

NACDL Problem-Solving Courts Task Force

Final Schedule

Wednesday April 30, 2008

New York County Lawyers' Association

14 Vesey Street

New York, New York

Day 1

9:00 a.m.

HUDSON REPORTING & VIDEO, INC.
124 West 30th Street, 2nd Fl.
New York, New York 10001
Tel: 212-273-9911 Fax: 212-273-9915

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PANEL:

- Rick Jones - New York, New York
- Adele Bernhard - New York, New York
- Vicki Young - San Francisco, California
- Gail Shifman - San Francisco, California
- Marvin Schechter - New York, New York
- Elizabeth Kelley - Cleveland, Ohio

SPEAKERS:

ACADEMICS PANEL 1

- Jeffrey Fagan, Professor of Law and Public Health, Columbia Law School
- Tony Thompson, Professor, New York University Law School

NEW YORK CITY PUBLIC DEFENDERS PANEL

- Leonard Noisette, Executive Director, Neighborhood Defender Service of Harlem
- Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services
- Robin Steinberg, Director, Bronx Defenders

ACADEMICS PANEL 2

- Victoria Brown-Douglas, Professor, St. John's University Law School
- Adam Mansky, Adjunct Professor, Fordham University Law School

PRIVATE ATTORNEYS PANEL

- Ed Friedman, Private Defense Attorney

PROSECUTORS PANEL

- Gerianne Abriano, Bureau Chief, Red Hook, Kings County District Attorney's Office
- Nina Carlow, Chief of the Intake Bureau, Bronx District Attorney's Office
- Nestor Ferreiro, Chief of the Narcotics Bureau, Bronx District Attorney's Office

Judge Jo Ann Ferdinand, Brooklyn Drug Court

Judge Alex Calabrese, Red Hook Community Justice Center

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. JONES: Good morning. And welcome to the national association of Criminal Defense Lawyers Problem-Solving Courts Task Force New York hearings. We are pleased to be here in New York. We have a full two days of very interesting and I believe divergent speakers and we are excited about continuing the listening tour that we have been on across the country and understanding the interworkings of problem-solving courts around the country. My name is Rick Jones, I am the deputy director of chief litigation at the Neighborhood Defender Service of Harlem and also -- Columbia law school but, most importantly, I am one of the co chairs of this task force. Just at the outset, I will just let you know just how we operate. We will give you somewhere in the neighborhood of about five or ten minutes to give us an opening statement, but we want to reserve as much time we can to ask you questions because we are very interested in getting your opinion and your thoughts about these courts. Before we actually dive into the question s, what I'd like to do is to just go down the list and have each

1
2 of my colleagues introduce themselves and tell
3 you a brief bit about them and then we will
4 start.

5 MS. BERNHARD: Good morning. My name
6 is Adele Bernhard and I teach at Pace law school
7 where I direct the criminal justice clinic so my
8 students are handling criminal justice cases in
9 the Bronx and I guess I have been involved in
10 indigent criminal defense issues for most of my
11 career, which now is getting to be quite long.
12 So it's a pleasure to talk with you today.

13 MS. YOUNG: My name is Vicki Young.
14 I'm an attorney in private practice in the San
15 Francisco bay area. I do primarily federal and
16 criminal work and I've been doing indigent
17 criminal defense for quite a long time as well.

18 MS. SHIFMAN: Good morning. I'm Gail
19 Shifman. I'm from San Francisco. I'm in
20 private practice. I've done criminal defense
21 work for the last 25 years and I do a mix of
22 federal and state work but mostly federal.

23 MR. SCHECHTER: Marvin Schechter, New
24 York private practitioner, co chair of this
25 committee, past co chair of the defense

1

2 committee, teacher and lecturer --

3

4 MS. KELLEY: Good morning. I'm
5 Elizabeth Kelley and I'm from Cleveland, Ohio
6 and I practice in -- and the majority of my
7 practice is devoted to people who either have
8 mental retardation or mental illness.

9

10 MR. JONES: Just for the record, our
11 first speaker will be Judge Judy Harris Kluger
12 who is the deputy chief administrative judge for
13 court operations and planning and I will just
14 note that I have been around Judge Kluger for a
15 number of years now and this is the first time
16 that we've had business in this setting and I
17 think it's quite nice.

18

19 MS. KLUGER: You get to question --

20

21 MR. JONES: I will now turn it over
22 to you.

23

24 MS. KLUGER: Well, thank you. It's
25 really a pleasure to be here today to talk to
26 you about problem-solving courts of New York
27 State, a subject very near to my professional
28 heart. But I also want to emphasize that I'm
29 here not to speak but to listen and to answer
30 your questions. I'm going to speak about our

1
2 work with the defense bar, but I want to give
3 you a little background on New York State and
4 our problem-solving court initiative. The idea
5 -- problem-solving courts is relatively simple,
6 to tried and improve both case processing and
7 case outcomes and I know you are going to hear
8 later from Mike Rempell, the research director
9 for the Center for Court Innovation, so I won't
10 repeat all the positive results that
11 problem-solving courts have achieved. But I
12 will say that our ability to achieve
13 demonstrative results, deterring crime, reducing
14 substance abuse, improving the functioning of
15 mentally ill defendants, that is help New York
16 State grow from a few isolated experiments from
17 the 1990's to a statewide network of 250 courts
18 including one problem solving court at least in
19 each of New York's 62 counties. My own
20 involvement with problem solving judges dates
21 back to the nineties when I was serving as a
22 judge in the New York City criminal court. And
23 back in those days, I was accustomed to hearing
24 case after case, sometimes into the night and
25 early morning and I'm sure you have seen judges

1
2 like I was in those days so intent on moving
3 cases quickly that we barely have ever looked up
4 at the case file to the people appearing before
5 us. And in the 1990's most judges in the urban
6 parts of the country handled cases as much as I
7 did, quickly, efficiently, we thought
8 effectively but the open secret was that we saw
9 the same individuals returning to court over and
10 over again sometimes as soon as the next day.
11 And by the early 1990's, we decided to see if we
12 could be a little more constructive, if it was
13 possible to use our time and our resources to
14 break the cycle to stop the downward spiral. So
15 under the leadership of our chief judge, Judith
16 Kaye, we decided to experiment with something
17 fairly -- we were going to focus on minor cases
18 in our system, misdemeanor offenses like
19 prostitution, drug possession and vandalism.
20 And we decided to look up from the case file at
21 the person standing before us, is he a drug
22 addict, is she mentally ill, are there
23 underlying problems that contributed to the
24 criminal behavior and are those problems that
25 can be addressed. And in asking these

1
2 questions, we took a page directly from the
3 defense bar, I can't tell you how many times as
4 I sat as a criminal court judge lawyers would
5 say to me, my client needs treatment, not jail.
6 Their argument was straightforward, if problems
7 like drug addiction are causing individuals to
8 commit crimes, let's tried and address the
9 problem rather than simply milling people
10 through the system. So we invited the defense
11 bar, the DA's, the police, city organizations
12 and local citizens to talk about what the
13 solutions might look like and the result was the
14 midtown community court. The midtown project
15 was the nation's first community court rather
16 than jail, the focus at midtown was combined
17 punishment and help. For low-level offenders
18 charged with prostitution, petty larceny, drug
19 possession, the midtown offered restitution,
20 on-site services, drug counseling and treatment.
21 And I was the first judge to sit at that court
22 and I was skeptical when I started. But as I
23 settled into the work, I began to see the
24 benefits, instead of jail or a fine, which at
25 that time turned into a warrant for those who

1
2 couldn't pay, I was able to offer tangible help.
3 We started support groups for prostitutes to
4 help them change their lives, we offered drug
5 treatment to addicts and we built partnerships
6 with homeless organizations to try and gain
7 permanent housing for defendants. And these
8 changes had a big impact. Independent research
9 showed that locally crime was reduced. And this
10 research has been documented in similar cases in
11 community courts that have followed midtown like
12 the Red Hook Justice Center and the Harlem
13 Community Justice Center. I'm particularly
14 hardened by recent research that has shown a
15 defendant's perception of the community courts
16 indicate that they perceive them as fair. In
17 Red Hook, nearly nine out of ten defendants say
18 their case was handled fairly, a finding that
19 was consistent across race lines, socioeconomic
20 status and case disposition. As problem-solving
21 courts have evolved, so have I. I moved from a
22 front-line practitioner to the statewide
23 administrator. I now oversee New York's 250
24 problem-solving courts. And I've had the
25 opportunity to watch as problem solving justice

1
2 has moved -- from the margins of the criminal
3 justice system into the mainstream. And I am
4 particularly proud of our drug courts. Each
5 year thousands of individuals enter our drug
6 courts and the approach is common sense, as soon
7 as after the arrest is possible, we offer
8 addicted-offender treatment as alternative to
9 incarceration. And research shows that that's
10 when addicts are most willing to change. And
11 study after study has shown that New York's drug
12 courts keep offenders in treatment longer and
13 have higher sobriety rates than purely voluntary
14 programs. Drug courts also cut recidivism. A
15 study found that recidivism was reduced by an
16 average of 32 percent among participants, and
17 among program graduates, it was an incredible
18 71 percent. To date, over 18,000 offenders have
19 graduated from New York State's drug treatment
20 courts. My office has also established mental
21 health courts, which give mentally ill offenders
22 the support they need to stay out of jail. We
23 know from hard-earned experience that
24 incarceration only makes mental illness worse.
25 By recognizing this, we are providing hundreds

