

DAVIS POLK
LEADERSHIP INITIATIVE

CASE STUDIES ON LAWYER-LEADERSHIP

Partnering for Change:
Lawyer-Leadership in the
Manhattan DA's Office



Columbia
Law School

INTRODUCTION

In April 2021, the Manhattan DA’s Office announced that it would stop prosecuting the offenses of prostitution and loitering for the purpose of prostitution. The Office shifted its policy, the first of its kind in New York State and one of the first in the nation, in an effort to minimize contact with the criminal justice system and the adverse consequences of arrest and conviction for these offenses. The Office promptly moved to dismiss nearly 6,000 pending cases.

The policy shift was years in the making—the result of careful exploration of alternatives in collaboration with affected communities in the face of strong competing values and interests. At the center of the effort was Carolina Holderness (CLS ’06), who in 2017 became the Chief of the Office’s Human Trafficking Response Unit. From the start, Carolina realized she could not responsibly make and enforce policy in the area without learning from affected communities how different policies would impact them and working alongside them in her ongoing efforts.

Among those with whom Carolina met in the early stages of her learning journey was Cecilia Gentili, an advocate for individuals engaged in sex work. Cecilia reframed the way Carolina thought about the Office’s approach to offenses of “prostitution” and “loitering for the purpose of prostitution,” and together, Carolina and Cecilia generated a set of reforms that paved the way for the dramatic April 2021 policy shift.

BACKGROUND

When Carolina started working at the Manhattan DA's Office in 2007 fresh out of law school, the DA's Office (like other district attorneys' offices nationwide) routinely prosecuted offenses criminalizing sex work.¹ Often, those arrested pled guilty to prostitution-related offenses, received fines or sentences to community service or incarceration, and after being released, repeated the process time and again. The effects of incarceration and criminal records—including the impact on immigration status, access to public benefits, and employment opportunities—could be devastating.

By the time Carolina became Chief of the Human Trafficking Response Unit in 2017, the DA's Office had changed its approach. The Borough of Manhattan had a Human Trafficking Intervention Court designed to address sex worker needs and identify human trafficking cases. It handled cases with prostitution-related charges by offering an Adjournment in Contemplation of Dismissal (commonly known as an ACD) that allowed arrested sex workers who avoided re-arrest for six months and completed mandated counseling sessions to have their case dismissed.² The process afforded alleged sex workers access to services, including additional counseling and mental health support, defense attorneys, and immigration specialists.

Initially upon taking her post in 2017, Carolina assumed the Human Trafficking Response Unit's ACD approach struck a fair balance.³ In the violent crime unit where she had previously worked, ACDs were seen as a favorable outcome for arrested individuals, and Carolina had seen firsthand the benefits that could come from the mandated services provided. Cecilia Gentili had a different view, as Carolina would soon learn.

¹ Recognizing that people disagree over the phrase "sex work" and without intending to take a position on the matter, this case study uses the phrase because Carolina and Cecilia used it in their conversations described here.

² Mandated services typically included counseling and therapy based on an individual's needs; during the six-month period, those implicated also were connected with defense attorneys and with immigration specialists.

³ Each of the five boroughs handled prostitution and loitering for prostitution cases differently; Manhattan's policy of offering ACDs was the most lenient of all the boroughs.

LAWYER-LEADERSHIP IN ACTION

Part One: Making Connections

Carolina believed that efforts to develop relationships with and learn from advocates of affected communities was critical to successfully prosecuting human trafficking cases and to being effective as Chief of the Human Trafficking Response Unit, as mentioned earlier. She also knew developing those relationships would not be easy.

Advocates not only distrusted and lacked faith in prosecutors, but they also fundamentally disagreed with each other over the proper legal treatment for people engaged in the sex trade. Anti-human trafficking advocates tended to see sex work as an inherently exploitative and thus illegitimate profession, believing that the potential for coercion and marginalization qualified any purchase of sex as trafficking. Advocates for sex work, in contrast, argued that sex work need not necessarily be coercive and that the goal should be to enable individuals engaged in sex work to control and sell their labor for money as they choose. Still others aimed to moderate the impact of sex work on neighborhoods where it occurred.

Acknowledging these fault lines, Carolina launched a series of conversations with representatives of organizations that worked with those involved in sex work, specifically inviting those who worked with LGBTQ youth. When Carolina's invitation reached Cecilia—a trans woman of color formerly engaged in sex work who at the time worked with LGBTQ youth involved in sex work—Cecilia was prepared to decline. Cecilia feared the conversation at best would be a waste of time and at worst an effort to co-opt her into a process that exacerbated the trauma she previously had experienced through her interactions with the criminal justice system. Ultimately, a colleague persuaded Cecilia to attend the meeting, arguing that Carolina could learn a lot from Cecilia's personal experience and professional expertise.

