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2 NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
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7 REPORT OF PROCEEDINGS

8 NACDL PROBLEM-SOLVING COURTS TASK FORCE
9

10 Friday, August 1, 2008

11 9:00 o'clock a.m.

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13 424 East Wisconsin Avenue
14 Milwaukee, Wisconsin
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NACDL TASK FORCE MEMBERS:

Mr. Jay Clark, Co-Chair, Cincinnati, Ohio
Mr. Rick Jones, Co-Chair, New York, New York
Mr. Marvin Schechter, Co-Chair, New York, New York
Prof. Adele Bernhard, Pace Law School, White Plains
New York., Member NACDL
Mr. Scott Ehlers, NACDL Staff, Washington D.C.
Ms. Elizabeth Kelley, Cleveland Ohio, Member NACDL
Ms. Gail Shifman, Shifman Group, San Francisco,
California, Member NACDL
Ms. Vicki Young, Law Offices of Ephraim Margolin,
San Francisco, California.

NACDL Problem-Solving Courts Task Force

TIME WITNESSES and PAGE NUMBERS

9:00 AM MR. BEN KEMPINEN Panel 1, Page 5
Professor,
University of Wisconsin Law School.

AM JUDGE CARL ASHLEY Panel 2, Page 37
Milwaukee Circuit Court

MS. ROBIN DORMAN
Principal Deputy First
Asst. Public Defender,
Wisconsin State P.D.

MS. BARBARA DUE
Asst. Public Defender, Milwaukee

MS. DAWN RABLIN
Asst. Public Defender, Milwaukee

MR. CRAIG MASTANUONO
Mastanuono Law
Offices, Milwaukee, Wisconsin.

11:00 AM MR. DAVID DICKMANN Panel 3, Page 80
First Assistant Public Defender,
Wisconsin, Stevens Point.

MR. STEVE MEYER
Meyer Law Offices.
Madison, Wisconsin.

MS. LIESL NELSON
Asst. Public Defender. Wisconsin,
St. Croix County; Board Member. of WI
Assoc. of Treatment Court Professionals.

1:00 PM MR. RYAN KING Panel 4, Page 118
Policy Analyst,
Sentencing Project.

MR. John Chisholm
District Attorney,
Milwaukee

10:00

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2:00 PM JUDGE TOM BOWERS
Blawk Hawk County.
(Iowa) District Court.

Panel 5, Page 162

JUDGE ELLIOTT LEVINE
LaCrosse County CC.

JUDGE SARAH O'BRIEN
Dane County CC.

JUDGE LISA STARK
Eau Claire County CC

3:30 PM MR. KEITH FARMER
Asst, District Attorney,
Dane County.

Panel 5, Page 206

MS. JESSICA SKEMP
Asst. District Attorney
La Crosse County.

MR. MICHAEL STEUER
Asst. District Attorney.
Eau Claire County.

4:30 PM MR. SAM BENEDICT
First Asst. Public
Defender, Wisconsin,
Waukesha Office.

Panel 6, Page 241

JUDGE KATHRYN FOSTER
Waukesha County CC.

JEAN LATOUR
Asst. Public Defender.
Wisconsin, Waukesha Office

1 (Time 9:00 a.m.)

2
3 MR. JONES: We are going to start. Good morning
4 and welcome. This is NACDL Problem-Solving Court Task
5 Force, Milwaukee hearings. We are pleased to be here
6 in Milwaukee. We have a full day of testimony ahead
7 and a tight schedule so we are going to jump right
8 in.

9 The way that -- actually, what I will do, just
10 for the record is my name is Rick Jones. I am from
11 New York. I am one of the co-chairs. We will just go
12 down the road and have each one of us identify
13 ourselves; that would be good then we will get to the
14 substance of the hearings. If you want to start with
15 Marvin.

16 MR. SCHECHTER: Marvin Schechter, New York.

17 MS. KELLEY: Elizabeth Kelley, Cleveland.

18 MS. SHIFMAN: Gail Shifman, San Francisco.

19 MR. CLARK: Jay Clark, Cincinnati, Ohio.

20 MS. YOUNG: Vicki Young, San Francisco.

21 MS. BERNHARD: I am Adele Bernhard, I am a
22 teacher at Pace Law School, which is right outside of
23 New York City.

24 MR. JONES: The way these hearings are conducted
25 is we have a line-up of various incendiary

1 stakeholders in problem-solving courts in Wisconsin
2 and the surrounding areas.

3 Our first speaker is Professor Ben Kempinen from
4 the University of Wisconsin Law School. I will give
5 you some time to introduce yourself and also to make
6 a brief statement, and really if you would be brief,
7 five minutes maybe. We have a lot of materials from
8 you. We are just interested to spend our time with
9 you in question-and-answer session, because there is
10 a lot we want to talk to you about.

11 To the extent that we have a bio from you, I
12 believe that we do, it will be become part of the
13 permanent record of this hearing. Without any further
14 adieu, good morning, happy to have you. Professor
15 Kempinen, the floor is yours.

16 MR. KEMPINEN: Good morning to all of you.
17 Welcome to Wisconsin. And I will just give a real
18 brief summary of what work of mine has led me here.
19 As the information provides, indicates, I have been
20 at the Law School in Madison since 1976. I have had
21 one foot in sort of the traditional doctrine in terms
22 of classroom teaching on criminal law, also I have
23 been involved in a variety of our clinical offerings.

24 We have a view at the U.W. Law Schools that we
25 have what I describe as a "law in action focus " the

1 idea being that affective practitioners need not only
2 to be well-grounded in doctrine but to really
3 understand how systems work. And we view the sort of
4 borders of states as being classrooms and all the
5 judges and correctional individuals and defense
6 attorneys and clients and victims that work with our
7 students to be their teachers.

8 With respect to sort of that philosophy, I
9 was asked in 2006, by our Chief Justice, if I would
10 be willing to participate in preparing a report on
11 different innovative practices in Wisconsin
12 communities. Part of my current work at the Law
13 School is supervising programs where students are
14 placed in prosecutor offices. I have worked with
15 trial appellant defense. I will review that.

16 So I visited a number of counties in all parts
17 of the State, as reflected in my report. And I would
18 say after three decades of working primarily in
19 criminal justice, one thing: You think you have at
20 least a modest command of things but I would say that
21 I found my visits and experiences in seeing some of
22 our various problems in the courts quite fascinating.
23 Sometimes a little bit troubling; sometimes more
24 questions and answers. But I prepared a report which
25 I believe you all have had an opportunity to see, and

1 somewhat of a updated part of that report also, as
2 well as statements for this hearing.

3 My work was focused primarily, I guess, if
4 there was a focus, it was on how these programs got
5 started, how they were funded, who were the support
6 people, and what not; and I felt it was important to
7 have an opportunity to talk and observe from all
8 different actors. I kind of revised my notes after
9 speaking with Ms. Young, and actually made some
10 additional inquiries when I understood the concerns
11 to be the defense function.

12 Let me just sort of quickly summarize, I think,
13 what would be the gist of my comments, then if there
14 is questions.

15 One of the things I saw and observed was clearly
16 defense attorneys functioning in what I thought were
17 three distinct roles, even though they all -- they
18 did not all sort of self-identify that. One was being
19 involved at the planning and advisory stage, that is,
20 primarily publicly funded attorney, publicly funded
21 defense planning the treatment course. Then to the
22 extent there is an advisory panel in some of the
23 communities that monitor things and make adjustments
24 being an equal partner in that.

25 Second, a dynamic which I found fascinating was

1 the team which was typically a public defender, a
2 prosecutor, treatment specialist and a judge. And I
3 saw the defense as being a part of a team in all but
4 one county; now they are members of team as well.

5 Then there is what I would say is a sort of
6 traditional lawyer representing a client in a
7 community with a treatment court. And I saw very
8 distinct roles. I describe them, or at least my
9 view, there is some value in separating the roles in
10 that way.

11 When I spoke to a number of attorneys in the
12 counties treatment courts, both longstanding and new,
13 and asked their reactions, I got basically three
14 different reactions: Some attorneys thought for the
15 right type of client that was an opportunity that was
16 worth pursuing.

17 There was some lawyers, perhaps some from my
18 generation who can remember guys like Spiro Agnew and
19 Richard Nixon, who thought they were gorillas in the
20 Spanish Civil War sniping at something: To be on a
21 planning team cooperative, they were predisposed
22 against it. I sensed that regardless of
23 circumstances they would be inclined to share that
24 view with their attorneys.

25 Then, to be quiet honest, I saw a number

1 attorneys that were, I thought, not the best of our
2 profession, who did not really understand treatment
3 courts and saw it as just one angle to play, if you
4 will, to try to get a concession. They did not visit
5 treatment courts, didn't know very much about them,
6 didn't know how extraordinarily different--
7 potentially extraordinarily different -- it would be
8 for a client.

9 Some would refer people simply because they
10 thought this is some way to get a concession in terms
11 of sentence recommendation or charge reduction.

12 And, in any event, my one other thing that was
13 very interesting to me, and in thinking through this
14 I don't know that I feel is the best way to approach;
15 what I thought was interesting was the complete
16 absence of any defense presence during the course of
17 the program.

18 I visited, as I said, a number of treatment
19 courts, both reflected in the report, in probably
20 four or five days in different courts, some of the
21 newer ones since then, and I never once saw a defense
22 attorney in the hearing. Even now there may have
23 been some having been around three decades you
24 know -- people they come up to you years later and
25 say you gave me a bad grade or something like that.

1 (Laughing.) In any event, I thought it was very
2 interesting basically no defense presence at all.

3 In the course of a participant presentation, it
4 would not have been helpful it was my understanding,
5 and others can speak to this from the agencies, at
6 least from a bureaucratic matter, the state public
7 defense, I believe, chose cases upon admission so
8 there isn't really an admission during the program
9 possibly to reappear. If at the end of successful
10 completion there is a perfunctory hearing to grant
11 concession, or if someone is unsuccessful, it would
12 be terminated.

13 One of my thoughts, therefore, was given the
14 very different nuances of how treatment courts
15 function that one of the areas I think a great deal
16 to be done is to sort of think through about what is
17 affectively the role of an attorney during the course
18 of a program: Providing some type of support for
19 someone, because while I think this is a program that
20 can have extraordinary benefits, it has also
21 extraordinary demands and it can be extraordinarily
22 stressful. I see value as yet a somewhat undefined
23 role for counsel to play; that was a role I did not
24 see here. So as difficult as it is for professors to
25 be somewhat limited, I think that would be a summary

1 of my gleanings. I welcome any questions that you may
2 have.

3 MR. JONES: Thank you. One of the things I
4 neglected to say at the beginning was the way we
5 conduct these hearings, one of us is tasked with
6 being the principal questioner of each witness. It's
7 your lucky day; you get me.

8 MR. KEMPINEN: Okay.

9 MR. JONES: I have a number of areas that I
10 would like to cover with you. But just at the outset,
11 if you could just elaborate a little bit. I know you
12 teach the Prosecution Project at the University of
13 Wisconsin Law School. I didn't see anything in the
14 materials, but you mentioned it previously in your
15 introductory remarks. If you could talk a little bit
16 about your experience working with the public defense
17 bar and what it looks like, and if anything that
18 would be useful.

19 MR. KEMPINEN: Well, maybe a little bit more
20 about my sort of background.

21 I have done some trial, some appellate defense,
22 although it's been some, maybe almost going on twenty
23 years since I have been actively involved. I have
24 done some amicus and what not. I was involved for
25 almost twenty years doing post-conviction clinical

1 work with defense students.

2 I also directed a program that we had in
3 Wisconsin that no longer exists which provided trial
4 level misdemeanor defense. And I was asked in the
5 1980s to take over the Prosecution Project.

6 I am not sure what this suggests but some of my
7 old defense friends thought ill of me when I said yes
8 to some of the prosecutors against whom I litigated.
9 I think they still don't trust me. When I visit my
10 students, they lock their desks, and what not,
11 thinking I am going to steal. One of my colleagues
12 said maybe I stumbled upon the true path because I
13 have people on both extremes who don't trust me. In
14 any event, I have benefitted from seeing things from
15 a variety of sides.

16 One other thing I might mention. I am also
17 involved, I neglected to say, we have a new program
18 in Wisconsin which embraces sort of something that's
19 a problem-solving police approach.

20 We have students working with police agencies
21 dealing with public safety issues that don't lend
22 themselves to affective resolution in traditional
23 technique.

24 Quickly, one exam we had in Madison, you can
25 think of people in all of your communities that are

1 always a handful; hardcore fellows that are in
2 downtown areas that have probably 20 or 30 police
3 contacts a day: public urination, yelling, et cetera,
4 that sort of compromise our ability to enjoy public
5 spaces. The police don't know what to do with them.
6 The district attorneys don't know what to do with
7 them.

8 I asked law students to figure out what to do
9 with them. That's one more thing I have been doing.
10 I would say I benefitted.

11 Last week, for example, I spent some time in a
12 police precinct in a squad car, walking the beat with
13 some students, and I am willing to sort of say things
14 that often look very clear when I work just very
15 defense side or look very clear on prosecutor side,
16 more different as a constituent, a member of the
17 public perspective. I see, I hope I learn more. I
18 also confess I get confused at the complexity of what
19 I see; we see. I try to do a variety of things,
20 classroom teaching and clinical work and try to
21 integrate the two.

22 MR. JONES: Thank you. One of the things, the
23 sort of way that Wisconsin thought about this, at
24 least the way that you sort of memorialized the way
25 Wisconsin has thought about these types of courts, is

1 very interesting to me. I hope we can get into it
2 more deeply.

3 But just off the top you talked about the
4 opportunities for defense, the Defense Bar
5 individuals, different individual communities, is to
6 take advantage of being in on the ground floor
7 thinking about how to formulate these courts, how to
8 create how they could operate.

9 My sense was though that either there was
10 resistance or reluctance to have a defense
11 perspective on the ground floor because they were
12 unwanted; they were interlopers. It was atypical, or
13 that certain parts of the Defense Bar didn't want to
14 buy in because of the analogy you gave about being
15 the gorillas in the hills.

16 So what was the actual -- in Wisconsin what was
17 the actual involvement of the Defense Bar in
18 formation of some of these Courts?

19 MR. KEMPINEN: I think I can best answer by
20 providing a little bit of perspective. Having been at
21 the university, probably with Justice in Wisconsin
22 for over thirty years, some time in the past, even
23 those members of the Defense Bar that had a great
24 deal to offer were often not welcomed, not invited.
25 That is very different than the treatment court

1 context. Also, part of a larger movement toward, for
2 lack of a better term, "collaborative
3 decision-making," we have a number of communities in
4 Wisconsin that developed collaborative counsel.

5 One thing I found fascinating about that dynamic,
6 treatment court is part of it, the impetus, in our
7 Wisconsin, we are not legally trained people. The
8 lawyers, and the judges, and the district attorneys
9 are often the last dinosaurs to get on board.

10 What I found fascinating, extra-fiscally
11 conservative Republicans at the local level were fed
12 up with no state or federal help, fed up with the
13 district attorneys, judges, saying build a new jail
14 every six months.

15 I saw not a lawyer on the county board willing
16 to think outside of the box, willing to take risks,
17 willing to do new things. But within that context in
18 the broader view of collaboration, I think
19 appropriately, thankfully, the Defense Bar was
20 finally recognized as an equal and important partner.

21 One thing, I am not sure I know exactly why,
22 which is, I think, unfortunate. I haven't seen in
23 Wisconsin a real viable presence with the private
24 Defense Bar. I think part of that is economics. I do
25 think for a variety of reasons. The health of a

1 local criminal justice system demands a vigorous
2 Defense Bar, even though I think we have a good
3 public defense system in Wisconsin.

4 One of our problems is with the rates we pay
5 private attorneys. It's not feasible for many of
6 the better defense attorneys to have that presence.
7 But, in any event, I think it would be unfair to say
8 that right now the communities that have
9 collaborative committees or treatment courts have not
10 welcome the defense because --

11 MR. JONES: At a policy level?

12 MR. KEMPINEN: Right. Partly let's think about
13 having a treatment court. Let's go visit another
14 state that has one. They are part of the team to
15 visit. Let's sit down and write our procedures; they
16 are part of that. To my knowledge most of the
17 communities are also members of the individual
18 panels. I might say one of our guests is Liesl Nelson
19 who is very involved in the State Public Defense
20 Treatment Court in Hudson near Minneapolis. She will
21 be testifying later.

22 MR. SCHECHTER: I want to go back on this last
23 area and ask a question.

24 MR. JONES: Sure.

25 MR. SCHECHTER: This business of the role of the

1 private defense lawyer, the fact it may not be
2 quickly feasible. Would one way to cure that be for
3 a bar association to adopt programs, formal training
4 programs, to encourage their members to join a
5 program of the bar association to take on these
6 cases? That's one suggestion. I want to hear what
7 you have to say about that.

8 The second, would it be a way to encourage
9 private attorneys to take these cases is to give them
10 credit for pro bono work toward C.L.E, a seminar?

11 MR. KEMPINEN: You know, as far as one thing, in
12 terms I see a valuable private defense presence in
13 the planning advisory thing. So that, I guess, that
14 would be viewed as pro bono under some of the
15 different definitions that we have.

16 As far as being a State Bar presence, that's
17 something that usually provides some elements of
18 financial support, if only for expenses, and what
19 not. So I think that's another way that the Bar
20 could support. You know, if there is endless
21 meetings, things of that nature, sometimes it is just
22 not economically feasible for somebody doing that. I
23 think some public defense agency can give local lead
24 for that.

25 MR. SCHECHTER: Mental health courts, it is not

1 endless meetings. Once the person is underway, they
2 come back for every two months with a judge. Why
3 isn't it a private defense could come back even for a
4 five-minute conference?

5 MR. KEMPINEN: That's a different thing. If you
6 are talking about like I am representing somebody
7 that's in the court?

8 MR. SCHECHTER: Right. No problem?

9 MR. KEMPINEN: To be quite honest with you, I
10 think that ought to be reviewed as part of your
11 response. The treatment courts, you know, like Yogi
12 Bear said "it isn't over until it's over." If a guy
13 is in a year-long program--

14 MR. JONES: We will get to that.

15 MR. KEMPINEN: For the advisories though it can
16 be once a month. We need to get up and running once
17 a month. Some of the counties that I visited, I sat
18 in on some meetings, they meet every month sometimes
19 over a lunch for an hour. There is continuous issues
20 to deal with, procedures need to be tweaked: Do we
21 need a new contract for treatment services, funding
22 is running out from one grant, help to prepare,
23 things of that nature where I think a defense
24 presence public/private is valuable.

25 MR. JONES: One more formation question. Then

1 we'll get into the nuts and bolts of the courts.

2 You talked about a lot of these courts in
3 Wisconsin being started. The genesis was an
4 identifiable problem, a threat, methamphetamine in
5 this community, cocaine in that community, whatever
6 it was. So the court was sort of brought up around
7 that issue and the access was started for those folks
8 with those problems in those communities.

9 My sense was that maybe other folks who had
10 different problems in those communities might not
11 have had as easy entree into those programs because
12 of the hyper-focus on those communities. I wonder if
13 you think that's a good thing and sort of why that
14 was?

15 MR. KEMPINEN: A couple of things. One the two
16 things that seem to go hand-in-hand with the counties
17 that I have visited and know most about was one
18 intractable problem often quickly developing and the
19 complete frustration and complete failure of
20 traditional responses to it.

21 One example, and Liesl can speak to this, when I
22 was in Berrien, in Eau Claire County, something I
23 hadn't seen was the scourge of methamphetamine. It
24 was incredible. Nothing else worked. Jail didn't
25 work; probation with treatment didn't work; people

1 didn't have private insurance; prison didn't work.
2 And it was something that was just there was a sense
3 among some of the local actors the state and federal
4 government has nothing to offer us. We have something
5 that's just basically ripping our community apart.
6 We have to do something about it.

7 Now, one of the things you mentioned, some other
8 communities in wanting to start it and having some
9 political resistance, in my view they were dumping
10 cases that didn't belong in treatment court. The
11 college kid who was caught smoking pot. The idea if
12 you go and talk to a counselor, you can get out of
13 this without a record, cases that in my view
14 shouldn't be in the criminal justice system at all
15 much less using scarce treatment resources.

16 In some communities I heard there is
17 attention -- I know I can speak empirically based on
18 this -- we should let these guys into treatment
19 courts so they can afford a record. My response is
20 you need to develop a different parallel diversion
21 program for those people rather than to avoiding the
22 understandable results of it and avoiding a record
23 and not using scarce resources.

24 One of the key things, the defense has a great
25 deal to offer, more than the prosecutor, more than

1 the judge. The defense attorney knows the
2 Defendants. They know their families; they know
3 their weaknesses; they know their strengths; they
4 know how the communities the defendants live are
5 affected by these things so in targeting that
6 population we want to try to deal with whether the
7 resources in the communities are adequate to deal
8 with them. I think the defense has much more to
9 contribute than other actors or shareholders.

10 MR. JONES: Okay. So we have an up and running
11 treatment court in the community. It seems to me like
12 the model you were describing in this state was as
13 follows: Correct me whenever I say something that's
14 wrong.

15 There's the front-loaded decision about whether
16 or not to have your client enter the treatment court.
17 That decision needs to be done, needs to be done with
18 two things. There needs to be a thorough consultation
19 I think is the word that you used. That consultant
20 needs to advise the client of A. to Z. what it means
21 to go into treatment court, which means that the
22 lawyers, the attorney who is doing this advising
23 ought to know the A. to Z. of what it means to get
24 into treatment court.

25 It also means that in your analysis that that

1 same attorney, who is now really sort of working in
2 an advocacy capacity at the front end, ought also to
3 know as much about the case as is possible so they
4 can advise the client whether or not it makes sense
5 to litigate this in the traditional way with hearings
6 and trial, or whether or not it makes more sense to
7 go to drug treatment. Part of that is whether the
8 person were to deal with the drug treatment part of
9 the strength of the case, the government's case, you
10 suggest that one of the things that ought to happen
11 is early discovery so that a person is in a position
12 to make those decisions.

13 I guess my question to you about just that much
14 of it, the early consultation is sufficient because
15 you also said that it may be unrealistic because of
16 time pressure to get into these courts to know that
17 much about the case, the strength of the case, those
18 kinds of things. But there were some inefficiencies
19 built into the drug treatment model because of the
20 delays because of too many people, because of
21 back-ups, because of administrative stuff that you
22 had to go through. So those inefficiencies net work
23 to the benefit of being able to find out more about
24 the case.

25 I wonder if that's a good thing to be reliable

1 on, inefficiencies. Also, is there -- is it
2 realistic to think that the government for this
3 particular type of case is going to change its
4 discovery rules? Does that happen? How does that
5 whole process really work?

6 MR. KEMPINEN: Well, you know, a couple of
7 things. Number one, I do think with all due respect,
8 I think some of the concerns about the intractable
9 conflict between due process and the adversarial role
10 of counsel in treatment courts, in many cases it is a
11 false problem. That is, if you have done a good job
12 of explaining to your client both the legal and
13 realistic implications of each of the choices that
14 are on the menu of options, you are confident at the
15 end of the day they have made an informed choice, if
16 they choose treatment, in my view it makes no
17 difference to you, it's irrelevant. You want to
18 strap on the armor and fight.

19 MR. JONES: We will get to that.

20 MR. KEMPINEN: On the other hand, in consulting
21 them, one thing that's just non-negotiable is you
22 have to be able to tell a client, in my view, one,
23 whether you believe the State can convict them. So, I
24 think it would be absolutely inexcusable to have a
25 system where you were pressured to say you have to

1 decide in 24 hours about this before you have gotten
2 discovery or interviewed witnesses or what not.

3 Knowing how personalities can interfere with
4 good judgment, and what not, I see greater value in
5 having the defense role in planning the adversary
6 courts if the district attorney is on board, the head
7 prosecutor who can basically say to his staff we have
8 to have accommodation, early discovery in these
9 cases, or we have to have criteria we fairly apply.

10 In some counties they may have three drug district
11 attorneys, or sometimes more draconian more than some
12 of the ones in treatment court, and they can
13 basically have a lots of control over you whether
14 referred to or not.

15 If that's not done in a consistent defensible
16 basis, that's another systemic flaw which I think is
17 the best way to deal with it. I think, I am sure all
18 of you have done with a situation where you have
19 similar cases, different personalities, same
20 prosecutor's offices, on Monday a diversion. One day
21 it's a felony. That's indefensible. That's a
22 structural flaw. In any event, I don't know, I call
23 it inefficiencies in the delay. I think it may be the
24 opposite. Sometimes the court is viewed so
25 attractive or efficient, there is a lack of a backlog

1 and more lack of resources.

2 MR. JONES: A backlog which gives you time to
3 get more about the case for the defense attorney?

4 MR. KEMPINEN: Absolutely.

5 MR. JONES: Not because that's been a
6 thought-out planned component of the courts. It's
7 really just because there is this backlog, you have
8 some play in the system?

9 MR. KEMPINEN: Right. None of the attorneys I
10 spoke to, public defense or private defense attorney,
11 said they felt pressure to make a quick decision.
12 More often I heard I would like to get into treatment
13 court but there is a six-month waiting list, you
14 know, what not. We need more beds. We are trying to
15 struggle to accommodate that. But I think that's a
16 struggle thing.

17 As it turns out that now, I suppose, of course,
18 part of the therapeutic model is the crisis of an
19 arrest suggestion. There is a greater benefit by
20 getting involved in treatment very quickly. Maybe
21 some of that benefit is lost with the delay. My point
22 is this: The thing was that is of concern while
23 legitimately it didn't seem to be a big problem in
24 Wisconsin.

25 MR. JONES: So now we have had the thorough

1 consultation. We've assessed the case as well as we
2 can with what discovery we have got, whether or not
3 we can win has been decided. The person is desirous
4 of treatment for whatever their particular problem
5 is. So now we have entered them into treatment court.
6 There is room, everything is fine, they are in.

7 My sense is that the public defense now closes
8 its file, puts it away, goes on to the next case only
9 to perhaps reappear if the person at the end of the
10 room now is going to be designated the judge. The
11 treatment court judge is going to recuse himself for
12 the termination hearing, a new judge is going to hear
13 it, re-enter the public defense and advocacy role to
14 try to prevent the termination hearing. They have to
15 go back and find that file, dust off the cobwebs, and
16 go back in and argue against the termination. Am I
17 right about that?

18 MR. KEMPINEN: That's my sense, I think, being
19 in a position to have to play some catch-up if you
20 would, in the sense they won't be aware of the
21 successes and failures that often define the history
22 of the program.

23 MR. JONES: Right.

24 MR. KEMPINEN: Up to the point where there is an
25 issue of termination, if I could step back for one

1 minute about the consultation.

2 MR. JONES: Sure.

3 MR. KEMPINEN: In a typical case consultation
4 may involve, I think, evidence of admissibility of
5 Fourth Amendment doesn't have merit. If you plead
6 guilty, waiving consultation, we can all do that in
7 our sleep on behalf of our clients, who are quite
8 experienced some of them; some students. Some
9 ex-defendants will have more courtroom experience and
10 will help correct you. This is different.

11 Even, I was talking to an attorney in the
12 last few days about treatment courts. I told him
13 about what I thought where decisions are really made
14 in treatment court; it isn't the hearing, it's the
15 staffings that precede the hearings. One of the
16 questions, really? But my point is not to be
17 critical. You really have to know how they function,
18 how they operate, the demands they place on the
19 clients to really affectively consult.

20 So I think there is a responsibility for
21 attorneys to be more proactive in the communities.
22 Because even only if you have a few of them in
23 Wisconsin, former students and friends that are in
24 this conference, when I was talking to them about
25 this, they said "We don't have a lot to do in this

1 county but I do a lot in the other county. I don't
2 know much about it. "

3 I think one of the things we can do or should do
4 is try to get up to speed more: what it's about, how
5 can we advise somebody about what it is. And I think
6 sitting in hot hearings, immersing in the available
7 materials, talking to people involved in them because
8 they were extraordinarily patient and generous with
9 their time with me.

10 Then I think another aspect about consultation
11 that may not play out in the typical bank robbery
12 case or something else, it is possibly learning a
13 little more about what therapeutic resources are in
14 the community and about whether your client is
15 someone that can benefit by that.

16 MR. JONES: So let's get that then. I will ask
17 you one more multiple part question, then let my
18 colleagues get in on this. Let's get now to the
19 actual treatment itself. The way that I understand
20 it, the public defender has closed his file. Maybe he
21 will be back if there is a termination proceedings;
22 maybe he will be back for graduation, it is unclear,
23 unknown. You never saw a defense attorney --

24 MR. KEMPINEN: I think the private attorneys
25 whose file might be open aren't at the hearings.

1 MR. JONES: Aren't at the hearings?

2 MR. KEMPINEN: While technically they have an
3 open file, there was not, in my view, a defense
4 presence at all in the hearings.

5 MR. JONES: So, there is a participant going
6 through treatment, and there is a public defense on
7 the team in the room. That person is -- that
8 person's loyalty is to the team. That person is a
9 member of the team. They participate in the team
10 meetings. They do not sort of see themselves as
11 representing any individual client but they are a
12 member of the team and will advocate in untraditional
13 defense attorney ways. Right?

14 There does though come this point where a
15 participant may say I don't feel comfortable, judge,
16 because everyone sees the judge as sort of the person
17 in the courtroom. I don't feel comfortable, judge,
18 talking to you about this in open court. I have a
19 question that the judge agrees this is not a question
20 perhaps.

21 Now the defense attorney, who has been a part of
22 this team, loyalty is to the team, has to sort of
23 take that hat off, go over in the corner and put on a
24 different hat and now have a conference that we don't
25 know if it's confidential or how confidential it is,

1 how much of it gets shared with the team the next day
2 or the next time that person's case is coming up. So
3 Part A of this question is what about that?

4 Part B. I guess it seemed to me, you might have
5 been suggesting, you had been suggesting with respect
6 to the consultation process that these other private
7 bar attorneys or these other attorneys who close the
8 files ought at least be observers in the team
9 meeting. You think it would be unproductive for them
10 to sit in on team meetings in an adversarial way? It
11 would break down the purposes and functions, the
12 utility of the team? But they ought to be observers.

13 Would you think that it might be a good idea if
14 we are going to have this model of the team public
15 defense having its loyalty to the team, that it might
16 be that there ought be a second defense attorney
17 available for the times when those confidential
18 conversations need to be had, whoever comes into the
19 room to have those confidential conversations, maybe
20 having been an observer in some of the team meetings
21 then you aren't putting this other team person in a
22 schizophrenic way?

23 MR. KEMPINEN: One of the beauties of what I can
24 do as an academic, people listen to me. I have that
25 power. Number One, the team member should never

1 represent somebody that's active on the team. That's
2 a recipe for disaster.

3 Secondly, my response to when the guy has a
4 question in court that doesn't ask the judge, you
5 should ask your lawyer. If your lawyer is there, you
6 can ask him. Now, that said one of the things that
7 is very problematic with scheduling is the dynamics.

8 You are all aware if there are guys who have
9 hearings in the morning, they all stay for the whole
10 time in the courts. I saw it wasn't clear when your
11 guy would get called. Many of my friends said, "I
12 can't do this. I have four appearances that morning.
13 I can't just sit, as entertaining it would be." I
14 don't know that could be accommodated; that lawyers
15 can check in with the clerk and say maybe you can be
16 in the first ten cases called. There is ways around
17 that.

18 But now the few times that I saw the person
19 wants to talk to someone other than the judge, the
20 team member, public defense was called. Part of me
21 wanted to go up and say what's going on here because
22 I was quite curious. I didn't obviously so I don't
23 know what the question was. I don't know if that team
24 member provided any caveat, you know, I am not your
25 lawyer and what I tell you is in confidence. I don't

1 think they are their lawyer.

2 But one of the ambiguities, as I saw it, people
3 as they tried, as we worked through this, it is
4 clearly a work in progress. What I saw were team
5 members functioning, in my view, in a way they were
6 clearly officers of the court, members of a team, not
7 lawyers for clients. When some of them verbalized
8 their participation in drug court, their
9 verbalization in review seemed less clear than what I
10 saw them doing.

11 MS. BERNHARD: What is the role of the defense
12 attorney who is part of this team? Is there a
13 general defense present who is responsible to every
14 case that comes through that day or just sort of to
15 give a general defense perspective? It seems odd.

16 MR. KEMPINEN: What I think is a viable model?

17 MS. BERNHARD: I would encourage you to talk to
18 some other people?

19 MR. KEMPINEN: Some of the most wonderful and
20 gifted lawyers and judges in Wisconsin that I have
21 learned a great deal from are to follow me. Anything
22 of value I say they get the credit; any mistake I
23 take full responsibility.

24 That said, I think the best way to view a member
25 of the team is I am not a lawyer with a client. I am

1 officer of the court. My knowledge of clients is due
2 process. Defense attorneys have a keener
3 appreciation for procedural fairness than prosecutors
4 and judges in my experience. You bring that to the
5 table. If the committee meetings are not before the
6 hearings where are decisions made? The team members
7 can ensure an element of fairness there.

8 MR. JONES: But it's sort of nonspecific?

9 MR. KEMPINEN: That's right.

10 MR. JONES: It's not particular to a particular
11 case or a particular client, just sort of general
12 like?

13 MR. KEMPINEN: To all of them.

14 MR. JONES: Well, actually we don't like the way
15 police are behaving down on the corner?

16 MR. KEMPINEN: You know, the thing I found
17 fascinating at a couple of hearings, you saw a little
18 venting yet where someone relapses a bunch of times,
19 the public defense said, "You know, I think he has
20 run out of second chances. I think we need to dump
21 him." The district attorney said, "I think he is
22 this close. Give him an extra chance." Role
23 reversal. All people working together; the goal
24 being we have to come up with a plan to make the guy
25 succeed. Clearly the client was to the team. In that

1 model in the efforts to help somebody when no other
2 things we have tried before, the criminal justice,
3 seemed to help.

4 But I think that the notion that you have
5 clients because it could be you are representing all
6 of the guys in the drug court? Are you the attorney
7 for the team? For the organization? I think not. If
8 the team gets sued, do you represent them? I think
9 not. I think sometimes thinking that through and
10 clarifying how you see your role, some of the other
11 issues fall into place. Then in analyzing the
12 ethics, the rules, which I touched about, becomes
13 easier, not completely easy, but easier if we have an
14 idea first and foremost what is my role. What's my
15 relationship to each participant and to each member
16 of the team.

17 MR. JONES: Yes.

18 MS. SHIFMAN: During your course of observations
19 and studies, did you talk to any of the actual
20 litigants in these courts, and, if so, did they
21 express to you any level of discomfort by basically
22 not having a traditional attorney advocate? That is
23 to say did they feel adrift?

24 MR. KEMPINEN: I did not. I pledged elements of
25 sorts of confidentiality to be allowed to participate

1 and see what I saw. I very much wanted to because
2 that's part of the puzzle. That may be more
3 important than the others. What do you think.

4 Even a range of questions. Now that you have
5 been in the program for six months, you look back, do
6 you think you learned -- did a good job of explaining
7 what you were getting into? Your lawyer. If there
8 was no defense were there times during the course of
9 the treatment did you want to call your lawyer, I
10 want to ask you something. If they say I was dirty
11 and I wasn't, do I have any resources? I don't want
12 to get them mad.

13 The roles that you all play for your clients all
14 the time is just sort of a sounding board in
15 confidence to ask. It would be wonderful, I can
16 think of your questions and others that would be of
17 great value to ask, extraordinary value to ask people
18 in the program. But I did not do that.

19 MR. JONES: Any questions? In a couple of
20 minutes any final thoughts you want to leave us with?

21 MR. KEMPINEN: I applaud you for this effort. I
22 think there is some great potential, also some great
23 tasks. In thirty years this is unlike anything I
24 have ever seen before. I have seen some poignant,
25 extraordinarily poignant; some make me want to

1 grimace. But to the extent people work together and
2 try to identify these issues, and that I think one
3 can move forward in both, support these for the
4 cases, that they can be very helpful and positive
5 without, in my view, damaging the important role of
6 the defense function. Thank you very much.

7 MS. YOUNG: Professor, I do have a question. In
8 that do you think that problem-solving courts or
9 therapeutic justice, is that something that's also
10 being taught at the law school or is that really just
11 an experience based?

12 MR. KEMPINEN: We are starting to integrate some
13 of these things more into the courtroom. I know some
14 of the other disciplines have started to do that,
15 some of the public health at the university.

16 We like many people are sometimes a little bit
17 slow on the uptake in terms of seeing law in action
18 focus. Sometimes one of the values I see going on, I
19 can integrate that into the classroom. I wish I
20 could tell you I thought of this before anybody else.
21 I taught everybody. But I learn as much from the
22 practitioners and judges and the problems much more
23 than they learn from me. But we are just trying to
24 start to do this more; the idea being that students
25 that would go out and choose criminal justice as a

1 career path would be at least mindful of the
2 different ways that people can approach public safety
3 and balance that with fairness.

4 MR. JONES: Questions?

5 MR. SCHECHTER: Professor, you had a chance to
6 look at the entire system from the institution all
7 the way to the end. If today you had to make two
8 recommendations what would be the top two
9 recommendations you would make to change the system
10 for the better?

11 MR. KEMPINEN: Well, one thing again that would
12 be a benefit, I would do, I would invest an infusion
13 of a great deal of additional resources to the
14 defense service. This goes to system generally or
15 just treatment?

