, as part of the profession. Another professor commented specifically on Ms. Kramer's skill moderating these sessions.

Faculty indicated that students learned what it would be like to be in court, a privilege that many of them did not enjoy until the end of law school or even after. They had the opportunity to see some good lawyering, but more importantly some bad lawyering. Further, they observed how courtroom proceedings actually work, as opposed to how they are portrayed on television. Many pointed to the lesson students were receiving in the importance of professional relationships and professionalism in general. Several faculty members mentioned that Ms. Kramer was a great embodiment of this lesson—the court officers received just as much attention from her as did the judges. One faculty member stated that if the whole experience had ended after watching her say hello to all the various people she knew in the court, it still would have been worthwhile.

Faculty hope that students see the logic involved in proceedings, and that the courts are not just comprised of a random set of rules. They also hoped that the experience would reduce the intimidation and that students would see that there are many career path options, including courtroom practice. One hoped that students would be inspired to sign up for the judicial clinic. Another said that she hopes students see something that inspires them and sparks their imagination in a way not possible in a classroom. Hopefully they will see that being a lawyer is more complicated than they thought, and that law school will only take them halfway to where they want to be. Others hoped the students gained insight into professionalism and respect. One professor suggested that the students would hopefully see that attorneys make mistakes, and that sometimes they need to look something up. Several hoped the experience would debunk their notions of television sensationalism, and that they would realize that there are other important players besides judge and attorney.

Nearly all faculty suggested adding at least one more observation per semester, realizing that adding observations would probably also necessitate adding another faculty member to the program. Several also realized that this task would require someone of Ms. Kramer's expertise. Other suggestions from faculty members included adding a writing component, publicizing court schedules, encouraging students to go back for more observations on their own, even after the first year, and getting other faculty more involved in the courts.

### C. Focus Group Data

Several themes emerged from the focus group, which was held in April 2007 and comprised of eight first-year law students in Year 1 of the program.

#### *Seeing a Future Career*

Students felt the program helped them look towards the future, rather than being stuck in their books reading about “dead briefs.” They liked learning the layout of the court, as they felt that they would know where to go to file motions, etc., when they started practicing in the county. In terms of the buildings themselves, many students reported that they found the federal court building inspirational. It felt more grand and professional than the district court, and students could see themselves working there for the rest of their lives or sitting as judges there.

Students also described feelings of belonging to a “club,” of feeling they could do what other lawyers were doing, as though they were already part of the justice system. One said:

...it makes you feel like they want us to succeed—and they also make you feel like you’re part of the club. You know, you’re in law school—eventually you’re going to be one of us... And it’s just nice to know that... you’re not just studying and torturing yourself on the test... because you’re going to get out and get a good job. You’re really part of something else. And they make you feel like that.

While some said that they wanted to become judges based on the observation experience, others received a sense of which jobs might not be as well suited to them; one student said state court was a great advertisement for why not to become a prosecutor, presumably in response to his negative impression of the arraignment part.

#### *Interactions with judges and court officers*

Students valued the attention judges paid them by bringing them back into chambers, explaining the case, and asking for their opinion. Especially in the second semester, students were stunned at the amount of attention paid to them and the quantity and quality of their interactions with judges during the observations. Students also mentioned appreciating the opportunity to obtain some insight into the way judges make their decisions. They were in fact surprised by the candor of the judges they encountered:

He really said to us... ‘Sometimes the presence and manner of the person before me is in his final decision. If he had an attitude, if he is not dressed properly, if it’s something about him, that’s what’s going to make my mind up. You know, sometimes I’m more lenient.’ I was shocked at how candidly he admitted to the level of subjectivity that he applies when he makes a decision. And I thought that was really a great opportunity just to see how a judge really operates and he was honest when we talked to him.

Several students also remarked on how impressed they were by how Professor Kramer was treated by court personnel. “It’s almost like she’s a celebrity in the courtroom,” one student said. Another

stated, “All the court officers acknowledge her. And every attorney that walks by, they, you know, put their hand on her back or shake her hand. Everyone knows who she is.”

### *Surprises*

The several surprises reported by students are a good indication of learning. First, students were surprised by the sizable role of court officers in the arraignment part. They were also surprised by how few RORs (Released on Own Recognizance) there were in arraignment court. More than one student compared the arraignment part to a factory. One also realized a personal connection to the arraignment part, as he felt that some of the defendants could have been them or people they knew, based on the types of charges he saw that day (i.e., DUI, drug charges). Students also took note of the appearances of various people they saw in court and were particularly surprised by how poorly some of the family members of defendants in arraignment court were dressed.

When asked to compare the state and federal court experiences, students felt that litigants were more adequately informed in federal court and that the atmosphere on the whole was calmer. They also took note of the inequality of representation between defendants of different socioeconomic statuses in the state court.

### *Suggestions/Comments*

Suggestions primarily concerned logistical issues. One of the most common requests was for a better sound system in the arraignment part. Another popular suggestion was to hold the classroom debriefings the same day as the courtroom observation. Further, some students felt that both the debriefing sessions and the arraignment observations could be shorter than they were that year.

Many students commented that they would like to go back for more courtroom observation, even on their own time. They would like to be notified of interesting cases ahead of time (one mentioned hearing about a possible LCD screen in the student center) so they can walk over to court when they have a free hour. Some students thought there should be a more intense courtroom observation class where students go over to court twice a week. Yet others felt observations should be worked into other classes, whereby students would make visits when the class topic is appropriate (i.e. observing arraignments in conjunction with a criminal law class). Some students also wanted to see more court operations in state court besides arraignments.

In response to a question about the readings, one student suggested including additional reading on the Suffolk courts. Another suggested adding a reading specifically on what students are observing.

## D. Results of Student Survey Data

Due to the poor response rate in Year 1 (33% at baseline, 14% at follow-up), the following results are exclusively for students who experienced the program in its second and third years. Paired sample t-tests were used when comparing responses from within the same cohort, and independent-samples t-tests were used to compare results between cohorts (e.g., between year 2 and year 3 responses). Notably, the paired sample t-tests can only include students who answered both surveys in a given analysis (e.g., baseline and follow-up 1 or baseline and follow-up 2). However, the tables shown below report outcomes on each survey for all students completing it, even if they did not complete one or two of the other surveys. Cross-tabs on multivariate models were run on select

answer items, primarily to examine whether gender or age were factors in the likelihood of a particular rating or attitude.

### *Baseline Demographics*

The student population consisted mostly of U.S.-born (84%), Caucasian students, the majority of which were under age 25 (69% were under 25 in year 1, 80% in year 2, and 85% in year 3). Nearly all students surveyed in years 2 and 3 were full-time (due to the logistics of survey administration); therefore, night students are severely underrepresented in the sample. During year 2, 62% of all students (83% of full-time only) responded at baseline, 51% of all students (69% of full-time only) responded at the first follow-up, and 28% of all students (33% of full-time only) responded at the second follow-up. In year 3, at baseline 64% of all students responded (86% of full-time only), 53% of all students (68% of full-time only) responded at the first follow-up, and 45% of all students (55% of full-time only) responded at the second follow-up. Most students (75%) expected to leave law school with over \$60,000 in debt.

### Legal Areas of Interest

Over the course of the three surveys, private firm remained the most popular desired area of practice, followed by government. Below, Table 1 illustrates the top-rated expected areas of practice (A) and specialization (B) over the course of the three surveys. (Students were asked to select their top three choices of specialization.)

Table 1: Expected areas of practice and specialization, years 2 and 3 combined

|                                  | Baseline |     | Follow-Up 1 |                  | Follow-Up 2 |                 |
|----------------------------------|----------|-----|-------------|------------------|-------------|-----------------|
| N                                | 264      |     | 210         |                  | 138         |                 |
| A. Areas of practice             | #        | %   | #           | %                | #           | %               |
| Government                       | 32       | 12% | 19          | 9%**             | 14          | 10%***          |
| Public Interest                  | 18       | 7%  | 12          | 6%               | 14          | 10%             |
| District Attorney                | 18       | 7%  | 16          | 8%               | 8           | 6%*             |
| Private Practice                 | 154      | 58% | 133         | 63% <sup>+</sup> | 80          | 58%***          |
| Solo Practice                    | 16       | 6%  | 10          | 5%               | 6           | 4%*             |
| Defense Attorney                 | 9        | 3%  | 9           | 4%               | 6           | 4%              |
| Academic                         | 5        | 2%  | 2           | 1%               | 4           | 3%              |
| Other                            | 12       | 5%  | 9           | 4%               | 6           | 4%              |
| B. Areas of specialization       |          |     |             |                  |             |                 |
| Corporate and securities         | 83       | 10% | 58          | 11%              | 27          | 9%*             |
| Criminal                         | 77       | 10% | 55          | 10%              | 38          | 12%             |
| Entertainment                    | 71       | 9%  | 40          | 7%*              | 16          | 5%***           |
| Family and juvenile              | 51       | 6%  | 38          | 7%               | 24          | 8%              |
| International                    | 52       | 7%  | 31          | 6%               | 0           | 0%              |
| Litigation and Trial             | 46       | 6%  | 32          | 6%               | 20          | 6%              |
| Patent and Intellectual Property | 36       | 5%  | 24          | 4%               | 11          | 4%              |
| Public Interest                  | 24       | 3%  | 25          | 5%               | 22          | 7% <sup>+</sup> |
| Real estate                      | 63       | 8%  | 44          | 8%               | 28          | 9%              |
| Sports                           | 52       | 7%  | 25          | 5%*              | 15          | 5% <sup>+</sup> |
| Trusts and Estates               | 29       | 4%  | 35          | 6%               | 17          | 6%              |
| Undecided/Other                  | 209      | 26% | 143         | 26%              | 91          | 29%             |
| Total                            | 793      |     | 550         |                  | 309         |                 |

+ p<.10 \* p<.05 \*\* p<.01 \*\*\* p<.001

Note: Paired samples t-tests are reported between baseline and follow-up 1, and between baseline and follow-up 2, with significance denotations in the follow-up columns.