Part Two: Learning from Stakeholders

During the meeting that included Cecilia and seven or eight other advocates, Carolina encouraged participants to speak freely about their views on how the DA's Office could improve its outreach and policies relating to the populations the advocates served. Carolina brought coffee and donuts and included in the conversation a colleague who advised the Office on LGBTQ issues. Carolina said little and listened hard, trying to understand the needs and perspectives of those in the room.

In discussing the Office's policy on charges of prostitution and loitering for the purpose of prostitution, Cecilia raised a pivotal question: Why is the DA's Office ACDing the cases instead of dismissing them straight away? Struck by the question, which challenged Carolina's assumption that an ACD was a favorable disposition for defendants, Carolina listened carefully to Cecilia's passionate account of the effects of spending six months with an open criminal

LAWYER-LEADERSHIP IN ACTION

Part Two: Learning from Stakeholders (cont.)

case, unable to get a new job, fly internationally given certain immigration statuses, or receive housing and other public benefits.

Cecilia's perspective shed new light on the ACD process for Carolina. For that reason, and to honor the faith in the process that Cecilia showed by sharing her experiences, Carolina undertook a searching exploration of why the Office needed to keep arrestees in a state of legal suspension for half a year, and what the impact of a change might have on what Carolina saw as the benefits of the services provided to those with ACDs.

Part Three: Advocating for Change

It turned out that a main benefit of the ACD process for the Office was evidentiary: as long as the case of an arrested sex worker was pending, the Office's lawyers and investigators could use information in the case file to support the more serious trafficking prosecutions.⁴ Absent the six-month window while the ACD was in place, the Office could gain access to that evidence only through a cumbersome and time-consuming process for obtaining an order "unsealing" the file in the dismissed case, which risked delaying or terminating investigations and prosecutions for sex trafficking. Armed with this information, Carolina saw she would need to undertake a process of balancing the evidentiary benefits of ACDs against their material harms on individuals charged with prostitution-related offenses.

Carolina knew that another consideration also had to figure into the balance: the impact on individuals engaged in sex work of losing the services provided alongside the ACDs during the six-month window. Carolina worried that abandoning mandated and other services altogether would disadvantage individuals engaged in sex work.⁵ Carolina mitigated this concern, however, by developing ways the Office could continue providing supplemental services for arrested individuals, even without the ACD.

Impelled by her collaboration with Cecilia to acknowledge and restrike the balance of considerations, Carolina concluded that the Office should try a new step: dismissing rather than ACDing prostitution-related charges while retaining the provision of services. In December 2018, Carolina wrote a memo to her supervisor, the Office's Head of Criminal Court,

⁴ An example: The police are conducting an undercover sting operation to identify sex trafficking. A woman is dropped off at a hotel for a "date" by someone driving a car. Based on her agreement to have sex in exchange for money, the woman is arrested and her phone is taken by the police as potential evidence. She is arraigned in the Human Trafficking Intervention Court and she agrees to take part in mandated counseling; in exchange, her case is ACD'd. The driver of the car is suspected to be a sex trafficker. During the six month window of the ACD, the DA's Office can use any evidence obtained in connection with the prostitution arrest, which might include a description of the driver of the car, the license plate numbers on the car, and evidence about that person's identify and modus operandi that can be secured from the woman's phone after obtaining a court-authorized search warrant.

⁵ In 2021, the Office did decide to abandon the [mandated] services altogether as part of its latest policy reform.

LAWYER-LEADERSHIP IN ACTION

Part Three: Advocating for Change (cont.)

explaining why she expected the benefits of the policy shift to outweigh the evidentiary and other losses. Carolina's supervisor endorsed the proposal, as did District Attorney Cyrus Vance Jr. The policy of moving to dismiss prostitution-related charges went into effect at the end of that year.

Part Four: Reflecting and Improving

Over the next two-plus years, the Office found that the evidentiary implications of immediate dismissal of prostitution-related charges were indeed not as serious as previously feared, and the gains to affected individuals from a decrease in interaction with the criminal justice system warranted further action. In April 2021, the Office stopped prosecuting prostitution-related charges, disincentivizing arrests altogether. Although the loss of mandated services that had been part of the prior process was a cost of the Office's evolving policies, the reflection and improvement process that Carolina set in motion and rooted in deep collaboration with and learnings from people closest to the affected communities revealed that the benefits of a no-prosecution policy outweighed its costs.

THE PRACTICE OF LAWYER-LEADERSHIP

Carolina's structured, iterative, and empathic learning process illustrates leadership competencies across the spectrum of leading self, leading others, and leading change.

Leading Self

Carolina exercised effective problem solving and cultural literacy throughout her effort to learn about advocates' perspectives and to shift the Office's policy. When Carolina took on her new leadership role, she approached the challenge with humility, curiosity, and a desire to learn from those who were closer to the work than she was. Carolina realized that to be an effective problem solver, she needed to have a deep understanding of the problem. It required her to listen—not to formulate defenses to existing policy or even to formulate alternative policies—but, for the moment, to hear and explore her interlocutor's perspective. This in turn required an environment in which people who disagreed with her and with each other could be vulnerable and express their real views about the Office and Carolina's approach, and in which people from different backgrounds, identities, and roles felt welcome and heard.