1
2 of offenders with community-based treatment,
3 helping them stabilize their illness and get
4 their lives back on track. We've also
5 established domestic violence and integrated
6 domestic violence courts which offer a more
7 coordinated approach to this difficult issue.
8 Our integrated courts place all cases involving
9 the civil, family and criminal before one judge
10 who has a complete picture of the family
11 situation. This has helped reduced litigants'
12 trips to court, made it easier for defendants
13 and respondents to file for visitation and
14 custody and eliminated the problem of
15 inconsistent orders of protection issued by
16 different judges. In a little more than a
17 decade, problem-solving courts have become
18 embedded in the New York court system. This is
19 in thanks in no small part to support
20 problem-solving courts -- from all corners of
21 the justice system. Police, prosecutors,
22 probation, corrections and, yes, defense
23 attorneys have helped make problem-solving
24 courts in New York a success. And the feedback
25 has help shape feedback from all courts that has

1
2 help shape our problem-solving courts. And I
3 want to just take a moment to discuss some of
4 the concerns that the defense bar has raised and
5 how we have responded. For example: Defense
6 attorneys involved in the planning of mental
7 health courts have worried that participants
8 might fail and might receive harsher sentences
9 than defendants in conventional courts. In
10 response, we address this issue squarely in our
11 planning process, defense attorneys, prosecutors
12 and the court sit down together to dialogue to
13 ensure that our mental health courts don't
14 increase penalties for those who attempt to get
15 treatment. Confidentiality is also another
16 significant concern. When participants provide
17 information during psychiatric or medical
18 assessments, their attorneys understandingly
19 want to be sure the information is used
20 appropriately. Defense attorneys' vigilance on
21 this issue has helped our problem so solving
22 courts establish strict protocols to ensure that
23 sensitive information is used to determine
24 eligibility or to customize treatment and never
25 used in a negative way against the client. To

1
2 further ensure that these protocols are
3 followed, we have created special trainings on
4 federal confidentiality laws for judges and
5 attorneys in our problem-solving courts. In
6 general, we make the numerous trainings that we
7 sponsor throughout the year for those who work
8 in our courts include breakout sessions for
9 defense attorneys allowing those who might be
10 new to the courts to discuss with veteran
11 colleagues the issues that concern them and
12 we've incorporated into our training of all
13 judges both in and outside the problem-solving
14 courts lessons on mental health and drug
15 addiction. The idea here is to ensure that
16 judges understand that these are medical issues
17 that are amenable to the appropriate treatment.
18 We have also at the request of the defense
19 lawyers expanded the role of defenders in our
20 integrated courts. The court system now
21 provides cross training and cross certification
22 for assigned counsel allowing defenders to
23 represent their clients in the integrated
24 domestic violence courts in both the criminal
25 and family matters. This has helped

1
2 strengthened the attorneys' ability to represent
3 their clients effectively. I know that there
4 are people who are still skeptical about
5 problem-solving courts including some members of
6 the defense bar and there are many more who
7 simply haven't been exposed to problem-solving
8 justice. I know many of you have important
9 questions and concerns about how lawyers can
10 uphold their responsibility to zealously
11 represent their clients and whether some
12 problem-solving courts require your clients to
13 opt in too early, before you can fully
14 investigate the charges. We are alert to these
15 concerns. We are committed to creating
16 problem-solving courts that are inclusive, that
17 not only improve outcomes for defendants but
18 also preserve the fundamental protections that
19 make our justice system the envy of countries
20 around the world. But I think it's important to
21 emphasize that it's not just up to us, all of
22 the stakeholders who participate have a
23 responsibility to the process and courts don't
24 work unless everyone is doing their job and this
25 includes defense attorneys. New York's

1
2 commitment to problem-solving justice is not an
3 invitation to the defense bar to stop being
4 advocates, far from it. In fact, quality
5 lawyering is critical. Problem-solving courts
6 shouldn't be the assignment of the least
7 experienced lawyers, it should be an assignment
8 for the best. Defense attorneys should advocate
9 for their clients as they would in any other
10 court and even after the decision is made to,
11 let's say, enter a drug court, there are serious
12 issues to address and negotiate, including the
13 appropriate type of treatment, length of
14 treatment, sanctions for relapse, ultimate
15 sentence if the defendant fails and the
16 definitions of failure and success. I think the
17 best way to meet the challenges of advocacy in
18 problem-solving courts is by providing intensive
19 training and education to lawyers who serve in
20 these courts and by ensuring that all the
21 stakeholders are included in the planning
22 process to address concerns such as ex parte
23 communications, case eligibility,
24 confidentiality, sanctions and other issues.
25 That is what we strive to do in New York State.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

After more than 15 years of experience with these courts, I believe that problem-solving justice is not a radical departure from the common law -- on which our legal system was founded. Quite the contrary, problem-solving justice involving some of the highest ideals of this tradition. If courts can make a difference, the court should be respected and valued. Institutions in our society and the courts can protect defendants' rights while helping them change their lives. I look forward to continuing to work with the defense bar and others and to hear your concerns. Thank you so much.

MR. JONES: Thank you. I just have a very few questions. Sort of right off the bat in listening to you, one of the things that we have as a committee struggle with, we started out as the drug court task force and then we were the specialty court task force, now we're the problem solving court task force and in reading the literature, a lot of which I -- didn't know about New York, New York really is sort of a forefront of pushing the envelope with

1
2 these courts. I know that under your purview
3 there are, there's the drug courts, there are
4 the integrated courts, the domestic violence
5 courts, there are mental health courts, there
6 are sex offense courts, there's the youthful
7 offender domestic violence court, the community
8 courts. I'd like to sort of off the top, what
9 is your definition or understanding of what a
10 problem-solving court is.

11 MS. KLUGER: Well, I think they
12 almost fall into two different categories, you
13 have the drug courts and the mental health
14 courts, which are more a rehabilitative model
15 where the -- and the courts work in a different
16 way. If you observe them, it's a very different
17 approach. The integrated courts, the domestic
18 violence courts, sex offense courts are
19 specialized in having everyone in the court --
20 well, I should differentiate with the integrated
21 court, the real basis was in New York State a
22 victim of domestic violence and the family
23 involved in the case would have to navigate
24 three different courts for three different
25 judges to handle the different cases that they

1

2 had. A divorce, for those of you not from New
3 York, a divorce is handled in Supreme Court,
4 custody and visitation in the family court,
5 criminal domestic violence in our criminal
6 court. So that was just a process that didn't
7 make any sense so we've integrated -- the cases
8 remained separate and distinct but they are
9 handled by one judge. So those -- and that
10 court, the domestic violence courts and the sex
11 offender courts are more of accountability
12 courts making sure the defendant is held
13 accountable for his or her actions. The judges
14 and staff in those courts have special training
15 in order to handle these cases, but they are not
16 rehabilitative in the sense that mental health
17 and drug courts are.

18 MR. JONES: So the problem that
19 you're solving in the integrated domestic
20 violence courts and the non-mental health, I
21 guess, and drug courts are really, I guess your
22 word was "accountability," it's more about
23 accountability than it is sort of rooting out a
24 particular problem.

25 MS. KLUGER: For example, I always

1

2 make the distinction, you don't hear a lot of
3 clapping in domestic violence and integrated
4 domestic violence courts as opposed to drug
5 courts. The ultimate result in some drug
6 courts, I mean, it's different depending where
7 you are. Even in New York State in some drug
8 courts, the cases are dismissed after the
9 defendant completes treatment. In most courts,
10 there is a lesser sanction. That's not
11 necessarily the case of the other.

12 MR. JONES: Let me just pick up the
13 integrated domestic violence courts, because I
14 know that we had one open in the last year, 18
15 months or so.