Trends observed include a steady drop in interest in entertainment law (9% at baseline, to 7% at first follow-up, to 5% at second follow-up), as well as a drop in interest in International Law, particularly from follow-up 1 (6%) to follow-up 2 (0%). Additionally, a steady increase was observed in public interest law. Corporate and securities, as well as criminal law, was rated consistently throughout all three surveys. Litigation and trial also remained consistent between baseline and follow-up when years 2 and 3 were combined; however, notably, there was a marked drop in interest in litigation in year 3. Whereas year 26% of year 3 students expressed an interest in litigation at baseline (as opposed to 6% in year 2), at follow-up 1, the percentage had dropped to 5%, followed by 6% in follow-up 2.

Table 2: Where do you think you will practice law? (years 2 and 3 combined)

|                   | Baseline |     | Follow-Up 1 |     | Follow-Up 2 |     |
|-------------------|----------|-----|-------------|-----|-------------|-----|
| N                 | 318      |     | 247         |     | 159         |     |
| Inside courtroom  | 86       | 27% | 55          | 22% | 62          | 39% |
| Outside courtroom | 159      | 50% | 126         | 51% | 72          | 45% |
| Not sure          | 73       | 23% | 66          | 27% | 25          | 16% |

+ p<.10 \* p<.05 \*\* p<.01 \*\*\* p<.001

Note: Paired samples t-tests are reported between baseline and follow-up 1, and between baseline and follow-up 2, with significance denotations in the follow-up columns.

Note: Though paired-samples t-tests did not yield statistically significant results, percentages for the surveyed populations as a whole varied notably from baseline to follow-up 1 and follow-up 2, as well as from follow-up 1 to follow-up 2.

As seen in Table 2, the number of students who expected to be practicing inside a courtroom increased dramatically between follow-up 1 and follow-up 2 (17%), though the increase was minimal between baseline and follow-up 1. In concordance with the qualitative data reflecting students' captivation with federal court, as well as their high rating of the federal court observation in the survey itself, it is likely that the second observation made a more favorable impression on students than the first semester observation.

#### *Intimidation*

At baseline, students rated their intimidation level at 4.3 out of 10, then reported a significant increase in intimidation at 5.0 after the first follow-up survey (p<.001). This figure remained at 5.0 out of 10 after the federal court observation, though significant when compared to baseline (p<.001). It is possible that never having been in a court before, students were actually less intimidated by the idea of the courtroom or of the judge until they actually entered a courtroom and were able to observe the seriousness of proceedings. Qualitatively, students also seemed to be in awe of the federal court itself, and this reverence may have impacted students' overall attitude of the federal court.

#### *Fairness*

Overall, students rated fairness in Suffolk County courts positively, though somewhat less so after the first semester criminal court observation (see Table 3). Whereas initially they rated whether people received fair results in the Suffolk County courts as 4.1 out of 5, after observation this number decreased to 3.6 (p<.05). This rating then remained about the same when students were asked about fairness in the federal court part.

Students also noted discrepancies when it came to a defendant's ethnicity, economic status and sex. An index measuring students' perceptions of disparate treatment was created from these items: "In most cases, courts treat all ethnic and racial groups alike," "Courts treat poor people and wealthy people alike," and "Courts treat males and females alike". The results did not change significantly from baseline (7.0 out of 12) to follow-up 1 (6.9 out of 12). Interestingly, perceptions of fairness then increased from 6.9 to 7.4 from follow-up 1 to follow-up 2 (p<.001). This increase was likely a reflection of the different type of observations students experienced, and the different types of defendants or litigants they encountered in the federal court.

Table 3: Perceptions of fairness

|                                                                                                | Baseline | Follow-up 1      | Follow-up 2      |
|------------------------------------------------------------------------------------------------|----------|------------------|------------------|
| N                                                                                              | 347      | 273              | 291              |
| How often do you think people receive fair results from the Suffolk county courts?             | 4.1      | 3.6*             | 3.5              |
| Disparate Treatment Index (sum of a+b+c)                                                       | 7.0      | 6.9              | 7.4***           |
| a. In most cases, courts treat all ethnic and racial groups alike                              | 2.5      | 2.4 <sup>+</sup> | 2.5*             |
| b. Courts treat poor people and wealthy people alike                                           | 2.0      | 2.0              | 2.2*             |
| c. Courts treat males and females alike                                                        | 2.5      | 2.5              | 2.7*             |
| The courts treat defendants differently... according to the defendant's type of representation | 3.1      | 2.8 <sup>+</sup> | 2.8 <sup>+</sup> |
| In general, how would you rate your confidence in the Suffolk county courts                    | 2.8      | 3.3              | 3.7              |
| In general, how would you rate your confidence in the federal court                            |          |                  | 3.7 (N=113)      |

+ p<.10 \* p<.05 \*\* p<.01 \*\*\* p<.001

Note: Paired samples t-tests are reported between baseline and follow-up 1, and between baseline and follow-up 2, with significance denotations in the follow-up columns.

Finally, students' overall "confidence" in the Suffolk County courts ("In general, how would you rate your confidence in the Suffolk county courts") went up from 2.8 out of 5 at baseline to 3.3 at follow-up 1 ( $p<.001$ ) and up to 3.7 at follow-up 2 ( $p<.001$ ).

### *Resources*

Students' opinions on the amount of resources the prosecutor and the defense attorney had did not differ significantly between baseline and follow-up 1. At baseline, students felt that the DA had slightly more resources than the defense (3.4 out of 5), and this rating dropped only slightly to 3.2 after the first semester observation.

### *Justice*

There were few significant differences between baseline and either follow-up on items concerning students' perceptions of justice (see Table 4). However, on the item "Justice is served through a system of punishment," students agreed more strongly at both follow-ups, with means increasing from 3.2 out of 5 at baseline to 3.3 at follow-up 1 and 3.4 at follow-up 2 ( $p<.001$ ,  $p<.05$ , respectively). Further, on the item "Justice should depend on the individual circumstances of a case," means decreased slightly from 4.1 out of 5 at baseline to 4.0 at follow-up 2 ( $p<.05$ ). Lastly, on the item "Law often has little to do with justice," there was some fluctuation, though students ultimately ended about where they started (2.9 to 2.8 to 3.0). These ratings are all close to neutral (3 on the 5-point scale).

Table 4: Perceptions of justice

|                                                                                   | Baseline | Follow-up 1 | Follow-up 2 |
|-----------------------------------------------------------------------------------|----------|-------------|-------------|
| N                                                                                 | 347      | 273         | 291         |
| Justice is served through a system of punishment                                  | 3.2      | 3.3**       | 3.4**       |
| Justice should depend on the individual circumstances of a case                   | 4.1      | 4.0         | 4.0*        |
| Criminal defendants receive due process almost all the time in our current system | 3.2      | 3.1         | 3.2         |
| Law often has little to do with justice                                           | 2.9      | 2.8**       | 3.0         |

+ p<.10 \* p<.05 \*\* p<.01 \*\*\* p<.001

Note: Paired samples t-tests are reported between baseline and follow-up 1, and between baseline and follow-up 2, with significance denotations in the follow-up columns.

### *Courtroom Dynamics*

At baseline, students rated the item “defense counsel clearly explains to the defendant everything going on with his/her case” 3.5 out of 5; at follow-up 1, this rating dropped significantly to 3.2 (p<.001) and remained down at 3.1 at follow-up 2. Students also indicated a rating of 4.1 out of 5 at baseline on the item “how much does the judge listen to the recommendations of the prosecutor” (1 being “not at all” and 5 “very much”). This rating also dropped, to 3.1, at follow-up 1 (p<.001). Similarly, although there was no significant difference between baseline and follow-up 1, between follow-up 1 and follow-up 2 there was a significant decrease in how much students felt the judge listens to the recommendations of the defense attorney (3.7 vs. 3.1, respectively, p<.001).

### *Professionalism and pro bono work*

As shown in Table 5, students rated the item “attorneys are highly prepared” at 3.6 (out of 4) at baseline; when isolating only those students who answered both the baseline and follow-up surveys (not shown in Table 5), the mean dropped significantly (p<.01), and crept up to 3.5 at follow-up 2 (after the federal court observation). Students also rated “well-dressed attorneys are more effective” at 3.4 at baseline. This figure jumped significantly to 3.8 at follow-up 1 (p<.05). However, there was little change in students’ rating of this item between follow-up 1 and follow-up 2.