16 MR. SCHECHTER: Problem-solving courts.

17 MR. KEMPINEN: I would say more resources for
18 defense. As far as the problem-solving courts,
19 another thing would be very helpful would be to make
20 sure that we have sufficient resources to empirically
21 in sound ways assess the efficacy of these courts, if
22 they work and for whom they work, when they weren't
23 working and why.

24 Maybe a final note. We tell students one of the
25 odd things about criminal justice with judges, and

1 often prosecutors, when we impose dispositions and
2 recommend them, we often have exactly no idea what,
3 if anything, they accomplish other than the depriving
4 somebody of liberty and giving sentences. We don't
5 have commitments or resources to sort of empirically
6 find that out.

7 I tell my students would you go to a doctor who
8 said "I just got these two new pink pills. I have no
9 idea what they are, take a couple and see what
10 happens."

11 So I think that would be something that would be
12 very valuable to problem-solving courts, but just
13 generally for the dispositions we recommend to see if
14 they are working.

15 MR. JONES: Next question.

16 MS. BERNHARD: I found your division of the role
17 of the defense attorneys into there categories very
18 helpful talking about the planning then these team
19 members then the advocate for individual clients.
20 That was a very helpful to think about it.

21 It certainly also helped me think about where
22 the legal issues were for the defense counsel in this
23 area. And it seemed to me there were more legal
24 issues to grapple with in terms of planning then the
25 informing the clients about what he or she might be

1 getting into.

2 Do you see any other sort of legal roles? One
3 of the reasons I think about this is because I think
4 a lot of times the defenders who are working in these
5 courts don't necessarily have the right training to
6 be dealing with these kinds of treatment issues since
7 some of it seems like psychological as opposed to
8 legal.

9 MR. KEMPINEN: Well, I think Liesl will be able
10 to speak to that. My sense, to a large extent what I
11 saw the prosecutors, defense attorneys, judges were
12 to a large extent deferring treatment professionals:
13 what would work, what wouldn't work, what the person
14 needed, what not. They were clearly playing a much
15 more prominent role in this than any kind of
16 traditional disposition model.

17 MR. JONES: Thank you very much.

18 MR. KEMPINEN: Thank you.

19 MR. JONES: This much is appreciated. Back in
20 ten. .

21 (Break at 9:50)

22

23 MR. JONES: Good morning. We are pleased to
24 have all of you. I would just ask as soon as I am
25 done, I see that Carl is handing you name plates;

1 that you all for benefit of us and also for the
2 record identify yourselves. To the extent that you
3 have given us a bio, they will become part of the
4 permanent transcript of this hearing.

5 We are pleased to have you. The way this
6 hearing works, the way that it runs is that we give
7 each of you really a brief three to five minutes to
8 give us the benefit of your introductory remarks.
9 Then one of us in this case, Vicki Young, will lead
10 the questioning of this panel. So we are pleased to
11 have you. If we could start at the end and go down
12 that would be great.

13 MS. DUE: Barb Due, Public Defender in
14 Milwaukee. I have been working in Milwaukee for the
15 past 21 years. I just recently started doing the
16 diversion and deferred prosecution agreements in the
17 Milwaukee area.

18 MR. JONES: Fantastic.

19 MS. RABLIN: Dawn Rablin, I too am a Public
20 Defender. I have been in the office for fifteen
21 years. I have been a part of this group pretty much
22 since the inception of the diversion. It's been
23 almost two years now that we have been doing the
24 program.

25 MR. JONES: Thank you.

1 MS. DORMAN: Robin Dorman. I also work in the
2 Milwaukee Public Defender Office, and I recently as
3 of yesterday celebrated my 29th anniversary in the
4 State Public Defender Office.

5 MR. JONES: Wow.

6 MS. DORMAN: I started supervising trial offices
7 around Milwaukee County. I have been in the
8 Milwaukee trial office for the last five years.

9 MR. JONES: Fantastic.

10 MS. DORMAN: We just started a pilot project for
11 a drug treatment court four months ago in Milwaukee.

12 MR. JONES: Thank you.

13 MR. ASHLEY: My name is Carl Ashley. I am a
14 Milwaukee County Circuit Court Judge. I have been a
15 judge approximately ten years. I am also the Chair of
16 the Subcommittee on Effective Justice Strategy, a
17 state-wide program, policy and program, for the State
18 Courts and the Director of State Courts. And that
19 committee has been in effect regarding effective
20 justice strategies. .

21 Coincidentally, I have been assigned to drug
22 court, specifically, a subcomponent of it that is
23 deferred prosecution agreements, which Barb and Dawn
24 here are very involved in. So I am very happy to be
25 here and talk a little more about that.

1 MR. JONES: Thank you very much judge.

2 MR. MASTANTUANO: Greg Mastantuano, private
3 practice here in Milwaukee, specializing in criminal
4 defense in the state and federal courts in Wisconsin.

5 You will hear about a couple of things today.
6 The inception of a pilot program for drug treatment
7 courts. Also, what we are referring to that may be
8 confusing for you, at the introductory, as the
9 diversion deferred prosecution agreement program.

10 My involvement and the reason for coming here as
11 it relates to the diversion agreements and deferred
12 prosecution agreements in Milwaukee County, I took on
13 an early role working with our newly elected district
14 attorneys, attorneys here in Milwaukee County, to
15 consider these as options in prosecution of cases.

16 When he was elected in 2006, November, then
17 sworn in the January of 2007, we started up a policy
18 group that started meeting about putting these into
19 place in our courts in Milwaukee County, which
20 ultimately led to the assignment of deferred
21 prosecution cases to Judge Ashley's Court, so I have
22 a policy-making role.

23 As a private bar member, I have taken on the
24 lead for private bar in Milwaukee County to institute
25 some of these things in Milwaukee County and carry

1 out training related to it.

2 MR. JONES: I just ask Judge Ashley, if you
3 would give us the benefit of your opening remarks,
4 then we will begin the questioning. Thank you.

5 MR. ASHLEY: Thank you. I guess my roots are as
6 public defense. I started out when I graduated from
7 law school, I spent nineteen years in a public
8 defense office before I went into private practice
9 for another nine years or so then I ran for judge.

10 I think the opportunity to involve then these
11 types of programs is extremely important, mindful of
12 defense attorneys are reticent to put their clients
13 in a position where they might fail. But the
14 opportunities in my estimation far out-weight the
15 failure as compared to the potential success rate on
16 changing people's lives.

17 As a defense attorney, I can tell you I don't
18 want to compromise any constitutional rights by
19 giving a client an opportunity to be involved in
20 these programs. As you will hear from the rest of the
21 panel at no point is anybody's constitutional rights
22 overlooked or side-stepped when we talk about these
23 programs. But rather it's an opportunity for them to
24 be informed about possibilities where in my court you
25 get an opportunity to have either a dismissal or a

1 reduction from a misdemeanor from felony.

2 Folks, it's pretty tough when you have a felony
3 conviction. It's also an issue regarding color, who
4 is in our system by and large, who is affected by
5 these programs or lack thereof.

6 When I have an opportunity to have someone in my
7 court who can have a dismissal, if they do six months
8 of certain things, it's a tremendous opportunity.

9 Now, I will tell you that Craig is right. The
10 Public Defender Office and John Chisholm went out on
11 a limb on this because there wasn't resources. They
12 simply said we will do this. Why?

13 John Chisholm is not someone who is soft on
14 crime. It is a matter of being smart about it.
15 That's when you look at the literature and what is
16 going on in our communities across the country, we
17 are talking about evidence based practices. Let's
18 try to do something that's more likely to work
19 beneficially in our communities and allow you to
20 represent your client in an appropriate way.

21 So from my standpoint, when I get a chance with
22 limited resources to try to get this done, and the
23 Bar, from both sides saying we are willing to work,
24 this is good for everybody, including the defendant.

25 Now sometimes it doesn't work. But I will say,

1 and I think some members will mention we have a much
2 better success than failure rate. So the potential is
3 tremendous about changing peoples lives. I don't know
4 how much over step time.

5 MR. JONES: We are interested in what you have
6 to say, if there is more.

7 MR. ASHLEY: I guess one of the other issues,
8 these things are not done in a vacuum. There are some
9 things happening statewide to change the way we
10 allocate our resources. Because the bane of the
11 judge's existence is okay, Carl, sounds like a great
12 plan but we don't have the resources. The effort is
13 now to try to get resources to help further these
14 effective evidence based practices. That is key.
15 Right now the justice reinvest efficiency followers
16 are here.

17 This is a federal program you might be aware of
18 in ten states where they come into jurisdictions and
19 say, look, you will bankrupt yourselves with these
20 prisons. Let's look at some alternatives.

21 So I had conversations with them this week: The
22 governor, chief justice of treatment courts here,
23 legislators, people are coming here to try to figure
24 out whether we can change the tide. It is a big
25 battleship. It's hard to turn it. But there is an

1 effort afoot to try to do that.

2 In addition, the Effective Justice Strategies
3 Committee has formulated aims or assess, inform and
4 measure. Another program is to try to get judges
5 more valuable information at a time when it's
6 relevant and to actually measure what happens.

7 Then we are also looking statewide at community
8 corrections actions to try to get money to deal with
9 some of these local issues instead of putting people
10 in prison. I will stop and let other folks talk as
11 well.

12 MR. JONES: Thank you.

13 MS. DORMAN: What you need to know about this
14 group is that we are all trial attorneys who just got
15 tired of seeing business as usual.

16 I think when Craig gives you the background of
17 how we really got together, how we got started, what
18 our documents are about, I think probably Vicki
19 shared some of information with you already, you will
20 get a perspective.

21 But if I am going to fall on my sword and tell
22 you how long I have been actually practicing, I will
23 take Ben Kempinen with me. He can talk to you
24 because he was my professor in law school.

25 When I worked at The Legal Assistance Inmates

1 Program in law school, I could count on my one hand
2 the institutions we had. In fact, my dad was state
3 senator. He was on the Joint Finance Panel in the
4 legislature when they sold Oxford prison to the feds.
5 When the state sold it to the feds because Wisconsin
6 simply didn't need another prison in the State of
7 Wisconsin. Now we have so many prisons, when I give
8 talks to different organizations around the state, I
9 show in a colorful way all the prisons when I started
10 my practice. You know, I can show you the -- we had
11 Central State for the criminally insane then we had
12 Waupun for our males, we had Green Bay, you go on;
13 just count on one hand or two the prisons. But now, I
14 can fill out this rainbow neon, I can string it
15 across this room two times of all the new prisons.

16 You all know what we are famous for now?
17 Leading the country in disproportion minority
18 confinement. It is a mantle we carry that is just a
19 total embarrassment.

20 I can tell you my whole career, it looks like
21 finally, fighting my whole life in the public
22 defense, look at what we have created. More prisons,
23 and then this. Just this sea of, you know,
24 incarcerated individuals and families that have been
25 just destroyed.

1 Milwaukee, which just feeds the prison system,
2 finally we said, "stop. Enough is enough is enough."
3 All of us in our office, Dawn and I have a huge
4 sexual assault trial that is starting. We are doing
5 trial work.

6 I did a vocation hearing the other day. The
7 hearing examiner said "give regards to Barb. She
8 wins everything. She comes in. " We are still doing
9 trial work.

10 This is sort of our -- this is in our free time,
11 other time. When we are not doing trial work, we are
12 doing this other work. But this is the work that's
13 finally changing things. This is what is creating the
14 numbers. This is what is finally going to help; this
15 is what is going to create the big sea change in our
16 community. This tiny little treatment court that we
17 have going, two people.

18 I have to tell you what happened last night. I
19 have one client who was going to finally make it from
20 phase one to phase two.

21 I am sure you hear about treatment courts
22 because they have been going around the country. We
23 have two people out of all the people in the system
24 who are in this little, tiny treatment court.

25 Yesterday, I get the call. My client was going

1 to make it from phase one to phase two, got
2 possession with intent to deliver cocaine and bail
3 jumping. He is in the jail. Last night, on my way to
4 the jail to see him after the program yesterday, when
5 I got the call the district attorney calls me on my
6 cell. I can hear my purse vibrating. He is probably
7 calling now to find out what I found out in the jail
8 last night.

9 But I got it tell you when the assistant
10 district attorney calls me last night, I picked up
11 the phone, I said, "My, God, Jeff, this is the call I
12 didn't want to hear right now." Jeff said, Robin, he
13 has to make it. I don't want him to fail. Tell me
14 what is happening. " How many of you have gotten a
15 call like that from a district attorney? We are
16 working together.

17 This is amazing. This is a new world. This is
18 something I never had in all the years I have been
19 practicing. When the district attorney says "we have
20 got to make this work, what is going on with him,
21 tell me what I can do to help." I have the
22 information. I talked to my client; I know it's going
23 to happen. I know I am ready for our staffing at
24 12:15 this afternoon with Judge Ashley.

25 With one of Judge Ashley's colleagues we went to

1 who was not -- does not have a public defense
2 background, who has come around and made a huge
3 change, I think. I think, he had the potential
4 always, but I think he has seen the light. Little by
5 little he is buying into this program.

6 I just hope he will be allowed to keep this gig.
7 I hope we will see what happens this afternoon in
8 court. We are all trying to -- we are all learning
9 little by little. That's why it's a pilot program. I
10 am prepared; hopefully, Jeff is prepared.

11 When I called on our court monitoring program, I
12 said, "You have to get in; you have to test him
13 because, you know, I am counting on him testing clean
14 this morning. Shows up this afternoon; we are ready.
15 But we are working as trial attorneys. We approach
16 it as trial attorneys do. We work as trial attorneys.

17 MR. JONES: Great. Thank you for that. We want
18 to hear from all of you. But because we have limited
19 time, I want Vicki to start the questioning. Then we
20 will get all of you together and get the benefits of
21 your thoughts.

22 MS. YOUNG: What I want to clarify in my mind,
23 if you could give the information to the panel as
24 well is the diversion and deferred prosecution
25 agreements that you have been talking about, do they

1 involve a strong treatment, you know, as part of
2 that?

3 I don't know who wants to do it. If you want to
4 explain to our panel how it was that Milwaukee
5 started the deferred prosecution agreements and the
6 diversion versus the drug courts because to me they
7 did sound very similar. I wasn't clear on the
8 differences.

9 MR. MASTANTUONO: If I may, I will explain that
10 for you. There are similarities between the treatment
11 courts approach, drug treatment courts approach, and
12 what we have instituted in Milwaukee County and the
13 diversions and deferred prosecution agreement.

14 By the end of 2007, excuse me, over 700 people
15 in Milwaukee County benefitted from a disposition in
16 criminal referral to the deferred from a diversion
17 agreement or a deferred prosecution agreement.

18 At that point, at the end of 2007, we were
19 clipping along at 65 percent success rate of those
20 700 people. Not all ultimately benefitted but all were
21 given that opportunity. And the percentages were
22 rising and we were continuing to tally our figures.

23 The way that started, quite frankly, it was born
24 in my opinion of two things. One, we had a long -- we
25 had a long-time district attorney in Milwaukee County

1 Mike McCann who decided not to run for re-election.

2 At the time he stepped down I believe he had been the
3 longest serving district attorney in the country. He
4 had been the district attorney since the early 1960s
5 in Milwaukee County. Harry Connick's dad in New
6 Orleans was right up there with him in those states.

7 MR. JONES: Bob Morganfeld.

8 MR. MASTANTUONO: As you can imagine his tenure,
9 he was a good district attorney but things tend to
10 stay the same, unless changes come along.

11 One of his colleagues, the district attorney, a
12 gentleman he hired was John Chisholm. He decides to
13 run for district attorney. Several of us reached out
14 to the private bar. He asked for support. Several
15 of us came on board his kitchen cabinet.

16 We started talking about how things are always
17 done the same; how the district attorneys had turned
18 into, as John put it, as candidates in a
19 sausage-making factory; we pump them all out the
20 same, we charge all the drug cases, have prison
21 recommendations, everything, et cetera, charged
22 multiple counts.

23 Ironically enough, Milwaukee's violent crime
24 rate had continued to spike in Milwaukee County and
25 the drug cases, the drug problems, hadn't gotten any

1 better as a result of ten years of sending everybody
2 to prison. So John wanted to take a harsher approach
3 to high level violent offenders. He saw that with a
4 limited amount of resources, you can't make sausages
5 out of everything that comes into the office. So we
6 will have to do things differently on different cases
7 in order to be more aggressive as district attorneys.
8 On other cases, as he saw it, we started talking
9 about this concept. That was one of the factors that
10 led to the formation of the program.

11 The other one was quite frankly, in my opinion,
12 it is my opinion we don't have a local bar. Judge
13 Ashley, assigned in Milwaukee County, a local bench,
14 excuse me, in Milwaukee County that was looking to
15 institute reforms and try to start-up a specialty
16 court and treatment court that weren't related to
17 sending as many people to prison for as long as
18 possible. We had to go outside of the judges to get
19 something going.

20 Well, we are adding cases in an adversarial
21 system. District attorney on one side; defense
22 attorney on another. We can form agreements. We can
23 bring agreements to judges, or if they are a charging
24 agreement that doesn't result in a charge outside of
25 the judicial review completely. We recognized this.

1 So we started a working group with the public defense
2 seated to my right.

3 My background, as Public Defender background,
4 Robin hands me this as public defense before I went
5 into private practice, a member of the private bar.
6 No. A member of the bench. We started this working
7 group about how can we do this differently when facts
8 by and large, and we will talk about this, but when
9 the facts of allegations aren't in dispute.

10 All of our wonderful trial skills aside, our
11 trainings, we do our great skills, we all represent
12 guilty people sometimes; sometimes even our greatest
13 skills can't serve in terms of courtroom adversarial
14 battles to acquit our clients or reach a result
15 that's borne of litigation that's favorable to our
16 clients. We all know that.

17 So by and large when the facts aren't in
18 dispute, do we have to make sausage out of every
19 criminal case? No. We started talking. What we did
20 decide, we didn't want to institute a first-offender
21 program. It's been done. We didn't want to limit the
22 possibilities for alternative dispute resolution to
23 cases where the person was, you know, somebody who
24 had never been arrested before, had a college
25 education, this impact on the public defense clients

1 more so than any other.

2 By the time you water it down enough, the only
3 people benefiting from this type of disposition are
4 suburban white kids, quite frankly. So it's not a
5 first-offender program. We didn't want to limit it
6 to certain types of cases. Nonviolent crimes,
7 misdemeanors, referrals only. We agreed.

8 The thing that we did initially that really led
9 to the rest of the program, I will finish up, we
10 formed a protocol. We wrote a protocol with members
11 of the private bar, the public defense office, and
12 the district attorney office. This was right after
13 Candidate Chisholm was elected to become District
14 Attorney Chisholm. He was sworn in, he sent over his
15 top Deputy Public Defender, sent over their top
16 deputy.

17 We met at my office with a computer laptop. Tom
18 started talking what would we agree on here about the
19 types of cases that should be given an opportunity.
20 We wrote a protocol for changing decisions that were
21 ultimately put into place. The district attorney's
22 office, the same among all the district attorneys,
23 this is what you may consider when deciding to charge
24 a case.

25 It goes diversion must be considered initially.

1 If not appropriate for diversion, based on a number
2 of factors but not first offender or nonviolent
3 cases, then deferred prosecution must be considered.
4 If not appropriate for deferred prosecution charges
5 are filed.

6 The difference between diversion and deferred
7 prosecution. First of all, we use standardized
8 agreements. These are contracts that we also met and
9 we drafted. We entered into agreements, the district
10 attorney's office and the clients. The only
11 difference, the agreements really are the same that
12 we use for diversion and deferred prosecution
13 agreement. The only difference is this: Deferred
14 prosecution or diversion is prior to charging. The
15 district attorney elects those cases not to file a
16 charge against a client and instead enters into a
17 contract that the client is going to do certain
18 things. If the client does certain things, a charge
19 will no be filed. There are no court reviews because
20 there is no charge filed, no case in the circuit
21 court.

22 I will tell you a little more, and, actually,
23 Dawn and Barb can tell you more about how they work
24 day to day. Deferred prosecution: a charge is filed,
25 an agreement is reached about what will be done at

1 the end of that six-months -- as usually, generally,
2 our agreements are about six to eight months -- at
3 the end of that period of time the case is usually
4 reduced or dismissed. These are filed in courts,
5 assigned to Judge Ashley's court, they go in for
6 court reviews.

7 Really, the only difference between diversion
8 and deferred prosecution agreements, when it's
9 working well the only consideration for a district
10 attorney is not more serious cases get deferred
11 prosecution and less serious cases get diversion
12 agreements. It is more does this person need the type
13 of structured monitoring that a court review will
14 provide. Is this more a kind of at-risk person that
15 needs more structure. Judge Ashley, talking to him,
16 or her every month or every two months, two weeks, if
17 not, a diversion can suffice.

18 If someone really has a good start on things --
19 I want to point out these agreements are monitored by
20 a third party. So once the agreements are entered
21 into a pretrial services courtroom that we have in
22 Milwaukee County called Justice Two that is assigned
23 and a worker is assigned to monitor the client and go
24 through whatever he or she needs to do to complete
25 the agreement. If problem arises that third-party

1 monitor reports to both advocates there is a problem.
2 In the case of a deferred prosecution agreement, both
3 advocates and the court. Either party is then free to
4 make a motion on whether this deferred prosecution
5 agreement needs to be reviewed, jangled, adjusted,
6 extended, continued. There is advocacy and court is
7 regarding that.

8 Judge Ashley reviews and decides on those types
9 of disputes all the time; more often there is a joint
10 agreement about what should be done. In the differed,
11 monitoring is performed by the same agency. But if a
12 problem arises, we have staffings. They are not in
13 front of judges, of course, but the district
14 attorney's office, the public defender's office and
15 the individual attorneys are all present sitting
16 around a table, problem-solving approach, talking
17 about what do we need to do because "your drug
18 screens are coming back positive."

19 Now, Vicki, I wanted to point out, I said there
20 is a lot of treatment oriented factors. There are.
21 Most of our deferred prosecutions and diversions, I
22 would say easily half, relate to some type of AODA
23 management, mental health management issues, about
24 over half. But that doesn't -- it's not a
25 prerequisite for getting a diversion or deferred.

1 There may be a day where the facts are not in
2 dispute: it's property related, there is no way, or
3 mental health issues driving the ship. It's just as
4 appropriate for our program as anything else.

5 Perhaps Restorative Justice, conferencing with
6 the victim should be something that's agreed upon as
7 part of the diversion agreement to be completed by
8 the client before ultimate success can be had.

9 They are custom-tailored agreements. You sit
10 with the district attorneys. What do we think is the
11 problem here; what needs to be done. It doesn't
12 always need to be treatment related.

13 MS. YOUNG: I would like to get the public
14 defense descriptions of these, whether you call them
15 staffings, when you follow the clients.

16 The other question I have, since you say -- I
17 noticed in the protocols there have to be no
18 constitutional issues, they are not to be resolved
19 through this process. That I assume you either deal
20 with later or you have dealt with them. If you can
21 speak to those.

22 MS. RABLIN: I will speak to that one. First, I
23 think it is first. Seeing there is no district
24 attorneys in the audience, with diversion your client
25 waives no rights. There are no risks involved for

1 clients. I will tell you every client when I meet
2 them, this is a win-win situation. You don't -- if
3 you screw up, you can come back and you can litigate
4 the hell out of this case. That's the benefit of
5 diversion. So its always my hope I can get my client
6 the diversion. That's what I try for first.

7 The district attorneys don't like the diversion
8 as much because they don't have any guarantees. We
9 can convince many to do the diversion because of the
10 internet. My hitch to the district attorney is, look,
11 as soon as you issue a case number, my client's
12 ability for employment or getting into school is
13 diminished greatly. This is what is holding down the
14 African American community within Milwaukee County.
15 It is the employment issue. The district attorneys
16 can see that and they will go along with the
17 diversion.

18 MS. YOUNG: I just learned this morning
19 apparently in Wisconsin arrest records and case files
20 are easily accessible, accessed by the public? I
21 didn't know that.

22 MS. RABLIN: Yes. The schools.

23 MS. YOUNG: Not arrests but case files?

24 MR. MASTANTUONO: All pending cases.

25 MS. RABLIN: Arrest records because an employer

1 can pay a seven dollars -- thirteen.

2 MS. YOUNG: Steve Meyer told me it was thirteen.

3 MS. RABLIN: To get NCIC arrest records.

4 Clients who called me, they were on diversions, they
5 said "You said it wouldn't be on my report. Well, it
6 won't be on your record as a conviction or even a
7 charged case, but if an employer pays a fee to get
8 the NCIC check, they will see you were arrested for
9 this.

10 At end of the diversion, they are given a
11 success letter. I tell the client "This is
12 important. You keep this letter saying you
13 successfully completed it regarding your arrest on
14 July 7, 2007. No charges were ever issued."

15 So diversions are the best thing that ever
16 happened to my client population, as a public
17 defense.

18 MS. KELLEY: Let me interject. It is right on
19 point. You are able to get involved in the process
20 to help the district attorneys decide whether or not
21 it should be diversion on the front end.

22 MS. RABLIN: The key is that we do a lot of work
23 for the district attorney office quite frankly. We
24 write the agreement.

25 MS. KELLEY: Shocking.

1 MS. RABLIN: They call us. We carry cell phones.
2 I have a client, he was arrested on theft. I am
3 thinking he might be appropriate for diversion or
4 deferred prosecution agreement. Yes, he is
5 appropriate for diversion. Let me come over
6 immediately to get this file off your desk. I will
7 ask for him to be assessed to see if there is
8 treatment need; then I type up the agreements. You
9 go to lunch. I will work over my lunch, get this
10 done and it will be ready for you to sign when you
11 get back." (laughing.)

12 It's great. We were joking. We just got badges
13 to get the district attorneys. I said to Barb, "It
14 says district attorney's office. But, Barb, it opens
15 doors."

16 MR. MASTANTUONO: Literally.

17 MS. RABLIN: I come from a social work
18 background so this is not foreign to me, to do an
19 assessment, to look at my clients. Quite frankly, I
20 was doing it for thirteen years but I wasn't getting
21 anywhere. I wasn't getting any benefit, because I was
22 talking to a judge who is like, "Okay. Miss Rablin, I
23 know you said this before, he has needs, but I have
24 probation and I have prison."

25 Not any more. These agreements are limited by

1 our creativity, our ability to go out into the
2 community and get resources is what we do. We are
3 knocking on doors constantly, emails from the
4 district attorneys: Dawn, there is a treatment group
5 that contacted me. They want to hear about us. We
6 may be able to get a case manager because Justice Two
7 now does a lot of monitoring but not all. If a person
8 is not qualifying for their monitoring because they
9 are at-risk or high enough in terms of treatment
10 needs, we have to find another monitoring agency.
11 That's a lot of work. A lot of work in the community
12 that doesn't have a lot of resources.

13 I am really proud of our success rate of 62
14 percent. Because really it has fallen on the Defense
15 Bar and Public Defenders to get that rate.

16 I think we should all go out and lift a beer
17 that we have that rate. Not in treatment courts.
18 (Laughing.) It has been phenomenal. It has been a
19 rollercoaster. The doors have not always been open.

20 Judge Ashley has been a phenomenal judge for our
21 clients. He is someone they can look up to and see
22 as a mentor, a role model. He gives them an extra
23 push. He gives them a pat on the back when they need
24 treatment for many clients. It is the first time
25 anybody in their life said, "I am proud of you. You

1 can do this."

2 I got sidetracked a little bit. I like what I
3 do. I like it a lot. When I tell clients, look, what
4 I tell about deferred prosecution agreements, this
5 program is for guilty people. If you are not guilty,
6 you should not do this program because you have to
7 waive all your rights. Your own deferred
8 prosecution, you have to enter a plea of guilty. But
9 it's also designed to put you in a better life
10 position. What got you into the criminal justice
11 system, that's what we do, we want to deal with and
12 get you out and hope you never return. That's a lofty
13 one; that's our goal.

14 MS. DORMAN: Clearly, we are a predispositional
15 program. I know you were going to talk to Waukesha.
16 They are post-dispositional prosecution.

17 MS. YOUNG: It sounds like two things. Diversion
18 no charges. Deferred prosecution agreement, there is
19 charges.

20 MS. DORMAN: A charge, a plea, but then if you
21 are successful, it is dismissed. Dismissed or
22 amended.

23 MS. DUE: Deferred prosecution agreement is a
24 misnomer. It's deferred judgments. We have always
25 used deferred prosecution agreements. But that's a

1 misnomer.

2 MR. SCHECHTER: Let's get the definition right.
3 It's predispositional even if there is a plea because
4 there is a possibility of dismissal or reduction?

5 MS. DUE: Judgment is not entered into.

6 MR. SCHECHTER: Wherever we go people give us
7 different definitions.

8 MS. YOUNG: If something goes wrong in deferred
9 prosecution agreement, you have waived your rights.
10 You have a plea. To that extent it is actually post.
11 You may not say it is post-judgment because there is
12 no sentence entered but post-judgment in the sense
13 you won't be able to go back and relitigate your
14 whatever.

15 MS. DUE: If you are not talking to your client
16 beforehand, you are doing an incredible disservice.
17 We have to discuss that obviously upfront beforehand
18 that you understand that you will be entering a plea
19 to this, you will be waiving all these rights. If
20 there is a serious constitutional issue we would
21 advise them not to.

22 MS. YOUNG: What time frame are you given in
23 order to talk to them about that? Sorry.

24 MS. RABLIN: For instance, my co-worker, who
25 came down with stomach flu, someone being produced

1 today who the district attorney is willing to offer
2 deferred prosecution agreement to. He already has
3 been assessed by Justice Two. Now, when I go back,
4 over lunch I will have a printout of what basically
5 they view as his needs. I will take the police
6 report, the assessment, and go meet with him in
7 custody and go through that. He will make a decision
8 at that point if he wants to do the agreement or not.
9 Then he will get out of custody. I make an office
10 appointment. He will come. We will go through the
11 agreement, the police report. A court date will be
12 set for the initial appearance, a plea entering
13 deferred prosecution agreement within about two
14 weeks.

15 MR. CLARK: When would he have been arrested?
16 Within the last 48 hours?

17 MS. SHIFMAN: Two quick procedural questions.
18 Then a substantive question. On all of these whether
19 it's deferred prosecution agreement or diversion, do
20 you get discovery right away?

21 MS. DUE: Yes.

22 MR. JONES: You never have to make a decision
23 blindly?

24 MS. DUE: Yes.

25 MR. JONES: What's discovery? Police reports?

1 MS. DUE: Yes, sir. Our district attorney has
2 always had open file discovery. We get everything
3 they have.

4 MR. JONES: So the police bring in the police
5 report right away. The district attorney makes a
6 copy and gives them to you?

7 MS. DUE: Immediately. I play it for him on the
8 computer.

9 MS. RABLIN: On discovery we have to wait until
10 -- but in deferred prosecutions, they are giving it
11 to us even before the preliminary hearing.

12 MS. SHIFMAN: On a deferred prosecution
13 agreement can you litigate any issues?

14 MS. DORMAN: All, with the exception I have
15 actually had motion hearings on a couple of cases
16 that I had been offered a deferred prosecution.

17 MS. SHIFMAN: Looks like an issue eligible for
18 deferred prosecution, you have talked to the district
19 attorneys, "you got a serious issue here. " If it
20 doesn't work, we will do a deferred prosecution
21 agreement?

22 MS. DORMAN: Not quite that way. It happened
23 there was a motion, we lost the motion, then I
24 begged.

25 MS. SHIFMAN: That's what I was saying.

1 MS. DORMAN: I begged. I said, whoops, maybe I
2 should have asked for the deferred prosecution
3 agreement first. My mistake. Then some cases it was
4 clear it could have been --

5 MS. RABLIN: Or their cases fall apart. The
6 district attorney says I should have offered deferred
7 prosecution agreement in the first place.

8 MS. DORMAN: There are some exceptions. It is
9 not a hard-and-fast rule.

10 MR. JONES: I read the sentencing project report
11 which was mind-boggling, eye-opening. I also reviewed
12 the Wisconsin Commission on Reducing Racial Disparity
13 in the Wisconsin justice system.

14 Now that you have these programs, you have three
15 programs now in Milwaukee County that I understand is
16 the deferred prosecution agreement and drug courts?

17 MR. ASHLEY: The pilot for drug courts.

18 MS. YOUNG: It isn't a real drug court -- sorry?

19 MR. JONES: Let him finish.

20 MS. SHIFMAN: My question is people who are in
21 and out of courts all the time, are you seeing people
22 of color: African American, Latino community, is much
23 smaller but your African American community numbers
24 in these programs, are you seeing them? You know, to
25 me just looking at the numbers there ought to be an

1 extraordinarily high percentage of African American
2 predefendant arrestees coming through these programs
3 just based on the numbers.

4 MS. RABLIN: Yes, we are. They are getting the
5 program. I can say this. There was an issue early on
6 that I keyed the district attorney's office, look,
7 your drug unit is not doing what they need to do for
8 my minority client. When I walk in, whenever I seem
9 to get a call lately on diversion, it's for the cute
10 college kid who she was able to come to tears. The
11 district attorney goes we won't do a deferred
12 prosecution, a diversion. She is crying. Guess what?
13 My inner-city kid is not crying. She should still
14 get the diversion.

15 The district attorney looks at numbers. We
16 keep track. They went to their drug units and they
17 said, hey, we have to offer these. These kinds of
18 statistics cannot be coming out of this program.

19 MS. SHIFMAN: Let me ask you from a law
20 enforcement policy standpoint, even before you get to
21 the district attorneys, what have you seen in
22 response to these numbers? Have you had any changes
23 in law enforcement policing out in the community?
24 Are they still just bringing in an extraordinarily
25 high percentage of these people into the system?

1 MS. RABLIN: The one thing I have found
2 heartening slightly, I have had a police officer
3 coming into the district attorney's office saying, I
4 think this kid should get a diversion or deferred
5 prosecution agreement.

6 I will tell you what. Everytime I see a cop
7 outside in the hall, because we have an office in the
8 courthouse, I am trying to educate about what we are
9 doing.

10 I had to smile when the district attorney called
11 me and said, "the police officer says this kid should
12 get a diversion. I am calling." Times are changing.

13 MR. JONES: The numbers are still there.

14 MR. MASTANTUONO: Exactly. But the attitudes are
15 changing. We have a new police chief in Milwaukee
16 who was recently hired. He and the district attorney
17 both seem very committed to more community oriented
18 policing law enforcement tactics. I know our district
19 attorney. This isn't in the closet program. He has
20 publicly spoken about the fact we have to offer
21 alternative dispute resolution, essentially in
22 criminal cases, in order to address the violent crime
23 problem. He is willing to put his money where his
24 mouth is. Over time we will see that reflected in
25 law enforcement as well. It isn't uncommon for the

1 office to get behind these agreements and have input
2 into them at the charging conference quite frankly.

3 MS. RABLIN: Officers come to staffings. We
4 never had that before. Our officers are willingly on
5 a battery, it came in as a battery to police
6 officer, doing restorative justice, and the police
7 officer whom she hit in the mouth with her cell
8 phone.

9 MR. ASHLEY: I have to leave in five minutes.
10 My daughter, eleven, is doing a poetry reading
11 program.

12 MR. JONES: We appreciate these priorities.
13 That's the right call.

14 MR. ASHLEY: I want to point out, a deferred
15 prosecution agreement, there is a full -- regarding
16 the waiver of rights, the defendant, the defense
17 attorney, everybody knows you are pleading. You are
18 pleading guilty. I tell them normally I enter a
19 judgment of conviction today. But instead I will
20 defer this for six months, normally a six-month
21 period, and set it for a three-month review. We talk
22 about court intervention, the difference between drug
23 treatment court.

24 The deferred prosecution model is much more
25 hands-on by judicial officers. We are doing that.

1 It was coming together to get us to have an
2 opportunity to do some intervention. So now I have
3 to admit there are times when the district attorneys
4 will say, they know me now, I don't want to revoke
5 someone right away. I will do my little sermon, try
6 to get people to understand how important it is. But
7 it is really tough to have someone so close to
8 avoiding a felony for an out-right dismissal to say
9 you lost it.

10 Sometimes the State, I have to give the State a
11 lot of credit. They are saying, "I know what you are
12 going to do. Quite frankly, I agree with you. We
13 will give them one more chance. I want you to know
14 that's a contract that the folks have down there. I
15 am very reluctant."

16 In fact, I have never over the objection of the
17 State continued one of these because otherwise what I
18 am sending is not going to be up to me. Old Judge
19 Ashley made his mind up. I do push. Sometimes it's
20 very hard but I am never going to say I won't revoke
21 because it is like a contract. I say that there it
22 is. Any other questions you want to address?

23 MS. YOUNG: How do you view your role as a
24 judge? If you are saying it's their contract, I am
25 just sort of along with it as opposed to your regular

1 judge's role?

2 MR. ASHLEY: Let me give you an example. A
3 young man came in. He had about a pound of marijuana
4 in the car. He was a college graduate. He was
5 working, no priors. I think everyone understood that
6 a little while ago a pound of marijuana, you are
7 going away to prison, least of all you are not going
8 to walk away with no conviction.

9 So he didn't do exactly everything he was
10 supposed to. So the district attorney was going to, I
11 could feel it, ask me to revoke it. Then I said, "Can
12 I go in chambers?" I took the defense attorney, the
13 district attorney. I said, "I know you want to
14 revoke it but let me ask you: do you think is he
15 personal use or is he selling?" She said, "you know,
16 I think it is personal use. I really do I think he
17 was smart. He wanted to buy a whole lot; don't get
18 in and out. Costs." She said, "You know you are
19 probably right. Okay. Let's do this."