16 MS. KLUGER: In Manhattan.

17 MR. JONES: In Manhattan, yeah. And
18 as you know, the premise of my office, the
19 Neighborhood Defender Service always many years
20 ago was totally representation. We went where
21 our clients needed us to be and so we would be
22 in family court, we would be in housing court
23 and we would be in criminal court. And I have
24 to say that from my perspective, that was a much
25 better situation for my clients than an IDV

1

2 court because it seems, it seems a difficult
3 almost legal fiction for me to think that one
4 judge, one family works very well for the
5 accused because if the same judge is deciding
6 the criminal case and then has to make decisions
7 about what happens with the children, what
8 happens with the assets in the divorce, but has
9 facts available to them that they might not
10 otherwise have, the judges sitting in the other
11 courts wouldn't necessarily know some of the
12 underlying facts, wouldn't hear what the
13 prosecutor is saying about the criminal matter,
14 it seems to me that has to have a negative
15 influence on the other issues that are going to
16 be determined in the IDV court. How do you --

17 MS. KLUGER: Well, I think that in
18 fact it's born out to be exactly the opposite,
19 that judges who have a full picture of the
20 family can better analyze what in fact has
21 occurred and what we've seen is, you know,
22 things like respondents in family court getting
23 visitation sooner than they might otherwise
24 have, if the family court did not know what the
25 facts in fact were in the criminal case. We

1
2 also cleared up the very dangerous issue of
3 conflicting orders of protection where your
4 client in criminal court would be told he has to
5 stay away from his children and the home and in
6 family court, the judge not knowing what the
7 criminal court judge has done, grants visitation
8 and the client goes to the house, the police are
9 called because there's a stay-away order and
10 what happens. So I think what we've seen and I
11 don't know if you had cases in the integrated
12 court or not, the lawyers on both sides seem to
13 have a sense that this is a better way of
14 handling the cases and the judges, you know,
15 we're a little bit, our view in New York City is
16 a little bit different. When you go around the
17 state, we have what we call multi-hat judges,
18 judges in small counties who are the family
19 court judge, the criminal court judge and the
20 Supreme Court judge and are doing this already,
21 so there's a history to it as well.

22 MR. JONES: The last area I wanted to
23 explore with you is, one of the things that
24 we're curious about, in sort of reading and I
25 I'd say I really didn't know this, is that New

1

2 York really seems to be at the forefront of this
3 -- expanding world of problem-solving courts. I
4 want to talk about, you're the deputy chief
5 administrative judge of court operations and
6 planning. I want to talk about the planning
7 half of your job and the work that you do, and
8 sort of give us an understanding of how it comes
9 to be in a jurisdiction or county or a state
10 that a problem-solving court comes to be.

11 What's the mechanism? Who gets the initial
12 idea? How does it terminate what stakeholders
13 are brought in --

14 MS. KLUGER: Two ways, sometimes
15 there's local interests that they will
16 communicate to me, but since I've been in this
17 position more often than not, I and my staff
18 take a look at the state and see where it makes
19 sense in terms -- by the way, we're all over,
20 we're in very small counties as well as large
21 counties. And one of the first things that we
22 do, and I'm a big believer in this and it's
23 worked, we bring everybody who could possibly be
24 involved, participants, stakeholders, partners,
25 whatever you want to call them, to the table and

1

2 we tell them what our thoughts are, we hear from
3 them. The planning process is usually eight
4 months to a year because we want to first do it
5 right. We want to make sure we include
6 everybody. We hold several trainings for, some
7 is just for court staff, but part of our
8 training includes others, defense bar,
9 prosecutors and we create -- document,
10 everything is, my office has created tool kits
11 for the jurisdictions and how to plan these
12 courts and we go step by step and we hear what
13 everyone has to say and we do adapt to local
14 issues and practices. While we have a template,
15 we do adapt to local issues.

16 MR. JONES: One of the problems that
17 we always run up against these things is that
18 there's never enough time to do, to ask all the
19 questions that we like and we see that our next
20 panel is here and our principal job is to keep
21 us on time.

22 Is there anybody who has a particular
23 question?

24 MS. KELLEY: Thank you. You referred
25 earlier in your remarks to your prior service on

1

2 the bench and the open secret among other judges
3 that you were literally processing defendant
4 after defendant after defendant. Is there a
5 potential with these types of problem-solving
6 courts for another type of problem to occur that
7 is to say because of no longer processing
8 defendants but very much becoming intimately
9 acquainted on a concentrated level with each
10 file before you that judges might become too
11 involved or even burned out. And my second
12 question is, is there a type of succession plan
13 that you recommend to various courts so that
14 those particular courts do not, if you will,
15 become a creature of the presiding judge.

16 MS. KLUGER: I mean, I think that is
17 a real issue and I remember when I sat in the
18 midtown court and then I left, people said it's
19 never going to be the same. Believe me, they
20 have long forgotten about me. There is -- I
21 think when you start it seems that only one
22 judge can do this. Now, I will say that there
23 are some judges who are probably not suited for
24 this type of work, but the majority of judges
25 actually can do it and do it well. I do think

1

2 the burnout does occur and I think there should
3 be -- I mean, in New York it's more than -- when
4 judges tell us that they are, they're ready for
5 a change, that's when we make a change. But I
6 think that if I were starting this again, I
7 might say two to three years and then there
8 should be a change. I think if you're first in
9 the embryonic stage of planning these courts in
10 the jurisdiction, you probably should think
11 about two to three years and then making a
12 change. But I mean the first one, I don't think
13 -- I think judges are trained to be objective.
14 I think because you know about a particular
15 individual does not mean that you still can't
16 kind of separate that from your decision making.

17 MR. JONES: Last question.

18 MS. SHIFMAN: I'm curious from a
19 statewide perspective how the state or what the
20 State of New York is doing about the ethical
21 implications for judges who are now serving in a
22 much different role than as defined by the rules
23 and the ethical implication for defense lawyers
24 who are no longer acting as, you know, really as
25 -- defenders of their client but are not

1

2 participating in some sort of paternalistic role
3 on behalf of their clients.

4

MS. KLUGER: I'm going to answer your
5 second -- I disagree with that premise that
6 lawyers should not still be advocating for their
7 clients. And I'll give you an example, in the
8 drug courts, there may be a whole discussion
9 before the drug courts starts, what's the
10 sanction for having a dirty urine and everybody
11 agrees including the defense attorney, this
12 should be the sanction. So the defendant is,
13 does test positive for drugs, but he contests
14 that, well, the lawyer still has an obligation
15 to vigorously contest that, whether he has
16 agreed to what the sanction would be if it was
17 in fact found to be true. So I mean, I think
18 lawyers are still lawyers in these courts. And
19 there may be ethical issues that have to be
20 addressed and I think the defense bar is doing
21 their part in trying to address that. As far as
22 the judges, I mean, we have an ethics panel of
23 judges who can be asked questions by individual
24 judges about certain issues and then those
25 decisions are published to all the judges in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

courts and there have been many involving
problem-solving courts and we also as part of
our training do an ethics piece with judges in
problem-solving courts.

MR. JONES: If we have additional
questions, will you be receptive to receiving
those in writing?

MS. KLUGER: Sure. Sure.

MR. JONES: Thank you so much.

MR. SCHECHTER: Thank you very much,
Judge.

MR. JONES: Our next panel is Jeff
Fagan from Columbia law school and Tommy
Thompson from NYU law school.

Good morning. In the interest of
full disclosure, I teach at Columbia law school
and Tony Thompson is a really good friend of
mine. I can say all that up front.

MR. JONES: The way that we operate
is, we give you guys five minutes to give us the
benefit of your thoughts and then we have a
number of questions that we'd like to discuss
with you. One of our members generally takes
the lead in the questioning and for you guys, it

1

2 would be Gail Shifman. So whoever wants to
3 start, the floor is yours.

4

MR. FAGAN: I'll try and go fast,
5 which shouldn't be hard. Over a century ago the
6 first problem-solving court, it was a juvenile
7 court in Chicago -- criminal court. It focused
8 on a population of kids whose crime was viewed
9 as transient and -- and fitting with some kind
10 of a disease model of human behavior. Under the
11 guidance of a judge whose moral authority was
12 augmented by -- in the community, kids were --
13 the stigma and the harsh -- now the Court was
14 founded on two principles, diversionary and
15 interventions, both of those -- exist today --

16

THE COURT REPORTER: I'm sorry. Can
17 you please pull the mic a little closer.

18

MR. FAGAN: The motivations for
19 creation of the court were not crime controlled.
20 Well, it could be, but they primarily were not
21 crime controlled but they were -- the court
22 reformers that created the courts sold -- to the
23 public and also to the parent criminal court not
24 with the idea that they can do a better job of
25 stopping crime but that they can protect and

1
2 nurture children -- public safety turns out was
3 ultimately a secondary concern. Juvenile court
4 has this transformational affect -- Chicago's
5 child welfare system, it -- into the court and
6 made them almost partners in the Court.
7 Resources were redistributed in criminal court,
8 in Juvenile Court in terms of child welfare
9 agencies to provide care and services to
10 children who were accused often of very serious
11 crimes and very often including -- the agencies
12 became partners with the courts in fact adjunct
13 to the court, they were fully integrated in the
14 court. Lawyers, if they were present at all --
15 but representation in fact was rare certainly
16 not guaranteed constitutionally but -- the judge
17 basically ran the show. The judge ruled the
18 sovereign as minister, as parent and as healer.
19 Rights were even less than and afterthought.
20 Within 20 years though, this model was so
21 attractive it was thought to be so effective
22 that within 20 years in the state -- country and
23 Federal Government -- so today, we see something
24 quite similar with problem-solving courts, there
25 are 2,100 drug courts, which is a rather rapid

1
2 expansion -- early 1990's or late 1980's, 150
3 mental health courts, a similar number of
4 domestic violence courts, gun courts -- reentry
5 courts, sex offender courts and a host of other
6 specialized courts. Modern problem-solving
7 courts share many of the same ingredients as the
8 early juvenile court -- as jurisprudence to
9 mobilize the authority of the court, to bring
10 about intervention, bring them into the court
11 that will reverse the factors that the court
12 thought caused crime, whether it be mental
13 illness, whether it be -- addiction, whether it
14 be misogamy, whether it be some other kind of
15 marital problem or sexual deviant or whatever.
16 Unlike the juvenile courts though -- the
17 problem-solving courts today are institutionally
18 problem focused, not person focused. They are
19 in business to reduce crime, not to save people.
20 They share diversionary -- philosophies of the
21 early juvenile courts, but they are not animated
22 in the same way -- or family developments or
23 family preservation, whatever. Their motivation
24 is first and last to control and reduce crime
25 and also any celebration of the individual is

1

2 sincere. There's no doubt that that clapping is
3 sincere and there's a lot of tears and so on but
4 it's really an instrumentality, it's not an end,
5 it's melting like -- a century ago.