Table 5: Professionalism items

|                                                | Baseline | Follow-up 1 | Follow-up 2 |
|------------------------------------------------|----------|-------------|-------------|
| N                                              | 347      | 273         | 291         |
| Well-dressed attorneys are more effective      | 3.6      | 3.8*        | 3.7         |
| Attorneys are highly prepared                  | 3.6      | 3.4***      | 3.5***      |
| Importance of doing pro bono work              | 3.1      | 3.1         | 4.3         |
| A lawyer has an obligation to do pro bono work | 3.3      | 3.5         | 3.2         |

+ p<.10 \* p<.05 \*\* p<.01 \*\*\* p<.001

Note: Paired samples t-tests are reported between baseline and follow-up 1, and between baseline and follow-up 2, with significance denotations in the follow-up columns.

Note: Paired-samples t-tests yielded statistically significant results on items that do not appear significant based on their means alone.

Students' ratings on the item "How important is it for you to do pro bono work" did not change from 3.1 at baseline to 3.1 at follow-up 1. However, there was a marked jump from 3.1 at follow-up 1 to 4.3 at follow-up 2. While not statistically significant, such an increase is notable.

*Program Feedback and Logistics*

Observation in arraignment part, observation in state/district part, Q&A sessions with judges and attorneys, and observations and Q&A sessions with judges in federal court were all rated 3.5 out of 4 and above for most informative during both years. Convenience to court and convenience of having a debriefing session the same day as the observation were similarly rated very highly overall (3.5-3.6), with small declines in the ratings from year 2 to year 3. Students similarly gave relatively high ratings (on a 1-4 scale) to classroom debriefings (3.3-3.4), convenience of getting to the court complex (3.5-3.6), enjoyableness of dinners with legal professionals (3.4), and usefulness of those dinners (rated a bit lower at 3.1).

Table 6, below, illustrates students' ratings of the most worthwhile aspects of the observation program. Students who completed the second follow-up surveys rated the Q&A session with judges and attorneys as the most worthwhile program component at 34%. Other highly rated components include observation in the arraignment part (19%), and the observation in the federal part (28%).

Table 6: Popularity of Program Components

|                               | Follow-Up 2 |     |
|-------------------------------|-------------|-----|
|                               | N           | %   |
| Arraignment part              | 30          | 19% |
| District/state part           | 20          | 13% |
| Federal part                  | 45          | 28% |
| Lockup                        | 8           | 5%  |
| Classroom debriefing session  | 3           | 2%  |
| Q&A with judges and attorneys | 54          | 34% |

*Other comments*

Students were permitted to include qualitative comments at the end of each of the surveys. The vast majority indicated that they were pleased with the program, but many of them stated that they wished there were more organized observation trips during each semester, or that in addition to the one formal observation trip, students should be required to go to court several times on their own. A few indicated a wish to follow a trial from start to finish. Additional positive comments included several about Ms. Kramer, such as "Professor Kramer is extremely helpful, informative, and a great asset to the program." One student commented specifically on the Q&A sessions, writing "Continue the interaction between judge and students. Interaction is FANTASTIC and completely unique. I loved our federal court observation..." There were several positive comments about the program as a whole, as well; for instance, "I loved the experience and the feeling. The court observation reminded me of what I am in law school for. It was the greatest feeling."

As stated above, the greatest number of negative comments concerned the number of observations during the year. In year 3, there were also a few students who indicated discontent with the way Touro has sold this program as a way to entice students to enroll; as a result, they expected far more than one observation per semester. As one wrote, "Either offer going to court more or make it clear

students go once a semester. A three-hour block is given once a week through the semester and we go once. It's very misleading to say students are 'immersed' in the courtroom experience."

### Survey Summary: Major Themes and Findings

#### *Demographics*

- The student population consists mostly of U.S. born, Caucasian students, the majority of which are under age 25.
- Most students expected to leave law school with over \$60,000 in debt.
- Over the course of the three surveys, private firm remained the most popular desired area of practice, though there was an increased interest in public interest and family law.

#### *Intimidation*

- Students initially rated their level of intimidation with the courtroom and the judge at 4.3 out of 10. By the end of the federal court observation, the rating increased to 5.0.
- Qualitatively, students seemed to be in awe of the federal court itself, and this reverence may have impacted their overall attitude of the federal court.

#### *Fairness*

- Overall, students rated fairness in Suffolk County courts positively, although these ratings declined after the criminal court observation.
- Students noted discrepancies regarding a defendant's representation, as well as his economic status and ethnicity. These ratings marginally improved after the second semester federal court observation.
- Interestingly, although the question explicitly tapping perceptions of "fair results" declined from baseline to follow-up 2, perhaps reflecting the totality of what the students learned concerning court operations and procedures, their ratings of "confidence" in the Suffolk courts significantly increased (2.8 to 3.7).

#### *Professionalism and pro bono work*

- Students' agreement with the statement "attorneys are highly prepared" fell significantly between baseline and follow-up 1. Signaling greater recognition of the role of professional self-presentation, students' agreement that "well-dressed attorneys are more effective" increased significantly between baseline and follow-up 1 (3.6 out of 4 to 3.8 out of 4).
- While ratings on the item "How important is it for you to do pro bono work" did not change from baseline to follow-up 1, they did jump from 3.1 at follow-up 1 to 4.3 at follow-up 2.

#### *Program Logistics*

- Observation in arraignment part, observation in state/district part, Q&A sessions with judges and attorneys, and observations and Q&A sessions with judges in federal court were all rated 3.5 out of 4 and above for most informative.
- Convenience to court and convenience of having a debriefing session the same day as the observation were similarly rated very highly, though less so in year 3.

## V. Study Limitations

There are a few limitations to the data collected for this evaluation, though the quality of data certainly improved dramatically in years 2 and 3 as compared with year 1. First, and most obvious, the data from year 1 turned out to be mostly unusable, limiting our data only to years 2 and 3 and excluding the pilot year. Additionally, the response rate at follow-up 2 remained fairly low, especially during year 3. Those who did take the time to complete this last survey may have self-selected in terms of their amount of enthusiasm for the program, or, alternately, their amount of displeasure.

Another challenge to the validity of the data is the fact that students were broken up into small groups, and no two groups saw the same proceedings. This was the case for both semesters; though all students did observe the arraignment part, and in year 2 this part had the same judge sitting for all arraignment appearances, all other appearances varied depending on the docket for that day. Accordingly, opinions students form may be largely based on what they witnessed on any given day; those who observed a problem-solving court may have different opinions from those who observed a conventional criminal court. Those who observed a federal jury selection may hold different views from those who observed civil motion practice. Some groups did observe in the same judge's courtroom, but the case was never the same. Students were not asked to share the date of their observation because it was an additional piece of potentially identifying information. Furthermore, it would have been extremely difficult to compare all ten or so groups to one another to determine group-specific differences.

A more conceptual limitation concerns the amount and type of exposure students received to the court system. While faculty indicated the importance of evaluating students' attitude changes regarding justice and the court system in general, two observation sessions, though accompanied by the Q&A sessions with judges and attorneys, comprise only a small overall introduction to the system as a whole. Therefore, one would have difficulty hypothesizing that such an amount of observation could strongly impact students' attitudes regarding justice, fairness, and other aspects of the court system.

## VI. Conclusions and Recommendations

All parties interviewed, as well as the student survey and focus group feedback, reflect high levels of enthusiasm about the court observation program. Students appear to be reconsidering their future career choices and learning the value of professionalism. Perhaps most importantly, students are gaining experience in their first year of law school that many lawyers do not obtain until they graduate.

The judges, attorney, and faculty members interviewed seem invested in and supportive of the program. Further, because of her extensive relationships in both the state and the federal court, Ms. Kramer was an effective program coordinator, reflected in particular in the largely laudatory student feedback concerning her role.

In the program, the students gain an introduction to the physical layout of the courts, as well as to many of the players in a court complex where many of them may find themselves employed post-graduation. The program gives them an opportunity to ask questions of attorneys and judges, and to gain a “behind-the-scenes” look at different kinds of proceedings. Suggesting a particular impact of the federal courtroom observation, there was a marked jump in the percentage of students who were interested in practicing inside a courtroom after the second follow-up survey. Having an opportunity to see what options are available to them in a courtroom may have impacted their assumptions about having a career in the courtroom.

Some additional changes were noted in attitudes about fairness, with students noting a marked discrepancy between fairness in the state court as compared to the federal court; witnessing arraignments, in particular, perhaps combated the naiveté many faculty members suspected was prevalent in the student population. Ratings of fairness decreased after observing criminal court, but on a question item tapping a somewhat different type of general perception, students nonetheless expressed greater overall “confidence” in the courts.

Although stakeholders hoped that students’ intimidation levels would be reduced, the results on these items were inconclusive. Further, there was not as much of a jump in attitudes about pro bono work as faculty may have wished, but overall the item “How important is it for you to do pro bono work?” increased quite markedly.

Because of the limitations in the data, as well as students’ brief exposure both to the state and federal courts, one cannot draw definitive conclusions from many of the attitudinal items on these surveys. While overall satisfaction with the program itself was high, many students complained that they wished there had been more observations. Program planners will hopefully take student and faculty feedback into consideration in future planning, either by hiring additional staff, or, if not feasible, expanding the requirements of the program and instituting informal observation requirements throughout the semester. In order to formally implement any school-level expansion, additional staff would be necessary. Selecting a faculty member to assist Ms. Kramer would need to be a carefully considered decision, as many students, faculty, and judges alike attributed much of the success of the program to Ms. Kramer herself. This additional faculty member would ideally have many years of experience in the Suffolk County and/or federal courts.