20 We go back out, we extend it. Just last week he
21 came in successfully completed. Now he doesn't have a
22 felony conviction. That's a win-win for everybody.
23 That district attorney didn't want to do treatment.
24 My role is to defer to them but to tweak it a little
25 bit here and there.

1 MS. SHIFMAN: In a district court your role is
2 obviously more hands on?

3 MR. ASHLEY: In a drug treatment court setting
4 it's really hands-on. I defer to my colleagues.
5 Although you say he has come along, underneath he is
6 always there. Tweak it a little bit.

7 (Judge Ashley exits room.)

8 MR. SCHECHTER: The question is two-fold. First
9 to Craig. The role of the private bar, privately
10 retained cases; one, are there a lot in these courts?
11 Two, do the privately retained attorneys know how the
12 courts functions? Three, what training is there for
13 the private bar, not involved in institutional
14 defender? And, Four, where there are many
15 conferences and people have to come back, are the
16 private bar attorneys coming back for those
17 conference?

18 All the way to the end. That's the first
19 question I would like to get, just from the private
20 bar. Then I have a question about ethics for all of
21 you.

22 MR. MASTANTUONO: I will answer those in order.

23 There is more cases for the private bar than I
24 anticipated there would be going into our policy
25 reforms. As you know, I mean for this group of

1 criminal defense lawyers to get into a group and
2 agree on something, it would take a lot. For the
3 entire bar right in the county, there is blow-back
4 you get from people. Being a point person on policy
5 with the district attorney, I heard a lot of it from
6 my colleagues in the private bar.

7 But how it works in private practice is this:
8 Somebody is arrested and they don't qualify for
9 public defense or there is if not an arrest an
10 investigation. They have not been evaluated by public
11 defense.

12 If there is someone who has resources to hire a
13 private attorney, they are given an opportunity to do
14 so. They may like any other case find me, okay. If
15 they find me and it's prior to a charge being issued,
16 there is either a, what we call "an ordering
17 conference" in Milwaukee County, where you are
18 scheduled to come to the district attorney and talk
19 about what you are charged.

20 Or somebody in jail, I go to see the person
21 because family members contact me. They haven't been
22 taken for charging yet. I will address the issue of
23 diversion or deferred prosecution, and hopefully get
24 one, right.

25 We always know as lawyers our best work, all of

1 our wonderful trials aside, our best work is when
2 nobody knows we exist or what we did in a case. I
3 shoot for that on diversions.

4 So there is opportunities to do cases in private
5 practice. I also take appointments. My office takes
6 appointments from the public defense when they have a
7 conflict in multiple defendant cases that's going to
8 be offering diversions.

9 Training. It was a very important issue. First
10 of all what we have done to make the protocol,
11 diversion and deferred prosecution agreement is a
12 standardized agreement available to any practitioner
13 in Milwaukee or anywhere else, whoever wants to get
14 them.

15 We have publicized the program both through the
16 public defense office, private bar appointment lists,
17 the attorneys that take appointments from the Public
18 Defender.

19 And, for example, at our annual conference, our
20 annual criminal defense conference, it is much like
21 this one, in Milwaukee yearly. I presented last year
22 with District Attorney Chisholm and a couple of folks
23 from the Public Defense to almost all private bar who
24 were at that training about this program. How? In
25 fact, we had compact disks with all the forms that we

1 handed out to everybody because we don't want the
2 program to fail. The more practitioners that are
3 using this, the more it becomes institutionalized so
4 the harder it is to make it go away when something
5 happens.

6 MR. JONES: They keep coming back, the probation
7 and parole?

8 MR. MASTANTUONO: They have so far. We will be
9 doing something in the fall.

10 MR. JONES: We heard it is economically not
11 feasible for some private bar guys to do this. Get a
12 retainer, let's take a simple drug case.

13 MR. MASTANTUONO: Please.

14 MR. JONES: \$1500. I don't know what they are
15 doing from Milwaukee. I am from Manhattan. You take
16 that, you make a calculation as a private attorney
17 what it will take. Suddenly you find you have one of
18 these cases, you may have to come back for eight
19 conferences. So you have underbid yourself. The
20 question is are the private attorneys coming back in
21 this area?

22 MR. MASTANTUANO: That was the last part of your
23 question. First of all, my answer is they should be
24 because I don't see anything about this arrangement
25 that's divorced from advocacy. This is advocacy in

1 its purest form when you have a client in one of
2 these programs.

3 If they have an economic incentive not to come
4 back, in my opinion, they are not doing their
5 management of their business very well.

6 If I can get a benefit to my client, and I have
7 not figured out a way to make money on it, I will be
8 that blunt, then I have a problem.

9 What I have found is that these probably aren't
10 the best days for flat fee arrangements. I think that
11 you know if you start going hourly on these cases
12 with a deposit into the trust account, you will not
13 only do the amount of babysitting that you need to do
14 for your client, but you will be rewarded
15 economically for doing so. I think that's more than
16 likely the model for diversions.

17 MR. JONES: I have to cut you off. No?

18 MS. KELLEY: As you all were speaking, I
19 realized how dependent the success of your system is
20 upon the commitment and the good-will of the
21 prosecutor, the bench, the public defender office.

22 When you as individuals are gone, what sort of
23 succession plans do you have? How are you making it,
24 this, a part of the culture of Milwaukee County?

25 MS. RABLIN: Within our office we are trying to

1 train as many staff attorneys to do these. They like
2 to come to us and have us do their work for them,
3 too. But we are trying to get them do their
4 agreement. That's why we put it online. It's an easy
5 document.

6 We have referral rep in Milwaukee. When the
7 district attorney's office has a charging conference
8 with someone, our referral rep person can go over and
9 talk to them, if they qualify for us. They do know
10 how to negotiate these.

11 It's not a private club. It's not a secret. We
12 are trying very hard to educate as many lawyers to do
13 these as possible. We are going to do training at
14 annual conferences, but within our office as well we
15 do mini-trainings about changes. We have a treatment
16 fair where all the treatment providers are inputted
17 in the community. We host it in the courthouse. The
18 other attorneys can become aware of the treatment
19 providers as well. We are resources. It's too much
20 dependent on us, I would agree with that, but we are
21 desperately trying to get as many attorneys.

22 MR. JONES: Now, are drug court judges and other
23 judges who preside over your various programs, are
24 those positions rotating or what?

25 MR. KEMPINEN: Yes, August 1st.

1 MS. DORMAN: Today. That was Judge Ashley's swan
2 song.

3 MR. CLARK: Two questions. Dovetail. In terms of
4 the prosecutor's office, it is obvious you two are
5 the contact people when someone is arrested. Is there
6 a dedicated group of people in the prosecutor's
7 office who those cases go to who know to contact you
8 all when the arrests are happening?

9 MS. DUE: Jeff Altenberg is the head of the
10 unit. He has two additional prosecutors that are
11 involved in it. But the rest of the prosecutor's
12 office, they are obviously, everyone is reviewing
13 these. They contact -- they know to contact us.

14 MR. MASTANTUONO: What they have tried to do is
15 to have a designated prosecutor do what they call
16 "charging." They take charging weeks. So there will
17 be a team of about eight or nine prosecutors in any
18 given charging week up there. They try to designate
19 someone as the point person if a case is going to be
20 diverted or deferred to handle with either public
21 defender or private bar.

22 MR. CLARK: You talk about the 62 percent
23 success rate. I want to ask you how do you define
24 success? Is that the same for a diverted or a
25 deferred or an aggregate of both?

1 MS. RABLIN: They are strikingly similar, the
2 success rate. At any given time, we had at one point
3 where the diversions were higher; great for us and
4 our clients. It's always between 62 highest. What we
5 got was 68 percent. It depends how quickly we get to
6 meet with the district attorney and processed or not
7 processed.

8 MR. JONES: How do you calculate success?

9 MS. RABLIN: It's an arbitrary definition at
10 this point. It's based on six months completing the
11 conditions of your agreement and not having another
12 case.

13 MS. DUE: A letter from the district attorneys
14 saying your case is processed or else the defendant
15 goes into court and the case is amended.

16 MR. CLARK: Someone's success, they said, the
17 first is that part of the contract they said?

18 MS. DUE: Yes.

19 MR. JONES: It's defined in the contract?

20 MS. DUE: Yes.

21 MR. JONES: At some point it is defined for
22 every one. If they are successful, if they get
23 arrested in a year or two, this is a one-time only
24 opportunity, or are they allowed others?

25 MS. RABLIN: I think I have a record. I had a

1 record with a client with five deferred prosecution
2 agreements. It was a mental health issue.

3 This client, to me, should be held out as to
4 what this program can do. I wish the Judge was here
5 right now, I will try not to cry. His family was so
6 grateful what the criminal justice system did for
7 this individual, to get him resources. We got him
8 hooked up. This kid, early 20, schizophrenic, just
9 out there. He stole things like 500 pairs of
10 sunglasses, 750 men's ties. It was ludicrous what he
11 took. But we got him the community monitoring agency
12 that was in the end administering his medication,
13 checking to make sure he was taking his medication,
14 transportation to go to his treatment. When this kid
15 started, he went even on medication, he was addicted
16 to street drugs. I mean, it was a phenomenal success
17 story. His father came up and was literally crying
18 in court thanking everyone.

19 MR. JONES: Last set of questions. Go to Adele.

20 MS. BERNHARD: To get a handle on the structure,
21 which I think Jay was doing a little bit, this sounds
22 like the public defender, the prosecutor, the point
23 person in the prosecutor's office, a number of people
24 in the defense office.

25 So somebody gets arrested and who sees it first?

1 The prosecutor I think might be then contacting
2 somebody there. But how does that relate to Judge
3 Ashley, because it seems this could go to any
4 courthouse right. Are there many courthouses where
5 these cases go or all these cases just go to him?

6 MR. MASTANTUONO: But judicial, by order of the
7 Chief Justice, if the charging decision that comes
8 out of this meeting between prosecutor and the
9 defense lawyer, if the charging decision, it's going
10 to be deferred entry of judgment agreement we should
11 really call them; it's scheduled in Judge Ashley's
12 court for that initial appearance where you appear, a
13 plea is taken and the entry of judgment deferred then
14 the deferred prosecution agreement is executed.

15 MR. JONES: How many criminal courts are there
16 in Milwaukee?

17 MR. MASTANTUONO: 47 branches in Milwaukee
18 Circuit Court. Almost half of them criminal.

19 MS. DORMAN: The deferred prosecution can go to
20 any criminal court once the deferred prosecution is
21 entered. Then they go into follow-up for deferred
22 prosecution agreement, the deferred prosecution
23 court, Judge Ashley's court.

24 MS. RABLIN: You can obtain it any step of the
25 role. Ideally we get it upfront. At any point any

1 lawyer can attempt to negotiate these.

2 MS. DORMAN: I am not part of the team but my
3 deferred prosecution can occur further in any
4 criminal court.

5 MR. JONES: Do you have anything written up
6 about the project? That's why I asked for Milwaukee
7 County because I was trying to find it.

8 MS. YOUNG: Robin sent me the agreement. I
9 thought I sent them out. The protocol.

10 MS. DORMAN: Yes.

11 MR. JONES: Nothing that says about the
12 evaluation. You said 62 percent success rate?

13 MS. DORMAN: We have that. We can send it to
14 you. I can forward it to the committee. I just want
15 to say, one, they are doing in our drug treatment
16 courts the diversion, the deferred prosecution
17 agreement deal with sort of early offenders,
18 mid-offenders. Drug treatment court is supposed to
19 deal with -- it depends on clients and totally repeat
20 offenders -- definitely people who have been, have
21 been, to prison; people who were returning to prison.

22 MS. RABLIN: But the deferred prosecution
23 agreement--

24 MS. DORMAN: Heavy return prison people; just
25 top level people who are in our treatment courts;

1 people we are supposed to do.

2 MR. MASTANTUONO: Last thing. We would be
3 remiss if we don't leave with you greatest risk to
4 this program is less of it becoming
5 institutionalized, having people take it over. We are
6 secure there or on the path. As the district attorney
7 hires new district attorneys, that's the best thing.
8 All of these new district attorneys coming in with
9 this become a part of the process. Their culture is
10 changing; the district attorney office will continue
11 to do so.

12 The biggest risk to the program is treatment
13 resources and monitors in the community. Our
14 strength: It was grass-roots advocates, simple form
15 to the agreement. Also our weakness, this isn't
16 block-grant funded, not a state funding or federal
17 bloc-grant funding.

18 We need to find the resource to put people
19 through these programs so we can keep those public
20 defense numbers up in the for-profit treatment and
21 private practice clients. It's easy to put someone
22 through a program but not so for public defender
23 clients.

24 MR. JONES: We are beyond time. You have been a
25 terrific panel. We appreciate your passion, your

1 commitment, your dedication. Thank you.

2 MR. KEMPINEN: Thank you.

3 (Break 11:05.)

4
5 MR. JONES: We are going to start. I apologize
6 for having you sit here, just listening to us ideally
7 chat. We are very appreciative of you being here. We
8 are interested in hearing the way things work in your
9 county and jurisdictions.

10 The way this panel operates is that we give you
11 each five minutes to give us the benefit of your
12 thoughts. Then we like to save as much as we can for
13 questions because we have a bunch. One of us takes
14 the lead on questioning each panel; in this
15 particular case it will be Marvin Schechter.

16 Why don't we start with you, Mr. Dickmann, tell
17 about yourself and give us the benefit of some
18 opening remarks, if you would.

19 MR. DICKMANN: Thanks for inviting me. I work in
20 Wood County. That's where I practice my office in
21 Stevens Point. The reason here, I supervise public
22 defender office in Wisconsin, points north.

23 In 2004, I was part of a criminal justice panel.
24 We started talking about drug courts and started
25 moving very quickly. I soon became aware that I was

1 going to end up being involved in drug court. At that
2 particular time I didn't know hardly anything about
3 drug courts whatsoever. I began to think about what
4 my role was going to be. As I thought about that, as
5 I became more involved in the planning process for
6 the drug courts, I became quite interested and that
7 resulted in I authored a paper for the public defense
8 office involving my role in the drug court and
9 ethical issues. Then I coauthored a paper with Judge
10 Levine, who you will hear this afternoon, on the same
11 topic.

12 When I thought about what my role is going to be
13 and some of the issues and problems I would have, I
14 am sure some of the things you have heard about:
15 confidentiality, was it going to be active
16 participants, passive participants, how was it going
17 to protect my clients' rights, kind of those
18 mechanisms kind of things.

19 What I found in Wood County, what we did, which
20 ended up pretty much alleviating my concerns, is that
21 up front we defined what my role is going to be. We
22 did that in the opening so the team knew that I was
23 going to have a different role than everybody else on
24 the team, because I had a special, special situation,
25 an ethical obligation for my clients that came to

1 drug court and were actually participants. I would
2 not be assuming the general team role in discussing
3 their cases going on, sanctions, or those kinds of
4 things. If I did anything, I would be advocating for
5 my clients. That's the way things kind of ended up.

6 For other attorneys that brought clients into
7 the program that I had not represented that I would
8 assume the general team role, so up front the team
9 knew that I was going to be a little bit different
10 than everybody else on the team.

11 One of the concerns I had early on was
12 fundamental fairness. My concern was as we looked at
13 the early composition of the team, there is going to
14 be one sole public defender; there was going to be a
15 prosecutor. We knew there was going to be at least
16 two people from probation and parole. Three or four,
17 maybe five cops that were initially going to be on
18 the team. Then other criminal justice system people,
19 lower rank, worried about how are we going to be --
20 going to stay fair with that composition.

21 And the way that I think we made it fair and
22 kept it fair was I had a very early role in the
23 planning process. I was there from the ground up. I
24 did a lot of volunteering. I have written 50 to 60
25 policies and procedures.

1 We have maintained a very strong presence on the
2 drug court team. We have two public defense and one
3 private defense attorney on the team so our numbers
4 have improved. We also encouraged as many, as many
5 disciplines on the team: Clerical, mental health
6 persons on the team, someone from social services on
7 the team. We are getting a conglomeration of views on
8 the team which I think helps.

9 One thing a little bit different about the Wood
10 County team. All of our important decisions are done
11 by majority vote.

12 In terms of ethical concerns, I think we
13 provided by policies and procedures a way for
14 participants to contest drug tests, contest
15 sanctions, to be heard in front of a court. We give
16 participants this in terms of what exactly the issue
17 is in terms of violation or potential sanction.

18 I think the bottom line in Wood County we have a
19 very good drug core team, and, therefore, and because
20 of that we have a very good drug court. It's a team
21 that gets along. It's a team that has changed over
22 time. But I think training also has been available to
23 us as well the national training for drug court is
24 absolutely excellent. We just sent five or six people
25 to the training this year. That's a big part of it as

1 well, keeping everyone on the same page.

2 What I also observed in terms of fundamental
3 fairness, one thing I was concerned about, what about
4 the folks terminated from the program. A judge will
5 hear the sentencing, will they get spanked
6 additionally for failing the program?

7 My observation has been that isn't the case.
8 There has been some acknowledgement these people have
9 entered a program knowing it would be a very
10 difficult program. They get credit for a significant
11 period of it so they probably have experienced this
12 while in drug court. Generally their sentence turns
13 out relatively good despite the fact they failed from
14 the program.

15 In terms of our drug court, things are going
16 very well. We are currently operated under state
17 grant with state monies. They look and check to see
18 how you are doing. There was a state analysis last
19 year, just Wood County, which is a very small county,
20 a couple hundred thousand. So the court itself,
21 itself, is functioning. I think it is good for the
22 clients, good for the community, and things are going
23 fine. The way things have gone I have no specific
24 concerns about my role on that team.

25 MR. JONES: Thank you. Mr. Meyer.

1 MR. MEYER: I am in private practice in Madison,
2 which is the council, capital for Dane County. It is
3 a community that is in large part impervious to
4 economic downturn. The majority of the individuals
5 who reside there are employed by the university, by
6 the state government or council government. But there
7 is a segment of the community, because it has this
8 idyllic reputation that it becomes a magnet for
9 people seeking a better life. Those are sorts of the
10 under-lying economic issues that are in play in this
11 particular county.

12 I have practiced now there for 28, 30 years. I
13 guess I bring a perspective of history rather than
14 personal knowledge. I will talk somewhat about the
15 Dane County program. Actually, Mr. Farmer who is
16 speaking later this afternoon is the go-to guy in
17 terms of specific information. But I think I have a
18 better historical perspective than even Mr. Farmer.

19 The reason, speaking globally, that I think
20 these types of courts have arisen is what I call the
21 "perfect storm." The perfect storm are three separate
22 events. One is the rising costs of incarceration,
23 rising costs of police services being used to deal
24 with the problems that flow from addiction, mental
25 illness, things of that nature. A lot of those costs

1 are borne by our county government. They are not
2 borne by the state. So the counties are strapped,
3 real estate taxes pay for most county services. They
4 want options to solve problems. So that's one part of
5 the storm.

6 The other part of the storm is now that I have
7 been in practice long enough, when I started the
8 focus was on rehabilitation. Then the mid-80s came
9 along. It changed to punitive; the emphasis was on
10 that. Now the pendulum is swinging back toward the
11 rehabilitation focus.

12 Then the third part of the storm is, I think,
13 historically. The judicial system has stepped up
14 when other branches of government have failed.

15 In my view point the legislature in the State of
16 Wisconsin has failed. They don't address these
17 issues. They pass laws so they can go back to the
18 home district and say we upped the penalties. Who
19 cares who bears the cost. In effect, we are filling a
20 vacuum; we are saving the legislative branch from
21 itself by the creation of these various programs.

22 The historical underpinning of the drug program
23 in Dane County actually relates back to the mid-70s
24 in which there are two district attorneys. They
25 followed each other. One was the last Republican

1 district attorney, then the democratic district
2 attorney. They started a first offender program. The
3 first offender was assigned to diversion misdemeanor
4 to get offenders out of the system. The first time in
5 we will give you to go to some classes, be a good
6 person for six months. The case either won't be
7 charged or it will be dismissed upon successful
8 completion.

9 I call it Uncle Ernie of the present drug courts
10 program. The first offender program still exists. It
11 has been modified in structure and procedure, the
12 types of cases that it handles, but one of the key
13 features of it is that admission to the first
14 offender's program back in the 70s, as it is today,
15 was that the district attorney's office is the
16 gatekeeper. I think that's an important thing to
17 remember for a number of reasons, which I will allude
18 to as I go along.

19 In the 80s, I was not necessarily a big fan of
20 the first offender program. It became a dumping
21 ground for bad cases. Here, you got a client who
22 comes in bad search, marginal case. They said we
23 will send you to first offenders. Present it to the
24 client. Okay, here it goes. You can go to first
25 offender program, you know, I mean about 39 of my

1 clients succeeded in the first offender on probation
2 or whatever. I said successfully completed cases,
3 dismissed or litigated, we don't know what the
4 chances are, depending on the judge we draw it out.

5 A lot of clients would obviously go for the
6 first offender's program. But it became a dumping
7 ground. As you can tell you have the district
8 attorney gatekeeper. Bad case, we will solve it by
9 going to first offender.

10 In early 2000, a Dane County judge said, let's
11 have drug court. We will model it somewhat after the
12 first offender program: The drug court assumes
13 similar features to the first offender program. The
14 district attorney is the gatekeeper. You can't get
15 in without them saying a-okay. In the early version
16 of drug court they would only allow misdemeanor
17 possession cases, which I doubt was brain dead. Most
18 of the people coming in, good families, they can get
19 treatment elsewhere. They can. Most of my clients
20 were doing it in advance. They wanted to shepherd
21 these people into drug court because they wanted the
22 numbers to be a high rate of success, show they can
23 justify its continued existence. At that time period
24 there was a lot of tight jaws between the Defense Bar
25 and the district attorney. Often the same issues:

1 dumping ground for bad cases, only taking misdemeanor
2 cases. This is nonsense. We have this program, we
3 should be extending these services to those people
4 who need treatment: People addicted who go out and
5 commit forgeries, a felony. The people that go out
6 and do purse snatchings, a felony. Those are the
7 types of people who we should be providing the
8 services to.

9 For unrelated reasons, I was out of the picture
10 for three years. I had one case that took three years
11 of my career. That's when that case started. That's
12 when the status of drug courts -- when that case
13 finished, I got back in, Mr. Farmer was the
14 gatekeeper from the district attorney's office. The
15 whole program had changed to address those problems
16 that I have raised.

17 Finally, we are getting the felony drug charges
18 into drug court. He is signing off on those: The
19 purse snatchings, the types of ancillary criminal
20 conduct that occurs from drug addiction.

21 When someone is going to set up this program, I
22 think that there are a number of things to think
23 about, if when setting up a problem-solving court.

24 One, who or what is your targeted audience for
25 services. Is it drunk drivers, people with drug

1 problems, is it mentally ill. We had a judge who
2 retired who tried to push this type of program for
3 mentally ill. It was unsuccessful. That's where Dane
4 County has to go next.

5 Who is the gatekeeper? Is it the district
6 attorney's office? Who is the district attorney
7 answerable to? the program dependent on a guy like
8 Ken Farmer who had the insight, the worldly
9 experience, to be able to push it in the direction
10 that it should have gone versus five other
11 assistants, who I can think of, that we would still
12 be stuck in doing possession cases for people who
13 don't need it just so they have the Stats.

14 What are the rules on disclosure in this
15 process. Mr. Farmer and I spoke earlier this week. I
16 said, "okay, Ken. Let's run through this scenario. I
17 have a client who comes in and says, "Jesus, Judge,
18 you are right, she has been using. I needed it so
19 bad I killed my supplier. " Well, we can't use that
20 statement under our contract rules in a separate
21 criminal action against that individual.

22 But my follow-up question to Ken was what's your
23 view point whether you can use it to get a search
24 warrant. He said, "I don't know the answer, Steve. I
25 am just praying that doesn't happen. We are in

1 court."

2 Those are the global issues that I see.
3 Targeted audience, who is the gatekeeper, how do you
4 protect what I view to be compelled disclosure, how
5 are they to be used, and ancillary proceedings.

6 MR. JONES: Thank you. Ms. Nelson.

7 MS. NELSON: I am Liesl Nelson, Assistant
8 District Attorney, St. Croix County which is part of
9 the northwest region of Wisconsin.

10 We have a very small community, small county.
11 It is not a lot of money. I think drug courts have
12 come about as counties have gotten squeezed, no money
13 for prison. The State is saying we are not putting
14 them in prison. You deal with them. The county
15 can't build a new jail. Pretty soon, you have a lot
16 of stakeholders who are very invested in coming up
17 with new things to do with these defendants and
18 people who are dealing with addictions. So that's
19 sort of my background what we are dealing in my area.

20 When Ben Kempinen was talking to you all this
21 morning, he talked about the three different roles of
22 defense attorneys. I know that's probably why you are
23 interested in talking to this particular panel. I am
24 uniquely suited today to offer some perspective.

25 I sit on advisory committee for my county, a

1 major stakeholder in our county. I also sit on the
2 drug court team for the county where my office is
3 located. I also am public defense and I have a
4 caseload in the county south of my particular county.

5 I am referring to drug courts but not the drug
6 court which I am a new member. In addition, public
7 defense for five years, but I was in private bar for
8 seven years as a criminal defense attorney. Also I am
9 married to a criminal defense attorney in private
10 practice who is very active in the local bar. I have
11 a pretty good balance about private bar and public
12 defense drug issues. That's my background.

13 I want to give you a couple of thoughts. I have
14 been listening this morning. I wanted to see what
15 you are interested in.

16 You had asked a lot about let's start at
17 advisory level. What's defense counsel's role.

18 It's my belief there has to be a buy-in from all
19 the major stakeholders, that includes defense
20 counsel. I think where you have buy-in break down in
21 any particular area: law enforcement, district
22 attorney's office, a judge, that's not participating,
23 that break down in buy-in is not always fatal but it
24 certainly makes things very, very difficult to have a
25 drug court that really has a participant's best

1 interests at heart. For it to really work you have
2 to have it. If you don't have defense counsel buy-in,
3 you are not getting the referral you're not helping
4 participants see what their possible benefits can be
5 from drug court. You don't have a well-operating
6 drug court. That's the leverage defense has. If the
7 defense says I take my fault going open, that county
8 will have a hard time. You have a lever. Do you
9 want, really want, this drug court to work. There is
10 leverage there for defense counsel.

11 I think also as you heard the whole spirit of
12 drug court, you put a lot of emphasis on the people
13 that we seek to represent. I think in that way
14 defense counsel is uniquely suited to carry the torch
15 in terms of this model Let's see the people as
16 individuals, talk to people about giving up their
17 unique perspective. That can take a lot of training,
18 a lot of education, a lot of practice for everybody
19 to start giving up those roles. But I think defense
20 counsel cannot only be the people saying, look, we
21 still need to be protecting the constitutional
22 rights, making sure there is due process, and
23 everything, but you are also uniquely suited to talk
24 to them. This is our population. This is what she
25 needs. This is what you can get by giving up your

1 role to some degree to accomplish something.

2 I think that stakeholder buy-in is really
3 important.

4 From a team member aspect, I know that drug
5 court and diversion program are so enormously
6 diverse, if you asked one drug court you will get --
7 a member's role, you will get a different answer.

8 My perspective, I agree with Mr. Kempinen. It
9 is not a good idea to sit on a team and represent a
10 participant in drug court. I don't -- this is a good
11 best practices kind of thing. Having said that, I
12 also come from a small county; sometimes there may be
13 a county that just don't have enough people to go
14 around that might help, but I don't think it is best
15 practices.

16 I share the spirit of a lot of people who
17 testified in terms of that when a drug court is
18 really operating, you are not always in a position --
19 you need to always consistently take a defense
20 counsel type of role. Often, especially in my
21 experience, the prosecutor is doing that. This is
22 what I see prosecutors saying. We can not let these
23 people fail.

24 I think while we have to be very conscious what
25 the adversary needs are, if you really have a team

1 that's operating well, you don't, you will see
2 everybody taking somewhat a protective role of the
3 person because if you are doing it right, you should
4 be setting up the people to succeed.

5 I think where the adversary counsel comes in, a
6 third portion is how do we best represent the people
7 when they are coming into drug court. I do think
8 that's a balance of knowing your clients, knowing
9 your drug courts.

10 I see what Ben Kempinen sees. We have attorneys
11 that do not understand what is going on in drug
12 court. We have people in my office that do not
13 understand what is going on in my drug court, do not
14 want to come down and ask me; they don't want to come
15 to team meetings; they don't want to observe drug
16 court. It is a matter of getting these people
17 educated about two major things.

18 Someone asked what would you want if you could
19 have anything. Training. I think we need people
20 trained. In addition, we need people trained in drug
21 court model. If you don't understand those two
22 things, you can't possibly understand what it is we
23 are trying to do with this population.

24 It's very clear what been happening. We can't
25 build enough prisons, jails. We have people who need

1 education otherwise they won't be an effective player
2 in the system. The private bar needs it as well.

3 There is a need for defense counsel to educate
4 themselves. There is also an imperative on the drug
5 court to also be educating defense counsels because
6 there is ignorance on both side. Neither side is
7 doing their job in terms of that. There is a
8 breakdown there. I would like to see a lot more
9 education.

10 A little bit about adversarial systems. There
11 was some suggestion why don't we see attorneys coming
12 to courts through the entire drug court. That would
13 be like district attorney coming to every meeting
14 with the probation agent. Once you set them up for
15 the program, I feel like that adversarial model can
16 be counter-productive within the system.

17 The reason I say that is that the court I sit
18 on, we have a -- we are taking the people who
19 otherwise would be going to prison. We figure if we
20 are not taking hard cases, we are taking the wrong
21 people. Anybody who can make it on probation on
22 their own. We want people that are failing on
23 probation. They need something different.

24 I see it as -- I don't know. If you have kids,
25 there is bumper bowling. You take your kids bowling.

1 They put guards or inflate things to fill the
2 gutters. When you bowl it keeps you on the lane
3 until you hopefully hit the pins. That's what I see
4 drug court as: It is like parenting. When they
5 start going on the gutter, you put them in the lane
6 and shove. We enter them before they come in. The
7 whole team says do you want to do this, do you know
8 what we are going to do; we are going to be invasive.
9 You don't get to run your life the way you want. You
10 have been doing that and that has not been working.
11 We need you to trust us. I will do it your way for a
12 while.

13 To me if you are sitting in court with your
14 adversary counsel next to you, in a lot of ways you
15 are setting up them and us kind of situation. There
16 are due process constitutional issues.

17 You have to be in a situation where that person
18 can trust the team because at some point we will ask
19 them to invest their trust in us; that we have their
20 best interest in heart. We are setting them up to
21 succeed rather than setting them up to fail, which is
22 the system they have been in all their lives.

23 Those are my thoughts about the adversary
24 process. Sometimes I do think it is necessary to see
25 that different model.

1 MR. JONES: If nothing else you have given us
2 the title of the report. Bumper bowling. Thank you.
3 Marvin.

4 MR. SCHECHTER: Let me ask you some general
5 questions to see if we can get agreement about them.
6 I would ask, you would all three agree that the
7 Defense Bar has to have a role in the planning of the
8 program? Liesl.

9 MS. NELSON: Absolutely.

10 MR. JONES: Two, there are potential ethical
11 problems that we face that have to be ensued?

12 MR. KEMPINEN: Absolutely.

13 MR. JONES: The issue of the degree of the
14 ethical problems, going from my left to your right,
15 it would be a slight difference. Mr. Dickmann, you
16 would say I want those ethical problems knocked out
17 right away. I want to know exactly where we stand.

18 Ms. Nelson, maybe you could tell me where you
19 stand on the ethical problems that we have encounter
20 around the country, the basic approach, the team
21 approach. We are defense attorneys. We have to
22 protect the client's rights. What are the ethical
23 problems that you see?

24 MS. NELSON: Again, I think you have to dive
25 into those three sections. You need to set up a

1 program. Again, it depends. Are you
2 post-conviction; are you pre-conviction. You need to
3 set up a system where you feel like they have the
4 opportunity to exercise whatever emotions they have.
5 The top level, you need to setup a program where they
6 are able to exercise all those rights where you are
7 not pressured into a situation where they take
8 something not getting discovery on time to consult
9 with the attorney. At that level that is one set of
10 issues.

11 The middle level I think it's a little bit
12 different. You are talking about team members. You
13 need to well-define that member's role. You are not
14 representing the participants. They need to know.

15 Mr. Kempinen was pointing out we now have an
16 ethical rule. At any time dealing with unrepresented
17 person you have to let them know what your role is.
18 That's important for team members to say, "I don't
19 represent you. If you need advice on this type of
20 issue, this is who I send you to." You can look out
21 for their interests without representing them. It's
22 important to define, too, that then you have defense
23 counsel who is adversarial should not never give that
24 up, whether the client is going to drug court or not.
25 They really need to be looking at ethical rules:

1 what, how do I make sure I have exactly informed the
2 client, zealously represented them making sure we
3 procedurally did everything we can to make sure this
4 is the best option for the client at each level.
5 They are very different.

6 MR. JONES: The three of you, coming from very
7 diverse areas, let me ask you about discovery.

8 In these cases -- what is the discovery like in
9 Madison? In these cases do you get it upfront
10 without questions.

11 MR. MEYER: No. It depends on the nature of the
12 misdemeanor you get it up front. Felonies we have
13 what we call the "preliminary hearing." The general
14 rule in the district attorney office is you don't get
15 the discovery until after you either waive the
16 preliminary or actually go through it.

17 We don't do the deferral in drug court up front.
18 That is typically negotiated between -- Mr. Farmer is
19 the head of the three-person team drug prosecution
20 team. Those are negotiated between defense counsel
21 and the prosecution as to whether this client is
22 appropriate for drug court referral. That can take
23 place about the time of the preliminary. After the
24 preliminary you may or may not have discovery. Even
25 so, even if the drug unit says I think this case is

1 appropriate for drug court, there is a preliminary
2 assessment done. You get the discoveries.

3 MR. JONES: Is that acceptable? Are you able to
4 make a decision for your client with that kind of set
5 up as defense attorney?

6 MR. MEYER: I have always had the discovery by
7 the time the ultimate decision is made. Because to
8 eventually get into the program you have to show up
9 at the plea. That's a condition of first offender.
10 That's the condition of the drug program. The day
11 that happens I will have had all the discovery. It's
12 never an issue.

13 MR. JONES: Mr. Dickmann, any problem with
14 discovery?

15 MR. DICKMANN: Well, there is, I think, there is
16 two things going up against each other. As attorneys,
17 we have ethical obligation to look for motions; is it
18 a trial case, all that kind of stuff. On the other
19 hand, drug treatment perspective, we want your client
20 as soon as possible to get those things but ahead.

21 In Wood County if the defense attorney says to
22 prosecutor how about this person for drug court, that
23 person will get all the discovery up front. We expect
24 that defense attorney to go through all the
25 obligations to accelerate his defense because we want

1 that client to be presented as quickly and as soon as
2 possible.

3 MR. JONES: Does that really happen?

4 MR. DICKMANN: It does.

5 MR. JONES: Ms. Nelson how about in your county?

6 MS. NELSON: I always had discovery. There is
7 no rush to get someone. We have plenty of time to
8 litigate whatever we want.

9 MR. CLARK: Does that happen with the private
10 bar also?

11 MR. DICKMANN: Yes. Actually more, although we
12 have two public defense on the team. By far most of
13 our referral come from private practice.

14 MR. MEYER: There is a follow-up. Institutional
15 pressure is not to pursue motions if you will get one
16 of the diversion programs. Sometimes it's then taken
17 off the table. You litigate that search and seizure
18 question, no deal.

19 MR. JONES: Mr. Dickmann, did I understand you
20 to say in Wood colony --

21 MR. DICKMANN: It may be a colony.

22 MR. JONES: -- in Wood County, on the team are
23 there still currently police officers?

24 MR. MEYER: Yes, we have three or four.

25 MR. JONES: Ms. Nelson, do you have that in your

1 county?

2 MS. NELSON: We do. We have beyond the judge,
3 prosecution, defense attorney, we have a Department
4 of Corrections person, we have a treatment
5 coordinator. We also have law enforcement that sit
6 on the team.

7 MR. JONES: I am during just -- Mr. Dickmann,
8 what do police officers do on these team meetings
9 when they are discussing your client whom they
10 arrested or may not?

11 MS. NELSON: Sometimes it's interesting because
12 they have a certain knowledge of the community we
13 don't have. Sometimes our participant is moving into
14 a building, that's not good, a bad building, you
15 don't want them in that building, you have to
16 encourage not to move to that address that's not
17 beneficial in their recovery.

18 Also we need a lot of flexibility in our jails.
19 We need to use the jail. We want to use the jail.
20 We want people to get huber, when the sheriff doesn't
21 want to give them huber, that person is a liaison,
22 they can cut them a little slack. We need that
23 person out to move their belongings and store them.
24 For us to have the beneficial relationship with the
25 sheriff's department is very important.

1 MR. DICKMANN: The only person to keep out of
2 drug court is if they are not an addict or a
3 significant problem or if their drug dealing kind of
4 life led them to be driving a Mercedes around. The
5 drug cops are in a position to tell us, yes, this
6 person was dealing but was hand to mouth. We know
7 this person is extremely addicted.