Carolina knew, in other words, that she needed to expand her cultural literacy, engaging sex worker and anti-trafficking advocates alike with awareness of her own identity, biases, and role within the criminal justice system. Together, these steps enabled Carolina to treat accounts like Cecilia's that contradicted her own deeply embedded assumptions about the generosity of ACDs as occasions to rethink and rebalance the considerations, rather than accepting and defending the sufficiency of existing understandings, justifications, and policy frameworks.

Leading Others

In addition to preparing Carolina to be a better, more informed leader, her cultural literacy (listening to and learning from those affected by and often disaffected with her Office's work) and management and teamwork enabled her more effectively to lead others. These competencies helped her build working relationships with advocates and critics on whom she could continue to consult for advice and reality checks. For example, after hearing from Cecilia during their initial meeting, Carolina continued to call upon her for ideas and input. Carolina also worked to amplify Cecilia's own powerful voice, both in the context of the policy shift and on other topics. And after her initial doubts about the process, Cecilia showed an optimism and a willingness to engage that enabled her to influence policy in significant ways.

In turn, those new partnerships generated Carolina's open exploration of the justifications for the six-month ACD delay, her development of ways to serve the same purposes through less intrusive means, her December 2018 policy proposal, the policy shift that immediately followed, and by 2021, the conclusion that further decreases in the life-disrupting reach of prostitution-related criminal prosecutions were possible. When the DA's Office announced its

THE PRACTICE OF LAWYER-LEADERSHIP

Leading Others (cont.)

April 2021 no-prosecution policy change, its press release quoted Cecilia validating the change. Throughout the process, Carolina's and Cecilia's strong, trusting relationship allowed them to accomplish together what would have been nearly impossible to do apart.

Leading Change

Together, Carolina and Cecilia exemplified what it means to develop a strong vision and strategy in the process of leading change. Their steps to compare the existing reality at the time their interactions began to the ideal enabled them to develop approaches that gradually moved the reality in a positive direction for all concerned. And while the solution the Office landed upon in 2021 was still not ideal for either Carolina (who would have liked to preserve incentives for and easy access to support services) or for Cecilia (who would have liked the DA's office to achieve a change in the law and decriminalize sex work itself), it was progress they both could endorse. By developing a deep, meaningful understanding of the larger context in which they worked, and having a clear vision for what they were seeking to achieve for the communities they served, Carolina and Cecilia catalyzed real change.

Their approach also illustrates the power of problem solving that can come from developing a hypothesis for change, testing it out, reflecting on the progress made, and continuing to improve it. The April 2021 policy change did not develop in a vacuum and it was not created overnight. Rather, it was the next phase of an approach to offenses for prostitution and loitering for the purpose of prostitution that had evolved through over time through a process of structured testing, observation, and iterative learning. The effort shows the power that comes with creative thinking, experimentation, and an openness to new ideas.

For both Carolina and Cecilia, the April 2021 policy is on balance better than the 2018 one, and the 2018 was an improvement on what came before it, but policy innovation is rarely easy and never complete. Instead, it requires a willingness to change; a desire continuously to improve based on careful planning, testing, and observation; and an ability to learn from emerging facts and circumstances that make it possible to lead change.

ADDITIONAL INFORMATION

“D.A. Vance Ends Prosecution of Prostitution and Unlicensed Massage, A First in New York State” (April 21, 2021), Manhattan DA’s Office Press Release, <https://www.manhattanda.org/d-a-vance-ends-prosecution-of-prostitution-and-unlicensed-massage/>.

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Rachel Treisman, “A ‘Relic’ And ‘Burden’: Manhattan District Attorney To Stop Prosecuting Prostitution,” (April 21, 2021), National Public Radio (NPR), <https://www.npr.org/2021/04/21/989588072/a-relic-and-burden-manhattan-district-attorney-to-stop-prosecuting-prostitution>.

ACKNOWLEDGEMENTS

This case study was created in Spring 2021 for the Davis Polk Leadership Initiative at Columbia Law School with the intent of providing a real-world example of Lawyer-Leadership. Thank you to all those who contributed to its creation, including Cecilia Gentili, Carolina Holderness (CLS '06), Molly Gurny, Elizabeth Emens, James Liebman, Grace McCarty, Petal Modeste, and Susan Sturm.

FOR MORE INFORMATION

For more information on Columbia Law School's Davis Polk Leadership Initiative and the ways in which it seeks to equip students with what they need to be effective Lawyer-Leaders in their lives, in their careers, and in the world, visit <https://leadership-initiative.law.columbia.edu/>.

HOW TO CITE THIS DOCUMENT

"Partnering for Change: Lawyer-Leadership in the Manhattan DA's Office,"
(Davis Polk Leadership Initiative at Columbia Law School, June 1, 2021 Draft).