Going forward, Touro might also consider who else might benefit from this program, particularly second- and third-year students. Before doing so, feedback—both from students and from faculty—would suggest that first-year students would benefit from even more courtroom observation than they are currently experiencing.

**APPENDIX A: Touro Law Project Evaluation**  
**Faculty Interview Protocol**

Thank you for taking the time to speak with me today. As you know, The Center for Court Innovation, the independent research and development arm of the New York State Office of Court Administration, is conducting a process evaluation of the court observation program at Touro Law Center. We have requested your participation in this interview because we're interested in hearing your thoughts about the observation itself from the faculty perspective. You can refuse to answer any question or end the interview at any time, for any reason.

First, could you talk a little bit about your background?

How long have you been at Touro?

At what other schools have you taught?

If you are/were practicing, in what area and for how long?

Were you part of the planning process for Touro Law Center's Court Observation project? If so, what was your role?

What are your initial impressions of the project?

Did you attend any of the observations? Can you tell me about your experience?

Do you think it is useful to the judges and court administrators at the Cohallen Court Complex to have Touro Law students observing court proceedings? [how/why?]

How useful do you think the observations are for students?

How useful are the Q&A sessions?

What do you think the students learned from the observation experience?

What do you hope the students learned from the observation experience?

What kind of misimpressions do you think students have that would be corrected by a good observation program?

Do you have any suggestions to make the court observation program more useful to the students?

**APPENDIX B: Touro Law Project Evaluation**  
**Stakeholder Interview Protocol**

Thank you for taking the time to speak with me today. The Center for Court Innovation, the independent research and development arm of the New York State Office of Court Administration, is conducting a process evaluation of the new court observation program at Touro Law Center. We have requested your participation in this interview because we're interested in hearing your thoughts about the observation itself from the court staff perspective. You can refuse to answer any question or end the interview at any time, for any reason.

First, could you talk a little bit about your background?

How long have you been in your current position?

On what other benches have you sat? (Judge)

Where else have you practiced? (attorney)

Who explained the Touro Law Center's Court Observation project to you?

Why did you agree to participate?

What were your initial impressions of the project?

Can you describe for me what happened? (Probes: How many students usually showed up, where did they sit, were the proceedings audible to them)

Do you think it is useful to the judges and court administrators here at the Cohallen Court Complex to have Touro Law students observing court proceedings? [how/why?]

How useful do you think the observations are for students?

How useful are the Q&A sessions?

What do you think the students learned from the observation experience?

What do you hope the students learned from the observation experience? What were you trying to convey?

What were some common questions or comments from students?

Were there aspects of the court proceedings which surprised or were confusing to them?

Did any students make observations or comments you found particularly interesting or unusual?

Did students see comparable cases or were there any days that stand out to you as being markedly different?

What kind of misimpressions do you think students have that would be corrected by a good observation program?

Do you have any suggestions to make the court observation program more useful to the students? To Touro Law Center? To judges and court administrators?

## APPENDIX C

# Touro Law Center Court Observation Project: Baseline Survey

Thank you for taking the time to fill out this survey. Even if you do not know the answers to every question, please do your best to provide an educated guess in your response. Remember that the survey is voluntary and that you may skip questions or discontinue the survey at any time.

**Unique ID:** Your answers to the next three questions will comprise your ID for this survey and for any follow-up surveys.

1) Please enter the first two letters of your mother's maiden name. \_\_\_\_\_

2) Now please enter the date of your birth (1-31) \_\_\_\_\_

3) Lastly, please enter the number of siblings you have (if you have 1 sibling you would enter "01").  
\_\_\_\_\_

### A. Court Proceedings

*First, we will ask you some questions about court proceedings.*

4) Have you ever been in a courtroom before? Check all that apply:

- Yes, I served on a jury
- Yes, I was a party to a case
- Yes, I observed courtroom proceedings
- No, I have never been in a courtroom
- Other (please specify)

If you selected other please specify:

---

5) How familiar are you with the courts in Suffolk county?

- Very familiar
- Somewhat familiar
- Somewhat unfamiliar
- Very unfamiliar
- Not sure

6) How would you characterize the available resources of a typical DA and defense counselor (i.e., staff, technology)?

- The defense has much more
- The defense has a bit more
- The resources are equal
- The DA has a bit more
- The DA has much more

7) Please indicate how much you agree or disagree with the following statement:

The prosecutor goes to trial with approximately the same number of criminal cases as those that are plea bargained.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

8) In the criminal cases in Suffolk county, what percent of defendants do you think are represented by a public defender (as opposed to a private attorney)?

\_\_\_\_\_ %

9) I feel intimidated by the idea of walking into a courtroom.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

10) I feel intimidated by the presence of the judge.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**B. Justice Values**

11) How much do you agree or disagree with the following statements?

|                                                                                    | Strongly Agree        | Agree                 | Neutral               | Disagree              | Strongly Disagree     |
|------------------------------------------------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Justice is served through a system of punishment.                                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Justice should depend on the individual circumstances of a case.                   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Criminal defendants receive due process almost all the time in our current system. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Law often has little to do with justice.                                           | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

12) Now we would like to ask you some questions about the court system.

In spite of its problems, the American justice system is still the best in the world.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**13) In general, how would you rate your confidence in the Suffolk county courts?**

- Very confident
- Somewhat confident
- Not very confident
- Not at all confident
- Not sure

**14) The next questions will reflect attitudes about key figures in the courtroom. How much do you agree or disagree with the following statements?**

|                                                                                                                            | Strongly Agree        | Agree                 | Neutral               | Disagree              | Strongly Disagree     |
|----------------------------------------------------------------------------------------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Judges should have more influence on the sentences imposed on defendants convicted of a crime.                             | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Judges should draw on therapeutic concerns (i.e., what will help solve the defendant's problems) in their decision-making. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Most lawyers do what is best for their clients.                                                                            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| In most cases, attorneys are highly prepared.                                                                              | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Attorneys who are well-dressed tend to be more effective.                                                                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

**C. Court Interactions**

*Now we will ask you about court dynamics.*

**15) To what extent do you think the judge listens to the recommendations of the prosecutor?**

- Very much
- Somewhat
- A bit
- Not at all

**16) To what extent do you think the judge listens to the recommendations of the defense counsel?**

- Very much
- Somewhat
- A bit
- Not at all

**17) The courts in Suffolk county are unbiased in their case decisions.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**18) The courts in Suffolk county treat criminal defendants with dignity and respect.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**19) How true are the following statements?**

|                                                                 | Very true             | Somewhat true         | Somewhat false        | Very false            |
|-----------------------------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| In most cases, courts treat all ethnic and racial groups alike. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Courts treat poor people and wealthy people alike.              | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Courts treat males and females alike.                           | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

**20) How often do you think people receive fair results from the Suffolk county courts?**

- Never
- Rarely
- Sometimes
- Often
- Very often
- Not sure

**21) The courts treat defendants differently during court proceedings, according to the defendant's type of representation (i.e., public defender vs. private attorney).**

- Very true
- Somewhat true
- Somewhat false
- Very false

**22) Criminal defendants are usually informed of their rights.**

- Very true
- Somewhat true
- Somewhat false
- Very false

**23) Judges want to get a case over with as quickly as possible.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**24) Most lawyers are more concerned with their own time management than their client's best interests.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**25) How long would you estimate the average arraignment appearance to be?**

\_\_\_\_\_ (minutes)

26) Judges clearly explain to the defendant everything going on with his/her case.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

27) Defense counsel clearly explains to the defendant everything going on with his/her case.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

28) Defense counsel and the defendant usually meet before the court appearance to discuss the case.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**D. Bail and Sentencing**

*This set of questions regards bail and sentencing issues.*

29) The amount of bail set is dependent on (rate importance on the scales below, 1 being least relevant and 5 being most relevant):

|                                                                                    | 1                     | 2                     | 3                     | 4                     | 5                     |
|------------------------------------------------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The risk of the defendant not appearing to face the charges if bail is not imposed | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The severity of the crime with which the defendant is charged                      | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The defendant's race, gender, socio-economic status, etc.                          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

30) Bail-setting is a fair procedure in the judicial system.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

31) The primary goal of the criminal justice system should be...