8 If you get the okay from one of the drug cops
9 it's smooth sailing. There has been no problems with
10 drug cops trying to exclude someone that wasn't a
11 flush money kind of deal.

12 MR. JONES: What about this problem. I
13 understand now the benefits of having police officers
14 on there. I hadn't considered that previously. But
15 how about this problem. We are at a team meeting, we
16 are discussing your client.

17 It becomes very clear to police officers, Mr.
18 Schechter, that this arrest was made by Police
19 Officer Kelley. In the course of discussions, things
20 come out, maybe even legal issues, even tangential.
21 Are you nervous Police Officer Schechter on his break
22 speaks to Police Officer Kelley about that arrest or
23 you don't worry about that?

24 MR. DICKMANN: Not to my observation. Those are
25 things, talking about those meetings, what we are

1 talking about is lifestyle addiction issues, family
2 issues, that kind of thing, why this person should
3 be. We don't.

4 MR. JONES: That scenario doesn't come up?

5 MS. NELSON: Not that experience. It hasn't come
6 up for me. But it did make me think of one other
7 thing. One thing strikes me interesting about drug
8 court. The people. Generally funding is low.
9 Everybody is doing this, this is volunteer, in
10 addition to their case load and everything else.

11 It's remarkable the amount of volunteer time
12 buy-in you get from everybody considering they are
13 not compensated for doing it, usually.

14 The other thing I would note, the cops, judges,
15 and the prosecutors and the Department of Corrections
16 we get coming out of these teams are so much better
17 than when they went in. The judges are better, better
18 on sentencing, on understanding our clients. Even in
19 law enforcement, I see a shift in the people who
20 participate in the teams.

21 MR. DICKMANN: We get points of referrals.

22 MR. JONES: Let me move on to training. Mr.
23 Dickmann, you answered my training question. you have
24 enough money somewhere to send five people to the
25 national program. That's spectacular.

1 Ms. Nelson, is there any money for you to send
2 any of your attorneys to a national training program?

3 MR. KEMPINEN: We haven't been able to get grant
4 money. We have tried hard. We haven't been able to
5 do national train. We have been fortunate the
6 Department of Corrections provides all of our
7 treatment. That in the area where I live is amazing.
8 We have no treatment that's paid for.

9 It's one of the things that I talked to my
10 clients about. This is going to be hard. It's going
11 to be difficult, not only will you get some
12 concessions on prison, you will get treatment paid
13 for. That's where I live it is good sense. We have
14 treatment dollars, an amazing county board that's
15 supportive. Money for a coordinator, a drug tracker
16 who does testing. More successful the more dollars we
17 have.

18 MR. JONES: Mr. Meyer, how do private attorneys
19 get training to understand drug courts or any other
20 problem solving?

21 MR. MEYER: When the drug court, drug court
22 first started, the judge who commenced the program
23 would have lunch and meetings with the private bar
24 saying, come on, this is what I am thinking about;
25 this is what we will do. Private lawyers are in large

1 part self-taught. Age has given me the perspective
2 that I have.

3 MS. NELSON: Can I mention two things? Two
4 major sources of training in Wisconsin. One it is
5 called Rural Drug Court Institute, a week-long
6 training program not just for defense attorneys but
7 treatment professionals, judges, everything in the
8 system. A week-long training, remarkable.

9 Then also we have a state Association Wisconsin
10 of Treatment Court Professional puts on yearly
11 meeting. It is a great meeting. We go all the way
12 back to addiction, the brain chemistry. I sit on
13 that every year. I can't get enough of that.
14 Everytime I sit in on the brain chemistry, I learn
15 more about my clients. We also do some of the drug
16 court training, issue specific, like tribal courts.
17 We bring out those issues, a challenge to our
18 different, statewide drug courts.

19 We have two major training opportunities in the
20 states. Plus NACDL has been working with the state.
21 We will do the training, tell us where you need, we
22 will set it up, bring it out, even if you can't get
23 the drug funding they will bring it to you, if you
24 ask.

25 MR. JONES: We want to get other folks involved.

1 Adele.

2 MS. BERNHARD: I am just confused about the role
3 of the defense attorney on the team as opposed to the
4 role of the defense attorney representing somebody
5 who is in drug court. What does the person on the
6 team do, how does that day work, or that court
7 session?

8 MS. NELSON: It depends on the drug court you
9 are in. Generally, when you have a drug court session
10 happening, that day the team comes in beforehand.
11 You hopefully have a coordinator, somebody tracking
12 the people all week, you get a report of some sort
13 about how everybody is doing. Smaller, we go through
14 individually.

15 MR. JONES: I know you are having meetings and
16 discussing the cases coming up but the defense
17 attorney isn't representing any of those people?

18 MS. NELSON: Not --

19 MR. JONES: What is that defense doing during
20 the staffings if they don't have a connection to the
21 people?

22 MS. NELSON: A discussion, we all bring our
23 unique perspectives to it. Sometimes, like I said
24 sometimes you don't have to play every traditional.
25 Like someone had a violation, the question what do we

1 do, what kind of sanction. Traditionally, you would
2 think public defense, don't put them in jail, be more
3 creative thinking of something to do with the person.

4 I will tell you sometimes, I am the public
5 defense, you know, one weekend would not kill this
6 person; it might be what we need. The prosecutor,
7 no, we need to be more creative. Sometimes you are
8 bringing a traditional defense role to the
9 discussion. But sometimes, honestly, I know my
10 clients, some of them, can you get their attention
11 with jail; sometimes you are wasting your time.

12 MR. JONES: But if they are not your client, you
13 are discussing, there is a defense attorney coming in
14 who actually does represent that person.

15 MS. NELSON: But they are not --

16 MR. JONES: They are not there.

17 MS. NELSON: Not in any treatment court. Once
18 you are in it's a two-year program. Our people are
19 coming first four months weekly. I can't imagine an
20 attorney who can come into drug court with their
21 client for four months. Nobody gets through phase
22 one in four months. We are talking six months coming
23 in weekly. I can't imagine a defense attorney who
24 would do it. To me it's more like seeing your
25 probation agent. I can't imagine what that defense

1 attorney would do.

2 MR. JONES: So, at this point his client is
3 unrepresented, the treatment people would include the
4 defense perspective, come up with a recommendation as
5 to how they should be?

6 MS. NELSON: The issue how did you do this week.
7 Did you have behavior, we need to reward, did you get
8 a job, GED program. We need to recognize how can we
9 regard you. Did you stay clean, did you have any
10 violations, if you had violations do we need to
11 sanction you, is it something that's not a violation
12 but not sanctionable. We are dealing with bumper
13 bowling, how do we keep them on the lane.

14 MR. JONES: I wasn't sure.

15 MR. DICKMANN: As we said, on the team you agree
16 with that. If something comes up we don't think is
17 fundamentally fair, even though we don't represent
18 that client, we will discuss and attack the process
19 that led to that issue.

20 MR. JONES: Would you call the person that
21 represented him originally?

22 MR. DICKMANN: I might.

23 MR. JONES: Would you say we worked this
24 agreement, Joe is here now. Something came up. I
25 thought you better step back in and take a more

1 energetic role?

2 MR. DICKMANN: I probably would do two things.
3 If I didn't like the process, brought it to a place I
4 thought was unfair, I would discuss that process with
5 our team, then I might talk to that individual say,
6 look, I am not your attorney. Your private attorney
7 was so and so. You might want to consider giving
8 your attorney a call. This issue has come up.
9 Usually we can resolve it.

10 It's on-going education for all of us. It is
11 not unusual. That those policies and procedures we
12 wrote four years ago are not written in stone. We
13 are always changing them. We are always learning
14 something new.

15 MR. CLARK: I am confused. I think when
16 Professor Kempinen was talking this morning you
17 nodded in agreement. He said the defense attorneys
18 have to be present for staffings. He said that was a
19 really important function for defense counsel.

20 MS. NELSON: It depends on whether you are
21 talking about processes where people are sort of like
22 admitted in. Are we talking adversarial counsel or
23 team member?

24 MR. CLARK: That's what I am confused about. How
25 can you as public defense, who didn't represent the

1 client going in, who is supposed to be at staffings?

2 You or --

3 MS. NELSON: The team member. Once you are in
4 drug court you are part of the drug court process.
5 There isn't really a role for adversarial counsel at
6 that point unless another issue arises where they
7 clearly have issues where they need to be
8 represented.

9 MR. JONES: I have a question about the police
10 officer on the team. First, I thought from Mr.
11 Dickmann assuming designated reps from different
12 departments in the county; is that fair?

13 MS. NELSON: Volunteers.

14 MR. JONES: But in your county is the arresting
15 officer a member of the team?

16 MS. NELSON: We have a permanent member of the
17 team from the sheriff's department who comes every
18 week. It is the same permanent person from the
19 Department of Corrections. They take all the people
20 who are not probation so we have one agent
21 supervising all people.

22 MR. JONES: So there is consistency with the
23 composition of the team?

24 MS. NELSON: Yes.

25 MR. DICKMANN: Our team, we have administration,

1 the sheriff, police chief then drug cops.

2 MS. NELSON: The adversary committee
3 stakeholders. It needs to be the sheriff who sets
4 the policy. Then the actual team member can be
5 anybody in the office who is willing to play that
6 role.

7 MS. SHIFMAN: I don't know if you guys had a
8 chance to see the sentencing or read the Sentencing
9 Project Disparity by Geography, which talks about
10 the disparity in arrests for drug crimes all over the
11 country and Wisconsin included.

12 Statistically, Wisconsin's disparity is highest
13 in the nation which was surprising to me.

14 MR. MEYER: The problem is primarily generated
15 in Milwaukee County where we sit.

16 MS. NELSON: There is not a lot of racial
17 disparity in Wisconsin other than the
18 Madison-Milwaukee. We are a very homogenous county.
19 There are interesting pockets. We have tribal land.
20 We have a large Mong community in La Crosse, Eau
21 Claire. Those are very new and speaking to that
22 particular culture we have to be sensitive to those
23 issues as well.

24 MR. JONES: Are you seeing in your communities
25 the two counties that you describe?

1 MS. NELSON: Extremely homogeneous.

2 MR. JONES: You are in Madison. Is there
3 differences?

4 MR. MEYER: Madison is primarily white middle
5 class. Certain pockets of other ethnic groups.

6 One of the comments I was going to make earlier
7 is that two of the drugs that drug court is dealing
8 with, primary ones, are heroin and Oxycontin. You can
9 sort of say what ethnic groups are involved with
10 those two drugs.

11 MR. JONES: That's what you are seeing in
12 Madison, heroin and Oxycontin?

13 MR. MEYER: That's what I am seeing in my
14 practice, which is usually a reflection of what's
15 going on in the community. We don't have the
16 methadone yet. That is concentrated straight along
17 the Wisconsin-Minnesota area.

18 MS. NELSON: That's changing. Since they changed
19 the legislation, since the legislation to get
20 pseudofed off the counter. Methadone is going down in
21 quality actually. My clients tell me. They are
22 starting to use cocaine because the quality of what
23 comes in is better, just as cheap as methadone. You
24 can't get methadone now that they took pseudofed off
25 the shelves.

1 MR. JONES: That's capitalism.

2 MR. MEYER: The feds do a lot of methadone
3 prosecution. We have a problem with the feds stepping
4 into state cases.

5 MS. SHIFMAN: It's all over.

6 MR. MEYER: Precursor guidelines.

7 MS. SHIFMAN: I take it Wood County is pretty
8 much homogenous?

9 MR. MEYER: 98 percent White. Pockets of Native
10 American and Mong.

11 MR. JONES: We are running up against the clock.
12 I wanted to go back for one second to this question
13 that got raised right off the bat with Professor
14 Kempinen in terms of this schizophrenic tension with
15 the defense attorney being on the team. Then
16 questions arise during the course of the treatment.

17 What I took from Professor Keminen was that
18 there are two sources of points of real advocacy that
19 occur in the whole process. One at the very beginning
20 when doing a consultation, making the decision
21 whether or not to get into the treatment pipeline.

22 The second terminus, if you haven't succeeded
23 you will have this hearing to determine whether or
24 not you will be terminated then you need to sort of
25 have a defense attorney available who can be more a

1 traditional defense attorney doing advocacy around
2 the termination proceedings, whether it should happen
3 or not.

4 In the middle, during the actual treatment where
5 you have this defense attorney who is part of the
6 team who has allegiance to the team, who makes the
7 kind of arguments that you were saying, you might
8 make it where you say jail might be so bad for this
9 guy, the prosecutor is saying well let's hold off
10 before we think about jail, those atypical
11 conversations are happening.

12 Should there be a second defense attorney role
13 in the actual day-to-day of the treatment process
14 that says if there is a confidential conversation
15 that needs to be had. If there is some advocacy that
16 needs to be had that person can be called upon to
17 have that kind of advocacy parole for the client with
18 the judge, outside of the team person, and should
19 that person -- if you think that person is necessary,
20 should that person also have the ability not to
21 influence team meetings, not to participate in team
22 meetings, not to be advocate at the team meeting but
23 an observer, not say anything, just so the person has
24 this ability to know what's been happening when you
25 now call me in to be advocate. Any of you, what do

1 you think? I see you shaking your head.

2 MR. DICKMANN: No. Because what's important in
3 drug court is honesty. So you will not get kicked out
4 for failing a drug test, for using, for parole.
5 What you will get kicked out for is using and then
6 coming into court, giving the team a bunch of BS.
7 That's what you get kicked out for. Bring a criminal
8 defense attorney into that process that isn't
9 familiar with what drug court is doing, they will say
10 let's attack the drug test. Let's do this. It will
11 be a problem for the client. So I say at that
12 particular point that person doesn't belong.

13 Let me also say, maybe Professor Kempinen didn't
14 say this, but at the end of the program if it is my
15 client that goes into drug court, I have been all
16 along, now it's my client's that I am going to resume
17 representation because he has been kicked out, let's
18 say not kicked out but it's a sanctioned hearing or
19 there is a discussion about termination, who better
20 to represent him on the team than me because I can
21 face those people, for the last three years a
22 valuable part of the team, they like me. I
23 coauthored the grant that is running the drug court.
24 It is hard to say no then it will be for someone else
25 working in there.

1 MR. JONES: Ms. Nelson.

2 MS. NELSON: I think is a very difficult
3 question. I think termination is, really, I don't
4 think the courts that I have been with inmates in
5 Wisconsin have tackled as much as they do need to.

6 The question is how much due process do you have
7 in termination in drug court things. Usually it's not
8 legal. It's not a new crime. It's have we exercised
9 everything we can possibly do for you. It is not are
10 you right or wrong, did we give you enough of a
11 chance, is there anything more this court has to
12 offer you. That's when we terminate. Not because you
13 have done something can we prove it or can't we prove
14 it. It's like we have given you every resource that
15 we have. We have tried to set you up to succeed. We
16 may have exhausted all resources, termination is very
17 difficult.

18 Personally, I have to say that I am not
19 comfortable representing people in that court. I
20 think it is confusing for them. I know where I wear
21 my team hat; I know where I wear my lawyer hat. But
22 my clients don't necessarily have the sophistication
23 to get that. I don't want that confusion.

24 I want them to know when I am on the team, I set
25 them up for success. But that's not the same thing

1 as having a confidential discussion. For them they
2 need two different people.

3 Let me say, too, I think the team meetings are
4 fairly open door, where if the defense attorney felt
5 strongly, wanted to come and give a perspective what
6 was going on with their client, I don't think that
7 would be unwelcome as long as it was in the role of
8 understanding what we do. If you want to tell us
9 what is going on with your client, we need that
10 information. That's great. But in terms of coming
11 in, trying to expectingly advocate those boundaries,
12 as an issue it is a real place to look at. The team
13 can be open to that but it doesn't work well fitting
14 that adversarial piece into the team piece.

15 MR. MEYER: It bothers me in my role. Ms. Nelson
16 said it is like you wouldn't go to meetings with a
17 probation agent. That's true. But your client is
18 going into a courtroom with a judge and prosecutor.

19 In a way I have rationalized it, but now having
20 thought about it I am not sure I am right. Saying,
21 okay, I have sat down with the client, gone through
22 the terms of the contract. I explained what the
23 expectations are. They know the expectations, they
24 have a preview.

25 Dane County has the potential clients. I see it

1 in operation. Everything is set up before the final
2 admission into the program. So I keep the file open.
3 I hope with my file drawer, when he succeeds, when he
4 or she succeed, I close it down. There is a
5 dismissal. I can go how. But the more I thought
6 about it in preparation for today, I am, I am letting
7 my client go in, into a setup that I would never do
8 under any other set of circumstances. A judge an
9 prosecutor, they are going to be asking my client
10 questions. I am going wait a minute. That's not like
11 going to visit your p.o. This is a whole different
12 deal. I have to go back and read my code of ethics.

13 MR. JONES: We are happy to be useful in your
14 practice. We are out of time. Thank you all very
15 much. This was very useful. We are going to recess
16 for lunch, be back in a hour. 1:00 o'clock.

17 (Lunch recess at 12:05.)

18
19 (Time 1:15 p.m.)

20 AFTERNOON SESSION

21 MR. JONES: So we will start. We were scheduled
22 to have two folks on this page. Ryan King is here.
23 John Chisholm, whom we heard about a good deal this
24 morning, who has not arrived yet, hopefully, he will
25 join us shortly. But I suspect knowing Ryan and

1 knowing the sentencing project and knowing his work
2 that we can more than amply fill the time with our
3 questions for Ryan. Why don't we start. Welcome.

4 MR. KING: Thank you.

5 MR. JONES: The way that we work is that we give
6 you five minutes or so to give us an opening
7 statement. Then we have lots of questions for you.
8 One of us usually takes the lead in questioning a
9 particular panel.

10 MR. KING: Okay.

11 MR. JONES: For this panel it will be Gail
12 Shifman. So I have said enough. The floor is yours.

13 MR. KING: So five minutes.

14 MR. JONES: Yep.

15 MR. KING: Okay. I didn't -- five to ten. I will
16 dive in here. I didn't get a lot of guidance on the
17 direction of this so I will dive in if you want.

18 MR. JONES: I will give you the high sign.

19 MR. KING: All right. I am Ryan King, policy
20 analyst with the Wisconsin Sentencing Project, a
21 criminal justice policy organization located in
22 Washington D.C. The Sentencing Project has been
23 engaged in research and advocacy regarding the
24 implementation of alternations to incarceration for
25 two decades. I welcome this invitation to address the

1 task force on issues of drug courts as an alternative
2 model of criminal prosecution of cases.

3 Since 1989, drug courts have spread throughout
4 the country; there are now over 1,600 drug courts
5 operating in all 50 states.

6 I was planning a little bit about it. I gather
7 this is a trip to the end of the hearing. Since I
8 have limited time, I will skip forward to our
9 thoughts about drug courts, the current state of
10 research. Is that helpful? All right. And we can
11 talk through that. So give me one second here. Okay.

12 The most commonly asked questions about drug
13 courts are: Do they work and, if so, what are their
14 benefits? After two decades of implementation
15 research shows that graduates of drug courts are less
16 likely to be re-arrested than those who were
17 processed through traditional court mechanics.

18 Findings from drug court evaluations show
19 participation in drug court results in fewer
20 re-arrests and reconvictions, or longer periods of
21 between arrests.

22 For example, an analysis of research findings
23 from 76 different drug courts found a 10 percent
24 reduction in re-arrest, with pre-adjudication courts
25 presenting a 13 percent decline in rearrest.

1 Another analysis of 30 drug court evaluations
2 found a 13 percent decline in the rate of
3 reconvictions for a new offense. A meta-analysis of
4 57 studies of drug court effectiveness estimated that
5 the treatment intervention would contribute an 8
6 percent decline in crime relative to no treatment.

7 While it is generally accepted that drug courts
8 effectively reduce re-arrest rates relative to simple
9 probation incarceration, there are some reason to be
10 cautious when interpreting these results.

11 I want to raise some questions. Maybe take some
12 questions and answers. we can talk about treatment
13 court.

14 First, as you have likely observed, the rates of
15 success, broadly defined, vary widely from one
16 jurisdiction to the next. There are some studies that
17 show little to no impact from drug court
18 participation, and it can be difficult to specify as
19 to what components of the program or the research
20 design may be contributing to those results.

21 For example, are the evaluation models
22 appropriately specifying relevant factors that may
23 impact outcomes, but are external to the treatment
24 design? So gender, age, race, socioeconomic
25 background, criminal history and substance abuse

1 history have all been shown to impact treatment
2 outcomes. Many of these variables are not accounted
3 for in analyses of drug court effectively.

4 Operationalizing drug court variables can be
5 difficult and outcome measures may be reflecting the
6 interaction of these variables with the treatment
7 modality.

8 Similarly, researchers are quick to point out
9 that rearrest figures may not be the best indicator
10 of drug court's efficacy. As mentioned above, this is
11 because factors both internal and external to drug
12 court design and operation can have a demonstrable
13 impact on outcomes.

14 For example, rearrest rates may just as likely
15 to reflect drug using history and the demographics of
16 the population the court serves rather than the
17 quality of the court services. High rearrest rates
18 may be indicative of a population that uses higher
19 drugs. Whereas lower recidivism rates may indicate
20 that the drug court is serving a population with less
21 severe drug abuses.

22 High arrest rates may also reflect a drug court
23 that is serving a population with longer substance
24 abuse history.

25 This is not treatment court, but an evaluation

1 of California's Proposition 36 diversion program for
2 low-level drug offenders found almost half of the
3 persons who were receiving treatment for the first
4 time had been using for more than ten years, and one
5 in five had been using for more than 20 years. A
6 population with a mature drug using history such as
7 that described above is unlikely to respond to the
8 same programming as a population who has been using
9 drugs for a shorter period.

10 On the issue of cost savings, the evaluations of
11 net costs and benefits of drug courts nationwide
12 generally find that drug courts save taxpayer dollars
13 compared to simple probation and/or incarceration,
14 primarily due to reductions in arrests, case
15 processing, jail occupancy and victimizations costs.
16 Skipping through some evaluation because I
17 wanted to focus more on some of the larger questions
18 that we can discuss through.

19 If we agree that, by and large, drug courts
20 were to save money, the next logical step is to
21 identify why they succeed, or fail, and seek to
22 maximize those benefits while mitigating any areas
23 of problematic institutionalization design or
24 mechanics.

25 A 1997 publication released by National

1 Association of Drug Court Professionals documents
2 the ten key components to a successful drug court
3 design.

4 Component Six, outlines the use of rewards and
5 sanctions, reduction of sanctions, instruments to
6 address compliance problems. The NADCP recognizes
7 that "addiction is a chronic, relapsing condition"
8 and that becoming abstinent from drug abuse "is a
9 learning experience, and each relapse to alcohol and
10 to other drug use may teach something about the
11 recovery process."

12 In order to account for relapse and other
13 violations that will likely occur during a course of
14 treatment, the NADCP recommends that court
15 administrators use a system of graduated responses.
16 Developing a system of both graduated reward and
17 sanctions that recognizes "there is value in
18 incremental."

19 But in practice courts tend to implement
20 sanctions and rewards for variety of reasons under
21 different circumstances. The National Institute of
22 Justice as well as a New York State Drug Court
23 Evaluation noted many courts don't have a formal
24 system under which sanctions are imposed, nor are
25 records kept for when and why sanctions are

1 enforced.

2 This is problematic when attempting to evaluate
3 the efficacy of drug court intervention. Even
4 within the same state, there can be substantial
5 variation as to how sanctions are employed.

6 An evaluation of drug courts in Brooklyn,
7 Queens, and Suffolk in New York found that "none
8 routinely follow a 'graduated sanctions' model, where
9 successive infractions are met with increasingly
10 severe sanctions" And, in fact, effect frequently
11 they make individualized decisions based on what they
12 believe at the time will be more effective. While
13 flexibility should be a hallmark of a well-designed
14 drug court, running a court in the manner described
15 above threatens inconsistent and arbitrary outcomes.
16 Of the three courts studied in-depth on sanction use
17 in New York, only one used the graduated sanction
18 method. In the other two court, certain infractions
19 were always met with the same sanction regardless of
20 how many violations a participant had committed.

21 Regarding the utility of relying upon sanctions,
22 there is no consensus as to whether sanctions are an
23 effective method of ensuring program compliance. A
24 GAO evaluation of sixteen drug courts found that the
25 severity of sanctions was not an accurate predictor

1 of program completions. But a Washington DC
2 pre-trial diversion court for drug offenders reported
3 lower rates of drug use and rearrest among those
4 persons who were subjected to regular judicial
5 supervision, drug testing and potential sanctions.

6 A study of a court-mandated drug treatment
7 program in Brooklyn found the strongest predictor of
8 treatment success was the threat of legal coercion.
9 Those individuals who faced more severe consequences
10 in terms of potential incarceration should they fail
11 to complete the treatment program reported better
12 retention rates.

13 The data on sanctions present a mixed and
14 confusing picture. It may be that sanctions alone
15 are not effective predictors of success, but in
16 conjunction with other program elements can play an
17 important role in leading to elevated retention
18 rates.

19 There is some evidence suggesting that the
20 implementation of sanctions is uneven in many courts,
21 which might explain the differential outcomes. Any
22 consideration of the role of sanctions in a drug
23 court environment provides important insight into the
24 intermediate steps that drug court administrators may
25 take to avoid future rearrest.

1 If sanctions are correlated with reduced program
2 retention and elevated rearrest rates, the need for
3 sanctions early on in treatment may be seen as an
4 indicator that a participant is at a higher risk of
5 failure. This permit the drug court administrators
6 with an opportunity to revisit the treatment program
7 and make any necessary adjustments.

8 Developing a flexible graduated sanction program
9 is a crucial contributor to a successful drug court
10 program, because even those who are eventually
11 successful in drug court tend first to relapse,
12 warrant, and violate other program rules. Thus, the
13 sanctions process should be seen as an opportunity to
14 adjust treatment on the fly to limit subsequent
15 relapse, rather than the first step on the path to an
16 eventual termination of drug court participation.

17 One of the unique aspects of the drug court
18 model is the frequency with which the judge interacts
19 with participants. The drug court judge's role is a
20 continuing partnership with the participants that
21 does not end at sentencing. The relationship is less
22 formalistic and individualized based on the judge's
23 supervision of the offender's progress.

24 As with other metrics used to determine the
25 effectiveness of a drug court intervention, there

1 remains some confusion as to the model role that a
2 judge should play in the drug court process.

3 A GAO report noted that the demeanor and conduct
4 of the judge did not predict a participant's success
5 or failure. However, a series of studies found that
6 while the judge did not appear to have an impact on
7 program attendance, drug use, or criminal activity
8 among drug court participants, there was an effect
9 when examined by type of client. Clients who were
10 higher risk experienced a benefit from more intense
11 judicial involvement; while lower risk participants
12 did not receive any benefit.

13 In one study, over 80 percent of participants
14 with a prior drug treatment history graduated from
15 the program when there were assigned to bi-weekly
16 hearings, compared to less than 20 percent of those
17 assigned to as-needed hearings.

18 Courts with a longer history of implementation
19 have had the opportunity to monitor a number of
20 judges cycling through the system. The evaluation of
21 the Multnomah County drug court system has done the
22 most to evaluate some of the effects of multiple and
23 rotating judges. The judges found serving second or
24 third rotations on the court graduated double the
25 number of offenders they graduated in their first

1 session. These judges also had better results in
2 terms of reductions of rearrests.

3 In addition to the data from the Multnomah
4 County drug court suggesting that the judge plays a
5 role, a focus group study of participants and staff
6 in three New York drug court programs point to the
7 importance of the judge in program success. While
8 the study did not have an effect on program
9 attendance, participants stated that the "hands-on
10 role of the judge" and the "intensive monitoring and
11 drug testing" were helpful in retaining them in the
12 program.

13 In addition, the rewards and sanctions offered
14 by drug court judges were important components to a
15 successful completion of the program. Thus, it
16 appears that a judge may play an important role in
17 determining drug court outcomes, but that the impact
18 differs based on the client base.

19 There is also some concern about the time it
20 take to plan an individual in a drug court program.
21 The duration of the lag between being assigned to a
22 drug court and beginning active treatment.

23 A study of a treatment court in Brooklyn found
24 that a critical predictor of success was whether a
25 defendant was placed in treatment with thirty days.

1 This is another variable to consider in light of the
2 fact that many drug court programs suffer from a
3 scarcity of treatment vacancies. If a drug court
4 cannot overcome capacity issues, the likelihood of
5 relapse will increase before an individual is even
6 able to be in treatment.

7 The length of time in treatment is also crucial
8 to success. Some studies suggest that a minimum stay
9 of 90 days is necessary for a successful outcome. If
10 drug courts are already scrambling to find available
11 slots, it is likely that the duration of treatment
12 will suffer.

13 Finally, there is a growing concern that instead
14 of providing an alternative sentencing route for
15 arrestees, drug courts actually increase the number
16 of people arrested on drug charges. Some studies
17 suggest that since drug courts provide an additional
18 venue in which to process offenders, law enforcement
19 officials are able to make more arrests of lower
20 level offenders.

21 The Vera Institute is concerned that the use of
22 sanctions has results in participants spending more
23 time in jail than they would have had they never
24 enrolled in the drug court program. Because most
25 individuals who enter drug court are non-violent

1 offenders, many would have experienced short, if any,
2 periods in jail. Participants who are punished with
3 sanctions sometimes end up with multiple stays in
4 jail.

5 In the Denver District Court, Judge Hoffman, who
6 wrote a law review, notes that arrest numbers for
7 drug crimes increased significantly in the years
8 following the establishment of their drug court when
9 drug arrestees increased almost three-fold in two
10 years. He contends that the drug court enabled
11 police officers to make arrests that they would not
12 have bothered with before.

13 Judge Hoffman implies that police officers are
14 encouraged to bring charges against low-level drug
15 offenders who were previously not process because of
16 a perception that the drug court is an additional
17 resource for adjudicating claims, as opposed to a
18 diversion meant only for those who would have been
19 arrested anyway.

20 In conclusion, research to date has consistently
21 reported that drug courts are achieving important
22 benefits. Although the degree to which and the
23 operations of the court affect that remains largely
24 debated. Still largely unknown, however, are the
25 practices which lead to success or failure of a drug

1 court. Of great concern is the contention that drug
2 courts could be increasing the number of people
3 arrested for drug crimes, instead of decreasing in
4 the long term the number of people processed in the
5 criminal justice system.

6 Research has not yet focused on determining
7 whether drug court participants would have ended up
8 in the criminal justice system if not for the drug
9 court. Increased and uniform tracking of
10 participants' criminal history may answer some
11 concerns about the net-widening effects of the drug
12 court. It would be further helpful for future
13 research to look at the effects of a pre-plea versus
14 a post-plea model and the use of sanctions and the
15 judge's role in determining outcomes.

16 So, that being said, sort of an abbreviated
17 glance through, I will do questions and answers.

18 MS. KELLEY: Ryan, since you seem to have
19 prepared remarks, can you give those to use and we
20 will make it a part of the record.

21 MR. KING: Absolutely, yes. I will
22 electronically. I will email them to you.

23 MS. KELLEY: Ryan, in addition to the statistics
24 that

25 you presented to us today, we have had a chance to

1 look at your report "Disparity By Geography The War
2 On Drugs In American Cities." We included that
3 report as part of your materials to review when we
4 ultimately prepare our report and recommendation.
5 I wanted to walk through and have you provide
6 us with some of the statistics, not every one of
7 them that's in your report, just so it's part of the
8 record and we have some of them and talk to you
9 about some of your recommendations that came out of
10 that report.

11 MR. RYAN: Okay.

12 MS. KELLEY: And serve that as the basis I think
13 what I would like to do is just ask if you, maybe you
14 can make a whole statement about this. One of the
15 points that I would like you to address is whether
16 you think the drug court model is really moving us
17 toward a public health model or whether you think the
18 drug court model and the drug court system is a way
19 to co-opt this war on drugs and sort of legitimized
20 the law enforcement policy strategy of just arresting
21 all these people no matter what level of drug
22 offenses are out there.

23 MR. RYAN: Sure.

24 MS. KELLEY: So with that in mind maybe you can
25 give us a few minutes of comments on that. As far as

1 statistics, I think it would be helpful to talk
2 about the increase in drugs arrests and the racial
3 disparity that your findings brought.

4 MR. RYAN: Actually, the panel I am going to
5 next is on that report. As I said, I was a little
6 confused. Scott indicated he wanted to talk about
7 the racial disparity and arrest reports. I wasn't
8 quite sure how to angle problem- solving courts. I
9 hope I didn't waste your time --

10 MS. KELLEY: Oh, not.

11 MR. RYAN: -- with the drug court. But I will.
12 The report that you are referring to, has everybody
13 read the report? So you have a general sense of what
14 we have looked at.

15 And it started out we had done a report a few
16 years ago looking at marijuana arrests. We
17 discovered that the vast majority of the increase in
18 arrests for all drug offenses in the 1990s was for
19 marijuana offenses and most of that was for low-level
20 marijuana possession offenses. Essentially, the
21 report was about how the war on all drugs had shifted
22 into a war on marijuana.

23 It was particularly interesting in light of
24 looking what we identified are two very distinct
25 areas of law enforcement. I am looking at 1984. I

1 am a firm believer the war on drugs, and it's gone on
2 for many, many years and historians have documented
3 different moral patterns for different drugs over the
4 course of years. But it was the federal funding
5 during the Reagan administration and the commitment
6 to enforcement of drug laws during that time,
7 particularly with an emphasis on state and local
8 officials getting access to federal funds that led to
9 increase in arrests that we see here. That infusion
10 of federal dollars -- Marijuana had been the primary
11 drug of arrest in the 1980s. During the 1980s, the
12 infusion of federal dollars, the pursuit of the war
13 on drugs led to literally sort of a complete flip in
14 terms of the drug arrests. It became heroin and
15 cocaine.

16 A lot of Americans in the U.S. would probably
17 argue that was an appropriate shift in drug
18 enforcement. Whether the scales and the means of it,
19 police were targeting what are now identified now
20 more commonly as the more severe drugs. This peaked
21 in 1989-90 or so we saw a very sharp decrease. Now
22 we are back to levels we saw similarly back in the
23 1980 where it is by and large driving the roof in
24 drug arrests.

25 So what we are particularly interested in

1 looking at the racial disparity in drug arrests, what
2 we were able to access, FBI data going back to 1980,
3 city level, we wanted to create the drug arrest
4 rates, and immediately dumped these in with census
5 data that created the rates, we were struck by the
6 very similar patterns from city to city.

7 I often travel with Excel files showing the
8 growth in prison population. 1920 to 1970, it's flat
9 then it shoots up. It always gets a lot of oohs and
10 ahs in the audience. I think a lot these state -- I
11 wish I had city charts with me that are in the
12 report. They make that same -- to me the racial the
13 disparity, I was quite shocked. I am not shocked by
14 much working on this issue any more. The disparity in
15 many cities was by today's standards very, very
16 modest. In some cases Whites arrested at a higher
17 rate. Then we saw this huge shift beginning in 1980.
18 As I stated, I argued, this is from the federal
19 declaration war on drugs and the money that was put
20 into that. To believe anything otherwise would
21 essentially suggest that African Americans despite
22 the fact that drug use rates and what we know about
23 the graphic research, it suggests that they tend to
24 sell and use drugs in proportion to the
25 representation of their population; woke up

1 collectively in January of 1980 or 1981 and decided
2 that, you know, we are going to start selling drugs
3 at ten, fifteen times the rate that we have in the
4 past.

5 Now, we haven't done any analysis to explain
6 what percentage of this expansion in disparity is
7 attributable to differential use rates and
8 differential sell rates. But I think looking at the
9 evidence we have in drug use and at the graphic work
10 in drug sells, there is nothing to support this
11 growth in disparity in these cities. In many cases
12 five to ten times the growth of Whites versus African
13 Americans. And varying very much from jurisdiction to
14 jurisdiction, which is a point I think Mark Malar,
15 our executive director, was most interested in was
16 the local level role has played in this. So every
17 city has a similar pattern, which is that the
18 disparity is growing significantly but the degree in
19 which it has, whether Whites went up as well or down
20 or they stayed level, varies from jurisdiction to
21 jurisdiction. And it shows very much that local law
22 enforcement, and anybody who has studied the war on
23 drugs knows that local law enforcement has a
24 significant amount of discretion in where the war on
25 drugs is pursued and who comes into it. This is

1 reflected in these disparity numbers and arrests.

2 How this ties into drug courts? I think you
3 raise a really good question. We are actually in the
4 process, my remarks today come from a report that we
5 are currently working on looking at drug courts,
6 because I think we have a lot of general
7 conversations in the office, which I am sure are very
8 similar to the conversations you are having about,
9 you know, is this a step in evolution towards an
10 ultimate goal. As you said a public health approach
11 model or is this more of an effort to sort of infuse,
12 try to keep the criminal justice system somehow
13 engaged in this.

14 I think one way to look at it is that I started
15 getting interested in this issue around 1990-91. I
16 saw William Buckley speaking about drug prohibition,
17 and I really became interested in it. And at that
18 time the notion of a politician coming out and
19 talking about drug reform, talking about treatment
20 instead of incarceration would have been, you know,
21 complete political death. Yet here we are, even the
22 most ardent drug wars warriors now are acknowledging
23 treatment is a valuable ingredient for certain
24 individuals. But when I saw the Bush Administration,
25 General Berry McCafferty, former Drug Czar General

1 Berry McCafferty and the N.C.P. coming out in strong
2 support of drug courts in opposition to models like
3 Proposition 36, it sort of suggested to me that, you
4 know, for a lot of these individuals they may see a
5 Prop 36 model, you know, a larger carrot, smaller
6 stick as the writing on the wall. If we can really
7 entrench drug courts and keep drug courts in there,
8 we are going to be able to keep the heavy-duty stick.

