

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

THE 45 STITCH RULE

With

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And

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Program description

Learn from former prosecutor Stephen J. Resnick about life as a young prosecutor in the Bronx and the transition to Mercer county NJ. This 1.0 credit CLE will teach you all you need to know about the Stitch Rule.

I. Introduction

- **Moved to East Windsor in 1974 while working at Brooklyn DA's office – taking bus to Manhattan and then the subway down – except when had a jury deliberating**
- **Brooklyn criminal court busier than the Bronx at that time**
- **Investigating crimes or assigned to a trial part (everything that came into that court was your responsibility – calendars of 200-300 cases)**
- **Every morning was a trial call – judges would try to move cases**
- **In NY – judge would be involved in plea negotiations – more hands on then here in NJ**
- **Most cases with legal aid attorneys – criminal law in NY was not a place for private bar to make much money because most defendants were indigent**
- **Each ADA had a partner – one would be on trial and the other was working in the court**
- **Everything in the whole borough went through DAs office**
- **Prosecutors must decide if cases have jury appeal – otherwise offer a plea to resolve the case**
- **Misdemeanor trials have juries**
- **45 stitches – if it took 20 stitches to close a wound, then the case would be downgraded and plead out as opposed to being indicted**
- **Every judge had jail numbers on the bench to determine if there was enough room to put someone else in jail**
- **Jail is a resource and must be careful how it is doled out – some people are “transient” jail populations not hardened criminals who are permanent parts of the prison population**
- **Being placed in jail was also part of the plea negotiation process – coercive!**
- **If downgraded a case, expect that defendant would get more justice, more quickly in the lower court than in the upper court – quick hearing, jail, then done**

- **Delay tactic by defense bar – the longer it takes from commission of the crime to the day of truth is better for the defense**

II. Book

- **Very few stories stick in your mind over the course of a career**
- **Started book 10 years ago – actively for a few months**
- **Summer of 2012 – started looking to retire and worked on book every day**
- **Excited about the book when it was done**
- **Difficult to get someone to read the book**
- **Amazon has a print-on-demand concept – only need to print when someone orders the book**
- **Weight lifted by being able to tell story**
- **Fiction form was better because did not need to pull records – allowed for possible inexact story-telling**
- **The book covers a snapshot of one week**
- **Organized crime is not in the book in a significant way because did not experience it while he was at Brooklyn DA**
- **Almost exclusively street crime**

III. Quality of life offenses and general police tactics

- **Arraignment part – people come to familiarity with court system – open from 7am-1am**
- **Volume of crime was outrageous**
- **Aim in arraignment court would be to get rid of as many cases as possible**
- **Police would not usually issue tickets for malicious property damage cases**
- **If necessary, could “no bill” a case at grand jury to resolve an indictable case – explain to grand jury the problems with convicting the defendant based on all the evidence that is present**
- **Arraignment court was 7 days a week**
- **Rule that defendant entitled to a hearing within 72 hours of arrest – needed to hold probable cause hearings in a timely manner**

IV. The Giuliani-era and how it affected the criminal justice system

- **It was effective in that it cut down street crime**

- **Under Mayor Dinkins – homicides skyrocketed**
- **Attitudes of the people and economics changed the number of crimes**
- **People felt better under Giuliani – they had a purpose**
- **The economic crisis in the 1970s was that officers would not get paid overtime**
- **Decreased street crime in NYC – Mayor backed the police**
- **Stop and frisk existed then and now – effective tool for law enforcement but more how it is perceived by the administration and the media**

V. Stop and frisk by NYPD

- **Police can walk up to anyone and ask them questions – not a seizure under the 4th Amendment**
- **Person who is there has the right to not talk to the police and there is nothing the police can do**
- **Police in NJ are not supposed to use a command voice because that would be more like a seizure**
- **When police have reasonable and articulable suspicion that criminal offense is going on – then seizure under 4th amendment and can confirm or dispel their suspicions**
- **Political component of stop and frisk**
- **Police would walk up to someone and stop to ask questions and when someone leaves then articulable suspicion begins to develop**
- **What frame of reference does a police officer use to determine when to approach someone**
- **State v. Tucker, 136 NJ 158 (1994) – Tucker ran from police and Supreme Court suppressed drugs that defendant dropped during flight**

VI. Drug investigations/prosecutions

- **Steroids – in the beginning they were not illegal; not scheduled drugs – prescription legend drugs**
- **Over time medical community became involved and steroids became schedule drugs**
- **Mostly educated people using steroids, many police officers, and they claimed that what they were doing**

was not illegal – body builders using for competitions not for getting high

- **Today all controlled substances**
- **Steroids were dicey – not as clear cut “drug use” as heroin – users were mostly upstanding citizens – different dynamic than street drugs**