- To treat and rehabilitate offenders
- To punish offenders
- Both
- Neither

**32) The priority of the prosecutor is to convict people charged with crimes, not necessarily to get a just outcome.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**33) Alternative sentences, such as doing community service, should be used more often instead of sending people to jail.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**34) Treatment courts, such as mental health court or drug court, should be used more often instead of sending people to jail.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

#### **E. Background Characteristics**

*These last questions ask some basic questions about you.*

**35) How old are you?**

\_\_\_\_\_

**36) What is your gender?**

- Male
- Female

**37) Are you a full-time or part-time student?**

- Full-time
- Part-time/evening

**38) Have you been to criminal court yet for class observation?**

- Yes
- No

**39) Were you born inside the United States?**

- Yes
- No

**40) How would you describe your race or ethnicity?**

- Black/African American
- Caucasian/White
- Hispanic/Latino
- Asian/Pacific Islander
- Multiracial
- rather not say
- Other (please specify)

If you selected other please specify:

---

**41) Have you ever worked for a criminal justice agency?**

- Court employee
- Police officer
- Paralegal
- I have never worked for a criminal justice agency
- Other (please specify)

If you selected other please specify:

---

**42) How much educational debt from attending law school to you expect to have upon your graduation?**

- Less than \$30,000
- \$30,000 - \$59,999
- \$60,000 - \$99,999
- \$100,000 - \$149,999
- \$150,000 or more

**43) Please select your desired practice area. Where would you prefer to work?**

- Government
- Public Interest
- District Attorney
- Private Firm
- Solo Practice
- Defense Attorney
- Academic
- Other (please specify)

If you selected other please specify:

---

**44) Which fields best describe your expected area(s) of specialization? Rank your top 3 options.**

- |                                                              |                                                           |
|--------------------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Alternative dispute resolution      | <input type="checkbox"/> Litigation and trial             |
| <input type="checkbox"/> Bankruptcy                          | <input type="checkbox"/> Military                         |
| <input type="checkbox"/> Civil rights                        | <input type="checkbox"/> Nonlegal                         |
| <input type="checkbox"/> Constitutional                      | <input type="checkbox"/> Patent and intellectual property |
| <input type="checkbox"/> Corporate and securities            | <input type="checkbox"/> Public interest                  |
| <input type="checkbox"/> Criminal                            | <input type="checkbox"/> Real estate                      |
| <input type="checkbox"/> Education                           | <input type="checkbox"/> Sports                           |
| <input type="checkbox"/> Employment and labor                | <input type="checkbox"/> Tax                              |
| <input type="checkbox"/> Entertainment                       | <input type="checkbox"/> Trusts and estates               |
| <input type="checkbox"/> Environmental and natural resources | <input type="checkbox"/> Undecided                        |
| <input type="checkbox"/> Family and juvenile                 | <input type="checkbox"/> Other                            |
| <input type="checkbox"/> General practice                    |                                                           |
| <input type="checkbox"/> Health                              |                                                           |
| <input type="checkbox"/> Immigration                         |                                                           |
| <input type="checkbox"/> International                       |                                                           |

**45) Do you anticipate you will practice law...**

- Inside a courtroom (e.g., litigation)
- Outside a courtroom (e.g., corporate law, transactional work, policy work, academics)
- Not sure

**46) How important is it for you to do *pro bono* work (legal work undertaken voluntarily, for no payment) in your law career?**

- Very important
- Somewhat important
- Somewhat unimportant
- Very unimportant

**47) How much do you agree or disagree with the following statement: A lawyer has an obligation to render public interest and *pro bono* legal service.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**48) Any other comments?**

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**Thank you for your participation!**

**APPENDIX D**

# Touro Law Center Court Observation Project: Follow-up Survey #1

The following items were added to the baseline survey.

**E. Observation Experience**

*Please answer a few questions about your observation experience.*

**35) How informative were the following aspects of observation?**

|                                                        | Very useful           | Somewhat useful       | A little bit useful   | Not at all useful     |
|--------------------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Observation in the arraignment part                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Observation in the district/state/treatment court part | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Observation in lockup                                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Q&A sessions with judge and attorneys                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Classroom debriefing sessions                          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Orientation session                                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

**36) What do you think was the most worthwhile component of the observation program?**

- Observation in the arraignment part
- Observation in the district/state/treatment court part
- Observation in the lockup
- Q&A sessions with judge and attorneys
- Classroom debriefing sessions
- Orientation session

**37) How easy to understand were arraignment procedures?**

- very easy to understand
- somewhat easy to understand
- somewhat difficult to understand
- very difficult to understand

**38) How easy to understand were the other part's procedures?**

- very easy to understand
- somewhat easy to understand
- somewhat difficult to understand
- very difficult to understand

**39) Was the reading material you were given sufficient?**

- Yes
- No

**40) Are there any additional reading materials which would have been informative for the program?**

- Yes
- No
- Not sure

Please specify: \_\_\_\_\_

---

**41) How convenient or inconvenient was it for you to get to the court complex?**

- very convenient
- somewhat convenient
- somewhat inconvenient
- very inconvenient

**42) On average, how well organized were the logistics of the court observation?**

- very well
- somewhat well
- not very well
- not at all well

**43) How convenient or inconvenient was it for the debriefing sessions to be held on the same day as the observation?**

- very convenient
- somewhat convenient
- somewhat inconvenient
- very inconvenient

**APPENDIX E**

## **Touro Law Center Court Observation Project: Follow-up Survey #2**

The following items were removed from the first follow-up survey.

**7) Please indicate how much you agree or disagree with the following statement:**

**The prosecutor goes to trial with approximately the same number of criminal cases as those that are plea bargained.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**8) In the criminal cases in Suffolk county, what percent of defendants do you think are represented by a public defender (as opposed to a private attorney)?**

\_\_\_\_\_ %

**25) How long would you estimate the average arraignment appearance to be?**

\_\_\_\_\_ (minutes)

**29) The amount of bail set is dependent on (rate importance on the scales below, 1 being least relevant and 5 being most relevant):**

|                                                                                    | 1                     | 2                     | 3                     | 4                     | 5                     |
|------------------------------------------------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The risk of the defendant not appearing to face the charges if bail is not imposed | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The severity of the crime with which the defendant is charged                      | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The defendant's race, gender, socio-economic status, etc.                          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

**30) Bail-setting is a fair procedure in the judicial system.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

The following items were added to or changed from the first follow-up survey.

**6) How familiar are you with the federal court in the Eastern District?**

- Very familiar
- Somewhat familiar
- Somewhat unfamiliar
- Very unfamiliar
- Not sure

**7) How would you characterize the available resources of a typical US Attorney and defense counselor in the federal court (i.e., staff, technology)?**

- The defense has much more
- The defense has a bit more
- The resources are equal
- The US Attorney has a bit more
- The US Attorney has much more

**13) In general, how would you rate your confidence in the federal courts in the Eastern District?**

- Very confident
- Somewhat confident
- Not very confident
- Not at all confident
- Not sure

**16) To what extent do you think the judge listens to the recommendations of the defense counsel?**

- Very much
- Somewhat
- A bit
- Not at all

**17) The courts in the Eastern District are unbiased in their decisions.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**18) The courts in the Eastern District treat defendants with dignity and respect.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**21) How often do you think people receive fair results from the federal courts?**

- Never
- Rarely
- Sometimes
- Often
- Very often
- Not sure

**24) Judges in the federal parts clearly explain to the litigants everything going on with their cases.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**25) Counsel in the federal parts clearly explain to the litigants everything going on with their cases.**

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

**E. Observation Experience**

*Please answer a few questions about your observation experience.*

**30) How informative were the following aspects of observation?**

|                                                        | Very useful           | Somewhat useful       | A little bit useful   | Not at all useful     |
|--------------------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Observation in the arraignment part                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Observation in the district/state/treatment court part | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Observation in lockup                                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Q&A sessions with judge and attorneys                  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Observation in federal court part                      | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Classroom debriefing sessions                          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Orientation session                                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

**31) What do you think was the most worthwhile component of the observation program?**

- Observation in the arraignment part
- Observation in the district/state/treatment court part
- Observation in the lockup
- Observation in the federal court part
- Q&A sessions with judge and attorneys
- Classroom debriefing sessions
- Orientation session

**32) How easy to understand were the federal part's procedures?**

- very easy to understand
- somewhat easy to understand
- somewhat difficult to understand
- very difficult to understand

**33) How useful were the lunches/dinners with legal professionals?**

- very useful
- somewhat useful
- not very useful
- not at all useful

**34) How enjoyable were the lunches/dinners with legal professionals?**

- very enjoyable
- somewhat enjoyable
- not very enjoyable
- not at all enjoyable