9 And my reading of a lot of research is for
10 certain individuals, I think the research does
11 suggest, as I mentioned in my remarks, that having a
12 stick is necessary. Having that coercion can be
13 necessary. But if you are starting to bring in more
14 and more people, people that really don't have an
15 identifiable drug abuse problem, there are problems
16 and they got arrested for using drugs, recreationally
17 or otherwise, and they are being brought into the
18 system and they are being subjected to the same
19 treatment as somebody who has been using drugs for
20 twenty years, you know, that's not really a workable
21 system. That's bringing in people for whom we are
22 wasting resources, we are wasting bedspace and in
23 many cases we are saddling those people with whether
24 it's some sort of condition status and changing their
25 lives in some sort of way.

1 I think the devil is in the details. I think
2 there are elements of drug courts that are positive.
3 There are elements that we can support. But I do
4 look at it -- I like to look at it as an evolution
5 towards an ultimate goal. So relative to where we
6 were in 1988 versus now it is positive. We've got
7 these diversion models. I do think that the
8 success -- or at least the success in
9 acknowledgement of the value of drug courts has
10 driven further from pushing boundaries. I think
11 that's why really a lot of the ardent drug warriors
12 are concerned about it. So I think we need to push
13 the elements that work that are positive, trying to
14 expand out.. .

15 The biggest thing, one of the most frustrating
16 things, I will let it in here, is the very narrow
17 qualifications that individuals have to meet to be
18 able to participate in a lot of these diversion
19 programs in drug courts. In many cases individuals
20 who are arrested for burglary but had a drug abuse
21 history, you know addressing the drug abuse might be
22 the very reason to keep them from recidivating on a
23 burglary charge. But they have all these different
24 barriers to participation. I understand it's for
25 political reasons.

1 But I think if we are talking about setting up
2 a model, one of the things that we need to do is
3 learn from the successes, learn from what's worked
4 and expand it out to an even a bigger and broader
5 population. Because we are, as you guys are aware,
6 tinkering around the edges. We have a half million
7 people that are in prison or jail for drugs
8 offenses, as well as countless others that are in
9 prison for drug offenses that could benefit from
10 drug treatment. If you are talking about first-time
11 nonviolent, no prior history, et cetera, et cetera,
12 we are talking a very, very small population of
13 people and the actual affect that you can have on
14 recidivisim and crime rates is going to be minimal.

15
16
17 MR. JONES: Thank you. We have been joined by
18 John Chisholm who is District Attorney for Milwaukee
19 County. Welcome happy to have you.

20 MR. CHISHOLM: Thank you. I have to apologize.
21 I was here 20 minutes earlier I was escorted into
22 the Chief Justices speech. (Laughter.) I dare not
23 leave.

24 MR. JONES: We would like to have you join the
25 conversation. Just give me three or four minutes to

1 make opening statement, if you would.

2 MR. CHISHOLM: My name is John Chisholm. I am a
3 first-time elected District Attorney of Milwaukee
4 County. My predecessor was E. Michael McCann. He was
5 in that position for 38 years. I was Assistant
6 District Attorney for fourteen years prior to taking
7 this position. And as part of my experience I spend a
8 substantial amount of time in our defined drug court.
9 They are not treatment courts; they are prosecution
10 courts. They have been funded primarily in the early
11 '90s. They have been in existence with the sole
12 mission of prosecuting felony-level drug offenses:
13 Drug distribution, possession with intent to delivery
14 and related felony drug offenses.

15 I also had spent a significant amount of time
16 working on task forces such as Project Safe
17 Neighborhoods, where we shifted focus quite frankly
18 from simple predicate drug offenses to violent crime
19 and the associated consequences with violent crime.

20 From that it led me to the realization fairly
21 early on that we were going to have to have some sort
22 of visible day-to-day presence in our community as
23 prosecutors if we were going to see any real affect
24 of our policies, whatever they may be. Whatever those
25 policies have been, if we wanted to see a positive

1 impact, we had to actually get connected with the
2 community. That led me to think very hard about how
3 we process people through our system. Ask the
4 fundamental questions, "A." are we doing what we
5 intend to do and "B." what have been the consequences
6 of some of our past policy decisions.

7 I think the hard answer to that is seen when you
8 are standing up with the Governor of the State of
9 Wisconsin, and you are discussing a recent report on
10 disparity levels in our state and we lead country.
11 When the Governor says that yes we do have a problem
12 were we to have our disparity rates we would still
13 lead the nation then you know you have a problem.

14 We recognize that, and I believe that a
15 significant amount of that problem has been driven by
16 best intention, policy decisions that have been made
17 since, quite frankly, crack cocaine entered Milwaukee
18 late 80s, early 90s. There was a dramatic upsurge in
19 violent crime. Put in a context, we had 88 homicides
20 in 1980. In 1990 we had 168 homicides. That's for a
21 city of approximately 800,000. We are now a city of
22 approximately 600,000 documented. It's a population
23 probably a little larger than that.

24 We have made significant strides in addressing
25 the violent crime. But it is still disproportion

1 violent crime that exists in certain pockets of the
2 City of Milwaukee, both on the near south side and
3 pockets on the north central side of the city.

4 Why do I mention that in terms of the context of
5 talking about drug treatment courts and racial
6 disparity? I say that because as law enforcement
7 officials, as elected officials, we have to create
8 the means of discussing these issues in a way that we
9 can discuss two things at the same time. This is
10 what can we do to put fewer people in jail and
11 prison. What can we do to reduce violent crime in
12 these pockets where the violent crime has existed now
13 for such a long time.

14 I am convinced that you can do that. I am
15 convinced if you adopt the right policies and
16 decisions that you can actually affect measurably
17 those areas.

18 One of the areas you can do it is by adopting a
19 system of changing the way that you process people
20 through the system. The only way you can do that, I
21 believe, is to start aligning your system so that you
22 have as much information as possible about the people
23 that we do process through the system as early in the
24 process as possible and that you have affective
25 tools, needs assessment, risk assessment; that you

1 make those decisions as early in the process as
2 possible. If you wait until five minutes before you
3 go to your sentencing argument, and that's the first
4 time you listen to the public defender who is telling
5 you how drug addicted, mentally ill the defendant is
6 then you are deciding I will go with some probation
7 at this point in time. Oftentimes we are talking
8 about four to three, four to five months that have
9 gone from the time of the initial contact with law
10 enforcement until you have reached that point.

11 One of the things I am convinced we can do. I
12 think I am reluctant to call them drug court. I
13 agree with much of what you are saying. I don't
14 think we should lock ourselves into a box of calling
15 it drug court, mental treatment court. In reality,
16 each one of the individuals often requires a
17 different nuanced approach. Sometimes a classic drug
18 treatment approach would be say six months to get
19 into treatment. If you successfully complete it, you
20 don't have a criminal charge. In other cases, if the
21 person is a mental health consumer, has needs, has
22 had a history of interacting with law enforcement,
23 you may need a structured, almost weekly appearance
24 in front of the judge to move that person out of the
25 criminal justice system.

1 You need the flexibility, you need experience,
2 quite frankly, at all levels. You need it from the
3 defense part. You need it from the prosecutor. You
4 need it from pretrial services specialist. You need
5 it from the medical treatment corrections community.
6 It's a daunting challenge, but I believe it can be
7 done in these types of communities. We take steps
8 here in the county to do that, but we are far behind
9 in the state in some ways. It's just remarkable.

10 We don't have treatment court in Milwaukee
11 County. I say that with a great deal of shame,
12 frankly. We will have one by the end of the year.
13 One way I was able to do that is by making the
14 promise we would start accountability, intelligently,
15 to the best of our ability, diverting people out of
16 the system. I would reduce the equivalent of one
17 criminal court and ask that be converted into a
18 treatment court. We have done it. We have diverted in
19 some accountable fashion from 700 to 800 cases with
20 no additional treatment resources. A 65 percent
21 success rate, as of a headline Monday of this week.
22 The violent crime rate is down about 20 percent. So
23 am I linking those two together? Yes. It would be
24 foolish not to do so. But it's sure better than the
25 other way around. It would be better without.

1 The backdrop of treatment court, I am out there
2 on my own. Every diversion I make puts me at
3 political risk. Every one of them that I divert is a
4 headline waiting to happen quite frankly. I am
5 willing to do so. I said so publicly. I will take
6 that risk quite frankly.

7 As an experienced prosecutor, I am just tired of
8 the docket, the same old thing, getting the same old
9 results, recycling people through the system again
10 and again. Also, as an experienced prosecutor, I
11 believe that we have to focus on violent offenders,
12 gun offenders, members of violent street gangs.
13 These are individuals, quite frankly, we are pretty
14 good at doing what we do in criminal court system,
15 but we don't do it very well right now because we
16 spend so much time dealing with the other issues that
17 are of lower priority not in sentencing, not because
18 they are not valuable individual cases, but because
19 we are just overwhelmed with volume and reactive
20 prosecutions. So that's an approach that we are
21 talking right now.

22 I am working closely with the Vera Institute of
23 New York. Why do that? We are one of three counties
24 that agreed to basically open up our shop. I am
25 working with Mac Linberg of San Diego County.

1 What we did with several severe racial
2 disparity studies, we said, come in, take a look at
3 what we do. Evaluate what we do. If you can find
4 disparities in here, help us do the process of trying
5 to explain why those disparities exist. I will do
6 everything in my power to change them.

7 One of the very first run-throughs they did with
8 us, it was very instructive in the relationship to
9 drug disparities, they found over-all our office
10 charged fairly even handed. There was very little
11 disparity, particularly at the higher category of
12 offenses. More serious offenses, there was almost no
13 disparities.

14 Where disparity was most significant was in
15 drug offenses; that that category was the lower level
16 drug offense had the widest disparity, stark
17 disparity; that that category was the least serious
18 offense, we call it possession of drug paraphernalia,
19 I don't know what it is called in other
20 jurisdictions, it's literally a 30-day misdemeanor.
21 In our jurisdiction there was a huge, huge disparity
22 in that number right there. That is sort of a gateway
23 case to have issued at high rates.

24 Why would there be such a wide disparity? That
25 process, just asking those questions was incredibly

1 value. We sat down with our most experienced team
2 captains, most of those prosecutors who are
3 documenting homicides, sexual assaults, were looking
4 at why in the heck are you even charging those cases
5 to begin with.

6 People in our office that had been charging
7 those were the least experienced people in the
8 office; the misdemeanor team that had been assigned
9 that response, and those had been horizontally
10 charged. They just came in randomly. You would look
11 at it, I think the easiest, even though you have to
12 really explore this much deeper, easiest
13 explanations. You take a look at somebody who has
14 multiple convictions for drug offenses, usually
15 possession, lower level offenses, they come in with
16 another drug level offense. You are just matching
17 offenses with prior records you issued in a case.

18 The first thing, we were saying no. Why do you
19 even want these individuals? These are drug
20 addicted. If they are carrying paraphernalia to
21 ingest cocaine, they are drug addicted. Why not
22 divert them out of the system from the get-go.

23 In the space of eighteen months -- I just gave a
24 presentation to the National Black Prosecutors
25 Association. Before giving that presentation, Vera

1 did another assessment of our office. The disparity
2 is gone. By making policy changes in that one area
3 alone the disparity is gone completely. So the hope,
4 one thing that's coming to you of that is disparity
5 from our end truly measures what we do to report out
6 what we do in some kind of transparent, accountable
7 way for ourselves internally and also publicly,
8 externally, so people can see how prosecutors use
9 their discretionary power. So from a policy
10 standpoint we can hold ourselves accountable. How to
11 do that, get some kind of systematic or internal way.
12 I have run on a bit. You may have some questions.

13 MR. JONES: Thank you.

14 MS. BERNHARD: I want to ask one follow up then
15 I know we will get close on time. I am sure people
16 have questions for both of you.

17 We have heard a lot about you and how you are
18 running your office, your interaction with the
19 Defense Bar, your openness in making charging
20 decisions after speaking to a public defender or
21 private lawyer, which is frankly remarkable.

22 My question to you: Following up on all of your
23 terrific policy changes and your statements today,
24 has it made a difference in the disparity of arrests
25 that are being made out on the street?

1 MR. CHISHOLM: I think it's a four-legged table.
2 No question about it. I don't know the answer to
3 that. I think the police departments who have taken a
4 good step forward in becoming sort of in the front of
5 the racial disparity. Through studies of stops and
6 charges and that, I think they have stopped doing
7 that, stopped looking close enough.

8 I think I have to get back into that and do the
9 same thing and start analyzing who they bring into
10 the system and why they bring them in. We have to
11 then do the same thing, and we have to measure who we
12 bring in and who we keep in the system, who we keep
13 out. The courts then have to do it in some
14 measurable way. They are getting a little bit ahead
15 of court. Probably most of the data you look at is
16 based on sentencing.

17 Then the fourth one would be the Department of
18 Corrections. It's the correctional individuals who
19 are in our state, if we are being looked at for
20 disparity, they play a huge, huge role in that.
21 Since we went from indeterminate sentencing in 2000
22 to terminate, what has happened since then even if a
23 judge places someone on probation, stays this
24 terminate sentence, particularly if they are drug
25 addicted or mentally ill, they quickly violate the

1 conditions of probation and go back not just for
2 interminate, they go back for the full amount. At
3 that point in time they spend 365 days of every year
4 of the sentence that has been stayed. We are
5 convinced that has led to a significant bump in our
6 incarceration thus our dispairity, since a large
7 number of those individuals are African Americans who
8 have been brought in on any number of charges.

9 MS. BERNHARD: I wanted to ask Ryan and you,
10 John, as far as recommendations for court drug,
11 treatment court, if you could name the four top
12 recommendations for any drug treatment court to
13 address: both success and dispairity. What from a
14 policy standpoint or practice standpoint do you think
15 needs to happen.

16 MR. KING: From a dispairity issue, the Human
17 Rights Watch that ranked Wisconsin number one in
18 terms of incarceration, that end point which reflects
19 all these different points up to there where
20 disparities exist, so much of it, that's what our
21 report says, existing law enforcement level.

22 One of the recommendations we make in that
23 report is for law enforcement who come upon someone
24 breaking the law, what do you do. You have some
25 jurisdiction: depriortized marijuana offenses as an

1 attempt to try to address arrests there.

2 But for a lot of law enforcement, for their
3 defense, I don't know if they know what they are
4 supposed to do. I don't think there is clear
5 guidance. We have to ask are they a conduit for
6 someone who comes into the system because they have
7 possession of marijuana.

8 Law enforcement, they can leave them there or
9 they can -- two ends. They leave it there or put it
10 in the system or middle way a conduit to access other
11 noncriminal justice services.

12 Tragically, Prop 36, those using for years,
13 years, the first time they get access, the only way
14 to get access to treatment is by getting arrested.
15 Criminal justice doesn't exist in a vacuum. Why we
16 continue to have these conversations.

17 We are not exactly all the right people that
18 need to be here. We can make all the changes, all the
19 recommendations, you know, and they can be
20 implemented. When we leave this room, we haven't
21 addressed any of the underlying problems why we see
22 this disparity.

23 From law enforcement perspective, I would like
24 to see them play a different role how to address drug
25 abuse.

1 From drug court perspective, even more
2 importantly how do we use drug treatment for someone
3 recycling through and through.

4 You can't just put them off. They need to come
5 into the system in some sort of way. We need to be
6 more broad, what I identified earlier, who is
7 eligible for those programs, keeping flexible both
8 for the decision to assign people as well as once
9 they are in there.

10 For so much of the research about why people
11 fail in drug courts, you know, it's part of the
12 problem. It's part of the addiction is the failure.
13 You will get one or two chances then you have shock
14 incarceration. You get a week, do it again.

15 If this is a one-size fits all treatment
16 approach that's not going to address that. Leaving
17 that flexibility to address for people, for people
18 who are low level versus those who are criminal
19 treatment.

20 But the disparity, the problem is that, as you
21 mentioned, these are people who come to the system
22 four or five, six times. They are no longer eligible
23 sometimes for drug court. That is because we know
24 the criminal history is strongly correlated with
25 race, African Americans have longer criminal history

1 for a lot of diversion programs, for a lot of stuff
2 we talk about. Not a matter I don't want to offer to
3 them, because they are African Americans. It is by
4 virtue of criminal history they are not going to be
5 eligible. All of that goes back to where law
6 enforcement perceives the war on drugs. More police
7 contact, more likely an arrest is magnified all the
8 way up.

9 A conversation we need to be having is law
10 enforcement needs to be at the table. It all broadly
11 comes back to legislators.

12 I thought you made -- I want to pick up on your
13 point every person that you divert is a risk. We
14 were talking on a separate conversation, opposite end
15 of the spectrum: life sentences. Parole is more
16 politicalized. The Governor doesn't want to parole
17 individuals. What political intent to parole. Miss
18 Halley Barrow, a horrific crime twenty years ago,
19 they are all over this guy every single day in the
20 newspaper. This guy hasn't done anything. Imagine
21 the person who goes out, there is no incentive, why
22 take the risk. Until we are able to calm the
23 political, getting these substantive changes is very
24 difficult. Not a precise answer.

25 MR. CHISHOLM: How we get to that conversation

1 point is to use the forces, draw people together,
2 that is if you are fiscally consecutive, you are
3 looking at your state budget. Yes, every huge
4 portion of that budget is going into the Department
5 of Corrections. It's great to talk tough on crime,
6 but if you find somebody that might be able to say,
7 look, I think if we are smarter about this that we
8 might be able to achieve the goal of lower violent
9 crime, we also might be able to put fewer people in
10 prison. I think that's what gives me the freedom to
11 keep moving forward on this quite frankly.

12 If we can show that by adopting a true public
13 health approach toward law enforcement, really
14 demonstrating that public health and public safety
15 are coupled with each other so closely, to get
16 partners from the medical community, from the
17 education world, to give us a little bit of cover;
18 quite frankly, to say, you know, what they are doing
19 is worth giving them some rope on because it is
20 critical that we identify problems early on, that we
21 intervene at the right moment and that we save our
22 precious resources really for those individuals that
23 we have identified that need to be removed from the
24 community, they are there. Everybody agrees on that.

25 One of the advantages that you have in doing

1 this quite frankly is that, I think, it requires two
2 of the major players in the system as to who comes
3 and who stays. Simply to sit down and talk to each
4 other on a much more familiarized basis much earlier
5 in the system.

6 Currently, for example, I have one of my
7 deputies who spends all of his time letting cases
8 with three dedicated public defenders from Tom Reed's
9 office in Milwaukee. They are getting risk
10 assessments from Justice 2000. Our pretrial screener
11 talking to Department of Corrections giving us
12 people, even if they are not on supervision, to send
13 somebody to give us their risk assessment tools so we
14 can start that process much earlier, decides who
15 stays and who goes.

16 The treatment court for me becomes critical to
17 have something to do -- a place to accountably
18 structure that relationship and send people along the
19 line of that out-right diversion, deferred
20 prosecution agreement, negotiated issuance for the
21 right people. And it helps to have a court system
22 that is flexible enough to deal with that.

23 The final thing I would say that you need. I
24 find myself now talking more as a policy-wong.
25 Sometimes it is you need insurance believe it or not.

1 In Wisconsin, if we could expand that, our state
2 insurance program is called Badger Care Plus. Right
3 now, were we to expand that three to four percent we
4 could cover the category called "the childless adult,
5 which is the vast majority that come into our system.

6 The biggest fear I have of treatment court,
7 problem-solving court, whatever court you want to
8 call it, you put people in there, if you don't have
9 the resources then to make sure that people are
10 getting what they need you risk failure.

11 By the way, that's why Milwaukee does not have a
12 treatment court right now. We adopted a model in 1993
13 called No Felony Diversion Alternative Program. It
14 was a model that took 17, 18 drug dealers, young
15 African Americans, Hispanics, Latinos, men for the
16 most part, put them into a treatment based program.
17 They were not drug addicted. They were selling the
18 product. They needed jobs. They needed wrap-around
19 programs. They needed an adult male in their life
20 that was shadowing them every moment of their life
21 essentially. That's what they really needed. We put
22 them in the treatment model. There was a 30 percent
23 failure rate. From that point on you could not say
24 the words drug treatment court in Milwaukee County.

25 MR. JONES: We are running up against the clock.

1 I wanted to get Adele then Marvin.

2 MS. BERNHARD: My question really has been
3 answered.

4 MR. SCHECHTER: One of my favorite television
5 shows and one of my least favorite is Law And Order.
6 But I do think that concept Dick Wolff presents is a
7 valid concept. Two parts.

8 Ryan, you use the term law enforcement. That's
9 sort of, as a cynical, low defense attorney, I have
10 to tell you law enforcement to me has two components.
11 There is the district attorney then there are the
12 cops.

13 My question is one I wanted to follow up on with
14 you. I am almost afraid to ask you a question, Mr.
15 Chisholm. You are too good to be true. Preserve you
16 and bring you back to New York. But I can't do that.
17 So here is my real question to you.

18 It's clear from all the testimony we heard here
19 today there is something wonderful going on here in
20 Milwaukee; that the culture has changed.

21 We heard testimony, some of these district
22 attorneys call the defense attorneys. That is
23 foreign to us. We haven't heard testimony like that
24 in any of the hearings we have done thus far.

25 What can be done for you as a district attorney

1 having decided to take the political risk to change
2 the culture of the police department. Because you
3 can keep doing it.

4 But I had this last year. The chance to
5 represent a police officer and I learned a great deal
6 about New York police officers and how cops on the
7 street really work.

8 It seems to me they have one culture; the rest
9 of the world has another. But if a district attorney
10 says to, you know, to the New York City Police
11 Officer, to its captain or police chief we will make
12 a change, it does have an effect in my town.

13 What do you do? What can you do to change the
14 culture, the minds of the police officers, because if
15 they don't change you will still get this racial
16 disparity of arrests no matter what you do.

17 MR. CHISHOLM: Here is my quick answer to it.
18 It is that I hope that I have credibility with them.
19 Over eight years now I have worked very, very closely
20 with the Milwaukee Police Department Gang Unit
21 members, vice control, ATF special, FBI, D.A. agents.
22 It's a big force. Really I became very, very close
23 to them.

24 Rule number one that I have with them from the
25 beginning is we are going to use every tool at our

1 disposal but we will do it the right way. We will
2 spend all of our time. We are going to be experts in
3 the Fourth Amendment, Fifth and Sixth Amendments.

4 We have to do it the right way. If you do it the
5 right way you will be able to sort the wheat from the
6 chafe. You will be able to identify the guys that
7 are really -- I call it the two degrees of
8 separation in Milwaukee. Every violent offender in
9 Milwaukee is only two degrees separate from another
10 violent offender. Almost every victim-offender
11 homicide review commission that can really verify
12 this information that our victim-offender homicide
13 shows almost the exact same demographics.

14 Beyond that I can make personal connections
15 between these individuals. Those are individuals law
16 enforcement ought to be focusing on. What I tell
17 them at the same time, the amount of time you spend
18 looking, I can go out in my suit and purchase crack
19 cocaine from somebody on the street and that would be
20 a felony drug charge. That's not going to accomplish
21 anything.

22 Our ultimate goal would be to stop that
23 individual from engaging in that behavior so that an
24 entire neighborhood could then start going in a
25 different direction. That way you certainly have law

1 enforcement plays a role in that. David Kennedy, we
2 have two districts going after David Kennedy. He
3 came out here with a high-point strategy. One in
4 District Five on northeast side. North side
5 attempting a call in with a goal of not putting more
6 people in jail but getting those, that core group,
7 that two degrees of drug dealers, gang members, to
8 get them to change their behavior, going in a
9 different direction, not engaging in drug marketing,
10 gaming, try to become invested in the community
11 again.

12 So, number one, you have to have credibility
13 with law enforcement that says that you will identify
14 the violent offender, work as closely as possible
15 with them to remove the violent offender from the
16 city.

17 But then you have to come back to them and say,
18 look, every single one of you know somebody who has a
19 mental health problem, drug addicted, then you work
20 on crisis intervention training with them. Across
21 the board it shows they come to recognize the signs
22 of those individuals and they view them in a very
23 different way.

24 A hard core captain from the Chicago Police
25 Department, NAMI, they had him present crisis

1 intervention training. When he was originally asked
2 to do it, the Department just wanted him to placate
3 the NAMI people, just say yes to them, not do
4 anything. What they didn't realize this hard-core
5 Chicago police captain had a son who was
6 schizophrenic and he spent every bit of his savings
7 and his wife's savings -- she was a public school
8 teacher -- trying to keep him out of prison. So when
9 he was given the opportunity, he actually implemented
10 the CIT program and changed that culture. It led to
11 a treatment court, a mental health court in Cook
12 County. I think that's what you need.

13 You need the people, the law enforcement people
14 that have the common sense that know that putting
15 drug addicted, mentally ill people into the jail
16 isn't going to solve anything. That you have to come
17 with longer term solutions. But if you come with
18 that, I will still work closely with you to get
19 violent, someone taking and sticking a pistol in
20 someone's face. Someone shooting. I am with you. I
21 love standing up in front of a jury staring at those
22 cases, not a problem. That's the approach we have to
23 take.

24 MR. JONES: We are unfortunately out of time. I
25 just want to thank you both and say that we are, I

1 certainly speak for myself, big admirers of the work
2 of Citizen Project and the work you guys have done
3 around racial disparity. It is ground-breaking,
4 eye-opening stuff.

5 I also have to say that I was in on some of the
6 early conversations at Vera Institute of Justice
7 around the formation of the district attorney study.
8 I know one of things, as people were talking about
9 this, they continually said was where are you ever
10 going to get a district attorney to agree to this. So
11 I commend you for having the courage to do that.

12 MR. CHISHOLM: That complement should really go
13 to Mike McCann. He was in the forefront of social
14 justice, and I worked for him for 14 years for a
15 reason. I have the deepest amount of respect,
16 admiration. He made that call. Sensing that I might
17 have a chance of replacing him, he asked me to come
18 along, but he left it in my hands to do it or not do
19 it. After when you saw what Vera had to offer me, a
20 safety net. when you have someone like Vera there,
21 they tell you we will help you, give you the
22 information so that you can make the argument that
23 you are not being soft on crime. That this actually
24 makes sense, to do it by looking at our own data,
25 maybe get a data system. Their involvement as a

1 practical matter, by reaching out to state
2 legislatures, they expedited us getting about a \$3
3 million infusion to actually get a case management
4 system for Milwaukee County District Attorney. I
5 believe we are, we are the last county in the state
6 to get electronic case management. We are still a
7 paper-based system in Milwaukee County. If you don't
8 give it to them we will. That forced DIT. It shamed
9 them into expediting.

10 Starting this fall we are rolling out a new case
11 management system. That's been formed by the direct
12 participation by Vera. We can pull out fields. A
13 study doesn't make a distinction for Latin
14 populations. It just say White and African
15 Americans. We didn't make a distinction between
16 Asian, Latino, Hispanic. We are putting those fields
17 in there. We are hoping with the system we work with
18 now we will be able to extract these kinds of
19 reports, we can get better responses too.

20 MR. JONES: Keep it up.

21
22 (Break at 2:05.)

23
24 MR. JONES: We are all in our places.

25 Welcome. We are happy to have you here and look

1 forward to interesting discussion. As you have seen,
2 the way we operate, we give each of you about five
3 minutes. We try to hold you to that as much as we
4 can. Give us the benefit of opening thoughts that
5 you might have then the questioning. We do have lots
6 of questions. It is led by one of our number. In
7 this case questioning will be led by Adele Bernard.
8 That's enough from me. Why don't we start this way
9 and go down. The floor is yours.

10 MR. BOWERS: Good afternoon. Happy to be here.
11 I did provide you with a handout and that handout
12 consists of a pamphlet from our drug court, and our
13 two-year evaluation that was a requirement for some
14 federal funding that we received. I gave you the
15 executive report which is about 12 pages as oppose to
16 the 75-page document. But that document is talked
17 about in the executive report and there is a website
18 where you can pick up the entire report, if you like.

19 The last portion of that is our handbook that we
20 use in Black Hawk County.

21 With that, my name is Tom Bowers, District Court
22 Judge which anyway means I am a general jurisdiction
23 judge. I have served as drug court judge now for
24 almost three years. We have been up and running a
25 year. Before that I was on board, hoping for some

1 funding so we could be a program.

2 Our program is post plea, meaning it is
3 generally probationer or people who picked up new
4 charges. It is not a diversion court.

5 Our court in Waterloo, Iowa, which is Black Hawk
6 County is about 120,000 people in our county. About
7 110,000 people in the metropolitan area with the
8 remainder in some farm communities.

9 We are in Iowa. We are known for corn, hog and
10 methamphetamine. Sometimes it's not necessarily in
11 that order. We have been up and running for about
12 three years as I said. My background was assistant
13 county attorney for three years. The first assistant
14 county attorney for the district attorney, as you may
15 know in your jurisdictions, in Black Hawk, then a
16 judge now for fifteen years.

17 When I became a judge, I came from that
18 prosecutor mentality but not to the degree that some
19 prosecutors do. I always understood that my role as
20 prosecutor was one to do justice both for the victim,
21 for society and for the offender. But the drug court
22 has done several things.

23 In addition to my normal duties of family law,
24 civil jury cases and that, I do drug court. We have
25 that once a week. We deal only with long-term

1 high-risk offenders. Some do it as a first-time
2 offender.

3 Our court was set up purposefully through our
4 funding to deal with people who generally have been
5 to prison at least once before if not two and three
6 times before. The reason for that was to try to
7 break the cycle, not only for the offender but for
8 the offender's problem, the problem and their family.

9 We have been very successful as the report will
10 show. Our county is approximately 80 percent
11 Caucasian, about fifteen percent African Americans
12 and about five percent Bosnian and Latino.

13 Our drug court is similar in its make up as far
14 as the type of people in our drug court. We do have
15 people of all ages. Our youngest offender is 23. He
16 has been to prison twice before, starting when he was
17 17. He has now been clean and sober for over a year,
18 the longest he has gone in his life being clean and
19 sober. We have a women who is 57 years of age who
20 didn't start using drugs until she was 50 and a
21 grandmother. She is now clean for about 45 days after
22 being clean for a year having relapsed.

23 What I can tell you about drug court in general,
24 but I don't want to take all the time. There are
25 lots of other people to talk. It is the best thing

1 that I have ever been involved in. It has not only
2 made me a better judge, but more importantly it has
3 made me a better person.

4 Before in my career I always thought if drugs
5 are screwing your life up this much then why don't
6 you just quit. Well, that would only be logical. But
7 what the people that we are dealing with, and some
8 issues they bring to the table, they can't just quit.
9 It takes a hands-on long-term approach with lots of
10 people: The judge, the prosecutor, the defense
11 attorney, the substance abuse counselor, the
12 probation officer, law enforcement, to come together
13 as a team, a collaborative team, as opposed to a
14 confrontation team, to do what is best for this
15 person. Not only does it work for them and
16 communities and their families but it reunites
17 families.

18 When we have graduations, we do have a
19 graduation ceremony, which includes cake, soft
20 drinks, pictures, lots of applause. We have families
21 that have been, they have just been away from each
22 other for ten or fifteen years, because oftentimes
23 the family is the victim. We are dealing with
24 economic crimes, forgeries, burglaries, thefts, in
25 our drug court, so often times the family is the

1 victim. The family has written this person off but
2 this is reuniting these families.

3 We are talking to the Department of Human
4 Services because we are not needing child abuse
5 services once these people are off the drugs.

6 The people in the program, before they graduate,
7 they have to be fully employed. They have to pay
8 restitution, court costs, attorney fees. People in
9 our program are buying homes. They are back to work,
10 and one thing that I like to tell people is we have
11 had two drug free babies in our drug court. I don't
12 know how much you know about the impact of drugs on
13 infants but not only at the hospital with premature
14 child births, and the things that happen as a result
15 of that but the problems that occur, that occur in
16 education: The extra money and time it takes to take
17 a child who has been damaged by drugs, try to make
18 them the best they can.

19 In our drug court we have already had two
20 drug-free children. There are actual costs we saved,
21 which the report says is about \$400 in two years. We
22 have saved dollar for dollar. Then the residual
23 costs, other costs, the ripple in the water after
24 throwing the stone. The stone being the dollar costs.
25 There are all those ripples, also we saved the money.

1 The program in Black Hawk County, our County, is
2 working well. It is actually for the criminal justice
3 system, because as I have told people for years I am
4 tired of everybody talking about being tough on
5 crime. It's about time we get smart on crime. It is
6 an outstanding program, problem-solving court.

7 Whether they be drug court like in Waterloo or mental
8 health court, domestic abuse court, whatever type of
9 court you have.

10 Those are my statements. I guess it is probably
11 more than five minutes so nobody had the guts to say
12 Judge be quiet.

13 MR. JONES: We were so enthralled, Judge.

14 MS. STARK: Thank you for having us here. I will
15 give you these, I guess, small town perspectives so
16 to speak. I am looking at all your names and the
17 locations from which you traveled. Eau Claire County
18 is similar to your counties. Judge. We have about
19 100,000. Our names are there, more miniscule
20 compared to the numbers that you are dealing with,
21 but the problems and the method of dealing with them
22 is probably quite similar despite the fact our
23 numbers are much less.

24 I hail from a civil background. I was a civil
25 defense attorney, insurance defense insurance, for 18

1 months before I took the bench. I have been on the
2 bench eight years.

3 I quickly learned what was involved in the
4 criminal law process. Also, I didn't feel what we
5 were doing was successful even in a short time. I
6 see the same people coming back over and over again.

7 I became very interested in the drug court
8 model. Frankly, the two people you will hear from
9 here supervising courts that I went to to learn about
10 different drug court models.

11 Our model in Eau Claire started in October of
12 2004. We have received no grants. We started it
13 from dollar one county funded. That's the way it's
14 always run. We did receive a grant for training
15 which was invaluable. But to run it, put it together
16 and keep it going, we have done it all strangely
17 grassroots. Frankly, I am very proud of that. I
18 think that would provide a great deal of continuity
19 and sustainability, which is important when dealing
20 with this population.

21 Our criteria are similar to yours. We have, for
22 lack of a better word, people who but for our court
23 would be in prison or have been to prison, out on
24 extended supervision, need assistance with re-entry.

25 We are also post-conviction. We accept people

1 on deferred prosecution agreement. Our persons are
2 on probation or extended supervision. We decided that
3 we had such limited resources we were going to deal
4 with the people who were frequent fliers in our jail,
5 the frequent flyers in the prison, that's where we
6 would get the biggest bang for our buck. We would
7 make the most difference to people, their families
8 and our communities. So we have, I think, been very
9 successful.

10 I didn't bring all of our statistics but we have
11 about 65 to 70 percent retention, our recidivism rate
12 for graduates is about right now 15 percent. It's a
13 little less than that for the participants in total.

14 MR. JONES: If you have those statistics in a
15 way that you could get it to us, we would appreciate
16 that.

17 MS. STARK: In fact, we are putting together the
18 most recent report which we will have done in a
19 month. If you can wait that long, we will have four
20 years of information.

21 MR. JONES: Fantastic.

22 MS. STARK: Very quickly, we want to hear from
23 other persons. We have multiple referral sources,
24 including defense counsel to our courts. That happens
25 on a regular basis. One of the persons you will hear

1 from later A.D. A. Mike Steuer. He also has referral
2 sources but different judges.

3 As a judge I will have someone come up before me
4 in sentencing, ask we adjourn to consider the
5 possibilities of a treatment court as an option. By
6 the way, we also have two other treatment courts: one
7 mental health court. We are just starting another
8 court called AIM for women who have committed
9 misdemeanors and will likely go to jail. They are
10 single mothers and their children will likely have to
11 go to foster care or out of the home source, so we
12 have a small court devoted to those people coming in
13 with similar types of structure. We have in
14 treatment court, keep the moms in the home, keep the
15 families together. Lots of wrap around services
16 provided. Hopefully -- they are all addicted to
17 drugs, alcohol -- hopefully, that will help them deal
18 with those issues so they don't go on and progress.
19 Just a few other points.

20 Some things that I know people ask about a lot
21 as far as being a judge and how comfortable you are
22 with this.

23 On sentencing, I will tell you if someone coming
24 into the drug court, I am supervising judge, our
25 culture is that we usually -- strike that.

1 Our culture, we usually say we will place him on
2 probation without sentence. We don't impose and
3 stay. If someone is coming to the court, and I am the
4 sentencing judge, I will impose and stay a sentence.
5 Because if I have dealt with that person for a year
6 or two, I don't want them to come back. I know way
7 too much about them to be comfortable, to be fair,
8 with them. I also will give them the opportunity to
9 request that I recuse myself so they can get to a
10 different court and have a different judge either
11 impose and stay or withhold sentence, not have me to
12 be the person ultimately handling the case. It is a
13 little different twist.

14 I love the collaboration. I relish the
15 opportunity to hear from all persons when trying to
16 decide what will happen on a daily basis with people
17 in our courts. It's an unusual role. It's unusual to
18 be out-voted when someone decides something should
19 happen that you don't necessarily agree with. But I
20 am dealing with people who on many days have much
21 more expertise than I do on some of these issues.