6 So today, we see problem-solving
7 courts attempting to leverage the cohesive power
8 of the law and of the court to bring about --
9 change. They attempt no fewer than three
10 fundamental transformations, a transformation
11 within the very broad landscape of law and legal
12 -- and also something that both Tony and I have
13 studied community court -- particularly
14 difficult and challenging. The first point of
15 transformation is the individual, the treatment
16 is implemented to change an individual's
17 behavior to resolve and remediate collateral
18 causes of crime. By devolving treatment away
19 from the court and into the authority of
20 providers, they become more accountable for
21 results and efficiency -- for results and
22 efficiency. In a large city, market forces will
23 supply the need for essential services and it --
24 good services. In a small city in a rural area,
25 you're out of luck. Second, the transformation

1
2 of the court and the courts' officers, and we
3 have heard a bit about this, this morning from
4 the judge. And material roles replaced by
5 transactional lawyering and it is transactional.
6 These guys ought to be contract lawyers because
7 they are negotiating contracts. Lawyers here
8 pursue services and material benefits under the
9 optimal contract condition that can contribute
10 hopefully to the individual's transformation.
11 Second is the transformation of judging, judges
12 now get to do judging like they used to do in
13 the old days and they are no longer just simply
14 the evidentiary procedural traffic cops that
15 simply, that judging evolves. Instead they do
16 real intervention in the lives of the
17 individuals. They also do much more, they
18 convene, they churn the market to stimulate
19 services, they create accountability mechanisms,
20 et cetera, et cetera, and at the end of the day,
21 they become co therapists. They also practice
22 legal norms that deliver more responsive -- it's
23 more proportionate when differentiated and
24 responsive. The sanctions are tailored to the
25 individual, which is a nice quaint -- the

1
2 sanctions have greater meaning though and the
3 possibility of social influence over defendants
4 and their families and their social methods,
5 compared to the kind of -- that goes on in the
6 centralized courts. The third is the
7 transformation of the institutional environment.
8 This is nothing short of democracy -- where all
9 the parties, providers, lawyers, judges,
10 administrative departments of the courts working
11 -- negotiate the substance of the procedure of
12 the court. They affect the allocation of the --
13 the definition of problem behaviors, the
14 definition of how those behaviors ought to be
15 responded to, they negotiate -- they negotiate
16 the -- compliance and these are profound
17 transformations and certainly something that
18 nobody learns in law school or at least not in
19 my courtroom. Most importantly is that the
20 authority for these critical-designed features
21 become shared and diffused among these parties
22 -- this is a profound transformation of what
23 courts look like. Finally, the case of
24 community courts, the transformation of the
25 normative environment where citizens engage in

1
2 both the legal institutions in the co production
3 -- goal. By redefining what courts do, how they
4 do it and where they do it, by improving the
5 quality of justice which is a distributive
6 justice argument -- and meaning and interaction
7 of citizens in the courts, which is procedural
8 justice argument. The relationship between --
9 is fundamentally altered and, again,
10 democratized. This presumably diffuses -- their
11 friends, their families, their neighbors, it's
12 visible, it's out on the table for everybody to
13 see as a model and all of these people sharing
14 -- communities engage in the contagious process
15 -- this is the ambition. So rather than
16 maintain -- position of power and control, the
17 community court coexists with other local
18 institutions -- it's a big transformation for a
19 court. So it sounds great. But we simply don't
20 know the extent to which the transformations
21 take place and if they do, whether they're
22 sustainable. And what happens is, these
23 institutions grow and change and professionalize
24 over time. We're now in the second and third
25 generation of this. There's evidence that

1
2 problem-solving courts can change behaviors,
3 there's no evidence certainly across the board
4 -- manifestations. We know a lot about drug
5 courts, we know nothing about sex offender
6 courts, which, you know, there's a lot of
7 controversy -- mental health courts and domestic
8 violence courts, the results in the social
9 science research is very -- but also, if they
10 are going to change, it represents the weakest
11 link problem -- as good as the providers and if
12 the court is good at marshaling up the provider
13 network -- they're in trouble, and I got to
14 witness a little bit of that in Red Hook in
15 community court. So critical questions remained
16 then if this thing doesn't pay off about the
17 tradeoff for rights of treatment. While the
18 restriction -- may well exceed what might
19 otherwise attach in a non-treatment court
20 environment downtown, basically people might
21 expect greater controls in the -- for the
22 promise of therapy -- whereas they could
23 probably get probation downtown and walk.
24 That's a big tradeoff. There's little real
25 experiment and even when the experiments do

1
2 happen -- what the experiments -- because it's
3 just not a lot of depth on who is involved in
4 these experiments. Transformation of the court
5 -- duration of tenure, et cetera, et cetera,
6 there's even -- the transformation of their
7 roles and some confusion over how to execute
8 these transactional lawyering functions, they're
9 simply not trained to do it. There's still
10 cohesion to accept deals as there is downtown
11 accept the deals themselves look and feel
12 different. I'll stop. I just want to raise one
13 thing about the change that the community courts
14 could bring about, we witnessed in Red Hook, for
15 example, which is a marvelous court and -- is a
16 marvelous, unfortunately unduplicated human
17 being in terms of what's done there, but we also
18 run into two problems, one is there is a
19 conflict of interest that came up in the first
20 panel, they will sit in the housing part one
21 day, in the drug part another day, the
22 misdemeanor a third day and if the -- after
23 somebody on trespass, which happens in the city
24 tens of thousands of times every year that he
25 has no choice. So there's an inherent conflict

1
2 of interest in opening up, and saying I really
3 need help with my addiction because it might get
4 you homeless. What the courts can't do is
5 change the behavior of the police. This is a
6 separation problem. The courts and the police
7 -- authority, the Courts -- in the community and
8 believe me, we've talked to the people in Red
9 Hook over and over and over again, as many other
10 communities in New York where half a million
11 people are stopped and frisked every year. They
12 don't like the cops. Whatever the Courts do to
13 make people feel better about the law and build
14 -- it's undermined on a daily basis by something
15 the courts simply can't control. That's a
16 challenge.

17 MR. JONES: Thank you.

18 MR. THOMPSON: I apologize to madam
19 reporter because I always talk very fast. I
20 will do my best to control that. I'd like to
21 thank the NACDL for inviting us particularly the
22 chair to testify today. One of the concerns I
23 have is that when you listen to Jeff, a lot of
24 themes that he highlighted, I am going to repeat
25 probably less eloquently. I think by way -- by

1
2 way of background, prior to coming to New York,
3 I spent a decade as a public defender in the San
4 Francisco Bay area and then a number of years in
5 private practice before moving to full-time
6 teaching. My practice of law coincided with the
7 beginning of the war on drugs. I also think
8 that -- community that I grew up in was a lower
9 moderate income African-American Latino
10 community because it too will shape the comments
11 I'm about to make about problem-solving courts.
12 In a number of settings, I've participated in
13 roundtable discussions including the initial
14 discussions -- and so I've spent a lot of time
15 thinking about it. In my view and experience,
16 problem-solving courts often do more harm than
17 good due in part to their -- substantive focus
18 -- police misconduct -- serving communities of
19 color and the processes -- interest of the
20 individual accused to all -- I'm going to
21 discuss each -- problem-solving courts have been
22 all -- judicial circles for the last decade,
23 notwithstanding that fact, I believe that there
24 are some fundamental questions that they raise
25 and I strongly urge -- some of the issues you've

1
2 heard from Jeff that I will also talk about. We
3 have accepted without question that services can
4 and should be funneled in the criminal justice
5 system. Although defendants are particularly
6 indigent -- embraced drug courts. It is
7 primarily because the -- conventional courts
8 have operated, coupled with the fact that often
9 the only way low-income communities and
10 communities of color can receive treatment is
11 through drug courts. Although we have sold and
12 the public has bought -- treatment services must
13 be provided through the court. It is expensive,
14 it's inefficient -- many segments of our
15 population particularly in communities like Red
16 Hook can only access treatment there through
17 court. So I will say that I think there's some
18 -- drug courts -- they work because they
19 acknowledge the drug, the drug use -- concerns
20 rather than criminal justice issues. But the
21 choice to deliver drug treatment through the
22 apparatus of the criminal justice system -- that
23 it entails and the choice that it raises more --
24 that actually raises more questions than answers
25 -- drug courts have proved a track record of