## **APPENDIX F**

### **IMPORTANT TIMES**

- 1. COURT EACH DAY STARTS AT 9:00 A.M. SHARP AT THE COHALAN COMPLEX JUROR/EMPLOYEE ENTRANCE. PLEASE BE THERE AT 8:50 SO YOU CAN CHECK IN WITH ME. HAVE YOUR TOURO I.D. AND DO NOT BE LATE. WE ARE BEING ESCORTED BY A COURT OFFICER SO EVERYONE MUST LEAVE TOGETHER FOR THE COURTROOM IN A GROUP ON TIME.**
- 2. DISCUSSION GROUPS WILL COMMENCE AT 12:30 P.M. AT THE LAW SCHOOL IN ROOM 204 AND WILL END AT 1:20 P.M. ATTENDANCE IS MANDATORY AND ATTENDANCE WILL BE TAKEN. YOU MUST GET FROM COURT TO TOURO ON TIME. YOU MAY WANT TO BRING LUNCH WITH YOU TO SCHOOL ON YOUR COURT VISITATION DAY.**

| <b><i>LP</i></b>   | <b><i>DATE</i></b>                        | <b><i>JUDGE</i></b>                                                          | <b><i>COURTROOM</i></b> | <b><i>TOURO<br/>CLASSROOM</i></b> |
|--------------------|-------------------------------------------|------------------------------------------------------------------------------|-------------------------|-----------------------------------|
| <b><i>LP1</i></b>  | <b><i>Monday,<br/>August 25</i></b>       | <b><i>Patricia M. Filiberto</i></b><br>County Court                          | D-34                    | 204                               |
| <b><i>LP9</i></b>  | <b><i>Thursday,<br/>August 28</i></b>     | <b><i>W. Gerard Asher</i></b><br>District Court                              | D-43                    | 204                               |
| <b><i>LP5</i></b>  | <b><i>Wednesday,<br/>September 3</i></b>  | <b><i>Andrew G. Tarantino, Jr.</i></b><br>Family Court                       | F-34                    | 204                               |
| <b><i>LP2</i></b>  | <b><i>Monday,<br/>September 8</i></b>     | <b><i>Gaetan B. Lozito</i></b><br>District Court                             | D-56                    | 204                               |
| <b><i>LP6</i></b>  | <b><i>Wednesday,<br/>September 17</i></b> | <b><i>Richard I. Horowitz</i></b><br>District Court                          | D-66                    | 204                               |
| <b><i>LP10</i></b> | <b><i>Thursday,<br/>September 18</i></b>  | <b><i>Mark Cohen</i></b><br>Supreme Court                                    | D-62                    | 204                               |
| <b><i>LP7</i></b>  | <b><i>Wednesday,<br/>September 24</i></b> | <b><i>Madeleine A. Fitzgibbon</i></b><br>Supervising Judge<br>District Court | D-33                    | 204                               |
| <b><i>LP11</i></b> | <b><i>Thursday,<br/>September 25</i></b>  | <b><i>H. Patrick Leis III</i></b><br>District Administrative<br>Judge        | S-24                    | 204                               |
| <b><i>LP3</i></b>  | <b><i>Monday,<br/>October 6</i></b>       | <b><i>David Freundlich</i></b><br>Supervising Judge<br>Family Court          | F-25                    | 204                               |
| <b><i>LP4</i></b>  | <b><i>Monday,<br/>October 27</i></b>      | <b><i>David Freundlich</i></b><br>Supervising Judge<br>Family Court          | F-25                    | 204                               |
| <b><i>LP8</i></b>  | <b><i>Wednesday,<br/>October 29</i></b>   | <b><i>Andrew A Crecca</i></b><br>Supreme Court                               | S-33                    | 204                               |
| <b><i>LP12</i></b> | <b><i>Thursday,<br/>November 6</i></b>    | <b><i>John Kelly</i></b><br>Family Court                                     | F-36                    | 204                               |

## APPENDIX G

# *2008 Touro Court Observation Program*

*Prof. Lynne Adair Kramer*

*Fall 2008*

## COURT OBSERVATION PROGRAM

### INTRODUCTION

The Court Observation Program is an integral part of the Touro experience. The program takes advantage of the Law Center's unique location in a complex with state and federal courts. From the beginning of your legal education, you will experience, up close and personal, the actual workings of the judicial system. The following is a brief overview of the program.

### OVERVIEW

The purpose of the court observation program is to introduce you to the everyday workings of the legal system and to enable you to experience first-hand and then evaluate critically how the theory you learned in classroom plays out in the real world of the courtroom.

In the Fall Semester you will visit a state court part which may be either the District Court, Family Court or Supreme Court. Each legal process section is scheduled to meet with a judge in his or her courtroom, learn what that judge does and observe what takes place in the type of court which you visit. Most judges will allow you an opportunity to ask questions. All sections will thereafter visit the Criminal Arraignment part of the Suffolk County District Court, where people charged with crimes under New York State law have their first encounter with the judicial system. From the arraignment part we will go to the "lock up" cell where prisoners who have court appearances are held. In the Spring Semester, you will attend a session of the United States District Court for the Eastern District of New York. You will spend time with a Federal Judge or Magistrate and have the opportunity to observe civil and criminal proceedings in the Federal Court. In this way, you will get a first-hand look at both the state and federal courts, and both civil and criminal matters.

The experience will not be passive. Each visit is a three-part process: preparation, actual visit, and debrief or post-visit discussion. In preparation for the first visit you are receiving a short reading assignment today; you will then participate in a small-group visit of usually between 15 and 20 students, accompanied by Professor Kramer; and, after the visit we will return here to Touro for a discussion of what you observed.

### STATE COURT VISIT

**Preparation:** The advance reading assignment on criminal arraignments follows.

**Visit:** You will meet in a group with Professor Kramer and a Court Officer who will talk to you about the State Court structure in the Cohalan Courthouse. You will then visit a District Court, Family

Court, or Supreme Court part for approximately one hour, meeting with the judge presiding in the part and observing the proceedings. From there you will go to Arraignment Court for about 45 minutes to observe the proceedings, meet with Assistant District Attorneys, Legal Aid lawyers, and the presiding judge for a Question and Answer session. You will be accompanied by Professor Kramer who is familiar with the proceedings you will observe. After observing the arraignments, you will visit the “lock up” where you may ask questions of the court personnel and deputies who are there with you.

**Debrief:** You will have a one-hour meeting with Professor Kramer to reflect on the visit and discuss your experience.

## **PROCESS OF CRIMINAL ARRAIGNMENTS**

Criminal arraignments<sup>2</sup> are where people who are charged with crimes (“defendants”) come before a judge to be informed of the charges against them, to be advised of their rights, and possibly, to enter a plea. The judge also decides whether the defendant should be released (usually called ROR, for “Released on Own Recognizance”), be required to post bail (a sum of money or a bond that guarantees the defendant will return to court on his/her next appearance date), or be remanded, that is, kept in custody until his/her next court appearance.

Once the defendant is informed of the charges and his/her rights, primarily the right to be represented by counsel and the right to have counsel provided if he/she cannot afford it, the case will move on to another stage of the process. This might be an adjournment so the defendant can get a lawyer or to be interviewed by Legal Aid (the local equivalent of a public defender office) to determine eligibility for free counsel; or a conference (at which the defendant’s lawyer will negotiate with an Assistant District Attorney); or for a trial.

It is very rare for cases to be resolved by a guilty plea at arraignment, because the prosecution does not always know the full extent of the defendant’s record at this stage. Often, the judge does not even take a not guilty plea, preferring to wait until the defendant has obtained counsel.

## **CUSTODY AND NON-CUSTODY DEFENDANTS**

There are two main categories of defendant in the Arraignments Part: custody and non-custody. The custody defendants are mostly people who have been arrested overnight, kept in the police precincts, and then brought to court in the morning.<sup>3</sup> A few custody defendants are people who were unable to post bail and are returning to court after having obtained private counsel or qualified for a Legal Aid lawyer. The non-custody cases are defendants who have gotten appearance tickets or who have been previously released (either ROR or on bail) and given adjournments to return with counsel.

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<sup>2</sup> The word comes from Middle English *arreinen*, from Old French *araisnier*, “to call to account.”

<sup>3</sup> Not all defendants who are arrested stay overnight in the precincts. The police have discretion to release defendants charged with relatively minor crimes on “stationhouse bail,” a procedure in which defendants are allowed to post a small sum of money guaranteeing that they will show up in court, and then get an appearance ticket, a notice to appear in the arraignment court on a future date.

## THE LEGAL PLAYERS

Lawyers from the Suffolk County District Attorney's Office, called Assistant District Attorneys, or ADAs, are the prosecutors. They represent the People of the State of New York, and when called upon to address the court, they are often referred to as "The People." For example, the judge might say to the ADAs, on a question of the amount of bail, "What do the People recommend?" ADAs occupy the table on your left from the spectators' area. Their principal role at arraignments is to inform the judge of the details of the charges and of the background of the defendant, and to make recommendations on custody.

Attorneys from the Suffolk County Legal Aid Society occupy the table on the right. A defendant charged with a crime that could result in a jail sentence and who cannot afford an attorney has a Constitutional right to have one provided free of charge. The Suffolk County Legal Aid Society holds a contract from the County to represent indigent defendants in criminal cases. The principal role of Legal Aid attorneys in arraignments is to determine defendants' eligibility for their services, to advise them throughout the arraignment process, and to make arguments to the judge on custody.

The third major player is the judge. He/she is a Suffolk County District Court Judge, elected for a six year term. Judicial candidates are not selected on a merit basis (though some, as you will see, are excellent), but are nominated by political parties, often in cross-endorsement deals or as part of political compromises that allocate judicial nominations among political parties. For each defendant, the judge gets a copy of the charges, a copy of the defendant's criminal record, and a report prepared by the Probation Department on the defendant's ties to the community (the "ROR Report"), which the judge uses to determine whether, and under what conditions, the defendant should be released. The judge's primary responsibility is to inform defendants of the charges, and of their rights, to decide on custody, and to set a date for the next step in the case.

Other minor players in the courtroom include uniformed court officers, armed state employees who are responsible for courtroom security; court clerks, who handle the files and keep track of the paperwork; and the court reporter, who takes down a stenographic transcript of every word spoken in the courtroom.