22 I think the other issue I will briefly mention
23 is the termination procedure. It is a little
24 different. I view our court as essentially probation
25 review hearings. We do not hold our court on the

1 record. We do not have adversarial process.

2 Participants are always entitled to an attorney if
3 they would like one. We do not use jail for
4 sanctions on a very regular basis, then only usually
5 for dishonest rather than for relapse.

6 On termination, our participants are accorded
7 full hearing. To me, I do not participate in the
8 termination decision. I have nothing to do with what
9 is discussed. They come before me and present their
10 case with counsel and the district attorney present
11 their cases.

12 I make the decision whether they will be
13 terminated or not from the team. So it is a little
14 bit different than traditional role. Then if they are
15 terminated that case is returned to the judge who
16 ultimately originally handled the case for further
17 handling, if necessary, or a person returns to prison
18 if it is imposed sentenced.

19 I echo, I think it is the most, the most
20 wonderful thing I do as part of my job. It is
21 self-fulfilling by far. Of course, I think it makes a
22 difference in the lives of these people. They would
23 not have had these opportunities but for this
24 treatment court.

25 MR. JONES: Thank you.

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MS. O'BRIEN: We all came up as lawyers. There are so many different models. I just wanted to contrast ours with these.

Ours is pre-conviction. People have to enter a plea but they are not adjudicated. Then there at the end of the drug court, the judges are there, dismissed or reduced, they may be adjudicated. Then if they fail drug court, they are returned to the originating court and adjudicated and go to sentencing hearing. We don't have people on probation unless they are on probation on a different charge.

Because it is pre-adjudication, the referrals source is the district attorney office. They are protective of their right to make that decision, whether someone gets into drug court or not.

Dane County is on the State capitol, University of Wisconsin is there. Nice liberal area. They say it is an island surrounded by --People's Republic of Madison. Shockingly to me I heard the Milwaukee District Attorney talking about the racial disparity numbers. Dane County is worse than Milwaukee, which is difficult for me to believe but is true.

All of the disparity in Wisconsin is driven by

1 drug charges statistics show. Milwaukee isn't as bad
2 as Dane County because in Milwaukee, traditionally,
3 everyone has gone to prison so there is not a lot of
4 room for disparity.

5 In Dane County we make choices. Our drug program
6 started in 1996 so it is well-established. We have
7 had about 700 graduates. I took over about four years
8 ago. We have been engaged in the growth process.

9 The National Drug Court Institute has a
10 publication called Improvement For Drug Court
11 Evidence Based Practices. We have been trying to work
12 with chapters of that to get smarter about what we
13 do. How to use rewards, how to use sanctions, things
14 like that. We have tried to improve our relationship
15 with the police. I won't say this is a major goal,
16 but it's something we have been sensitive to. We have
17 joint meetings with the drug and gang task forces to
18 explain what we do and get some input from them. Just
19 recently, we decided to start inviting the arresting
20 officer to people's graduation. We haven't had any
21 available to come. I think even the invite is worth
22 something in terms of getting their trust.

23 Many drug courts started with federal grant.
24 Ours didn't. The federal grant required that you not
25 take violent offender. I think that's a real issue in

1 a lot of places. We have no longer getting federal
2 funds, so we have gotten rid of the requirement that
3 you not have violent misdemeanor offense. We have
4 retained the requirement that they not have a violent
5 felony history, although we are talking about maybe
6 replacing that with some sort of more accurate risk
7 assessment. We don't want people who are dangerous
8 in the program or dangerous. But the fact they have a
9 violent felony in the past is probably not the best
10 measure of that. I think that's something we should
11 be looking at. Over time the seriousness of the
12 offense has increased.

13 We started out with two-track education track
14 for people who are no longer addicted but caught with
15 drug or paraphernalia and treatment track. Because
16 all the research shows an intensive program probably
17 does more harm than good with low-risk offenders, we
18 have gotten rid of the education track. And as
19 prosecutor and police have come to trust the work of
20 the drug court, they are willing to refer people for
21 more offenses. There is no restriction on the number
22 of prior convictions you could have. The offense has
23 to be drug offense or drunk driving offense. So we
24 have a lot of people, forgeries or thefts of various
25 sorts, different ways to get money to buy drugs.

1 We have tried to send disorders. I would say
2 that's a mixed bag. We have been able to manage some
3 of them; some of them have not been well enough to
4 meet our requirements; and at a certain point we have
5 had to part ways. I guess that's something I would
6 like to see improvement on in the future.

7 Another thing we have done is try to partner
8 the University of Wisconsin. It has a medical
9 school and a big hospital. We have teamed up with
10 doctors and researchers from there, we have written
11 several grants too, one of which was to improve our
12 work with African Americans. African Americans get
13 discharged from our program more often than others
14 because of new offenses. Although they represent 17
15 percent of admissions, they only represent 14
16 percent of graduates. We believe that's related in
17 part to their poor employment status. The
18 employment correlates with successful completion of
19 the program.

20 We wrote a grant. We don't know. We will get
21 the money to work on cultural competence basis with
22 these clients and bolster the employment services we
23 can offer to them. That's what we have been up to.

24 MR. JONES: Thank you.

25 MR. LEVINE: I will talk about the drug court.

1 I will talk about the State of Wisconsin a little
2 bit.

3 My background is a little bit different. New
4 judge, baby judge, compared to all these guys. Today
5 is my one-year anniversary. Also your anniversary
6 too. But we all started on the same day. Before, a
7 year ago, I was first a Public Defender in La Crosse,
8 for the La Crosse region, the sort of southwest
9 corner of the State.

10 At the time, back in 2000, La Crosse got
11 interested in a drug treatment court. Some of you
12 know Keith Bowers. I knew you knew Keith. He has
13 told me about you. But Keith used to be in our
14 office. He was on the original -- started the
15 original planning team. Eventually I took over his
16 team and went into private practice. We developed a
17 drug court in La Crosse County, much like they did in
18 Dane County. At the time the only drug court that
19 existed was their court in Dane County, Madison. It
20 had been around for many years. Nobody had really
21 developed it.

22 At the same time we developed our Monroe County.
23 Also we developed planning stages, we went for the
24 same granting that Liesl was talking about through
25 the National Association Drug Court Professionals

1 provides. Eventually you get to the point where we
2 both applied for federal courts. One county got it,
3 we didn't which was good.

4 It means we worked hard. We did a pilot
5 program. We had started actually 2000 with our drug
6 treatment court. Fast forward into the future, what
7 happens, we keep on developing that program. At the
8 same time the National Association of Drug Court
9 Professionals has a meeting right here in Milwaukee
10 about five years ago. We formed the Wisconsin
11 Association of Treatment Courts providers to the
12 statewide association. For some reason I was the one
13 who stood in line, everyone stepped back, I ended up
14 being the president of the association because I
15 didn't know any better.

16 MR. JONES: Like this gig?

17 MR. KING: I avoided those meetings, ended up in
18 leadership if you don't run fast enough. Nate. Liesl
19 is here. She is our treasurer. I am the past
20 president. Sarah sits on the board. So we ended up
21 forming an organization which is slowly coming along
22 to provide information. I was going to say I know
23 there is a website. This is sort of up-to-date.
24 WAPTC.org, which will have, links to the county sites
25 which have the evaluation of all the drug courts that

1 are operating that are out there.

2 Right now, in 2000, we had three there. Dane
3 County, Monroe County, La Crosse County. Today we
4 have around twenty.

5 I thought it was interesting John Chisholm said
6 they don't really have a drug court; they actually do
7 sort of. They have three participants in drug
8 treatment courts here in Milwaukee County. He says
9 that. I think he is waiting to get more established
10 to say it exists. The reality, they are experimental
11 with it here. That change in Milwaukee County is very
12 much a wonderful change in the system. I think they
13 all had good intentions but I think it has finally
14 come to fruition.

15 One thing that's important. I know David
16 Dickmann talked earlier. Dave and I have written a
17 piece. I know that you guys have the website. You
18 have gone where we talk about the ethics of public
19 defender, defense attorney. I know Ben talked about
20 this, too. But I really had that role as planning
21 agents, team members representing individuals then
22 sitting on teams where decisions were made.

23 It does really challenge one's traditional role
24 as a defense attorney. Going back to those days of
25 doing that, it was -- you had to be very conscious

1 about conflicts of interest, very conscious of where
2 you were representing people, and when in a case we
3 have to step back.

4 One of the main roles as a team member defense
5 attorney is making sure you understood the best
6 research out there. Quite honestly from 1999 to this
7 point the research has exploded. There is a lot of
8 good information. Everything from things like the
9 need to have more serious offenders in the program
10 rather than first offenders. Pretty much the research
11 supports that concept. That was people weren't really
12 sure that was good enough. But the research has shown
13 this is under the circumstances your best bang for
14 your buck to put the serious offender.

15 La Crosse about a year and a half ago got
16 another federal grant, the first grant, federal
17 grant, for federal program. Also if you missed, we
18 call it OWI treatment court.

19 I am one of the treatment court judges. It is a
20 lot different from what drug court is in the central
21 population. It is so significantly different. But we
22 have everybody in it. We are challenging the model
23 somewhat with our OWI court. But on the other hand,
24 it has made significant differences.

25 We have over 50 graduates in just over a year

1 and a half. 130 participants in the program. There is
2 two judges: myself and Judge Horn who was the
3 district attorney at the same time I was there in
4 public defender. We both started at the same time.
5 We both see miraculous changes in individuals.

6 People who have been alcoholics, I saw an old
7 friend graduate about three weeks ago. I got to tell
8 you I don't think I talked to Julio -- do you mind if
9 I say something? It's okay. I said I have known him
10 since he was a kid. I represented him as a juvenile.
11 He looks older. I know he is about twenty years
12 younger than I am. He looked good. Just to see him,
13 that was the thing that makes you go, go and go.

14 All the problems we could come up with how these
15 courts and issues that we face, quite honestly, we
16 can work through them. There has to be a way. There
17 should really not be a barrier what we view as the
18 traditional role as defense attorney, which is
19 extremely important, what we are trying to accomplish
20 here. I say that for skeptics, which is out there
21 about what is going on with these courts. What are
22 we doing. We can get around the issues of due
23 process, not get around it. We can figure out ways
24 to make sure you are assured due process and that
25 representation is full. We can talk about specific

1 questions about how do you do that.

2 That was my biggest concern. By the way, when
3 we designed it, we designed a system that was fair
4 that gave the clients the absolute best
5 representation as if they were in the regular old
6 system. They don't. Just because they have a drug
7 problem doesn't mean we will short-shift any of the
8 defendant rights. Liesl describes they stole it from
9 us. (Laughing.) It is exactly the process.
10 It was interesting that process was a debated process
11 about does this give adequate due process, sort of
12 distance for the judge.

13 By the way, it mirrors the probation and parole
14 system that we have for revocations, and probation
15 and parole. That's what it says. The same thing as
16 probation and parole revocations. Let's follow that.
17 It should be closer for due process reasons.

18 Anyway, I just wanted to say that I have a
19 little bit more. Having been the president of the
20 State Association, 2000 to now, former president,
21 only after six short years the fact is it really --
22 this State has changed. It has become much more
23 proactive.

24 MR. JONES: Thank you.

25 MS. BERNHARD: Thank you all very much for

1 coming in and talking to us about the work that you
2 are doing. It is very important work that you are
3 doing. We are all very pleased to hear about, very
4 impressed with your success. We are an organization
5 of criminal defense attorneys. Our task here is to
6 think about where is the role of the defense attorney
7 in all of this.

8 This is a big movement sweeping the country.
9 It's evolving on its own, got organizations: local,
10 federal organizations of drug court professional
11 mutating off this direction. There is a new mental
12 health court, drunk driving court. We need to think
13 about where does the defense attorney fit into that.

14 The things that you are trying to do for
15 individuals who come before you are the things that
16 we as individuals public defenders; private
17 practitioners have always been trying to do for our
18 clients which is to get out of the particular trouble
19 that they are in at the moment. We meet them but
20 clearly to work on whatever kinds of problems got
21 them there in the first place. So our goals in all of
22 this really are very much the same.

23 You may feel it's a relief to be able to do more
24 in your position as judge in drug court than you
25 perhaps were able to do as a defender.

1 I would like to ask all of you, what would you
2 say, how would you change, how would you modify?
3 What would you tell us that we should be telling our
4 membership about the relationship of the defenders to
5 your court?

6 Anybody can start who wants.

7 MR. BOWERS: One thing that needs to be said.
8 We have a contract defense attorney who used to be
9 the chief public defender who is retired. He helped
10 set the program up. He had struggles with some of the
11 rules that our clients are supposed to follow. I
12 know this is a struggle for many defense attorneys
13 giving up certain rights to come into the program.
14 But I think at the beginning, at the end of the day
15 at least, when I get up, when I was a prosecutor,
16 when Dean Olson goes up as public defender, now a
17 retired public defender, what we are trying to do is
18 help people.

19 I became a prosecutor to help people. I had
20 opportunities to go into private practice where I
21 probably could have made more money, but I wanted to
22 be a judge because it is about helping them. Although
23 some of the issues that come up, maybe some of the
24 rules, are less palpable than others to defense
25 attorneys. We have to remember what our goal is.

1 Our goal is to take someone who is broken and to fix
2 them.

3 MR. JONES: Let me follow up a little bit. You
4 got someone who is a permanent defense attorney in
5 the court?

6 MR. BOWERS: In our court.

7 MR. JONES: In your court. That person, he
8 represents everyone who comes, everyone who is in the
9 drug court?

10 MR. BOWERS: Everyone in the drug court is
11 represented by this attorney.

12 MR. JONES: Does he know each one of their
13 cases, meet with them outside of court, advocate on
14 their behalf? Or is he sort of the part of the team
15 that reviews the status of the cases before you
16 decide what to do? Or is he both of those things?

17 MR. BOWERS: He is all of the above. He is
18 advocate for his clients when there are issues. We
19 just got a person who relapsed, who has a dirty u.a.
20 He is advocating maybe not as much punishment. He is
21 advocating we maybe need to put this person back into
22 phase one; that person is in phase three.

23 We have a three-tiered program. So advocates for
24 that, he is also part of the team. He understands
25 where each of the other team member is coming from,

1 but the best part of the program it is collaborative.
2 It is not adversarial. I mean, there are adversarial
3 roles that he plays. But we are all trying to make
4 the decision as best for that person to make that
5 person whole and to get them as an everyday, ordinary
6 law-abiding employed person without an addiction. So
7 that's one of the things I think that needs to be
8 made.

9 The case needs to be made for defense attorneys.
10 You are not selling your clients out. There are still
11 ways that you can raise Fourth and Fifth Amendment
12 issues in our drug court. But it is important that
13 the whole idea, I think is like I said before, try to
14 make the person whole, try to fix the broken person.
15 That's what we all strive to do. We don't want to see
16 the same person over and over. The court, my
17 experience with it is that's what drug court does. It
18 is a holistic approach to all issues.

19 MS. STARK: You have to keep in mind this is a
20 voluntary court. You don't have to go into drug
21 court. It is an option. I would expect an option
22 that a defense attorney would discuss with their
23 clients.

24 At all appropriate stages in proceeding, as any
25 other population, they have given whatever offers are

1 made, whatever sells they can prove. This is a very
2 important thing to start with.

3 Second, our court is post-plea post-conviction.
4 we don't require participants to give up any rights
5 to litigate any issues before they come into our
6 court. Now that goes against basic tenets of
7 treatment court, you should get people in quickly as
8 possible because most are motivated to make changes
9 as soon as possible after the offense.

10 But when weighing those equities, we will not
11 require people to give up their rights to bring
12 precious motions, raise any other issues they wish to
13 include in trial before they may enter our program.

14 We find most of our referrals come from persons
15 who are getting, for whom probation is going to be
16 revoked. We get a lot of referrals from probation
17 agents and/or defendants at that time where they are
18 looking at this as their last option to stay out of
19 prison. That's a whole different scenario. They may
20 have a new offense but they also have an old offense
21 that they are going to have to deal with.

22 There is a lot more motivation to come in, a lot
23 of other factors to consider at that point. As far as
24 our person on our treatment team, we have the head of
25 the district public defender office as participant on

1 our treatment team. She is not representing any of
2 the people in our court. That is not her role. Her
3 role is advocate for defendant as appropriate, but
4 also she is a member of the team. She considers
5 what's best for the court, the participant in forming
6 policy, in making decisions, voting on things.

7 If there is an issue that requires an attorney
8 for it, an attorney will be made available to help.
9 They can retain one. If they can't afford one, one
10 is appointed. Rarely do they ever ask unless they
11 are being terminated, do they ever raise an issue
12 about incarceration, which by the way from our court
13 perspective because most of these people are on
14 probation or extended supervision, done with, a
15 probation hold is not something I order. The
16 participants think I am ordering, but I am not the
17 one who makes the decision. That's a decision that's
18 made by the probation agent who is also on our team.

19 If ultimately we believe longer incarceration is
20 necessary for some reason, maybe an additional 30
21 days as a condition of probation, there is a
22 full-fledge hearing with defense counsel advocating
23 for their clients separate and distinct from what the
24 treatment team may have considered or discussed.

25 Short answer, if there is one I think

1 adversarial role it is very much there because this
2 is a post-plea post-conviction court. Traditional
3 defense attorney roles are always available. You
4 have another option to discuss with your clients a
5 potential resolution.

6 I believe that as much as anyone wishes they
7 still maintain the ability to have defense counsel
8 throughout whatever process they wish once they are
9 in the court.

10 MS. O'BRIEN: In our county people have
11 attorneys, many appointed by the public defender up
12 until the time they enter the plea entered in court.
13 At that point that attorney more or less stop
14 representing them. If they get terminated from drug
15 court that court will step back in.

16 MR. JONES: To handle the termination thing?

17 MS. O'BRIEN: Our termination is consensus
18 decision made by the team. We don't have a hearing
19 on it. They would be coming in at sentencing stage,
20 back to the original judge but in between it is the
21 head of the public defender office, in our county she
22 is on the team, and we tell participants every week
23 that she is there to answer any legal questions they
24 may have be it child support, other cases or things
25 involved with drug court. They don't have to be

1 eligible under financial guidelines in order for her
2 to assist them. So it is -- but it is one attorney
3 that at that stage is available to everybody. She
4 sits on the team. So, yes, she does the court reports
5 on every participants; she knows the ins and outs of
6 it. She does attend in our meeting to act like
7 defense attorney. She is always looking for
8 mitigating factors, bringing those up; but she also
9 is very creative in suggesting consequences that
10 would be appropriate for the purpose so instead of
11 jail why don't you try this this time. But she also
12 would be in on the decision to terminate.

13 MR. JONES: Are those permanent people, those
14 public defender team members, do they get special
15 training or is this something it's up to their own
16 creative personalities? She just happens to be
17 interested with some good ideas?

18 MS. O'BRIEN: I doubt she had any training
19 before she started. Since then she has gone to some
20 of the -- she just went to the national conference in
21 St. Louis. I don't know how much they talked about
22 defendant-attorney role. There are some articles
23 written about that which I am sure you found.

24 MR. JONES: She hasn't gone to the State
25 Association of Drug Court Professionals with you or

1 she has?

2 MS. O'BRIEN: Yes, she has.

3 MR. LEVINE: When I was in the public defender's
4 office, she worked closely with me and others. We
5 have -- public defender office did a number of
6 trainings in the last three years for this
7 specifically; usually I sat on the panels. That was
8 one of the things we did. So there is then some
9 specialized training. Quite honestly, there is
10 probably a group in the state probably 50 or 60 who
11 had some training. If not a simple seminar, going
12 out west to Reno for national trainings which are
13 more intensive. Liesl did it; others have done that.

14 Then there is the usual in the training grants
15 which Liesl was talking about. There is a -- that's
16 a two- to three- to four-day training multiple days
17 where you work as a team, separate out as defense
18 attorney and NADCP, National Association Of Drug
19 Courts, the Treatment Court Associations or the Drug
20 Court Associations as part of the national
21 conference, a break-out for defense attorneys, which
22 usually these issues come. That's where you get the
23 monograms, everything else that comes out from that
24 association. The issue of how defense attorneys, the
25 roles of attorneys, by the way it is very complicated

1 because of jurisdiction is so different.

2 You have to contract defense attorneys.

3 Actually when we started our treatment court, the
4 interesting thing is that because Keith had
5 originally started as public defender then went to
6 private attorney, he took on different roles on our
7 team. He became the go-to neutral defense attorney at
8 times.

9 But, you know, to be frank, the issues that come
10 up tend to be like probation violation issues, which
11 don't tend to be very complicated. You would have to
12 know the background of the individual.

13 The defense attorneys who are involved with
14 these teams know a phenomenal amount about the
15 background of these individuals because you just
16 dealt with them for how many months.

17 There is a couple of things that happen. I guess
18 what my advice would be for defense attorneys, first
19 of all, any defense attorney pulling a client into a
20 treatment court better understand that treatment
21 court. They better talk to someone who works there,
22 frankly, talk to the defense attorney who sits on the
23 team, understand how it works and functions.

24 These things are so new people are not very sure
25 what they are. They know they are alternative reduced

1 sentencing for individuals. Sometimes that becomes
2 blinding a little bit. If you talk about going to
3 prison versus sticking on probation, a chance
4 program, then think about times you represent people
5 who have drug cases. They told you we can get up
6 into Hazelton in Minnesota. I will put them on
7 probation, Hazelton, we won't revoke and sent to
8 prison. You know what? Hazelton, you know the
9 intense treatment. They have the private money to go
10 there.

11 The whole point is this: we did that before. The
12 only difference is this tends to be a local level.
13 By the way, keeping them in the community, they tend
14 to be more successful. Also, it has the ability of
15 really changing not only this person but their whole
16 life around them in the community.

17 I guess my advice is for defense attorneys who
18 are not involved with the team, one of things that I
19 know obviously I know most of the defense attorneys
20 in our area very well. The fact is as this was
21 created, they had to spend more time understanding
22 the role of the individual sitting on the team.

23 One thing I saw myself as defense attorney on
24 the team you bring up mitigating factors. The other
25 thing you do is you do the research. You know, when

1 people violate probation the hammer was jail. Jail.
2 Let's go to jail, send them to prison. Let's clamp
3 down on them.

4 In the drug court fully they talk about
5 specifically incentives and sanctions. It is an
6 understanding how incentives work and correspondence
7 of treatment. Also an understanding of how
8 incentives work with those sanctions. That is outside
9 of the traditional role of the court system.

10 That's why I think that's something that takes a
11 lot of leg work to understand, understanding how
12 those come together, especially when dealing with the
13 whole court system.

14 The third thing which I think is important to
15 understand about the defense attorney in this role is
16 that you're there.

17 One thing that, I don't know in everybody's
18 jurisdiction, in La Crosse, State of Wisconsin, is
19 very, very, very separate as far as how the
20 Department of Corrections and the Community
21 Corrections, that is, probation and parole versus
22 treatment in the county versus the court system
23 versus the child support versus everything else.

24 The problem is everybody expects you to do
25 different things. Many times they conflict. The

1 beauty of treatment court you have the opportunity to
2 focus, actually open up the communication. You don't
3 have parole agent who says you better go down x,y, z.
4 The team says if you don't do "y" now you will lose
5 your funding.

6 You get together. How do we make this work,
7 make sense. The realty is that this really has
8 reduced the amount of contractual information setting
9 up things, making it impossible as a defense attorney
10 or your clients to really do. The whole idea of
11 communication is really a central idea to the
12 treatment.

13 MR. SCHECHTER: Three areas of questions. One
14 clarifying questions to you, Judge. The person who
15 is on the team from the public defender is the same
16 office as, for example, the public defender who would
17 argue for the clients? Is that correct?

18 MS. STARK: Sometimes, although, because the
19 best way, we have a private person who does public
20 defense work. So there are many occasions when an
21 out-of-office person is appointed.

22 MR. SCHECHTER: Sometimes it would be a public
23 defender?

24 MS. STARK: Sometimes in the office.

25 MR. JONES: It raises local problems? Nobody

1 raises an issue? We are on the same issue?

2 MS. STARK: No one raised an issue. I will tell
3 you the person on our team is very conscious of not
4 discussing.

5 MR. JONES: The Chinese wall.

6 MS. STARK: The term is ethical wall. Also using
7 Chinese in New York?

8 Maintains a separate file. And our drug court
9 files are not kept in the clerk's office so there is
10 no access to them, so that person couldn't look at
11 what was going on. There is some separation.

12 MR. JONES: Question to all four of you on the
13 team; that each of your jurisdictions are there
14 police officers.

15 MR. BOWERS: We have a Waterloo police officer.
16 We do that for a variety of things. They can do
17 curfew checks. They can get information to other law
18 enforcement about this person in drug court. The
19 main reason we have that liaison because most
20 officers think of this as "un-court." You go hold
21 hands, sing cum-ba-ya. We do that.

22 MS. BERNHARD: In California they have trees,
23 too.

24 MR. BOWERS: We do it so there is a link between
25 law enforcement and drug court.

1 MS. STARK: We have a jail captain, a county
2 sheriff.

3 MS. O'BRIEN: A community advising board that
4 advises drug court but not on our team.

5 MR. LEVINE: The drug treatment court at one
6 point did have an officer that sat on the advisory
7 court. Quite honestly, he got too busy. He stopped
8 showing up. The answer is really no.

9 MR. JONES: Last question to Judge Stark and
10 Judge Bowers. I think, Judge Stark, you correctly saw
11 most of panel here is from big city. You are from a
12 small, rural portion of the state. Judge Bowers.

13 MR. BOWERS: Compared to New York, Cleveland.

14 MR. JONES: Sort of bigger cities in Wisconsin?

15 MR. BOWERS: Yes.

16 MR. JONES: My question is this. Judge Stark, I
17 think you are right the problem of addictions are the
18 same whether it is in a small, rural county as it is
19 in New York City, but the solution may be different,
20 require a different solution in a small county such
21 as yours where you don't have a lot of money.

22 My question to you this is this. To you, Judge
23 Bowers, what would we need to do? What could be done
24 to improve the drug court problem-solving court
25 situations in small rural county in terms of

1 financing? Where should the money come from? How
2 could we get the money. Do you need special
3 scholarships; from bar association? Do you need more
4 government money? State level? Should your State
5 Bar Association be supporting you better in small
6 rural?

7 MR. BOWERS: I would say the problem is lack of
8 treatment resources. Problem, the biggest problem, we
9 confront inpatient and outpatient that ability to
10 have a certified drug alcohol counselor. Transitional
11 housing, that's somewhat more supervised than
12 three-quarter way house.

13 Those lack of treatment resources are the
14 biggest impediment to rural treatment court.

15 Eau Claire, we are fortunate because we are a
16 centralized area for, perhaps, a 100-mile radius.
17 But the people in the county nor any of us have a
18 very difficult time. But they have to drive two
19 hours to get to a group meeting, for instance. Those
20 people don't have licenses. There is no
21 transportation available.

22 Transportation is the next issue besides lack of
23 treatment. How to fund that is a very difficult
24 issue.

25 Winding up, it being a government issue because

1 just locally not enough financial resources to pay
2 for that. We were fortunate to get a grant through
3 Department of Corrections. Eventually that's what
4 people are looking at, shifting funds from the
5 resources we are hopefully saving money that being
6 Department of Corrections to put into the treatment
7 court or up-front prevention. But, of course, for a
8 while you will have to have both which is the
9 difficult and expensive part.

10 We received a grant to have \$50,000 a year, a
11 small amount for you, for us large enough to develop
12 some group and individual treatment that we didn't
13 have. It was a gap in our programming for all of our
14 participants. We also used it for probation and
15 parole, other individuals who are not in the court.
16 People shifting resources from the Department of
17 Corrections.

18 Probably the most viable long-term alternative
19 to deal with the issues we are talking about,
20 transportation is an issue that has to be dealt with
21 on a legal basis. In the city, for instance, if
22 there is buses or cabs, sometimes churches have
23 people who volunteer to transport people to different
24 places, Mothers Against Drunk Driving, solely will
25 transport people to different facilities as an

1 example. It will not help in large areas but for us
2 the number of persons we are talking about, that's
3 what is happen.

4 Ultimately our drug graduates are transporting
5 our participants. It's a wonderful connection. The
6 participants.

7 MR. BOWERS: Treatment beds is where we need the
8 most money. Our average wait to get into inpatient
9 treatment in our county is about three weeks.
10 Oftentimes the person is coming from jail so they are
11 not using, while they are in jail presumably, but
12 they are not getting the treatment or education they
13 need for three to four weeks after they are taken
14 into the program. Ours is a voluntary program.

15 Housing issue. Where the money could come from.
16 The federal government gave us a two-year grant. We
17 have gone to private foundations. They are not real
18 gun-ho. I think because of the presumption of being
19 soft with drug people.

20 Our community is notorious for hard core
21 prosecutors, people who hate criminals. They love
22 consecutive sentences. It's been a difficult sell,
23 but our community is coming around because we are
24 getting the notoriety in the press and things are
25 happening.

1 We look to the State, this last year, for two
2 years of funding. When you show your legislature
3 that you are actually saving money, we saved over
4 \$4,000 the first two years. Over 1,150 already this
5 year. It is an easier sell for them, but they are
6 not out there beating the drum about drug court.

7 Education from your group as well as the judge's
8 association, prosecutor's association, is essential
9 for this to really, for this really, hold and do some
10 good for long-term.

11 MR. JONES: Jay.

12 MR. CLARK: Judge Bowers, the material you gave
13 us about your court, I understand high-risk, post
14 -pea court. But I have some concern as a defense
15 attorney with a participant being required to give up
16 basically his entire Fourth Amendment rights while he
17 is in your program.

18 How do you reconcile that easily in light of a
19 small community where you have a rep from the largest
20 police department who is there, they can go do curfew
21 checks, be hand on not, that I don't trust. But I
22 don't trust police to necessarily do the right thing.
23 That is an open hole for just all types of abuse and
24 possible problems. I don't see how it furthers the
25 goal that you are trying to help the person beat the

1 drug problem.

2 MR. BOWERS: One of the issues we had training
3 in California and UAH through the National
4 Association of Drug Court Professionals, that was one
5 of issues we deal with. Why it is in there is to let
6 the clients know it's a possibility.

7 We have not had an issue with law enforcement
8 because most of law enforcement don't care to be
9 perfectly honest. The panel member or team member
10 that's involved knows the people. If they need to
11 drop by, he may call someone on duty and do a welfare
12 check because we haven't seen Gary for three days.

13 We tell the people, especially our public
14 defender, you come into this program it is hard. You
15 are giving up everything. The easiest thing you can
16 do is get your prosecutor, revoke, go to prison. In a
17 way a ten-year sentence, you will do maybe 14 months
18 then you are on parole. You will be on parole for two
19 to three years. Don't send them that way, okay.

20 (Laughing.) Seriously it is about 14 to 16 months on
21 ten years. It is usually about eight months on five
22 years, nonviolent people.

23 We tell them the easiest thing you can do to get
24 your probation revoked. Do your time, come back out,
25 deal with it on your own. If you want to come into

1 this program, you will have to do a metamorphosis.
2 This is the ugly duck, beautiful swan. This is the
3 caterpillar into the butterfly.

4 What we have learned is that when people are
5 ready to make that wholesale change in their life,
6 they don't care what rights they are giving up. Are
7 we getting them when they are at a bad spot? Maybe.
8 They are willing to do anything. People we are
9 dealing with, if they don't come out of this program,
10 not everybody has. We are about 75 to 85 percent
11 success rate.

12 MR. JONES: How do you define success?

13 MR. BOWERS: I define success: people who
14 started in the program who are continuing to be in
15 the program, who have graduated from the program, not
16 re-offended.

17 MR. JONES: For what period of time?

18 MR. BOWERS: We have been in effect for three
19 years.

20 MR. JONES: Program is 12 to 18 months then a
21 year or more. Only three years you have gotten?

22 MR. BOWERS: Right. That's part of our problem,
23 comparing us to Madison, they have been in effect
24 roughly twenty years or something like that. That's
25 my definition.

1 I find my definition got even broader because I
2 am defining success as people who are not using
3 drugs. If they go back, at least we give them some
4 tools.

5 There is a concern about the Fourth Amendment.
6 I understand. We debated it. We talked about it.
7 We tell the people that come in. Yes, it is
8 different. If you have a Fourth Amendment dispute,
9 you can opt out of program. Challenge that.

10 MR. JONES: I don't mean with the one that
11 brought them into the program. Once they are in,
12 after they are in it, they can be sentenced without
13 probable cause by anybody. They can be in a program
14 and then challenge?

15 MR. BOWERS: Not everybody can do that because
16 we haven't had an issue. Are there bad cops in
17 Waterloo, exactly.

18 MR. JONES: I didn't mean to imply.

19 MR. BOWERS: There are. There are bad lawyers,
20 bad cops.

21 MR. JONES: We all win. Fourth Amendment,
22 precious motions. (all laughing.)

23 MR. BOWERS: But it is a concern. But I think
24 the people that we are dealing with, they are ready
25 to make whatever change it takes. If keeping them on

1 the street there says we will come look around, which
2 we have done twice in almost three years.

3 MR. JONES: Liz.

4 MS. KELLEY: Judge Bowers, you referred to drug
5 court as "un-court." You all know we have conducted
6 hearings throughout the country. Several times we
7 have heard judges say that their colleagues on the
8 bench look upon their work as being less serious,
9 less judicial.

10 Have you received any comments like that? If
11 so, how do you respond to this?

12 MR. BOWERS: Sure. It didn't come about because
13 it was a ground swell of support from the judges.
14 There were a couple of us that thought we had read
15 research, seen what happened, been to training and
16 said there is a reason for this. We it will work in
17 our county.

18 In fact, we are expanding into Dubuque, which is
19 even more rural. Our program in Waterloo has been
20 used as a model in five different counties. The
21 judges are always slow to come aboard. They want to
22 try the murder cases. They want to do the two-week
23 long medical malpractice case.

24 We don't worry about that because I am drug
25 court judge. I do all that other stuff plus I do

1 this. I arrange my schedule accordingly. Sometimes
2 I have to give some hugs. Today I said only if they
3 need them. I figure they are going to think whatever
4 they want no matter what I do. Some of the judges, I
5 don't care. I don't even like them.

6 I find great reward in my job. What they
7 think is second. I know what the results are. I know
8 the impact we are having. If they think I am soft or
9 they think I am not as smart or maybe not a real
10 judge so be it.

11 I was going to say one of the things that has
12 happened since I became a judge, Judge Ashley talked
13 about it before, our Chief Justice in Wisconsin is
14 supportive of these. Sarah commented about that.

15 It is obvious to me there is a lot more judges
16 in Wisconsin that have become much more favorable to
17 this. Not about the -- social workers you say here.

18 MR. BOWERS: In my county four judges have been
19 trained as treatment court judges. A fifth one is
20 very much, she is trained in areas much like the
21 treatment court approach, judicial intervention
22 approach. So there is sort of uniformly thought, at
23 least in our county, because we have these five
24 judges who are relatively close to thinking this is
25 important, very valuable thing to do, more our

1 population.

2 I also get the impression, Sarah can comment,
3 there is a general acceptance this is an acceptable
4 way of conducting, using, your court time. In other
5 words, it's not sure -- It's not traditional but it's
6 something that has been grounded in research. It's
7 been grounded as being successful.

8 Obviously as much of a variation out there, but
9 the basic concepts have been fairly well-grounded.

10 Judges like evidence so usually if you present
11 something as best practices, best interest, there is
12 acceptance of it.

13 Now, it may not fit people's styles. That's
14 true. That's just of any job. Some people fit into
15 one style; others don't fit into a style.

16 There is a whole generation that's about to
17 change how you can approach this stuff from the
18 implementation of motivational technique by treatment
19 court judges. How they come to treatment court
20 judges. How they use it in the court context to the
21 type of treatments that are out there.

22 For example, beds aren't the only question but
23 it's a diversity of type of program. Gender specific
24 programming. Cultural competence program for those
25 with different types of populations. It really is

1 sort of a fascinating new progression what we are
2 doing.

3 MS. O'BRIEN: A related problem judges have. It
4 is extremely time consuming. The courtroom next
5 door, they disposed of forty cases. While I am in
6 court I will see these people every other week for
7 nine months. I spend an enormous amount of time with
8 each defendant while someone can just dispose of the
9 cases. It is a commitment from the whole Bench to
10 state, all right, you will not get very much done.
11 Hopefully, it will be worth it in long run.

12 MR. JONES: We are out of time, sadly. This has
13 been a particularly useful conversation. We
14 appreciate you having it with us.

15 (Break at 3:15)

16

17 (Time 3:36.)

18 MR. JONES: All right. Welcome. Thank you for
19 being here. You guys have I think been here for a
20 least one or two of the last panels, so you have a
21 good sense how this works.

22 We are delighted to have you. We are interested
23 in the conversation that we are about to have. We are
24 going to give each of you, really to the extent that
25 we can, five minutes to give us the benefit of your

1 opening thoughts. Then we have a number of questions
2 that we are interested in engaging you in. The person
3 who is going to be the lead questionnaire for this
4 panel is Elizabeth Kelley from Cleveland.

5 I have stated enough. The floor is yours.

6 Mr. Farmer.

7 MR. FARMER: I work in Madison, Wisconsin. I
8 have worked in the drug unit since 1994. We have had
9 a drug court in Dane County since 1996. I have been
10 the representative of our office in drug court -- on
11 the drug court committee since it's inception in Dane
12 County.