1
2 success, but the same cannot be said for the
3 plethora of other problem-solving courts that
4 report to address issues -- prostitution to
5 domestic violence. These courts simply do not
6 share and cannot claim that they're the same
7 empirical -- indeed, the pride of the
8 problem-solving courts, the midtown community
9 court here in New York carries with it one
10 dangerous -- monitor and exercise potential
11 oversight of the abusive discretion by law
12 enforcement. The very crimes that that court
13 takes -- are the type of discretionary crimes
14 that courts should be observing in police
15 behavior. Assuming jurisdiction over quality of
16 life made the focus, was made the focus of
17 Giuliani Administration, these problem-solving
18 courts -- substantive focus -- far exceeds their
19 capability and expertise except -- providing
20 window dressing for politicians who claim to be
21 addressing critical problems, they talk about
22 bringing justice, the justice system to bear on
23 issues like public urination and graffiti --
24 responsibilities of judges -- this critical
25 oversight of the responsibilities of misconduct

1
2 on the part of law enforcement particularly
3 around minor offenses, it should raise issues of
4 vigilance for the police -- these activities
5 remain out of sight no one challenging the
6 context of law enforcement in the public
7 principally because these courts coordinate all
8 concerns to the process. It also raises a
9 second issue for me and that is, it relates to
10 communities of color. Problem-solving courts
11 support this voice in communities of color in
12 the criminal justice system. But in this
13 regard, they have failed miserably. I know that
14 everyone in this room is aware of the fact that
15 in virtually every urban area in the United
16 States it's difficult to get a more
17 representative jury representing all the cross
18 sections of the community -- in San Francisco,
19 Chicago and here in Manhattan, the problem is
20 the central courthouse is situated far away from
21 often the areas where crimes occur and so away
22 from the witnesses, victims and defendants. And
23 so paneling juries are difficult to get -- juries,
24 for example, in criminal court here in
25 Manhattan. The design of problem-solving courts

1
2 -- theoretically to give those communities a
3 voice. But a real voice was created in court to
4 seek jurors and try cases in communities where
5 the so-called problem-solving courts are
6 constructed. In essence, we permit these
7 communities to have courts where defendants of
8 color can plead guilty and get services but
9 these same communities are not good enough to
10 impanel jurors -- misdemeanor and felony cases,
11 which raises another issue of concern. And that
12 is simply that look, at least at each -- there
13 seems to be a plethora of these problem-solving
14 courts in communities of color. I have been
15 intimately involved in -- I have seen first hand
16 the power of empowering communities to have a
17 voice in questions of justice. These courts do
18 not achieve that end. What drug courts and
19 lately the generic problem-solving courts have
20 done is give judges a higher profile in the
21 community. They have also given judges -- to
22 preach the gospel of the court, which may help
23 but if the goal is to empower communities,
24 problem-solving courts do the exact opposite.
25 Finally, problem-solving courts have coordinated

1
2 the interest -- the greater interest of the
3 system as a whole. The interest is
4 inefficiency. By limiting the adversarial
5 process something that has been discussed a
6 little bit today, the problem-solving courts
7 have achieved -- and that is to eliminate the
8 voice of the accused because it interfered with
9 the real -- of processing people through the
10 system. Drug courts have in some -- support for
11 the notion that they have been successful -- the
12 drug courts would suggest that some individuals
13 who go through drug courts do better than those
14 who experienced processing in conventional
15 courts, however, I think it's vital that this
16 body recognize -- examining the success rates
17 for individuals who received strong-wrap around
18 services, strong case managers and
19 well-resourced treatment -- why court. The
20 answer simply the jurisdictions of -- is only
21 willing to fund treatment in communities,
22 particularly communities of color that is
23 administered through the criminal justice
24 system. The view is that the court apparatus
25 add some measure of control. What it really

1
2 adds is cost, the cost of judges, the cost of
3 lawyers, the cost of court apparatus on top of
4 the cost of treatment. It's not only
5 inefficient, it's unfair and unnecessary. We
6 should proceed with caution around the notion
7 that courts can solve all of our society's ills,
8 notwithstanding some of the successes in drug
9 courts, we are rapidly moving to a model that
10 attempts to deal with problems like --
11 homelessness through the lens of the criminal
12 justice system. There is no treatment regimen,
13 there is no court proceeding, there is no judge
14 that can fix problems associated with persistent
15 poverty and those are the problems that these
16 courts are attempting to address. But aside
17 from the physical concern, there are a number of
18 other problems associated with both the
19 problem-solving court and with drug courts that
20 need to be addressed. First, there's a question
21 of pre and post adjudication. We must be
22 careful to note that immediate release into a
23 drug court versus remaining in custody to be
24 adjudicated in conventional court creates -- for
25 people to plead guilty and go right into

1
2 treatment. I think that the larger challenge
3 for the criminal defense bar, however -- and
4 especially the indigent -- is a requirement of
5 the team approach in drug court advocacy. While
6 great in theory, it raises a number of questions
7 of implementation. The team is supposed to
8 focus on the best interest of the client,
9 although -- and a far better -- to speak to you,
10 I will say that there's no exception in
11 governing -- to allow for the suspension of
12 zealous -- groups like NDAA and various -- have
13 cobbled together practical advisories about
14 practice in drug courts, the truth is, there's
15 no authority to suspend -- other than judicial
16 decree. Defendants are often seduced -- and the
17 waiver of all civil rights and civil liberties
18 in the informal setting of the problem-solving
19 court only to find themselves later being led to
20 the same jail they would have been led to in a
21 conventional court. Lawyers are sometimes but
22 not always present as judges question defendants
23 about drug purchasing, purchasing prices and
24 purchasing practices. Indeed, one of the
25 supporters of drug courts the National Drug

1

2 Court -- published a monograph that said in
3 part, the proper role of defense attorneys in
4 drug court remains ambiguous. This is -- this
5 is in no way to suggest that the adversarial
6 process is flawless. One only needs to look at
7 the lack of -- in communities of color in this
8 city and the result almost any -- tried in a
9 bench trial. But, you know, I think that we
10 should be cautious engaging the mechanisms of
11 the Court to try to solve social ills. I think
12 I should probably stop here and allow some times
13 for questions. Thank you.

14 MR. JONES: Thank you. Gail.

15 MS. SHIFMAN: Well, I appreciate both
16 of your testimony here this morning. And
17 particularly -- on the judge who began who is
18 obviously very proud of her role of
19 problem-solving courts here in New York State
20 and I guess my initial question, I want to start
21 with taking some of her comments about the
22 rehabilitative model versus the accountability
23 model, which she has looped under the umbrella
24 of problem-solving courts. I think it would be
25 helpful to hear from each of you very briefly,

1

2 what you believe is the true definition of the
3 problem-solving court or the best definition of
4 the problem-solving court.

5 MR. FAGAN: It depends on the Court.
6 If it's a mental health court, I think they'd
7 have a very different definition than if it's --

8 MS. SHIFMAN: I'm looking for an
9 answer in a perfect world. How should we define
10 what a problem-solving court really is, is my
11 question.

12 MR. FAGAN: I attempted to respond
13 like a college professor and ask you what what's
14 your theoretical starting point. I can't answer
15 the question.

16 MR. THOMPSON: Let me take a shot,
17 number one, and I share Jeff's frustration, I
18 submitted to this body an article that I wrote
19 on problem-solving courts, it's a -- but the
20 point of it is, with regard to drug courts,
21 there is in both the drug court, the voluminous
22 drug court literature, there are components that
23 are considered the essential components of drug
24 courts and it's outlined in John Goldencamp's
25 (phonetic) article -- the problem is, when you

1
2 leave the drug court model, it's a moving
3 target. I mean, what we know is, we don't want
4 lawyers to act like lawyers in that court. We
5 want judges to kind of have a stake in the
6 outcome and not be neutral -- of issues. We
7 want to engage on some level a motion of
8 therapeutic jurisprudence. Neither one of us
9 can answer either from an academic or from a
10 practical standpoint what those components are
11 because they are constellating and are a
12 constantly moving part depending on
13 jurisdiction.

14 MS. SHIFMAN: Right.

15 MR. FAGAN: If you ask the lawyers,
16 you get a different answer, they probably will
17 say there's no such thing. The judges might
18 talk more about a rehabilitative model because I
19 think that's something that is a comfortable
20 role. For somebody like me or somebody maybe
21 like, you know -- it would be something more
22 along the lines of the transformational aspects
23 of it. I'd like to see it from certainly the
24 conversations that go on in my building in
25 Columbia are about transformation with respect

1

2 to democratization and accountability. So I
3 think it depends on who you ask and that's on
4 one axis and you can cut that a -- mental health
5 courts are in business to make people take their
6 meds, to put it really bluntly, to make sure
7 they go to therapy and take their meds. Drug
8 courts are in business to make sure people --
9 sex offender courts -- and the role of the
10 lawyer each one of those molds is different, so
11 the idea for a perfect world court, there are
12 several perfect worlds.