VII. Police corruption

- **In Brooklyn – only inferentially**
- **Investigations done by internal affairs and then would turn it over to trial team**
- **Mostly street crimes being done by officers – rarely a scam**
- **Mere threat of indictment was not enough to resolve the case**
- **DA was elected – officers were indicted and then a press release was issued – no real way to plea out a case early**

VIII. “Perp Walk”

- **Very unusual in NJ – but goes with the territory in NY**
- **Cater to the media**
- **Defendant is paraded before the cameras as they are being walked into the police department, courthouse, etc.**
- **Media tries to ask defendant if he did it**
- **Banned in NJ – all show business – trial issues with picking a jury**
- **Some people may be innocent**

IX. Trial practice

- **Preparation for trial is like preparing for a lesson as a teacher**
- **Need to have an idea of what jurors are looking for so that you can connect with the jury**
- **In Brooklyn, jurors would dress as they wanted and attorneys could voir dire jurors and get a feel for them**
- **In NJ, jurors came into court in suits, ties, and dresses – less forthcoming, some judges would allow lawyers**

to ask questions but allowed jurors to remain more anonymous

- **Jury selection is all supposition because nothing beats live voir dire**
- **More trial experience resulted in more of an understanding of Brooklyn juries**
- **Trying cases every day – no time to prepare cases – met witnesses while jury was waiting for them to come in**
- **Didn't have opportunity to go into the field – stuck in the courtroom trying cases**
- **In jury selection you have opportunity to challenging jurors to remove them from the panel – when started practicing no caselaw existed that prevented attorneys from throwing off jurors for whatever reason**
- **Removed jurors based on the type of case, i.e. a rape case – didn't want middle aged motherly women on the jury because they did not identify with the victim but would identify with the defendant**
- **In Brooklyn – able to speak with jurors after the case**
- **Most of the cases where the defense was consent plead out because defendant did not want to take the risk of conviction at trial**
- **Most cases folded on the eve of trial – defendants want to see who is going to show up**
- **Issue of race in trials**
 - **Try to put biases aside**
 - **Don't know what juries are thinking**
 - **Not going to get all black or all white jury in Brooklyn**
 - **Race of officer**
 - **Race of victim**
 - **Race of defendant**
- **Some cross-racial crimes are more common than others**
- **As a prosecutor ignored cross-racial crimes in jury selection**
- **As a prosecutor looking for a juror who will not hold prosecutor to precise and exact standard – no engineers, accountants, or scientists – will look for**

absolute proof – want someone who will cut a little slack with proof

X. The Issues in the Book and “Real Life”

- **One character is a secretary who is a dancer at a club at night**
- **Stone is a character in the book – from gentile lifestyle thrust into Brooklyn, crime victim that causes a physical injury, law firm puts him out of work because of injury, gets hired by Brooklyn DA – grew up in suburban background, not used to cut throat world that is Brooklyn – needs to develop a thick skin – troubled by thick skin**
- **Attitude that crime is normal and accepted as routine in Brooklyn Das office**
- **Any big city where people are used to crime**
- **Kitty Genovese walking through a housing project was robbed and stabbed – she is screaming, people are opening their windows and watching and no one called the police**
- **Acceptance of violent crime is something Stone is worried about**
- **Cannot do job if get emotionally involved in cases – counterbalance to getting too hardened**
- **Stone attracted to witness and possible target of an investigation**
- **As a public defender – be concerned with facts of the case – not personal about the client because then lost focus on the case – fought harder for ideas as opposed to people**
- **Cannot let emotions be in charge – keep a distance from your clients**
- **Client’s belief of what happened is not exactly accurate**
- **More concerned with evidence the state has and not really anything else – must be detached from client and their wishes**
- **Second book is a spin-off of the first book – brought characters from first book to Burlington County**

- **New prosecutors don't try cases anymore because sentencing statutes pose too large a risk for defendants to go to trial**
- **When a case goes to trial now, prosecutors believe it is a failure of the criminal justice system**
- **New book involves the garbage industry and organized crime based on experience prosecuting those cases and current representation of industry in regulatory matters**
- **New book is more about how the criminal justice department operated in the 1980s**

XI. Advice to young attorneys

- **Unless you want a flashy car – government work is steady and stable – private practice of law is not so stable and is a hard road**
- **Being a lawyer can be a hard life even though some do very well**
- **Being a prosecutor is wonderful if you have the disposition for it – deal with the misery of life – most of victims are unhappy and most defendants are unhappy – surrounded by unhappiness**
- **Not going to get rich – not going to be wealthy**
- **Will learn how to try a case and persuade juries – know your way around the courtroom**
- **Every lawyers should be required to be a prosecutor or public defender to learn to try a case**
- **As a prosecutor or public defender you can make a difference and help people**
- **It is fun – feeling of accomplishment**
- **You have to go in with the right attitude – you are not going to stamp out crime**
- **Prosecutors have no stake in the outcome – using skills to process the facts to reach a resolution**
- **They are just cases – empathize with the victims not the defendants**
- **Stress and ingratitude in the criminal justice system**