13 I have experience as a prosecutor. I have been
14 a prosecutor for perhaps twenty-something odd years.
15 When I graduated from law school, I was a public
16 defender for about five years so I have a little
17 experience on the other side of the question. So
18 perhaps because of that experience, maybe I add some
19 sympathies in this direction. But I guess as you
20 become a prosecutor for a while you become skeptical
21 as time goes on. Maybe I lost some of the sympathies
22 that I had.

23 Drug court for me initially was something to be
24 skeptical about. It was something to be concerned
25 about. It was this, just another program. What's

1 going to happen to the dispositions of our cases.
2 This was a problem. It was not something which I had
3 received very well. But as time went on I gained
4 greater and greater confidence in it as a program.

5 We got sent, as part of the educational
6 processes, we went to various drug courts: one in
7 California in Sacramento, California; another in
8 Rochester, New York. I got to observe some of the
9 other drug courts and how they handled things, what
10 their success was. So I kind of decided in my own
11 mind this may have been contrary to other people,
12 contrary to other people, that I would refer a lot of
13 cases to drug court.

14 My feeling was it will either be -- starve a
15 cold, feed a fever. I will refer a lot of cases. If
16 it is a bad program, we will have proof it is a bad
17 program. On the other hand, if is a good program then
18 I will be wrong but the community will be served.

19 So a good number of referrals we made were being
20 referred personally by me. That got our numbers up,
21 got things going.

22 I think I got a commitment by various people
23 toward drug court. So far, since '96 we have had
24 about 1200 referrals to drug court. We have had
25 about, I would say close to 700 graduates. Those

1 individuals, recidivism rate at a rate of about -- 24
2 recidivists. 76 percent don't. Which is better than
3 probation, for example, which would be about 504,
4 50/50 there.

5 So, as a result of those statistics, we have
6 been able to sell the program more to our office. We
7 increased the seriousness of the referral to drug
8 count. Initially, misdemeanor type offenses,
9 misdemeanor drug possession offenses. Now we refer a
10 good portion of cases, a good portion of them are
11 felonies, a good portion of them are more and more
12 traffic-related cases to drug court. Low level
13 traffickers.

14 Despite the increase in the seriousness of the
15 cases, we have found our graduation rate has remained
16 the same: about 70 percent graduate. Our recidivist
17 rate has remained largely the same despite that. So
18 we have been really encouraged by that.

19 Some of problems that we have run into, we run
20 into problems in terms of drug testing, whether the
21 testing is accurate. There are a lot of problems, if
22 you want me to go into it. There's that problem: as
23 far as prosecutors, you always want accountability.
24 One of the major ways you have accountability is
25 u.a.'s.

1 We have had some problems with racial diversity
2 in terms of drug court referrals. We are working on
3 that. In general there is a long-term fight in terms
4 of getting people to refer cases, education on my
5 behalf involving keeping statistics up, giving them
6 statistics. It involves me representing us on a
7 committee, and in court to try assure there is
8 accountability so the program has credibility with my
9 colleagues.

10 I would say, in general I would say, I am very
11 impressed by the drug court concept. One of things I
12 am with this that I see as a prosecutor that I don't
13 get -- I see as a prosecutor in drug court that I do
14 not get to see in other areas that I am focused on as
15 a prosecutor, I get to see the successes. That helps
16 to motivate me. Really I get to see successes.

17 The only time as a prosecutor, normally you get
18 to see somebody when they come back for disposition,
19 when they probation revoked. They have extended
20 supervision after prison, after they get extended
21 supervision revoked.

22 But with drug court we see their successes all
23 along. To see somebody get back with their kid, to
24 get off drugs, to see them to really become
25 contributing members of the community is a real, real

1 rewarding experience for me as prosecutor. So I do
2 endorse drug court fully.

3 THE COURT: Thank you. Ms. Skemp.

4 MS. SKEMP: Thank you for inviting me. I am
5 relatively new to the treatment courts. I started
6 just about a year ago. When the prosecutor in my
7 office, who had worked very hard to establish our
8 drug court, in 2000 and 2001 with Judge Levine and
9 Keith Beller, he was also elected judge. So I took
10 that position over. I advocated at that time that the
11 prosecutor who had -- who was prosecutor in drug
12 court was also the prosecutor who handled all. La
13 Crosse is a smaller country, about 100,000. He was
14 the prosecutor who handled all the major drug cases,
15 drugs and gangs.

16 I advocated for a split. That the prosecutor in
17 drug court should not be the major drug prosecutor so
18 that there is, although it is not officially a wall
19 of separation, I don't have nearly as much knowledge
20 about a lot of participants when they come in. We are
21 voting on them. I like that.

22 Before I became the drug court prosecutor, I was
23 the juvenile court prosecutor. This is sort of a
24 continuation after. The philosophy is a lot of
25 counseling, a lot more hands-on, more on the people

1 that you have contact with. That's the part that I
2 enjoy. That's why I went to my office and advocated
3 for splitting those positions.

4 Knowledge. Not that we only take drug cases.
5 Certainly I have referred cases from my caseload.
6 Now I am doing white collar. Mostly, I have referred
7 those cases in as well. We seem to have a lot of
8 possessions with intent to deliver, trafficking kinds
9 of cases. I don't know those from Adam which is
10 nice.

11 Since joining the drug court team, also the
12 prosecutor on the OWI court team, I have seen a lot
13 of successes. In fact, yesterday, just yesterday, in
14 drug court we had graduation of a women who had been
15 in just a little more than two years. She went from
16 using amphetamines, I think was one of her charges
17 possession of cocaine, moves on to what we call a
18 diversion.

19 We have a combined system. We take both post
20 plea and pre-adjudication cases. We do not -- we
21 allow those to be anyone. It does have to be
22 first-time offenders. We have people who are on
23 straight probation offer alternative to revocation to
24 their probation, we have this mix.

25 She was one of the folks who was on felony

1 diversion. I was able to state up in my motion to
2 dismiss, I read everything she accomplished, which
3 included a bachelor of arts in psychology. She has
4 been accepted into St. Mary's in Rochester. She will
5 be studying to get a degree to become a AODA worker.
6 She has done community service, given back.

7 So I got to read all of this to her. I am
8 shaking because it was such a wonderful experience.
9 Her mother stood up and described what a change there
10 was in her daughter. Thanked us for giving her
11 daughter back.

12 Now, I can't say that I played that much of a
13 part in Julie's graduation. I came in after she was
14 in a year. She never had any problem while I was in
15 drug court. To have that little bit of that personal
16 connection with somebody, a little bit to see that
17 somebody that we would have written off. She was a
18 habitual criminal. She would have been going to
19 prison. She has done that kind of turn around is
20 fantastic.

21 The question I heard you ask judges, what is the
22 role for the defense attorney in this.

23 In the break, Mr. Farmer and I were discussing
24 this. I think part of it is to take a very long view
25 to what your client's best interests are.

1 Now, I know that you are not there to advocate
2 to your client what their best interests are but
3 advocate for them as counselor, you can look at that.
4 You can be educated about drug court policies and
5 procedures, what the reason is behind those things
6 instead of just, I don't want to say it the wrong
7 way, but instead of just saying you are giving up all
8 the Fourth Amendment rights, if you find out what
9 reason is behind it or what the policies are to maybe
10 protect prosecution, if you are giving up Fourth
11 Amendment rights in one area, like as a member or
12 participant in drug court, there are some guarantees
13 further found with possession of drugs in your home,
14 we violate Fourth Amendment, you will not be
15 properly, to find out what are the policies, the
16 procedures, the contracts take the long view about
17 what is best for your client.

18 And now my husband is a defense attorney. He is
19 in private practice specializing in criminal defense.
20 He does not refer a lot of cases into drug court.
21 Most of the time he talks to his client, they want
22 the way out.

23 MR. JONES: You are a liberal prosecutor?

24 MS. SKEMP: Yes, exactly. Like I said, like I
25 said our home life is interesting. But a lot of his

1 clients want the easy way out. One of his clients,
2 third phase, getting ready to graduate. Every once in
3 a while I tell him how Greg is doing. My husband
4 never thought that Greg would make it. Greg is a
5 tough case. He was a Viet Nam War vet. He has
6 schizophrenia. He had multiple drug issues. What
7 brought him into drug court was the meth problem. But
8 he has been a fantastic drug court client.

9 So I think being cognizant both of rights,
10 certainly as prosecutors we want to do justice. We
11 want the best for everybody, including the defendant.
12 We want to do right by everybody. Those are my
13 perspectives on this. I would really rather answer
14 the questions that you have.

15 MR. JONES: Thank you. Michael, you have been
16 here the better part of the day. We greatly
17 appreciate that. You will have to tell me how to say
18 your last name.

19 MR. STEUER: Stoi-er. Like Freud.

20 MR. JONES: You have the floor.

21 MR. STEUER: Thank you. First of all, I have to
22 echo the sentiments of Judge Bowers from the previous
23 panel. I am in 23 years of being prosecutor, 19 of
24 which have been in Eau Claire County. I had a couple
25 of previous lives before that. I didn't go to law

1 school until I was 28 years old. My previous year
2 having been born in Franklin, raised on Long Island,
3 going to law school in Golden Gate, San Francisco.

4 I do have a big city perspective when I come to
5 Eau Claire. There is comment we are small town. We
6 are. But with my so-called big city perspective, I
7 don't find that much different in Eau Claire County
8 even though we are small in terms of types of
9 problems that we have, especially the drug problems,
10 especially methamphetamine problem which seems to be
11 lessening.

12 But this is the treatment court concept I was
13 familiar with prior to becoming involved in our drug
14 court. And four years ago when the drug court was
15 formed, originally the district attorney
16 representative on that treatment court was the drug
17 crimes prosecutor in our office. I did just about
18 everything I could to insinuate myself into the
19 process somehow. Eventually I became sort of an
20 informal back-up for her.

21 Thankfully for me and for her, I guess, she took
22 twelve weeks off for maternity leave. I was offered
23 the opportunity to go to a national drug court
24 training in Salt Lake City with the rest of the team,
25 including Judge Stark, which I jumped at.

1 I was hooked. That was it. Eventually that
2 prosecutor did leave the district attorney's office.
3 For the better part of the last three years I have
4 been the district attorney representative on the drug
5 court team. I was recently railroaded into a position
6 on the Wisconsin Association of Treatment Court
7 Professional's board with Ms. Nelson, if she is still
8 in the room. I go to one meeting so far. But I am
9 passionately involved.

10 It is the best thing I ever done in my life
11 counting all the previous lives. I guess what it has
12 done for me personally, it has made me, helped me to
13 internalize what I always used to say. I talked about
14 "there but for the grace of God go I," but I would
15 never know aside from being the juvenile prosecutor
16 for most of that 19 years in Eau Claire, I would
17 never know the people I was prosecuting.

18 Now being involved in drug court from a personal
19 standpoint I do know. I have hugged people. I do
20 know them. It's just I see them in me and me in
21 them. It's just a different way to approach being a
22 prosecutor, although I talked a good game. Before I
23 tried to do my job that way. I can internalize more
24 and recognize it more. It's in my office, I am the
25 nice prosecutor. It seems like it anyway. Nobody has

1 ever said that.

2 MR. CLARK: The one.

3 MR. STEUER: Yes, the one. Being involved in the
4 court reaffirmed that I am doing my job the right
5 way.

6 After patting myself on the back in front of
7 you, I will tell you what I struggle with. I am
8 involved in the vetting process of making
9 recommendations as to who gets in and who doesn't. I
10 only have one vote. The D. A. is not in control of
11 who gets in. We are post-adjudication court as Judge
12 Stark already told you. But parts of what I do, the
13 people's past record to make sure they don't have any
14 disqualifying offenses, I personally disagree with
15 the requirements for federal funding that require a
16 person not be convicted of certain violent crimes or
17 any pending violent charges. But that's what we have
18 to go with, even though we have never been able to
19 get a federal grant. I do have to call defense
20 attorneys. I don't have to call public defender.
21 The public defender will come to me, we are aware of
22 them. I do have to call defense attorney, I am
23 willing to do that, when I see somebody who I think
24 might fit the criteria for our program.

25 As far as I am concerned, if the person has no

1 disqualifying offenses, if the person is not a dealer
2 in it, for profit dealing the drugs, and if he meets
3 the treatment criteria as our treatment court
4 coordinator finds through the screening processes
5 then I vote for them to get in.

6 There can be disagreement between individual
7 prosecutors in my office. I am very often not the
8 prosecutor assigned to that person's case. But I will
9 sit down with another prosecutor in my office knowing
10 that our boss, the district attorney, is in favor of
11 treatment court so I can apply pressure. He has
12 already given me the go ahead to give pressure to get
13 prosecutors to agree to recommend drug court as a
14 condition of probation on a new case or recommend
15 probation on what otherwise would be a prison case if
16 that person is going to drug court as alternative to
17 probation-revocation.

18 But I do struggle because we only have 25 spots.
19 I am forced into a position to actually where we have
20 to look at whatever needs, the treatment, more, as
21 that two competing people fighting for one spot. A
22 person who needs the treatment the more is usually
23 the one who will get in. Unfortunately we don't have
24 the room for first-time offenders. That's not what
25 we do. We want them to come to us having virtually

1 exhausted the other available treatment in our county
2 before we can see fit to take that person.

3 That's a struggle for me personally because I
4 know somebody intimately who could have benefitted
5 from the drug court but it was too early in his
6 criminal life to be allowed into that program. Of
7 course, I would have had to get out of drug court, if
8 that happened. It's ashamed.

9 One of the things I would like to see, Eau
10 Claire County does, is early intervention program in
11 a drug court type program. It would have to be
12 different from our drug court. We have just formed a
13 mental health court, which has been up for two weeks.
14 We have two people in it. I am on that treatment team
15 as well.

16 Briefly, my other discomfort in the termination
17 procedure, as Judge Stark described, we basically
18 agree to disagree whether due process is necessary.

19 The way I look at it, I look at our drug court
20 program. We are not a court. I look at it as we are
21 a treatment program. We are a treatment program that
22 just so happens to have a judge, prosecutor and a
23 public defender and probation agent involved in
24 making decisions. Yes. We actually have what appears
25 to be a court docket. There is a clerk of court in

1 the courtroom when we go through the drug court. But
2 after that all similarities to actual court go out
3 the window.

4 My thinking is that if somebody is sent, for
5 example, to an inpatient facility as condition of
6 probation, they are in that facility, they violate
7 the rules of that facility enough times so that
8 facility kicks them out of the facility, they don't
9 go back to court so that the court can determine
10 whether or not they are kicked out of that facility.
11 The authorities that run that facility make the
12 decision. We are not going to keep you; any more
13 you are out.

14 Basically, that's the way I look at it. That's
15 the way I would want our drug court to run. That
16 presents all kinds of problems I am sure because you
17 have a prosecutor and public defender and judge. Not
18 the judge because she stays out of the process.
19 Probation, public defender, probation agent are going
20 to be making decisions as if they were the
21 administrator of an inpatient treatment facility. To
22 me that's the closest analogy that can be made: We
23 are a treatment program treatment facility. The
24 treatment team makes the decision to discharge
25 somebody.

1 I don't like the word termination but that's
2 what we use. We decide whether to discharge
3 somebody. If that discharge is upheld by the judge
4 then that person can go back to court on probation so
5 that or a probation- revocation. So the court can
6 determine whether revocation is appropriate for
7 additional conditions as alternative to. Revocation
8 can be imposed on that probation.

9 Basically what we are doing now, we are going to
10 court. Judge Stark will decide whether somebody is
11 to be terminated or not. They have a right to a
12 Right to Appeal that termination. No appeal comes
13 first then we have an appeal hearing.

14 Judge Stark decides whether to uphold the drug
15 treatment team. If that person is terminated then
16 that person's probation agent decides whether they
17 want to bring that case to real court, circuit court,
18 on either probation review or probation revocation
19 hearing or sentence after revocation.

20 If they decide they want to revoke the person,
21 there is an administrative process within the
22 Department of Corrections that determines whether or
23 not that person is revoked. Then, finally, they go
24 back to court for actual sentencing.

25 The due process is already in place as far as

1 loss of liberties and the sentencing. there should be
2 some type of process by which you can appeal a
3 treatment team's termination decision. But I believe
4 it should not be in open court. That's what I
5 struggle with.

6 I don't know what my role is. I am a member of
7 the treatment team, also the prosecutor brings this
8 into court before Judge Stark. Whether I agree with
9 the termination decision or not, I have to argue the
10 treatment team's position, which is to discharge that
11 person.

12 Judge Stark can tell you I am not very good very
13 often on our treatment team. Everyone votes to
14 terminate the person except for myself and the public
15 defender. We are usually on the same page more often
16 than not in these situations.

17 I haven't even begun to think about prosecutors
18 and me voting to keep someone on the team, voting to
19 discharge, then me having to take that into court and
20 argue for termination. Something that I have chosen
21 not to think about. The easiest way to get around
22 that is to view this whole system as a treatment
23 program not an actual court process. That's what I
24 have chosen to do. That's about it.

25 MR. JONES: Thank you very much. Liz.

1 MS. KELLEY: In the universe of prosecutors, you
2 three, as well as Mr. Chisholm, who spoke to us this
3 morning, are very, very unusual. I have never heard
4 of a district attorney hugging someone in court.

5 MR. FARMER: Judge Stark makes us. One person I
6 hugged got rearrested three weeks later. She is back
7 in prison; probably doesn't do any good.

8 MS. KELLEY: In light of fact that the three of
9 you seem to have almost reversed roles or have moved
10 your roles closer to that of a defense attorney. Can
11 you talk a little bit about the collaborative process
12 you engage in with, if that's appropriate term, with
13 the defense attorney either pre plea or post plea.

14 MR. FARMER: Our drug court, we have a meeting
15 ahead of time. The defense attorney is there. That
16 involves the judge and myself and drug court liaison
17 from the mental health department, pulls all the
18 reports together. We have a discussion about what's
19 going to happen ahead of time before the actual court
20 session.

21 I find that process to be a good one and in that
22 process we end up having a lot of communication with
23 the defense attorney and myself sort of in a group
24 along the whole team.

25 I find our communication to be very good. One of

1 thing that I have noted there is the -- you say we
2 have become more as defense attorney, prosecutor
3 defendant attorneys. The defense attorney that's
4 representing the defendant in all the cases, the
5 public defender that's in there is much more tougher
6 on what should happen I think than sometimes I am.
7 Because they see it as an opportunity to, in the long
8 run, to get the client out of a charge. Or to make it
9 so in the long run their client is less likely to
10 recidivate. So often times I might say well I am not
11 even asking for jail sanction. The defendant might
12 even say aren't you going to ask for jail sanction on
13 this? Aren't you being a wimp? It is kind of
14 interesting the dynamic that goes on there.

15 I guess in following up on what has been said by
16 someone else here drug court is not a traditional
17 adversarial approach. It is a cooperative approach.

18 MS. KELLEY: So you agree more with Mr. Steuer's
19 characterization as a treatment program rather than
20 a --

21 MR. FARMER: I think it is both. To be
22 successful it has to be both. Treatment. There is a
23 treatment component that is important to someone's
24 rehabilitation but what makes that treatment
25 effective is a court seeing that it provides

1 accountability for the treatment.

2 If you just have treatment alone without court,
3 it will be marginally successful. If you add the
4 court element to it, the ability to sanction, the
5 ability to give rewards from people in the community
6 like a judge they may look up to already. The
7 combination of those two things: treatment and the
8 court component is what makes it work.

9 MS. SKEMP: Talk about the collaboration within
10 the team itself. It is amazing. It's extremely
11 important. We have -- on our team we have the drug
12 court coordinator and supervisor who usually comes to
13 the staffing, myself and the defense attorney from
14 the public defender's office. We have two treatment
15 providers: one from the county human services and one
16 from the private, our local hospital basically. One
17 of our local hospitals. Having all the people there
18 with the different background and resources is so
19 important to making decisions during that team of
20 what should happen.

21 But, Ms. Kelley, I hope that I can get to your
22 question. You said also pre-plea, how do you
23 collaborate with the defense attorney.

24 MS. KELLEY: While designing the program.

25 MR. FARMER: While designing the program. The

1 program is, you know, right now if you are looking at
2 bringing in drug or treatment court to your city or
3 county, obviously you want to be on the ground floor
4 to be able to collaborate, to come up with procedures
5 and policies. But even when I am looking on the --
6 we are looking at bringing somebody into drug court,
7 you can talk to the defense attorney when you are
8 making your plea offers. You talk about what is
9 going to motivate your client; what do they really
10 want. What do you think is going to motivate them to
11 do right. Are they wanting to avoid prison; are they
12 wanting to be home with their kid.

13 We can try to structure something to be that
14 motivation, because that motivation isn't the same
15 for every person.

16 For example, we have one gentleman who is in our
17 drug court who is an over-the-road truck driver. He
18 had been clean for a long time then he picked up a
19 couple of charges, including possession of cocaine.
20 Well, he would lose his license, lose his livelihood.
21 So we designed something to divert that charge.

22 He had another charge that was plea and sentence
23 charge so he is placed out of probation. That would
24 motivate him to keep clean, keep going to treatment
25 to keep his job. We would keep him in the community

1 and with his family.

2 That's part of the collaboration is in the plea
3 bargaining stage. It is to educate yourself or the
4 defense attorney can be as educated as possible about
5 the program, Ask questions, observe during with your
6 client is this something that you want to do the kind
7 of collaboration that I think happens even before
8 court.

9 MR. STEUER: In Eau Claire County I am
10 constantly being presented with potential candidate.
11 I don't have to seek them out. The public defenders
12 all come to me with them. Recently, within the past
13 six months, I would say prosecutors, other
14 prosecutors in my office, are actually coming to me
15 now, which never used to happen and saying, you know,
16 so and so's attorney would like to explore the
17 possibility of drug court for this person. What do
18 you think.

19 I think the climate is changing. We don't have a
20 lot of support from the D.A. himself to do this.

21 There are a lot of private -- the Eau Claire
22 private bar knows about the drug court. They are
23 starting to come to me more often than they used to.
24 This is at all stages in the proceedings. Sometimes
25 the person has already pled but hasn't been sentenced

1 yet. They come to me and talk about drug court.

2 In the Public Defender situation, if there is
3 just a new charge, we will have it all straightened
4 out before there is a plea ever entered in court on
5 the new charge. In others, people are referred to
6 through their probation agent, but we still have
7 discussions with appointed counsel who is going to
8 represent them if the probation were to be revoked.

9 So there is a lot of discussion, a lot of
10 planning, that takes place prior to the actual
11 investigation as to whether the person qualifies for
12 the drug court.

13 The one thing we don't want to have happen for
14 our drug court coordinator, who is extremely busy to
15 say the least, is to have to spend time with an
16 individual who we later find out cannot be admitted
17 into drug court for other reasons. So there is a lot
18 of discussions, especially between defense counsel
19 and the prosecutor that does take place. When we are
20 talking about drug court, even outside the drug court
21 situation it's a nonadversarial type of discussion.

22 MS. KELLEY: This afternoon Mr. Chisholm said
23 something along the lines of everytime we admit
24 someone to drug court it is a risk.

25 Has there ever been anyone or individuals in

1 your drug courts who have failed miserably and has
2 there been a backlash from perhaps your office, the
3 community? Any bad consequences? Or do people just
4 understand it's sort of the nature of the beast?

5 There is relapse and recidivism.

6 MR. FARMER: Occasionally, I have seen some
7 backlash. Interestingly, the backlash that I saw on
8 one serious occasion, where I saw it wasn't from a
9 member of our office. It was another judge. He had
10 somehow or another put a copy and raised the name of
11 the person's drug court report up on our door, all
12 the violations they had.

13 MR. JONES: Was the judge a little upset?

14 MR. FARMER: Yes. Maybe it was the person
15 actually had completed successfully drug court, put
16 successful completion question mark then circled all
17 the violation.

18 For the most part I would say we haven't had any
19 serious incidences where any individuals have gone
20 out. I am waiting for the day one goes out and
21 commits that murder, or something like that, ends up
22 thrown in our faces. Honestly, twelve years we have
23 had it we never had that experience. Maybe that is
24 the people we refer to drug court are not individuals
25 that are so inclined but you never know. Fortunately,

1 we haven't had that kind of feedback.

2 MS. SKEMP: We haven't had a terrible amount of
3 negative feedback from the public, but from the
4 police and other drug court participants.

5 There is one situation that I am thinking about
6 where there was a person who probably should not have
7 been let in to drug court: A young man who -- I am
8 cognizant I speak to a panel of defense attorneys --
9 reported his drug dealing activities while in our
10 court. But we were never able to nail him. It's not
11 for a lack of trying. Our police officers were trying
12 to surveil him.

13 We had our drug court participants were
14 anonymously tipping their probation agents this guy
15 kept dealing. He had no violations. He did
16 everything he was required. We had to convince them.
17 That was a sick, sick day, because he is still out
18 there.

19 MR. JONES: He will be back.

20 MS. SKEMP: That's a prosecutor response. But he
21 is obviously smart enough to have worked through a
22 whole year of, you know, or more than a year of our
23 supervision and everything else. So that's been a
24 disappointment.

25 Publicly, obviously the public didn't know about

1 that. The problem is the participants know. That's so
2 demoralizing to them. That's what is hard. To justify
3 to them you are following all the rules yet you are
4 not convincing quite yet, this guy is. That's been
5 hard. We are trying very hard to avoid, you know, to
6 make better choices about who we bring in the future
7 so we don't have to face that.

8 MR. FARMER: To follow-up quickly on what she
9 said as far as the police. I have had, I have had
10 the experience of the police actually going after a
11 person. Gone behind my back to my boss here are a
12 list of cases that he referred, he disposed of this
13 way. Several of these were drug court cases. Why
14 was this person submitted to drug court. I had to
15 answer for it. I was able to explain myself.

16 One of the individuals that was in drug court
17 that got referred, one of their cases that they are
18 in and out was a big crack dealer made it through
19 drug court. Graduation, he was wearing a suit, coat,
20 tie, successful. It was really rewarding to see that.
21 He has come back, spoken to our drug court on at
22 least one occasion to describe his success. They had
23 proven them wrong.

24 When you ask about backlash, when she mentioned
25 about the police, it caused me to remember that

1 incidence. We are on the line on this as prosecutors.
2 I know defense attorneys, they are on the line, too.
3 But we are on the line on this.

4 MR. JONES: Liz? Does he have a response?

5 MR. STEUER: We had a few people that fail
6 miserably. There is only one. She wasn't in the drug
7 court long enough to benefit from it in my opinion.
8 But that would be the only person that I would
9 venture to say that got nothing out of the drug
10 court.

11 I think even the people who failed miserably are
12 better when they failed than they were when they
13 started. There was one women, well, who I mentioned
14 before, who was unfortunately graduated, three weeks
15 later arrested for selling heroin. I went out on a
16 limb for her at that point because from everything I
17 knew about her from drug court and about her family,
18 basically what was happening, I thought that her
19 husband, who was a big-time drug dealer, was forcing
20 her to do this kind of thing.

21 We gave her another sweetheart deal on that
22 case, put her on probation then a couple months later
23 after we had sent her husband back to prison, she had
24 no reason to continue to sell heroin, she was
25 rearrested for selling heroin. She went back to

1 prison. I was wrong on that one, but I still
2 wouldn't say about her we did not provide a benefit
3 for her.

4 I still think, even in talking to her while she
5 was having her new pending charges, I felt that
6 although she had deceived us, she was acknowledging
7 she had deceived us, but she still had some inner
8 benefit in terms of being a stronger person. At
9 least that's what I felt. I could be justifying it to
10 make myself feel better.

11 MR. SCHECHTER: Let me ask all three of you this
12 question. Is there any reason why giving discovery to
13 the defense attorney at the earliest possible moment
14 in the process would be antithetical to a successful
15 drug treatment court program? Can you think of any
16 reason at all?

17 MR. FARMER: In our case we don't like to give
18 discovery before the preliminary hearing.

19 MR. SCHECHTER: Which would be how soon after
20 the arrest?

21 MR. FARMER: If they are in custody ten days,
22 twenty out of custody. The reason for that is that we
23 don't want to have inordinate long preliminary
24 hearings, frankly. Sometimes they are referred to
25 drug court after that stage. Oftentimes though at the

1 preliminary hearing stage is when they waive the
2 preliminary in exchange for a referral, for example.
3 So the discovery is given, I would say that unless
4 that situation comes up, one of problems we have is
5 how long it takes to get people.

6 The earlier we get the discovery to the
7 defendant, the faster an individual consults with
8 their client and gets them in drug court.

9 The majority of the cases, if we are able to
10 work with the defense attorney early on, we know
11 there is not a preliminary, get them the discovery
12 and get them in isn't possible. We have a six-month
13 waiting list to get into drug court.

14 MR. SCHECHTER: So what about the harm?

15 MR. FARMER: Generally, there isn't a harm to
16 it. The only time there would be, where they are
17 contesting this matter, not agreed on it, we will
18 have a preliminary hearing. We wouldn't give them
19 discovery, it would delay the preliminary.

20 MR. SCHECHTER: So to clarify, go on to your two
21 colleagues and see if they agree. There is a big
22 benefit to giving to the defense, getting the
23 discovery, so the defense attorney can have a
24 rational, logical discussion with the client and
25 advise the client properly what they are about to get

1 into in a drug court versus what D.A. sees in the
2 discovery; is that correct?

3 MR. FARMER: That's true, not just in drug court
4 but with respect to any proceedings.

5 MR. SCHECHTER: Some day we will deal with the
6 other proceedings. Just trying to get it in drug
7 court.

8 MR. FARMER: My thinking is to get it over with.
9 I got to move the cases.

10 MR. SCHECHTER: Ms. Skemp, without agree?

11 MS. SKEMP: In my county we have an open file
12 policy. We do not, with certain exceptions, withhold
13 discovery at any time after we file the criminal
14 complaint. By case law statute we don't have to
15 provide it before the preliminary hearing.

16 Right now there are some newer prosecutors in my
17 office who are withholding, but the other prosecutors
18 are doing more sensitive crime; sexual assault, child
19 abuse, so they have reasons for that. I am a white
20 collar prosecutor. Knock yourself out; have my file;
21 settle this.

22 Honestly, you are right. It's much better to
23 from drug court or OWI, the sooner you get them in
24 treatment, the more success. My experience
25 cross-county, defense attorneys who come from out of

1 county, we have a much more collegiate versus
2 adversarial attitude amongst us.

3 MR. SCHECHTER: Mr. Steuer, do you agree with
4 your two colleagues?

5 MR. STEUER: I do. A policy where we would only
6 give a police report prior to pretrial conference. We
7 never would have pretrial conferences in felony
8 cases. But ten or ten or twelve years ago we ended
9 that policy. Now most of the Defendants waive their
10 time limits to have a preliminary hearing. We set up
11 pretrial conference, return when all the reports are
12 given to defense counsel automatically.

13 In certain cases the prosecutor has the option
14 of saying, no, I want preliminary hearing; don't want
15 pretrial conference. I will keep the reports until
16 after that. Ninety-five percent of the time they are
17 given out.

18 MS. BERNHARD: Just getting back to the thing
19 about the role of the defense attorney. One thing
20 occurred to me. I am sure you are thinking a lot
21 about evaluation. How to evaluate the work that you
22 are doing?

23 What's the success rate, if there is a control
24 group that you can measure yourself against, that
25 kind of thing? Is there a role for defense attorneys

1 in the evaluation process? Is that something that
2 anyone thought about? Or we bring in outside
3 evaluators? What do you think?

4 MR. STEUER: Just at the outside we do have the
5 defense attorney involved in the evaluative process
6 in that their recordings system I think is better at
7 picking out the how many. For instance, offenders
8 who would have been eligible for drug court and how
9 do they do compared to how people who didn't get into
10 drug court for similar felony.

11 MS. BERNHARD: It terms of numbers they are?

12 MR. STEUER: I am able to crunch the numbers
13 more easily than the district attorney. Not more
14 easily than probation but probation only deals with
15 the people who have been on probation.

16 MR. FARMER: I don't know. Our office doesn't
17 keep the statistics. Their office doesn't keep the
18 statistics. We have a drug court person whose
19 assignment is to do that. The person, who is an
20 employee of social services, keeps the statistics. We
21 have an objective basis; kept it objectively.

22 As far as the evaluative process, I think that
23 it is nice when the defense attorneys can tell us
24 just on a anecdotal basis how their clients have done
25 we haven't maybe seen lately.

1 I know it's important to me when I hear. A
2 defense attorney came up to me the other day, public
3 defender, I want you to know I think you are doing
4 the right thing with this. There is evaluative
5 process, I guess, there of myself.

6 Largely we keep the statistics. We have a
7 person assigned to do that. We would be, I mean, I
8 hate to sound too skeptical. I would, I would rather
9 have it that way. I may be a little skeptical of what
10 statistics have been given to me by defense
11 attorneys. They might be more skeptical of me. We
12 are skill advocates. I think it is better to have
13 the objective person doing it.

14 MS. SKEMP: We have received a grant, a
15 professor from the local university who has taken our
16 caseloads statistics that are maintained by our
17 social services, called Justice Sanctions, he has
18 crunched those numbers. I emailed a copy to Ms. Young
19 of the most recent report.

20 One of the things that we have discussed is
21 having kind of a post-mortem, like when we have
22 failed, when we expelled someone from drug court, to
23 have a little discussion what could we have done,
24 could we have applied better incentives, were we not
25 harsh enough on sanctions or did we not get them into

1 treatment soon enough.

2 But I think the way our treatment is comprised,
3 the defense attorney would be part of that. Outside
4 facilitator could be helpful to the process.

5 MR. JONES: The last question.

6 MS. YOUNG: I was interested in the comment
7 Mr. Steuer made. When somebody was on leave there
8 was an opening for you to go to a presentation, a
9 training, by the Association of Drug Court
10 Professionals?

11 MR. STEUER: Right.

12 MS. YOUNG: Was that for only for prosecutors,
13 the training?

14 MR. STEUER: That was only for drug court team
15 members training to be a part of the drug court team.
16 I took the prosecutor's lot. Designated slots for
17 different representatives on the treatment team. I
18 think we could send a max of ten people funded by the
19 organization.

20 MS. YOUNG: Have other two prosecutors gone to
21 that training?

22 MR. FARMER: I went to one in Sacramento.

23 MS. SKEMP: I have not been to local training. I
24 have been to Wisconsin local treatment conference. We
25 will be having a training coming to La Crosse for

1 just our treatment courts on motivational
2 interviewing.

3 MS. YOUNG: Because it seems all these drug
4 courts seem to be personality driven, drug court
5 judge, the defense counsel, the prosecutor that's in
6 the court. I mean how is it developed that you know
7 there is someone. Is there back-up for you if you
8 need to take ten days off or ten weeks or what have?

9 MR. FARMER: For maternity leave?

10 MS. YOUNG: Right.

11 MS. SKEMP: I don't have a back-up at this time.

12 MS. YOUNG: Is there a mechanism?

13 MR. FARMER: There is one other person in our
14 unit who is going to back me up when I am gone. We
15 are so shorthanded, lost federal grants. We don't
16 have as many, we don't have drug prosecutor grants.
17 They can, you back a number of people in the unit.

18 When it comes to somebody being gone for any
19 reason, there have been times we haven't had anybody
20 in drug court to represent the prosecution when I am
21 gone. I have to trust the judge and trust the people
22 involved to do it, if there is anybody that needs to
23 be sanctioned. An issue, set this over, do it when I
24 come back because we just are so shorthanded.

25 MR. JONES: One last question.

1 MS. SHIFMAN: I want to ask, you mentioned in
2 your opening remarks that there is some problems with
3 disparities, I believe you said, in getting people of
4 color into the drug courts.

5 MR. FARMER: Right.

6 MS. SHIFMAN: Maybe you can briefly, very
7 briefly, address that, talk about what you are doing
8 to resolve that problem. What recommendations you
9 might have for drug courts in general to assure there
10 is no disparity problems.

11 MR. FARMER: One of the problems that helped was
12 initially we didn't put anybody in drug court that
13 were on probation. Now, we do that, probation. I
14 think people of color are more likely to
15 statistically be on probation. Don't restrict it in
16 that way. Don't restrict this in terms of violent
17 past or anything like that. Grant restrictions, they
18 will have a racially negative impact in terms of
19 numbers of people coming to drug court. We got off
20 the grants.

21 We were referring, unless a violent felony past,
22 we were referring, even if they have pending violent
23 misdemeanors, weapons, referring people to drug
24 court. We didn't before because we got off the
25 grant.

1 I would say also I would recommend highly having
2 treatment groups that are run by people of color. We
3 have something called Genesis Program which is run in
4 that fashion. We are able to refer people of color
5 to that group. I think there is a great confidence
6 in that form of treatment. That has helped.

7 We still struggle enormously with that problem.
8 Some of it, there is a larger issue than drug court
9 in that regard. It's hard for us to overcome in
10 small drug court world. What I mean by that, I
11 believe, we have found that people of color will turn
12 down drug court more than people who are white. It
13 could be that there is less of a stigma maybe in the
14 community that for people of color to be convicted
15 and go to jail. That is a larger problem than drug
16 court. So I say I will just do the jail, I don't
17 care. That's something, that motivation, that
18 problem, that attitude is something that's broader
19 than drug court. I am saying we are working on that
20 problem. It is an extremely difficult problem.