13 MS. SHIFMAN: Yeah. The notion that
14 problem-solving courts particularly beyond the
15 drug courts are using the cohesive power to
16 bring a number of people within the criminal
17 justice system that normally wouldn't have been
18 brought there, have either of you in your
19 experience and in your research seen the
20 jurisdictions utilize any of the community power
21 and information and feedback to actually bring
22 about any community restitution and in any of
23 these community courts here?

24 MR. FAGAN: You mean from the
25 offender to the court or from the court --

1

2

3

4

5

6

7

8

9

10

11

12

MS. SHIFMAN: Whether it be the community voicing their opinions about what kind of offenses ought to be brought through the court or what kind of judgments or sentencing ought to be imposed on the offenders or through the advisory boards or through monthly Towne Hall meetings, just members of the community coming in to voice what it is that they're seeking. Is that happening in these community courts other than the notion of we'd like to do it?

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. FAGAN: I should say that I know in Red Hook they have tried to do that and they continue to try to do that and a few things come out of that. It's a very good incentive. One is that, on the first part of your question about which offenses, what's the range of sanctions that are available, et cetera, et cetera, we turn to diversionary -- whatever, are negotiated not between the community and the court, but between the court and the court, between the centralized court which creates and enables and empowers the local court. So that's a negotiation that occurs within the hierarchy

1

2 of -- occasionally, I suppose -- will be a party
3 to --

4 MS. SHIFMAN: Are the police party to
5 that conversation, law enforcement?

6 MR. FAGAN: No, not that I've seen.
7 I haven't seen it anywhere in New York and also
8 in New Jersey where I'd have some familiarity of
9 what they do there. No, in fact it is quite the
10 problem -- I alluded to it, when those meetings
11 take place where the community will meet with
12 the court, the various stakeholders in the
13 community, whether it's housing -- association
14 of public housing or local, the -- commerce,
15 they'll say, look, we really would like to take
16 on problems A B and C and often one of those A,
17 B and C will be the police. But the court can't
18 take on the police. And the police continue
19 because they are accountable to a totally
20 different mechanism, just simply can't be
21 responsive and aren't responsive. So I think
22 there continues to be this --

23 MR. THOMPSON: The same question in
24 two ways, one, outside the model of the court
25 itself, there are two jurisdictions where -- the

1

2 local prosecutor there works in what's called
3 sentencing service but he works off of, or at
4 least had when I last looked at it, a more
5 conventional court model but that brings the
6 victim and the offender in to talk about a
7 broader sense of restitution, if you will, the
8 second place -- and it's been more effective --
9 county which is Portland, Oregon and -- kind of
10 has a fairly wide dialogue, again, doesn't
11 include the police and only includes the, only
12 on a consistent basis -- Red Hook was the
13 example I was going to use and Jeff -- but the
14 other place is the attempts at creating juvenile
15 courts where kids sit as the prosecutor, the
16 lawyer. Youth courts, that's probably the
17 closest to what you described and it was at one
18 point fairly effective going on both in the Bay
19 area in some jurisdictions and in Red Hook. It
20 hasn't really sustained over time.

21 MR. FAGAN: There's about four of
22 them here, the one that's the most dynamic and
23 sustains over time is the one that's completely
24 -- the one in the Bronx.

25 MS. SHIFMAN: I didn't hear you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. FAGAN: It is totally from the ground up. And draws its power and authority from the ground up. The youth courts that depend as the one in Harlem does, as the one in Red Hook does and I believe there's one in Queens, they depend very much on the umbrella of the legitimacy that can be provided by the courts but that's an ambiguous and uncertain umbrella. Sometimes it's a very good umbrella --

MR. SCHECHTER: Which is the court that you're referring to --

MR. FAGAN: It's in the Bronx.

MR. SCHECHTER: Who runs that?

MR. FAGAN: I don't know his name now. I can get that for you.

MR. SCHECHTER: Could you get that for me.

MR. FAGAN: Sure.

MR. SCHECHTER: Great.

MS. SHIFMAN: So that's a court where kids sit as judges --

MR. FAGAN: Kids meet at sanctions and most often sanctions are complied with.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. THOMPSON: I ran one of those courts in California, and I ran it, it's totally separate from the court system, the only irony the kids tend to give out much harsher punishment.

MS. SHIFMAN: How does law enforcement respond to these youth courts?

MR. THOMPSON: -- they will stand by whatever the adjudication of the court is.

MR. FAGAN: And, you know, so you're from Bay area, the model that comes to mind --

MS. SHIFMAN: I'm from Detroit.
(Laughter)

MR. FAGAN: -- started in the 1970's.

MS. SHIFMAN: I don't know it.

MR. FAGAN: I don't think it's still in business.

MR. THOMPSON: I only know the historical references from my practicing.

MR. FAGAN: Yes, but he did develop a series of --

MS. BERNHARD: I'm a long time friend of Professor Fagan. But one of the things you guys raised, which, you know, I think is really

1
2 interesting for us because one of the things we
3 were trying to do is really focus on the role of
4 the criminal defense attorney and these
5 different courts and the things that come up
6 over and over again are the questions about --
7 being part of a team and, you know, does that
8 mean that you're compromising your ability to
9 zealously advocate and which places do you have
10 an opportunity to zealously advocate -- initial
11 plea bargaining that gets into the court, one of
12 the things that you raised today, which I
13 thought was really interesting is sort of the,
14 one of the traditional roles that the defense
15 attorney has sort of been to stand between -- by
16 looking at police action, right. So how do the
17 police effectuate the search, how -- now
18 generally speaking, I would say that I think
19 defense attorneys across the country are doing
20 less and less of that challenge. And part of
21 the reason they're doing less and less is
22 because the court decisions have gotten worse
23 and worse making the challenges more and more
24 difficult to win. There are less avenues to
25 suppress drugs, there are fewer avenues to

1
2 suppress confessions, the work has become
3 technically in terms of applying our rights
4 based jurisprudence much, much harder. But in
5 these courts, it's almost as if though -- you've
6 decided to go into them, you have sort of given
7 up all of those things. But I'm thinking like
8 one of the things may be we could do through
9 this -- reinvigorate some of the concepts and
10 ideas around that, for example, just in the
11 paper today did you see the article about the
12 marijuana stops that was based on Harry Levine's
13 research in -- I mean, if we step back and look
14 at what, what policing is doing in New York,
15 there are some very interesting things going on
16 that the defense bar is having absolutely no
17 voice in stopping or commenting on and we
18 should, you know, it's like these courts have
19 sort of absorbed the voice and made it more
20 difficult for people to see what's happening,
21 and to comment on that, so I just throw it out
22 to you if you have any ideas -- thinking about
23 following up on.

24 MR. THOMPSON: I just want to take
25 issue with something you said actually -- I

1
2 think we need to be careful with these courts
3 particularly midtown community courts -- it's
4 not only the responsibility of defense counsel
5 and it definitely -- it's also the Court's
6 responsibility to provide some oversight.

7 MS. BERNHARD: I don't mean to
8 minimize it.

9 MR. THOMPSON: I think the danger in
10 adopting these models without precedent, is
11 there's a ton of very discretionary conduct on
12 the -- that never gets reviewed and that I think
13 if you get the judges who participate in these
14 courts to buy in to the notion that they do have
15 an oversight role because they have this
16 elevated -- participation, then I think you have
17 to ask the hard questions about where does that
18 happen in a post adjudicatory problem-solving
19 court, how does that happen.

20 MR. SCHECHTER: Can we just ask you
21 some very specific questions, putting aside the
22 broad category of the problem, the mere
23 existence of these courts -- the poverty and
24 general problems of the minority -- in dealing
25 with the fact that we do -- they do exist,

1

2 there's a process --

3 COURT REPORTER: I'm sorry. Can you
4 pull the mic down, please.5 MR. SCHECHTER: First let me ask you,
6 because I reached the same conclusion you did,
7 you're pretty clear in your mind that there's
8 nothing in the ethics rules that you've looked
9 at, the ABA, the New York State rules anywhere
10 that provides an exception for a defense
11 attorney to engage in these private
12 team-approach discussions about his client with
13 the Court personnel and the providers, the
14 judge, the prosecutor. Are we clear about that?15 MR. THOMPSON: Let me say an
16 unequivocal maybe. Let me say why. I do think
17 that the -- first let me say there's a, I try to
18 teach my students if there are better people out
19 there, you go to them -- Howard University and
20 -- in the University of Tennessee have both done
21 extensive writing on this -- I assume you're
22 familiar with this. But I think that, you know,
23 there's the question of local rules under some
24 state bar local state bar jurisdictions that
25 allow judges to kind of conduct, reasonably

1
2 conduct the proceedings the way that they see
3 fit, but short of that, no, I don't see that
4 there is a, an ethical bypass for the
5 responsibilities --

6 MR. SCHECHTER: Second question, if
7 the program, the drug court or mental health
8 court provides the defense attorney and the
9 client with a specific contract that says, any
10 of the information that you give us in this
11 confidential setting can never be used against
12 you, in the event you failed the program and you
13 now have to be prosecuted, does that ameliorate
14 this ethics concern that you've mentioned? Yes
15 or no.