## THE LAW

**Defendants In Custody Must Be Arraigned Promptly.** New York State Criminal Procedure Law §140.20 (1) provides that "upon arresting a person without a warrant<sup>4</sup>, a police officer, after performing *without unnecessary delay* all recording, fingerprinting and other preliminary police duties required in the particular case, must ... *without unnecessary delay* bring the arrested person ... before a local criminal court and file therewith an appropriate accusatory instrument charging him with the offense or offenses in question" (italics added for emphasis). The state's highest court, the New York Court of Appeals, has interpreted this statute to mean that normally a defendant must be arraigned within 24 hours of arrest, People ex rel. Maxian v. Brown, 77 N.Y.2d 422 (1991).

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<sup>4</sup> A police officer may arrest a defendant without a warrant for a crime committed or attempted in his/her presence. The overwhelming majority of all arrests are made at crime scenes without a warrant.

**At Arraignment, Defendants Must Be Informed of the Charges and of Their Rights.** New York State Criminal Procedure Law §170.20 provides, in relevant part:

2. Upon any arraignment at which the defendant is personally present, the court must immediately inform him, or cause him to be informed in its presence, of the charge or charges against him and must furnish him with a copy of the accusatory instrument.

3. The defendant has the right to the aid of counsel at the arraignment and at every subsequent stage of the action. If he appears upon such arraignment without counsel, he has the following rights:

(a) To an adjournment for the purpose of obtaining counsel; and

(b) To communicate, free of charge, by letter or by telephone, for the purposes of obtaining counsel and informing a relative or friend that he has been charged with an offense; and

(c) To have counsel assigned by the court if he is financially unable to obtain the same; except that this paragraph does not apply where the accusatory instrument charges a traffic infraction or infractions only.

4. Except as provided in subdivision five, the court must inform the defendant:

(a) Of his rights as prescribed in subdivision three; and the court must not only accord him opportunity to exercise such rights but must itself take such affirmative action as is necessary to effectuate them; and

(b) Where a traffic infraction or a misdemeanor relating to traffic is charged, that a judgment of conviction for such offense would in addition to subjecting the defendant to the sentence provided therefor render his license to drive a motor vehicle and his certificate of registration subject to suspension and revocation ... and that a plea of guilty to such offense constitutes a conviction thereof to the same extent as a verdict of guilty after trial; and

\* \* \* \*

6. If a defendant charged with a traffic infraction or infractions only desires to proceed without the aid of counsel, the court must permit him to do so. In all other cases, the court must permit the defendant to proceed without the aid of counsel if it is satisfied that he made such decision with knowledge of the significance thereof, but if it is not so satisfied it may not proceed until the defendant is provided with counsel, either of his own choosing or by assignment. Regardless of the kind or nature of the charges, a defendant who proceeds at the arraignment without counsel does not waive his right to counsel, and the court must inform him that he continues to have such right as well as all the rights specified in subdivision three which are necessary to effectuate it, and that he may exercise such rights at any stage of the action.

7. Upon the arraignment, the court, unless it intends to make a final disposition of the action ... must ... issue a securing order either releasing the defendant on his own recognizance or fixing bail for his future appearance in the action ...

**Factors to be Considered in Setting Bail or Releasing the Defendant.** Judges do not always have discretion to set bail. In some circumstances bail must be granted as matter of law; in other cases bail must be denied a matter of law and the defendant committed to custody.<sup>5</sup> In most cases, though, the judge has discretion to grant or deny bail, and to set the amount. In cases where the judge has discretion to set bail, New York State Criminal Procedure Law § 510.30 (2) sets out the factors that must be considered:

(a)... the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

- (i) The principal's character, reputation, habits and mental condition;
- (ii) His employment and financial resources; and
- (iii) His family ties and the length of his residence if any in the community; and
- (iv) His criminal record if any; and
- (v) His record of previous adjudication as a juvenile delinquent ... or a youthful offender, if any; and
- (vi) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and
- (vii) ... the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction ... and
- (viii)... the sentence which may be or has been imposed upon conviction.

**ROR (Released on Own Recognizance) Report.** In order to help with the decision on release or bail, the judge gets a copy of an ROR report, prepared by the Probation Department, based on an interview with the defendant and with information in the court record, such as the defendant's criminal record.

## WHAT TO WATCH FOR

**Identity of Defendants.** Observe the age, race, gender, English-language proficiency, and apparent economic status of custody defendants.

**Nature of the Charges.** Sometimes the clerk or judge just reads a section of the New York State Penal Law or Vehicle & Traffic Law to identify the charges. A section-by-section guide to the Penal Law and common sections of the Vehicle & Traffic Law violations are attached.

**Arguments on Bail.** When a defendant is charged with a felony, the court cannot rule on release or bail unless the district attorney has been heard or, given reasonable opportunity to be heard, has waived his right to do so. Pay careful attention to how the ADA and defense attorney argue the various factors contained in the statute (family, employment, community ties) that go in to the release/bail decision.<sup>6</sup>

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<sup>5</sup> When a defendant is charged a misdemeanor (a crime punishable by a year or less in jail) or and offense less than a misdemeanor (a violation, like Disorderly Conduct) the court must order recognizance or bail. When a defendant is charged with a felony (a crime punishable by more than a year in jail), the judge in a local criminal court may (that is, has discretion to) order recognizance or bail (except for Class A felonies - the most serious crimes generally punishable by 10 or more years in jail - or if the defendant has two prior felony convictions).

<sup>6</sup> The decision on release or bail may have effects beyond the immediate custody of the defendant. Studies have shown that defendants who are jailed prior to trial are more likely to be found guilty and to receive longer sentences.

**Role of the Judge.** Observe how the judge fulfills his/her responsibility of explaining the charges and protecting the rights of defendants. Is he/she active or passive? Does he let defendants talk? (Remember, the stenographer makes a record of everything said in the courtroom.) How does the judge involve the ADAs, Legal Aid, or private defense attorneys?

**Role of Counsel.** Do the ADAs and Legal Aid attorneys appear to have equal resources, in terms of experience, personnel, technology? How do the ADAs and defense attorneys go about achieving their purposes? Are private defense counsel treated differently from Legal Aid attorneys?

**APPENDIX H  
COURT OBSERVATION DATES IN FEDERAL COURT**

**PROFESSOR LYNNE ADAIR KRAMER**

**SPRING 2009**

**IMPORTANT TIMES**

- 1. COURT EACH DAY STARTS AT 9:00 A.M. SHARP AT THE ALFONSE M. D'AMATO FEDERAL COURTHOUSE. YOU WANT TO BE A FEW MINUTES EARLY AS YOU MUST GO THROUGH THE MAGNETOMETER THERE. YOUR TOURO ID DOES NOT HELP. DO NOT BRING YOUR CELL PHONE OR ANY OTHER ELECTRONIC DEVICE. I WILL MEET YOU AFTER YOU GO THROUGH THE MAGNETOMETER. DO NOT GO TO THE COURTROOMS UNLESS YOU ARE LATE AND THE GROUP IS ALREADY GONE.**
  
- 2. DISCUSSION GROUPS WILL COMMENCE AT 12:30 P.M. AT THE LAW SCHOOL IN ROOM 408 AND WILL END AT 1:20 P.M. ATTENDANCE IS MANDATORY AND ATTENDANCE WILL BE TAKEN. YOU MUST GET FROM COURT TO TOURO ON TIME. YOU MAY WANT TO BRING LUNCH WITH YOU TO SCHOOL ON YOUR COURT VISITATION DAY.**

## COURT OBSERVATION DATES IN FEDERAL COURT

**PROFESSOR LYNNE ADAIR KRAMER**

**SPRING 2009**

| <b>LP</b> | <b>DATE</b>     | <b>JUDGE</b>                              | <b>TOURO<br/>CLASSROOM</b> |
|-----------|-----------------|-------------------------------------------|----------------------------|
| 1         | Mon., Jan. 26   | Judge Leonard D. Wexler                   | 408                        |
| 5         | Tues., Jan. 27  | Judge Leonard D. Wexler                   | 408                        |
| 6         | Tues., Feb. 3   | Magistrate Judge Kathleen A.<br>Tomlinson | 408                        |
| 9         | Thurs, Feb. 5   | Magistrate Judge Arlene R. Lindsay        | 408                        |
| 2         | Mon., Feb. 23   | Judge Leonard D. Wexler                   | 408                        |
| 7         | Tues., Feb. 24  | Judge Leonard D. Wexler                   | 408                        |
| 3         | Mon., Mar. 2    | Judge Joseph Bianco                       | 408                        |
| 10        | Thurs., Mar. 5  | Magistrate Judge William D. Wall          | 408                        |
| 11        | Thurs., Mar. 12 | Judge Arthur D. Spatt                     | 408                        |
| 12        | Thurs., Mar. 19 | Judge Joseph Bianco                       | 408                        |
| 4         | Mon., Mar. 23   | Judge Leonard D. Wexler                   | 408                        |
| 8         | Tues., Mar. 24  | Judge Leonard D. Wexler                   | 408                        |
| 3         | Mon., Apr. 6    | Judge Joseph Bianco                       | 408                        |

## APPENDIX I

### MEMORANDUM

To: First Year Day Students

From: Professor Lynne A. Kramer, Director, Court Observation Program

Subj: Spring Semester Court Observation Program

Date: January 2009

The Law Center's Court Observation Program, an integral part of the new Central Islip curriculum, is designed to give students an interactive experience of actual court proceedings. In the fall semester, you visited State Court where you spent time in a Family, District, or Supreme Court judge's courtroom and then observed arraignments. Beginning in January 2009, you will participate in the second phase of the program: supervised, small-group visits to federal civil and criminal cases in the United States Courthouse, Touro's next-door neighbor in the Central Islip complex.