21 We have some greater successes lately. We
22 currently applied for a \$300,000 federal grant to
23 increase the number of people -- the number of people
24 in drug court. Even to have an omnibusman to go out
25 and seek out these individuals to get them into drug

1 court. We will see how that grant works.

2 MS. YOUNG: But then the grant has the same
3 restrictions that came with the others?

4 MR. FARMER: No, this is called
5 augmentation-type grant. I don't think it has those
6 restrictions.

7 MS. YOUNG: Then a circle back?

8 MR. FARMER: Right. The grant we were on before
9 was more in the inception of the program. That's
10 what they had as requirements.

11 MR. JONES: We have to stop.

12 (Break 4:33)

13

14 (Time 4:43)

15 MR. JONES: Let's start. Welcome. Thank you
16 for being here. We are excited about your testimony,
17 engaging in conversation.

18 As you know, the way it works, we give each of
19 you an opportunity to give us benefit of your
20 thoughts by way of opening statement. Then one of us,
21 in this case Jay Clark, will lead the questioning of
22 this panel. So without further adieu, why don't we
23 start here, just have you, give us benefit of your
24 comments.

25 MS. LATOUR: I thought we would start with Sam.

1 That's fine. I am Jean LaTour Assistant District
2 Attorney Waukesha County, just the county straight
3 west of here. I am a member of Alcohol Treatment
4 Court Team for Waukesha.

5 Our counsel decided to specifically focus on
6 third offense drunk driving because it is a
7 conservative county. The leap to drug offenses would
8 have been far to great for the county to handle. It
9 was a little more acceptable to deal with drunk
10 driving which also happens to be our huge issue. We
11 are the leader in the state, I believe, our county in
12 drunk driving. So we narrow it to third offense.

13 Once again because fourth offense would be too big of
14 a leap to sell to the county board or public because,
15 as I said, the nature of the county itself is one
16 very focused on law and order and punishment. I
17 think that's my opinion.

18 My role on the team is to -- it's
19 post-dispositional as well. So our clients have
20 already gone through a process of treatment before
21 sentencing, if they chose to. Our county puts a great
22 emphasis, if you do treatment you get a reduction in
23 the jail sentence: The judge on board, the
24 prosecutor on board.

25 Our system, where people get treatment upfront.

1 They go to plea or trial, whatever they want to do.
2 If they are convicted and they are convicted of third
3 offense, they can then apply to enter our alcohol
4 treatment core program.

5 So ours is post-dispositional. My role on the
6 team is to -- we meet once a week. We discuss the
7 members who or participants for that particular week.
8 Of course, there is faces in and out, often they come
9 to court, and to essentially talk about giving them
10 phrases. And our incentive is there is a sanction in
11 order here. I essentially share my opinion. I am
12 playing an advocate role at that point in time except
13 for what comes I think naturally.

14 That is to say, an example is a person, case
15 manager, comes in and says, John Hass, we are
16 suspicious of John not turning in his self-help group
17 slips. We have some other issues. They will say,
18 gee, why don't you go talk to him. I am able to talk
19 to the client and I will talk to him and say this is
20 the deal, what is going on. He will say some stuff.
21 I will say let's be frank, open, honest. If you give
22 me the straight scoop, I think we can help you out
23 here. I will advocate for you as a member of the
24 treatment court team.

25 Sometimes I will be like they have been

1 drinking, screw up. Our particular treatment court
2 rewards honesty, because our whole goal is sobriety.
3 If you will lie to us, there is no way you will get
4 it.

5 Essentially, I come back and say here is what is
6 going on. He wants help. He has some suggestions.
7 I have some discussions. Let's talk as a group.

8 Our treatment court operates very much as a
9 team. The judge is involved, the case managers,
10 Waukesha County Services, who oversees our
11 participants are involved. Then, of course, our
12 prosecution does not participate. It's pretty much
13 just public defender, judge and the two case
14 managers. Our probation department will show up once
15 in a while, who has a client who is part of our
16 participants in treatment court.

17 When I first went to the training, I did go to
18 the national training out in Reno, they talked about
19 the different roles of adversary counsel, advocate
20 counsel. It seemed to be tripping a fine line.

21 When I went there I said I would not be a part
22 of the treatment court. Ours had not been set-up.
23 What about client confidential? Due process? What
24 about all of these things? What has come to pass,
25 the way our court is set up, this is voluntary. They

1 have been convicted. They have received their
2 sentence. Their sentences have been stayed. Now
3 they are there to get better to get sober, to take
4 our assistance.

5 What we have seen, what has evolved over time
6 for me is I haven't had any problem with client
7 confidential I haven't had any problem with due
8 process in a sentence. I am also there as a
9 safeguard.

10 Judge Foster started with us. We have another
11 judge who has not gone to a national training. The
12 other day, we will sanction three days. I said to
13 the woman that person has a right to due process
14 hearing. They can come to the Public Defender. They
15 can assign up, we will appoint counsel for them for
16 that due process hearing. Those safeguards in a
17 sentence, we created that as a team.

18 I don't know. We had direction. It is in the
19 training materials to give them that opportunity. So
20 in a sense its still very much -- it feels like
21 advocate. At the same time some of that advocacy
22 sometimes is to say we need to sanction, jail time,
23 to get the message so they can succeed in the future
24 with a sobriety program.

25 Jail is not always the answer to relapse but

1 sometimes it is. I am sure you heard a great deal. I
2 will answer any other questions.

3 MR. JONES: Thank you. Judge Foster.

4 MS. FOSTER: As of today I have been a judge 20
5 years. Before that I was a prosecutor for eleven.

6 MR. JONES: Happy anniversary.

7 MS. FOSTER: Thank you. It has. I am happy to be
8 here. I appreciate all the time you invested
9 throughout the day. One slight negative. That is that
10 the title out there in the hallway about this being
11 about problem-solving court, I say that from the
12 standpoint I talked to a lot of colleagues. I am
13 thoroughly invested in the ten key components and the
14 treatment court modality. But I think most judges
15 would bristle it is a problem- solving court because
16 I think we all think that's what we do everyday.

17 People can't get along, marriage is faltering,
18 can't solve the problem, we divorce them, make their
19 decisions. There is somebody in the neighborhood
20 terrorizing the kids, we solve the problem by sending
21 the bad actor to prison.

22 I think the whole idea you were talking about in
23 the last group, the idea that it is a treatment court
24 modality, while you need all of the components of the
25 traditional court system, the roles many times are

1 very different. I think that's the discomfort that
2 judges feel.

3 Judges care about due process, probation,
4 safe-guarding that as do prosecutors as do defense
5 attorneys at different levels at different times in
6 the case.

7 But I think the one thing I wanted to talk about
8 to this particular group is as Jean has already
9 explained, because of the nature of our drunk driving
10 laws, you can not amend. There is really very
11 limited plea bargaining in the State of Wisconsin for
12 drunk driving. It is a statute. It has district
13 attorney will really lay out all of the reasons for
14 the judge to prove it. Also, because of the number of
15 convictions are so integral to the sentence, the
16 minimums, maximums, and to assess for the degree of
17 problems the individual may have, there is no
18 possibility of the elimination of the conviction. So
19 as Jean said it is all post-conviction. It is all
20 voluntary.

21 Since I was involved in this at ground floor, I
22 didn't want to know when I sentenced someone whether
23 or not they were coming into the program. I wanted to
24 know eligible third, eligible third drunk driving
25 sociopaths, basically, although we had someone

1 convicted of arson because the feds said that wasn't
2 violent.

3 We have a federal grant. Most everybody will
4 leap, the eligibility -- that eligible commits third
5 offense.

6 The due process does come in when, Jean I talked
7 about this, in the sanctions. As a judge I am not
8 only focused on due process, but I have a very
9 limited audience once you get to that stage. I am --
10 I won't ignore what the public thinks or funding
11 sources. It is always very important, it is
12 important what other participants think. Everybody on
13 the team looks at me, sitting in judicial notice, but
14 I look at other participants. We are talking about a
15 sanction, whether it's jail or something admitted,
16 talking about far less other graduated things. It is
17 very important about the even-handedness. So the
18 other people in the program know what is possible if
19 they violate rule ten, et cetera.

20 So the credibility of the participants I think
21 is much more greatly heightened in the treatment
22 court modality than it is in anything else we do as
23 judges.

24 Somebody here mentioned in the last group about
25 the personality function of the judges, lawyers, so

1 on. But it is also about the personality of
2 participants because we have so much more knowledge
3 about the person appearing in front of us. I really
4 think unlike the cliché about familiarity breeds
5 contempt, it is just the opposite. We really feel we
6 have a good understanding because we do home visits.
7 Sometimes as a penalty I have them write their life
8 story. A little letter between me and them helps us
9 help them. When it comes to the sanctions you know
10 Jean is for getting she is a pretty tough district
11 attorney.

12 MR. RYAN: Defender.

13 MS. FOSTER: But she has done some questioning
14 for some people. I don't mean to put you on the spot.
15 If you needed -- it needed to be done. Jean and Sam
16 buy into the idea of the credibility of the program;
17 should we keep someone in the program when we have a
18 waiting list for somebody who also very much needs
19 the program. How much time we invest in the
20 individual. Counter that really with the idea that it
21 isn't just about the jail sentence. It is about
22 these peoples lives.

23 The people that are no longer in the program
24 that started when I did, two are failures, are people
25 who drove while under the influences. Thank good

1 that they didn't injure or kill anybody but they did
2 drive under the influence.

3 I worry about that. No matter what you do, if
4 you are in the system you know it happens. But I
5 worry about the rest of their life. A couple of
6 people that left the program. My feeling is it
7 wasn't about the 80 or 90 days on the jail sentence.
8 It's about their life.

9 I think leaving, it is a death sentence. They
10 will die if they don't change their alcohol and
11 drugs. We do have evaluators as part of our grant.
12 It is required. Nice requirement to have.

13 A professor at Temple, he tells us we have a
14 very high retention rate. More than anything I am
15 pretty much a part of that. We do process them to
16 death sometimes, I think, in many respects.

17 I know there were times early on when there were
18 sanctions. I don't think the team was sometimes
19 happy with me because I didn't sanction somebody. You
20 knew they did something, you knew they slipped the
21 bracelet but mom was willing to come in and lie for
22 the kid. We learned we have an enabler family
23 situation. We learned how to put it on a little
24 tighter. We learned more things about the bracelet.
25 we caught her the next time. That factors in but she

1 graduated.

2 MR. JONES: Third DUI is a felony Wisconsin?

3 MS. FOSTER: Currently, no. But we did have a
4 much publicized case, I will talk limited, in our
5 county where a man in between, sentenced not in
6 treatment court, reporting for jail but he had
7 reported an up-coming surgery, he killed a pregnant
8 woman and her daughter in a car accident. He happened
9 to be an orthopedic surgeon. A lot of publicity
10 attended. The deceased family is apparently suing
11 even though he had no alcohol in his blood. He was
12 under the influence of drugs at the time,
13 prescription medication.

14 There are advocates who are working now. The
15 woman what was killed was a high school guidance
16 counselor. Based on the papers as to what will happen
17 because of that tragedy is anybody's case. Change
18 that. When the first offense, criminal. No.

19 MR. BENEDICT: This is Miller Brewing.

20 Jean and I work together. I was on the
21 development of the treatment court with Judge Foster.
22 I thought what I would add, some of the decisions
23 that we made as a State public defender office to
24 participate and why we do it, the level and the
25 nature of our participation because it is a little

1 different.

2 But we got started in this project, I think as
3 Jean said, because alcohol abuse is the big drug
4 problem we have in our county. There is a general
5 consensus, you know, the question about the risk. I
6 mean, have you had any bad cases where something bad
7 happened to a participant. Just like the case the
8 Judge talked about. This isn't even a treatment
9 court case. It doesn't matter. This is a guy who
10 hasn't started his sentence. He killed someone.
11 There is a recognition the traditional methods aren't
12 working with a growing jail population, a sentence,
13 that we weren't having any impact as a community. I
14 think that it was a process of building consensus,
15 working to coordinate a collaborative effort to
16 start this project. Biggest real eye-opening
17 experience for me, it was real difficult to get
18 started, this interdisciplinary approach. But
19 something happened along the way. I don't remember
20 where it was but after we went to Michigan where
21 everybody came together, it was no longer a question
22 are we going to do this. Okay. How are we going to
23 did this together.

24 This has continued. It's been a very positive
25 thing for our county to work on.

1 Some issues of interest to you about our
2 program. We made a decision as state public defender
3 agency, both statewide and local, we would invest in
4 the program.

5 So the thing that is interesting about our
6 county, we think 60 to 80 percent of the drunk driver
7 applicants or even drunk driving defendants are not
8 indigent.

9 We have a very high percentage of cases where
10 they are receiving private bar representation at the
11 time of the adjudicative process.

12 But we made a decision as state public defender
13 organization locally to participate and to fully
14 invest in the program to the point we have committed
15 a staff person to participate on a full-time basis
16 with the treatment staff, partly just to invest our
17 institutional knowledge, what we have learned,
18 because we believe in the program; that this is
19 really necessary to have alternative options
20 available.

21 As a community we really concluded that they
22 needed us to be there because a lot of things we were
23 dealing with, they were being developed on the fly.
24 So you know defendants needed -- there needed to be a
25 voice for criminal defense bar; there needed to be a

1 balance.

2 We voluntarily assumed that role. Part of it is
3 the grant process built that in. But the other
4 interest thing about our county, something I noticed
5 in the division between the state public defender and
6 the private bar participation, which I am sure is
7 interesting to you. We have had a hard time getting
8 the private bar to invest in the participation on the
9 legal end in our treatment process.

10 Because we are post-conviction program, the
11 service deliver from the private bar usually starts
12 at arrest and goes to plea sentencing. Then it
13 stops. Then, despite our encouragement, there has
14 not been a high level of interest to participate in
15 the program after conviction.

16 In other words, to make sure that the client
17 successfully navigates the treatment court process. I
18 think it's just sort of the culture that, you know,
19 the legal part is over. That's not what we are
20 getting paid for.

21 None of the attorneys have been able to figure
22 out a way to put that into the billing process. That
23 surprises me. I thought somebody would pick that up.
24 It hasn't worked out.

25 What that means, as public defender

1 organization, we are participating as a team for
2 people that mostly were not our clients. But we are
3 the only voice of the criminal defense bar in the
4 process. The private bar has sort of a limited role
5 even in the development meetings.

6 We meet quarterly, semi-annually. They are
7 always invited. That's been a difficult challenge to
8 have an active private bar in the treatment courts.

9 The other challenge we face are possible
10 legislative changes the Judge mentioned. That's going
11 to be a big change. Our program is designed for a
12 certain category of offenses. It allows us to defer
13 a portion of the penalty. It may not be available or
14 drastically different if we have a legislative
15 change. We have to adapt. That's one thing we are
16 good at. We are good at adapting.

17 We have talked about what if third offense is a
18 felony. We will recategorize our population or
19 restructure the program.

20 That is the other thing. We have not had the
21 benefit like other counties that you heard from the
22 district attorney we have very low participation. We
23 really could benefit from a district attorney being
24 part of this treatment staff every week. The times
25 that our district attorney comes and participates we

1 have a better product. We would like to see that
2 change in the future...

3 MS. FOSTER: Our district attorney at the time
4 we developed the program said everything we needed to
5 say in the paper. He was also running for attorney
6 general at the time.

7 MR. BENEDICT: He has been supportive.

8 But the current district attorney lost then went
9 into private practice. We have a new district
10 attorney who is very supportive of the program
11 publicly. He does some other things that are
12 beneficial, justifying the battle of not enough
13 staff.

14 He does come to meetings. He is involved in
15 policy meetings because we do have team meetings.
16 Occasionally members of the private bar will come to
17 that.

18 MR. JONES: Thank you.

19 MR. CLARK: Historically -- a couple of simple
20 questions, ground rules. Third time DUI charges is
21 that in the offender's lifetime or it looks back a
22 period?

23 MS. FOSTER: Based on DOT now I think we can go
24 back a lifetime.

25 MR. CLARK: What's outside the program? They

1 don't participate? They are convicted of third time
2 DUI, what do the penalties look like?

3 MS. FOSTER: The minimum is 30 days in jail up
4 to one year. Minimum 24 months, up to 36 months
5 revocation of driving privileges then safety
6 assessment, but our care is predominately the jail
7 sentence, although we have added a reduction -- we
8 have fashioned it this is the adjustment, the care in
9 terms of post-graduation because our county runs an
10 alumni AA program. If they attend that, they don't
11 get any OARs, we will continue reducing their length
12 of revocation and eliminate the interlock device
13 which saves some money.

14 MR. CLARK: Are they allowed any type of limited
15 privilege for work or child care if they have a
16 medical conditions? Come to court, go to treatment?
17 Are you allowed to give limited privileges?

18 MS. FOSTER: Are you talking driving privileges?
19 No. Because the feds mandate through one year. This
20 is across the country. Obviously, because it is
21 federal, if you have a third offense whether
22 R-category or felony, you can't get an occupational
23 for one year.

24 Because of the National Association of Drug
25 Court Professionals, we have been lobbying to change

1 that, give more discretion to the court. To the
2 states.

3 We are a smaller county. Public transportation
4 is limited. Because we have so many court sessions,
5 meetings, with staffings, that transportation is a
6 big factor. It's not in the handbook but to get them
7 where they need to be is a big deal.

8 So our biggest offense a lot of times is driving
9 after revocation so we have a whole new subset of
10 sanctions, if you will, for people that are arrested
11 for driving after revocation while in the program. We
12 give them kudos if they haven't been drinking, coming
13 to meetings, we modify. This is a tough part of this
14 kind of program. When you have that prohibition
15 after a year then they can get an occupational, then
16 it is pretty wide open to all the things you listed.

17 MR. CLARK: If you get charged with driving
18 after your license is revoked is that mandatory,
19 mandatory jail offense?

20 MS. FOSTER: It's been modified. That's the
21 biggest precipitation offense to most of jail.
22 Dollars are finally driving policy in the right
23 direction, in my opinion. It is not a first offense.
24 The district attorneys have a lot of discretion.

25 MR. CLARK: I want to talk about the eligibility

1 criteria. I read the policy procedure manual. I
2 guess it's current to May 2006?

3 MS. FOSTER: We are in the process of changing
4 that. To reflect things we have learned in the last
5 two years.

6 MR. CLARK: But in terms of eligibility, it has
7 a person's eligibility is determined by the district
8 attorney and the judge. Does that mean you have the
9 ability to over right to the district attorney who
10 says no, I don't think this person is eligible?

11 MS. FOSTER: I think the case law says the
12 district attorney -- I think there is a case law that
13 says the district attorney has final say, but the
14 district attorney has never gotten involved in that.
15 It's part of how collaborative he was.

16 We haven't had an issue in the two years we have
17 been in business. It's not problematic the district
18 attorney in it because they provide the information.
19 As judge I don't run record checks. We have to rely
20 on the district attorney to determine if there is a
21 prior felony conviction. They have to give us that
22 information. They are also the ones who make the
23 determination about the number of convictions.
24 That's proved up at the hearing and the other
25 relevance is the prior felony.

1 MR. CLARK: So, where it says you can review
2 initial determination of noneligibles, what does that
3 mean you can do?

4 MS. FOSTER: When we initially started we just
5 wanted people to come. We took everybody that signed
6 up. We took everybody, anybody. Never any
7 objection. We did alert that criteria to the defense
8 bar. There are defense attorneys who will talk about
9 that in the sentencing or pretrial appearance. So is
10 somebody eligible? The State will say yes.

11 When you get someone like the gentleman who has
12 an arson, there are some crimes of forgery, it is a
13 violent felony, no. But we were obviously very
14 concerned about our funding sources. We don't want
15 to do anything to jeopardize that. That's out there.

16 Secondly, our district attorney has not taken a
17 hard line so to speak on the violence issue. We as a
18 team are concerned. Our treatment staff are too.

19 We don't pay a huge salary for this. They are
20 doing home visits. We don't want to jeopardize the
21 safety. We don't want anybody -- we have those kinds
22 of concerns. The district attorney has never
23 factored in that. The defense attorneys do because
24 some of them understand that's the way to justify
25 their fees if you will be an advocate for the client.

1 MR. CLARK: What about a victim impact panel?

2 MS. FOSTER: It exists in a lot of counties in
3 the state. I won't call it scared straight. It was
4 started by a colleague of mine in our county. A
5 group of victims that volunteer to speak. They go to
6 that in the State. Whether they are in the program
7 or not it's part of them getting their license back.
8 No affect on the sentencing. It is a one-time
9 evening. It's just not really -- The impact of it on
10 a participant may be minimal. We are finding that
11 coupled with our treatment program, it has great
12 value we find in the program. What you and I do, the
13 case I talked about, the case that's been on the
14 front pages, a lot of alcoholics don't watch the
15 news, don't read newspapers.

16 We had a participant, he was in tears at one of
17 our sessions because he had actually read the papers
18 "Roger. " He didn't know anything about it.

19 We had a high school student killed homecoming
20 night. It happened in Milwaukee County. He was in
21 tears. He never realized that could happen.
22 Consequences of the driving. That was the genesis of
23 the program without the treatment component. For some
24 people it works well; some people would sit there
25 reading the newspaper.

1 MR. CLARK: In phase three you talk about the
2 participant has to make arraignments to satisfy
3 financial obligations. How is that handled for
4 someone who is indigent?

5 MS. FOSTER: Most of our participant aren't. But
6 we have adjusted that. That's the beauty of the
7 program, of our program. It is individually
8 identified. We have one woman that graduated, who
9 did not complete her fine payments, most of them had
10 been.

11 A lot of that is there because we want to fund
12 this after the grant. That's something you provide
13 to your county board. We don't have to pay \$23 to
14 our collection agency to get the fine. This is part
15 of our accepts accountability-responsibility. We
16 work with them to get a job. They keep their job.
17 They get promotions in their jobs and programs. We
18 are a lot of times soft on that criteria.

19 That particular woman was raising her grandson
20 as her own son. We know because she was in the
21 program. That child didn't have to go into foster
22 care, things like that. She was providing a valuable
23 service. We really individualized it, partly to keep
24 the funding coming. Part of it is to pay for one of
25 the services.

1 MR. CLARK: You have something in your program I
2 don't think we have seen in a lot of other places we
3 have been around, in the hearings we have done.

4 It's kind of interesting to me. Sam, you have a
5 grievance procedure for sanctions. Can you tell me
6 how that works? What your role in it or the private
7 bar is in it when a participant can start this
8 grievance process.

9 MR. BENEDICT: We have never had it happen. We
10 have never had it happen.

11 MR. CLARK: Why? Procedure is someone is in the
12 planning, wanted to put that safeguard. Yes, it
13 happened because the participant doesn't know about
14 it?

15 MR. BENEDICT: My opinion is because the
16 participants are invested enough in the program and
17 the disclosure is so transparent that, you know, I
18 think most of them walk away. I mean, a lot of times
19 the people that are discharged, discharging, we are
20 convincing to voluntarily self-terminate.

21 MR. CLARK: What is it intended -- you and the
22 Judge were on the planning committee. You went, if I
23 read it right, to other locations, got the training,
24 so on. You have something in here, this grievance
25 process which could be considered due process that

1 we have not seen in a lot of other courts. What was
2 the intent in putting this in here? What was it
3 designed to do from the defense perspective?

4 MR. BENEDICT: From the defense perspective it
5 was not intended to be a substitute for due process
6 hearing where judicial determination would be made
7 and counsel could or would be participating. I think
8 it was probably to -- it went to deal with complaints
9 against staff members or case managers where the
10 decisions are being made by case managers; that they
11 might want to grieve. Is that accurate, Judge?

12 MS. FOSTER: 100 percent accurate. It copied
13 Maricopa. Our faculty advised us it was from
14 Maricopa County.

15 MR. CLARK: Not if someone relapses, gets
16 arrested? I am not getting along with treatment
17 provider. I don't like him. I am being treated
18 unfairly. That's the concept that's there for,
19 something like that?

20 MS. FOSTER: That wouldn't apply. We don't do
21 treatment. They have private treatment providers. We
22 don't have embarrassment of riches. In many respects
23 we don't have a long waiting list to provide
24 services.

25 This would be our case managers, case

1 supervisors, those are the only two employed as part
2 of the grant. They monitor what happens. They told
3 us they were having trouble with someone in
4 treatment, we would say go to someone else. We don't
5 dictate who the treatment provider is, the insurance,
6 or geography.

7 MS. KELLEY: Judge, did I understand you
8 correctly, you said you yourself make home visits?

9 MS. FOSTER: No. Our staff.

10 I don't do because of my rules of ethics apply
11 just as they would in any other case, even though
12 post- disposition. If they are out of the program,
13 they don't go back and see another judge. They don't
14 need to see anybody because the sentence has been
15 imposed. My simple order is to lift the stay of the
16 jail sentence.

17 MS. KELLEY: I misunderstood you.

18 MR. JONES: The only thing I would say, the one
19 thing that stuck in my mind, basically talking about
20 how we have public defenders in there, even though
21 most of people aren't -- don't meet your eligibility
22 requirements.

23 MS. FOSTER: Never public defender clients.

24 MS. BERNHARD: So that's an unusual thing? You
25 have done that because nobody else has the public

1 voice that you have? Nobody else sort of represents
2 the interests of the public defense bar?

3 Thinking about taking on that role, being a
4 voice of public defense, have you done anything else
5 with that? Are you talking to the private bar about
6 what you are doing in this court? Are you doing
7 trainings or writing newsletters? Public Defense as
8 the voice? Are you doing other things with that
9 voice that you have captured, you know, more than
10 others know about this?

11 MS. FOSTER: We are an available resource to
12 private bar. We have a good rapport. We have a
13 blended system where we have private bar lawyers,
14 where we appoint on 40 percent of our cases in this
15 category.

16 We have a pretty good relationship. Are there
17 things we can do better that we can try to do? We
18 want to do collaborative counsel newsletter, sort of
19 supervising groups that report on treatment court.
20 That's definitely something we just talked about last
21 month.

22 I think there are other things that we can do
23 but we have been trying to encourage -- There are two
24 things we have observed trying to encourage the
25 private bar lawyers to refer their clients. In other

1 words, encourage them to do the program. It has been
2 surprisingly tough. Because the private bar tends to
3 approach the case of, look, let's mitigate as much as
4 we can. If your term is low enough why do treatment
5 court. That's been a problem.

6 But the private bar representatives have been
7 well publicized. They are invited any time we have a
8 review session. We have an oversight. They are
9 invited. We have had private bar come to sanctions,
10 adjudicate. We invite them after a hearing itself
11 when the decision, let's say the judge decides there
12 has been a violation, we say come back. You can
13 participate in our discussion about appropriate
14 sanctions. They say look we should give them
15 community service. They can advocate. We will
16 listen. We will do it. There is a role for private
17 bar, just none of them care to take it very often.

18 MR. CLARK: Maybe a newsletter will be part of
19 it. One way to kind of broadcast the reasons why you
20 think this is a good idea so they do take advantage
21 of it, if that's the most appropriate thing to be
22 doing.

23 MR. BENEDICT: We have to do more.

24 MR. CLARK: Liz, you raise the issue evidently
25 members of the private bar have not figured out how

1 to bill for that. We had a gentleman this morning in
2 private practice from Milwaukee. If I pronounce his
3 name, Craig Mastantuano?

4 MR. BENEDICT: We used to work together.

5 MR. CLARK: He has said he made this a very
6 profitable field for himself because he bills by the
7 hour.

8 MR. SCHECHTER: When you reach out to the
9 private bar, how do you do that? Do you call the Bar
10 Association or a group of private bar guys you know?

11 MS. FOSTER: Before we started I sent out
12 letters to all the criminal defense attorneys. They
13 did come to the meetings. They asked all kinds of
14 questions, a whole lot more. Part of me said maybe we
15 did a good job explaining up front not punishing
16 people in the program more than we do others. This
17 was a big concern; that I wouldn't do that
18 subliminally or whatever. I think that's part of it.
19 But I talked to them. I said everything that has
20 been said already. You are welcome to come.

21 Sometimes we beg them to come just to a session,
22 probation. Something tells me part of it is because
23 nothing has gone on bad that has gotten back to them.
24 Part of it is apathy, billing other clients.

25 They can do what Craig is doing because clients

1 do come in routinely twice a week, once a month. As
2 Jean stated they have shown up. We encourage our
3 participants to go back to their attorneys. If they
4 want to, if they are facing a sanction. They get an
5 adjournment, if they are contesting the allegation. I
6 would rather have the attorney there. It makes
7 everybody else assume more traditional roles when you
8 have that due process hearing.

9 MS. YOUNG: So you currently are funded by a
10 grant?

11 MS. FOSTER: Correct.

12 MR. CLARK: I know that you just had a study
13 come out. I didn't have time to review that. But
14 how much longer does that grant go, and once that
15 funding, if you know, runs out, is the county or the
16 state going to be able to pick it up? Are you able
17 to generate the numbers of we saved the county
18 X-amount of dollars or DOT or the county?

19 MS. FOSTER: We are in the process of doing
20 this. Off the record, I believe the county will fund
21 it. Our county board chair was involved in the
22 preliminary matters. He went to the training with
23 us. Our current county board chair. Other county
24 executives change. But our county executive comes to
25 the graduation. We spend a lot of energy to

1 incorporate county board members to do various
2 committee work. They have served, attended
3 graduation.

4 We have another graduation coming up in two
5 weeks; that I believe we have new members. A
6 constant turnover. We intend to have a group of
7 graduates speak to the counsel board. We have some
8 enlightened counsel boards. They get it. We can
9 talk dollars and cents to them as well.

10 MR. CLARK: It seems like it.

11 MS. FOSTER: I am very confident.

12 MR. CLARK: It seems these courts are dollar
13 driven?

14 MS. FOSTER: Of course. I could be wrong.
15 Something catastrophic could happen, testimony that
16 would change right now they believe they are.

17 MR. BENEDICT: It is in the preliminary budget,
18 yes.

19 MS. FOSTER: We have a benefactor based group
20 called Sophia. They provide our rewards, movie
21 passes, restaurant passes. And they have been very
22 beneficial. They come to a lot of our sessions.
23 They have been very active in our community. They
24 have been in the county board. They have really been
25 a public voice because they are just citizens. They

1 have no political affiliation whatsoever. I think
2 that has given us that kind of sounding board,
3 whatever. They worked in other areas. Just this last
4 budget, yes. Unheard of in our counsel. I think
5 they were able to get a different kind of program, a
6 therapeutic justice program, only \$30,000. But the
7 principal, they got it through without anybody
8 generating a committee because it was the right thing
9 to do. It had a small ripple in the courthouse, our
10 legal, political. The principal was encouraging
11 because they are equally not more behind this
12 program.

13 I expect we will have their full support next
14 spring.

15 MR. BENEDICT: The one thing our county has been
16 able to measure, because we are post-sentencing, they
17 have measured the number of days in jail not been
18 served because sentences been imposed. But they are
19 measuring. As of last month 7,278 jail days didn't
20 have to be served, imposed but didn't have to be
21 served. That's one of the measures.

22 MR. SCHECHTER: How does that translates into
23 money?

24 MR. BENEDICT: How do you measure what value of
25 a jail day is for a person because of operating

1 overhead costs? It is estimated between 35 to 65 a
2 day.

3 MS. FOSTER: 65 is the number they throw around.
4 Then we factor in like nonfoster care, looking at
5 those things.

6 MR. CLARK: Ask Jean. How do you say success in
7 the program? They completed the program in twelve
8 months. What's the percentage; how many people have
9 done that?

10 MS. LATOUR: The percentage, I got to tell you,
11 let me tell you the majority graduate in our program.

12 MR. CLARK: The majority?

13 MS. FOSTER: We have had 101 participants. We
14 have had so far graduations, 55 as of next Thursday.
15 48 graduations. Going on for two years, 353.

16 MR. CLARK: In the year after folks graduate,
17 what's the percentage that reoffend?

18 MS. FOSTER: That's where our guy comes in.

19 MR. BENEDICT: Nobody with rearrest for drunk
20 driving, two rearrested while in the program. They
21 were ultimately discharged.

22 MR. CLARK: None for what brought them there for
23 drunk driving?

24 MS. LATOUR: I can tell you the measure of
25 success when I see these counsel boards, who we

1 invited to the graduation. These are men for all I
2 know they are not educated in any area of addiction
3 studies. Every graduate gets a chance to talk to
4 these graduates, who, one guy really not very
5 educated, doesn't speak, doesn't use great
6 vocabulary, he had people in tears because, you know,
7 he just spoke from the heart. He said this program
8 changed my life. He said in simple terms,
9 straightforward, such a huge difference. That's the
10 measure of success. We have a judge coming in there
11 practically crying now.

12 MS. FOSTER: One of my favorites.

13 MR. CLARK: When you see the changes occur. We
14 can bring in the general public. They see it. This
15 is really changing what he is happening in our
16 community. It's making a difference; that we will be
17 a safe community if we want to put it a safer
18 community. It operates here in front of us.

19 Greater success, it cannot be measured by
20 numbers sitting there, what a transformation. The
21 woman who was only 20-years old, who failed time and
22 again, slipped her bracelet off, lied at a sanction
23 hearing, failure after failure. Here comes hope. We
24 stuck with her. We didn't kick her out. She was
25 begging to be kicked out on a subconscious level.

1 She graduated. She got off probation successfully.

2 For now she is sober.

3 I do know, because I saw her agent, she called
4 her agent. This is a total change in personality, at
5 least for now she is good and sober. There is hope
6 for the future. That's why I am a true believer.
7 That's why my role completely changed.

8 I am a full-time lawyer. I am in juvenile,
9 mental, kind of pro bono. This is not my full-time
10 job. I go there two to three hours a week. This is
11 what I do. We talk to the people. Because I have
12 been around fifteen years because of my role as
13 defense attorney I know a little more about addiction
14 than the general district attorney or the judge. I
15 have a lot to listen to, learn from these people, so
16 I have a lot to give back. I see life on a real
17 bias. I have lived life.

18 Everyone knows an alcoholics or drug addict,
19 just a matter how much you like them. It is how you
20 look at addiction, whether they got recovery, whether
21 you believe it can happen. That's how I am measuring
22 the success. Numbers prosecutors hear, someone
23 speaks, maybe you should have a graduate come here.
24 It would be very powerful.

25 MS. YOUNG: I don't know, three we have had.

1 This is the one location where the county we are in,
2 we didn't have it. I didn't realize that you were
3 close enough. But everyone I was talking to, they
4 were all across the city, they drove from their
5 house. I didn't think we could get a graduate from
6 that distance.

7 MS. FOSTER: One footnote. What Jean is talking
8 about, what we see in the program is true
9 rehabilitation. Most defense attorneys never see that
10 because the clients that do well, you don't see them
11 again because they are doing well.

12 The same thing for judges. I think when Judge
13 Ashley, he is involved in our State Committee
14 measuring, looking at outcomes, you don't get to see
15 those. Anybody in the system for twenty years.
16 Sam, you have been in for thirty? He started about
17 the time I started in the district attorney. We have
18 been in the system a long time. Still close in terms
19 of getting along fine. It is a different perspective.

20 One of my goals, I am getting over the fact only
21 call her agent. But probation and parole agents that
22 have come to the treatment court, I really think that
23 it's been beneficial for them because they see the
24 same thing. It's tough to the client. It's hard to
25 keep your story straight if you are lying to two

1 different people, provider and the agent. Once they
2 realize they are working together, it has changed the
3 agent's perspective.

4 We have seen the metamorphosis. I am not really
5 happy with probation and parole in this State. I
6 think they could learn in treatment modality. Just a
7 thought.

8 A lot of collateral benefit to this system not
9 just to the participant.

10 MR. JONES: Not guilty. Thank you all very much.
11 We appreciate this.

12 (Task Force ended at 5:30 p.m.)
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CERTIFICATION

I, Darlene M. Shue, Certified Court Reporter,
RPR No. 30228 in and for the State of Illinois
County of Cook, certify that the foregoing pages
1 through 273 constitute a true and correct copy of
the original hearing of National Association of
Criminal Defense Lawyers, taken on August 1,
2008.

I declare under penalty of perjury under the
laws of the State of Illinois that the foregoing is
true and correct.

Dated this 20th day of August 2008

Darlene M. Shue, C.S.R. 08402634 and R.P.R. No. 30228

Judge Tom Bower

Transcript Correction

Milwaukee

Friday August 1, 2008

“...the report refers to me as Bowers my last name is Bower. Please remove the s.”

Sarah O'Brien

**Transcript Edits
Milwaukee Hearing
Friday August 1, 2008**

P. 186, lines 7-9 Change to: Then at the end of the drug court, charges are dismissed or reduced.
[delete judges are there..they may be adjudicated]

p. 187 line 24 Ours did. [Delete didn't]

p. 188 line 1 We are no longer getting federal finds

line 8 Delete "or dangerous."

line 14 should read "for people who are not addicted but caught with"

line 23 should read "to be drug offense or drug motivated offense."

p. 189 line 1 "We have tried to include people with mental illness."

lines 20-21 should read: "We wrote a grant. We don't know if we will get the money to work on a culturally competent basis with these clients..."

Michael J. Steuer

**Transcript Edits
Milwaukee Hearing
Friday August 1, 2008**

One non-substantive correction would be that the comment on page 239, line 5 attributed to Mr. Farmer was actually made by myself (Judge Stark presides in my county).

A substantive inaccuracy appears on page 243, lines 19-20. What I said was, "We do have a lot of support from the DA himself to do this." The transcript indicates that I said "We don't...".