16 MR. THOMPSON: You only addressed
17 part of it with the contract issue. Listen,
18 with all due respect to the court, I listen to
19 the judge tell you, there's a ton of ability for
20 lawyers to be zealous, they can talk about
21 sanctions. Well, that's fine and that may be
22 one aspect of zealous representation, but there
23 are a myriad of others. So the short answer is,
24 no, that contract does not resolve the problem.
25 But let me say more and that is, I have a larger

1
2 concern, I teach at an institution where my
3 public interest is -- go into practice in a
4 public defender offices -- relationships with
5 clients. We don't, we don't provide in this
6 model any guidelines to client-centered
7 representation to thinking about how you
8 interact with clients. Instead we say it's kind
9 of okay that -- you go in with the judge and the
10 prosecutor, you kind of figure it all out and
11 you tell your client what to do and it's --
12 protecting their rights with the conversation
13 that happens at bench, although that's
14 important.

15 MR. SCHECHTER: One final question.
16 One of the problems that I have observed in
17 Brooklyn Supreme Court in the drug court is one,
18 I'm not seeing defense attorneys at any of the
19 -- in fact, I've confirmed that, I have spoken
20 to private bar members who tells me the majority
21 of their colleagues once they're in the program,
22 they do not come back unless they get a note
23 from the Court there's a problem, that the guy
24 has fallen off the wagon or whatever. That's
25 number one. But number two, one of the problems

1
2 that private -- have spoken to me about in the
3 Brooklyn sector and I think this exists, by the
4 way, in Florida as well, is that there is no
5 mechanism that allows the defense attorney to
6 evaluate the case from a legal perspective
7 initially. And what happens is, in Brooklyn on
8 the felony, within 24 hours of arrest and
9 arraignment, you are in the felony part. And
10 here's my question to you, to the both of you,
11 Philadelphia has a very different system than
12 everybody else in the country, Philadelphia says
13 you can opt into the program assuming that you
14 need the criteria, but there's a ten-day delay
15 and the ten-day delay is for the DA to turnover
16 to the defense all of the discovery in the case.
17 And during that ten-day delay, if you get the
18 discovery and you, the defense attorney,
19 discover or have reason to believe that you have
20 a crummy case and most obviously one of these
21 drug cases which involves street stops is the
22 motion to suppress, then you can come forward
23 and say, I want to be in the program, I want to
24 fight the case or you can say, and this happens
25 to be the Brooklyn Supreme Court, judge, we

1

2 don't belong here, there's a real serious legal
3 issue, send it to a regular part. Is that
4 ten-day delay process helpful?

5 MR. THOMPSON: Yes. The question is,
6 why wouldn't you be able to litigate fully and
7 fairly all the Constitutional -- come to the
8 conclusion in that period, okay, the person --
9 this person should get treatment. That's my
10 problem, the structure. Let me just say one
11 other thing. I released a book yesterday on
12 reentry, I have a chapter on reentry courts.

13 MR. JONES: One you should buy, by
14 the way.

15 MR. THOMPSON: The most dangerous
16 aspect of the reentry court is that, there's not
17 only no lawyer in that court but if you think of
18 the responsibilities articulated -- there's no
19 way to fund a public defender to be in that
20 court. There's no criminal case pending. So
21 how does a public defender who has limited
22 resources and crushing caseloads in the city
23 provide a lawyer for a court that they don't
24 necessarily have funding to do. So I call those
25 courts, they're store-front facades like the old

1

2 west. They have all the trappings of the court
3 but no lawyer, no funding to have a lawyer and
4 the judge essentially replaces the role of the
5 parole agent. So I think we need to be very
6 careful about using the trappings of the court,
7 which is the hookness, the drawness to get folks
8 to comply.

9 MR. FAGAN: Yeah. Philadelphia -- in
10 New York where it's basically negotiated up
11 front and the charge grade basically determines
12 which court it goes to. But who gets the
13 authority to write the charge grade -- it comes
14 through the mail slot through the front door
15 written by a cop based on evidence that may or
16 may not have been presented -- and it's exactly
17 at that point where that, what we call in
18 chronology -- push-down stage. So the cases
19 that used to walk now wind up in drug court, the
20 cases that should wind up in drug court might
21 wind up someplace else. So there's no -- so, A,
22 there's no real negotiation about who belongs in
23 drug court and who doesn't, either who doesn't
24 because they're simply, simply no risk
25 whatsoever -- and they can decide -- or

1

2 certainly have a very strong influence on it.

3 So I consider it an interesting model. It will
4 be interesting to see if in fact there was some
5 kind of broader vetting of who is eligible and
6 who isn't.

7 MS. KELLEY: You concluded your
8 remarks by saying that, Professor Thompson --
9 particularly in low-income communities these
10 problem-solving courts are incapable of solving
11 the underlying problems of poverty and your
12 testimony reminded me and probably reminded
13 several of people of some testimony we heard at
14 our last hearing in Tucson where one of our
15 colleagues Bob Hooker, who is the chief public
16 defender of -- County talked about how if in our
17 communities we had proper education, proper
18 access to mental health treatment, proper access
19 to drug treatment programs, then these courts
20 would be moot. Inasmuch as that jeannie is
21 pretty much out of the bottle, how do we put it
22 back in or should we even attempt. What's the
23 answer.

24 MR. THOMPSON: So I'm not -- let me
25 -- my comments -- I'm not --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. JONES: Please do.

MR. THOMPSON: Depending on how you want to look at it that I believe we can get the proper funding to schools and do all the things to eradicate poverty in this country, I think the questions of erasing poverty are too -- however, I do think, maybe we can't smash the jeannie back into the bottle but we can at least create filters to justify an incredible added cost of providing the types of services that we provide when we add all of the costs of the criminal justice system on top of them, so that's kind of where I come out. I think that this body can create very fundamental questions for the judges that participate in these questions and guidelines for the defense attorneys and that begins to take seriously the procession of being critical but analytical about it. So I don't have a happy ending to your question, but I do think that being a little bit more critical of when we suspend and why we suspend someone's -- kind of have a stake in the process so that when a defendant, somebody before them lets them down, there's an

1

2 emotional personal tie there. Having this body
3 produce a document that raises questions about
4 those and the fundamental oversight that -- I
5 think they're there.

6 MR. FAGAN: I would be interested in
7 seeing if you guys could recommend, for example,
8 an experiment to the social science community.
9 We spend a lot of money on these courts. But in
10 fact, we're setting up very large expensive
11 apparatus with all kinds of legal complications
12 to put people -- why not bypass the court, what
13 if we were to have something on the one hand say
14 that -- 36 in California but maybe a bill larger
15 or maybe we can have some kind of experiment
16 where we created within the -- the chance to
17 take money from the voucher system or whatever
18 system and use the money that would have gone
19 into a court to get people into treatment and
20 get people into the services -- I don't see any
21 added benefit given the equivocal data
22 particularly when you get beyond drug court and
23 particularly when you get beyond more
24 complicated cases than what's typically in the
25 drug court that would justify -- I would

1
2 actually rather see it being put -- somebody who
3 can buy services -- that unleash the
4 representation they might be able to do a better
5 job. In other words, there is a tradeoff, it's
6 a huge tradeoff, rights for service and I'm not
7 sure that given the cost of the tradeoff and
8 limited benefits, we wouldn't do a whole lot
9 better off.

10 MS. YOUNG: Well, in part, what I'm
11 hearing throughout this is everything is labeled
12 a problem-solving court, but you hear, it's not
13 really a court. I mean, it is a court such that
14 a court overhears a probation violation, but
15 isn't what we're really talking about, it's
16 really post sentencing even though, I mean,
17 that's really what it seems to be in reading all
18 the literature and hearing what people are
19 talking about. Could you tell me, because what
20 I was, have been struck with is the amount of
21 resources, you know, that are going into
22 problem-solving courts. But someone said early
23 on, the people that go into problem-solving
24 courts are capped at what, these are very
25 low-level felonies; and what percentage of

1

2 criminal justice resources is going to look at
3 these courts to address the problems of this
4 level offender and I'm going to exclude death
5 penalty cases because that has its own money,
6 its own funding. But there seems to be a
7 skewing of where all the research and where all
8 the innovation is going into to looking at this
9 level of criminal activity versus a serious
10 felony. And people say, well, they just belong
11 in regular criminal court and good luck. I
12 mean, it's a real skewing that I'm really
13 troubled with and there really is nothing
14 looking at the serious felony again non-death
15 penalty area. Is there? Or --

16 MR. FAGAN: I don't believe that
17 there are courts that attempt to do what these
18 courts do with a very high-grade felony or a
19 higher-grade felony and I think there are
20 probably two reasons, one is just political risk
21 of business, but second, there's also a demand
22 for punishment, that legislative -- that demand
23 for punishment -- the third is, there's a threat
24 of -- perhaps held somebody up at gun point to
25 get money to buy drugs by not punishing that

1

2 person on the, their blame worthiness for
3 sticking a gun in somebody's ribs, that would
4 raise serious questions, no matter whether we
5 think it's the same way to go and has a better
6 chance of stopping this person from getting a
7 felony. There's a preemption of options by this
8 -- crime given the way the legislature define
9 these matters now that makes it impossible to
10 do, the experiments that you would see done.