The purpose of this memo is to give you a preview and some background reading that will help you get the most out of the experience.

**How the Spring Program Will Work.** As with State Court in the fall, you will be assigned to a small group visit (your legal process section) to the Federal Court. During your visit, you will have an opportunity to discuss the case with the judge and often the lawyers involved. You will also participate in a follow-up class with me, during which you will have an opportunity to discuss what you observed.

You will receive a copy of the schedule for the semester at the January 22<sup>nd</sup> mandatory meeting, but the basics remain the same as in the fall: a weekday court visit from 9:00 a.m.-12:30 p.m., and a one-hour class back at the law school after the visit.

**Federal Court Basics.**<sup>7</sup> You may have already gotten a lot of this from Civil Dispute Resolution and Procedure (CDR&P) I, and you will get even more in CDR&P II, but just in case, here is a brief summary of federal jurisdiction and procedure relevant to what you are likely to see when you go to court.

*Preliminaries.* Before a federal court can hear a case, certain conditions must be met. There must be an actual case or controversy between real people or business entities (as opposed to some theoretical question or a request for an advisory opinion); the plaintiff must have standing to bring the case (*i.e.*, must be a person or entity that was actually harmed by the defendant); and there must be a basis for federal subject matter jurisdiction.

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<sup>7</sup> The following discussion has been adapted by Dean Rosenblum from "Understanding the Federal Courts," a wonderful booklet prepared by the Administrative Office of the United States Courts. For the full text, see <http://www.uscourts.gov/understand03/>. Used with permission.

First, under the U.S. Constitution, federal courts exercise only “judicial” powers. This means that federal judges may interpret the law only through the resolution of actual legal disputes, referred to in Article III of the U.S. Constitution as “Cases or Controversies.” A court cannot attempt to correct a problem on its own initiative, or answer a hypothetical legal question.

Second, assuming there is an actual case or controversy, the plaintiff in a federal lawsuit also must have legal “standing” to ask the court for a decision. This means the plaintiff must have been aggrieved, or legally harmed in some way, by the defendant.

Finally, the case must involve a category of dispute that the law in question was designed to address, and it must be a complaint that the court has the power to remedy. In other words, the court must be authorized, under the U.S. Constitution or a federal law, to hear the case and grant appropriate relief to the plaintiff.

Federal courts are courts of *limited subject matter* jurisdiction, because they may only decide certain types of cases as provided by Congress or as identified in the U.S. Constitution.

*Federal Jurisdiction.* There are two main sources of cases that come before the federal courts: *federal question* jurisdiction (28 U.S.C. § 1331) and *diversity* jurisdiction (28 U.S.C. § 1332).<sup>8</sup>

*Federal Question.* In general, federal courts may decide cases that involve the U.S. government, the U.S. Constitution or federal laws, or controversies between states or between the United States and foreign governments. A case that raises such a “federal question” may be filed in federal court.<sup>9</sup> Examples might include a claim by an individual for entitlement to money under a federal government program such as Social Security; a claim by an individual for violation of rights guaranteed by the U.S. Constitution or a federal law; a claim by the U.S. government that someone has violated federal laws; or a challenge to actions taken by a federal agency.

*Diversity.* The U.S. Constitution provides that a case may also be filed in federal court based on the “diversity of citizenship” of the litigants, such as a dispute between citizens of different states, or between U.S. citizens and citizens of another country. An important congressional limitation to diversity jurisdiction is that only cases involving more than \$75,000 in potential damages may be filed in a federal court. Diversity claims below that amount may only be pursued in state court. Moreover, any diversity jurisdiction case, regardless of the amount of money involved, may be brought in a state rather than a federal court (though if the amount involved exceeds \$75,000, the case could be “removed” to a federal court).

To begin a civil lawsuit in federal court, the plaintiff files a formal legal document called a “complaint” with the court and serves or mails<sup>10</sup> a copy to the defendant. The complaint describes the plaintiff’s injury, explains how the defendant caused the injury, and asks the court to order relief. A

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<sup>8</sup> Congress has determined that federal courts also have exclusive jurisdiction over all bankruptcy matters. Through the bankruptcy process, individuals or businesses that can no longer pay their creditors may either seek a court-supervised liquidation of their assets and a cancellation of many of their debts, or under court supervision they may reorganize their financial affairs and work out a plan to pay off their debts.

<sup>9</sup> Most federal question cases may be filed in state court as well.

<sup>10</sup> Under FRCP 4, plaintiff might either formally serve defendant with a summons and complaint (Rule 4(c)) or, upon request by plaintiff, may waive formal service of process and accept receipt of the complaint by mail (Rule 4(d)).

plaintiff may seek money to compensate for the injury, or may ask the court to order the defendant to stop the conduct that is causing the harm. The court may also order other types of relief, such as a declaration of the legal rights and obligations of the parties.

*Pretrial Discovery and Motion Practice.* Once the complaint has been served, the defendant may file a “motion” asking the court to dismiss the complaint, for a variety of reasons (*e.g.*, failing to state a claim upon which relief can be granted, lack of personal jurisdiction, or lack of subject matter jurisdiction).<sup>11</sup> In the alternative—or if the court denies the motion—defendant will file an “answer” responding to the claims in the complaint.

Usually, the litigants will then conduct “discovery,” a fact-finding process that helps the court and the parties clarify the issues, perhaps provides a foundation for settlement, or prepares the parties for trial. In discovery, the parties must provide information to each other about the case, such as the identity of witnesses and copies of any documents related to the case. Discovery methods might include demands to produce or inspect documents, or for a party to answer written questions, called “interrogatories.” One common method of discovery is a “deposition.” In a deposition, a witness is required to answer under oath questions about the case asked by the lawyers, in the presence of a court reporter.

*United States Magistrate Judges.* If disputes about discovery arise, they are generally handled by United States Magistrate Judges. Magistrate judges are appointed by the district court to eight-year terms. Their duties fall into four general categories: conducting a wide variety of proceedings referred to them by district judges (including deciding motions, reviewing petitions filed by prisoners, and conducting pretrial hearings and settlement conferences); conducting most of the initial proceedings in criminal cases (including issuing search and arrest warrants, conducting detention and probable cause hearings, and supervising the appointment of attorneys); the trial of certain criminal misdemeanor cases; and, with the consent of the parties, even the trial of civil cases. The case you will see may well be a hearing before a United States Magistrate Judge.

After discovery, the parties might file additional motions, such as a motion for summary judgment that asserts there are no factual issues in dispute necessitating a trial, and asks the court to make a decision that a party is entitled to judgment “as a matter of law.”<sup>12</sup>

*Settlement Efforts.* To avoid the expense and delay of a trial, judges (including magistrate judges) often encourage litigants to try to reach an agreement resolving their dispute. In particular, the courts encourage the use of mediation, arbitration, and other forms of alternate dispute resolution (ADR), designed to produce an early resolution of a dispute without the need for trial or other court proceedings.

If a case is not settled or otherwise disposed of by pretrial motion, the court will schedule a trial. In a wide variety of civil cases, either side is entitled under the U.S. Constitution to request a jury trial. If the parties waive their right to a jury, then a judge will hear the case without a jury. At a preliminary hearing or at a trial, witnesses testify under the supervision of a judge. By applying rules of evidence, the judge determines which information may be presented or considered.

As the questioning of a witness proceeds, the opposing attorney may object to a question if it invites the witness to say something that is not based on the witness’ personal knowledge, is unfairly

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<sup>11</sup> See FRCP 12.

<sup>12</sup> See FRCP 56.

prejudicial, or is irrelevant to the case. The judge decides on the objection, generally by ruling that it is either sustained or overruled. If the objection is sustained, the witness is not required to answer the question, and the attorney must move on to his/her next question.

Unless you are lucky enough to see a jury trial, the judge will usually not make a final decision immediately after the attorneys present their witnesses and/or arguments. Typically, the judge will “reserve decision,” that is, decide the matter at a later time, sometimes after considering briefs or memoranda submitted by the lawyers.

## WHAT TO WATCH FOR

**Identity of the Parties.** Observe the age, race, gender, demeanor, English-language proficiency, and apparent economic status of the parties, if they are present in court. Unlike criminal cases, where defendants normally have to be present at every stage of the proceeding, in civil cases the parties are not required to be present. If the parties are not present, what practical or strategic considerations might have led them to opt out? Do you think their absence could affect the judge’s decision?

**Role of the Judge.** Observe how the judge fulfills his/her responsibility of inquiring into the matter. Is he/she active or passive? Does he/she appear knowledgeable about the case? If there is testimony, does the judge let the witness speak? Does he/she allow counsel to handle the questioning of the witness? If counsel argue a motion or point of law, does the judge give them latitude to make their points? What kind of questions does the judge ask?

**Role of Counsel.** Observe the conduct, decorum, and preparedness of counsel. How do they go about achieving their purposes? Do they appear to be effective? If not, what might they do differently? If one or more parties is a state or the federal government, or a government agency, do you notice any difference in the preparedness, conduct or resources of government attorneys compared to attorneys for private parties?