11 MR. THOMPSON: The only thing I'll
12 add, including the drug courts, but in all of
13 these courts, the prosecutor has such a high
14 degree of control over what cases are funneled
15 in and out that we require huge kind of
16 legislative pressure to conduct that type of
17 experiment that I don't see happening, too --

18 MS. YOUNG: But the other thing, and
19 admittedly I was reading quickly, but when the
20 judge said that there was a greater perception
21 of fairness in the Red Hook justice court versus
22 another court, because I was reading that one
23 study yesterday there was a difference but it
24 wasn't really that big a difference, I mean, in
25 terms of percentage. So if it was really such a

1

2 small percentage, then I guess I have a question
3 of where are we going or what are we doing.

4

MR. FAGAN: There are a number of
5 problems with that evidence and without getting
6 too far into it, that's stuff we can get through
7 the front door. It's not in peer review
8 publications. The methodologies are very, not
9 the best methodologies, far from it, so zero to
10 ten, really great science versus -- amateurs,
11 it's five or less.

12

MS. YOUNG: So you agree that there
13 is a significant difference between the
14 community court --

15

MR. FAGAN: No. I think, I don't
16 think we have the right yardsticks or the
17 capacity to make those claims based on how we go
18 about doing that kind of evaluation.

19

MS. SHIFMAN: So I'm still and
20 remain, I remain troubled about the role of the
21 defense lawyer and on an individual basis when I
22 walk in as a privately-retained lawyer to a drug
23 court with a client whose amenable to drug
24 treatment going into a pre adjudication drug
25 court can be a fabulous tool and I'm thrilled.

1

2 But from a bigger picture perspective and from a
3 political perspective, I'm troubled by in
4 general defense lawyer participation all of
5 these courts and for me, I guess I, I'm thinking
6 out loud and I'm throwing out a question at the
7 same time, would it be as an experiment along
8 those lines possible for all these public
9 defender offices -- variety of community courts,
10 sex offender courts, which are probably the most
11 troubled of all the courts, the drug courts, et
12 cetera, if they determined that they were not
13 going to participate in these courts except in
14 the traditional defense-lawyer mode, I mean, do
15 you see the courts responding at all to that?
16 There was a complete refusal to participate in
17 these models. What would you see happening in
18 the courts that you have --

19 MR. FAGAN: In other words, the
20 lawyers would simply refuse to take the deal.

21 MS. SHIFMAN: The lawyers would say I
22 can't participate.

23 MR. JONES: Ethically, I can't do
24 this.

25 MS. SHIFMAN: My role is to be and

1

2 as advocate and judge, you're asking me to
3 participate up front -- I know I get to say to
4 you, well, he didn't really do it but I'm
5 telling you I agree to the sanction up front,
6 that's completely unethical in my opinion, for
7 the lawyer, and then to walk back to the client
8 and go, don't worry, we're going to try to
9 convince the Court that it was poppy seeds,
10 whatever. What would you see happening in these
11 courts? Because it would stop the process.

12 MR. THOMPSON: Let me give you a
13 sense of history, in the early configurations of
14 these courts, they didn't ask defense attorneys
15 to participate in the design. It was only
16 through a lot of lobbying and -- and pressure
17 that defense attorneys were even brought to the
18 table.

19 MS. SHIFMAN: But they were asked to
20 participate by representing the clients even
21 though they didn't participate in the design,
22 right?

23 MR. THOMPSON: Yeah, my sense is they
24 could offer drug court at arraignment -- a
25 client could have the ability to come in and say

1

2 I choose not to be represented, I'd rather do
3 drug court and the Court will say, here are your
4 choices, Ms. Defendant, Mr. Defendant, you could
5 get out today and participate in drug court and
6 not have a lawyer or you could remain in
7 custody, we'll get you a lawyer. I mean,
8 there's a lot of ways, we would be at this
9 panel, not to call it old, has too much history
10 to think that we could completely shut down a
11 process. But I do think if this body were to
12 raise fundamental questions about the zealous
13 advocacy within these courts and push local bars
14 to say what is your statutory authority to be
15 less than a zealous advocate, it would raise
16 questions nationally and on the 50th
17 anniversary --

18 MR. FAGAN: I think Tony is right.
19 And I think there would be an ethical challenge
20 back from the drug court interest groups to say
21 to attorneys, you're going to sit there and
22 leave your client in jail -- so it would get off
23 the ethical -- but I could imagine also where
24 there could be a push back that will say from
25 the often defense -- where in this process do we

1

2 get to access the charges and the evidence
3 before I take this deal. How can we revise the
4 procedure to do that, it was poppy seeds or this
5 search was illegal. We have a paper that shows
6 that roughly 40 percent of the street stops in
7 New York are illegal, still even after -- it's
8 really quite sickening. But where is their, an
9 accommodation, where can an accommodation be
10 made in the process -- one other thing, how do
11 we make sure that we're not running into massive
12 Brady problems or Rosario problems.

13 MR. THOMPSON: I want to add one
14 other potential problem we should be aware of,
15 in a jurisdiction like New York City -- there's
16 a hugely politicized process of cash for cases
17 -- politically for refusal to participate.

18 MS. SHIFMAN: By that do you mean
19 based on the number of cases that come into the
20 office, that's how they do their funding.

21 MR. THOMPSON: They get funded on a
22 per-case basis -- testify before you about that,
23 but I'm worried about political punishment for
24 lawyers in some jurisdictions who refuse to
25 participate in these courts.

1

2

MR. FAGAN: Which happened in the
city ten years ago.

3

4

MR. JONES: We are running up against
the clock. I have just one last question that I
wanted to ask this notion that the paradigm and
that, you know, we've had any number of
problem-solving court judges come in and talk to
us about the success rate and they've always
measured their success rate against what happens
to similarly-situated defendants who don't get
problem-solving courts. I'm interested in you
guys because I like this notion, it's the wrong
-- I'm interested if you guys could direct us to
individuals or studies who could help us refocus
the analysis on the success rate and the cost as
compared to non-court based wrap around
services. Where are those studies? Who are
those folks? Point us to that because I'd like
to be able to do that analysis.

21

22

23

MR. FAGAN: I haven't seen those
studies. It would be a very interesting study
to do.

24

25

MR. JONES: Is there somebody you
know who is in that wrap-around non court world

1

2 who we could bring in here to talk to --

3

4

5

6

7

8

9

MR. THOMPSON: Maybe you didn't understand my comments, if you're in the community who have these courts, you don't get those services, that's the problem. It's not only -- unless you bring the hammer of the courts with you, we're not going to fund those kind of services. That's the problem.

10

11

12

13

14

MR. FAGAN: In a place like Red Hook -- contract of the court to stably staff the court and provide all of the necessary services that would in fact encompass -- they couldn't even do it with the money. Imagine --

15

16

17

18

19

20

21

22

MR. THOMPSON: Let me say one thing, Commissioner Young, actually made me think of it, you guys might want to pursue, recommend a mapping project where you map the amount of money spent on problem-solving courts in comparison to the amount of services or traditional and conventional courts because I think that the visual will be stark.

23

24

25

MR. JONES: Thank you both very much.

MR. JONES: Our next panel is Leonard Noisette, who is the executive director of the

1

2 Neighborhood Defender Service of Harlem, Lisa
3 Schreibersdorf, who is the executive director of
4 the Brooklyn Defender Services and Robin
5 Steinberg who is awol from the Bronx Defenders
6 and who may or may not wander in at some point.
7 Once again, in the interest of full disclosure,
8 Lenny is my boss, as close to a big brother I've
9 got in the world, I say that, and Lisa also is a
10 friend. So there's my disclosure. The way that
11 we work, is you guys each have five minutes -- I
12 think I see robin in the hallway. Is that Robin
13 Steinberg in the hallway? I believe it is.
14 Should we go grab her? Here are the Bronx
15 Defenders in the house now.

16 MS. STEINBERG: Hello, everybody.

17 MR. JONES: Hi. The way that we work
18 is, we give each of you five minutes or so to
19 give us the benefit of your thoughts in an
20 opening statement and then we have a number of
21 questions that we'd like to pose to you and get
22 your responses to and one of us principally
23 takes responsibility for questioning each panel
24 and in this particular instance, that will be
25 Adele Bernhard so I will leave it to you to

1

2 choose who starts, but the floor is now yours.

3

4 MS. SCHREIBERSDORF: Robin wants me
to go first. So let me just start by saying

5 that I am probably in a unique situation because

6 I am from Brooklyn. And Brooklyn I would say we

7 look across the entire country at all of the, I

8 would say, I'm calling them drug courts, I would

9 say drug courts and mental health courts and

10 eliminate the other problems -- if you looked

11 around the country and looked at Brooklyn, you

12 would see a substantial difference in the

13 quality of the drug courts -- in Brooklyn and

14 pretty much anywhere else. Because our district

15 attorney very -- in a meaningful way, not in a

16 superficial way. The court system has used

17 Brooklyn as a jurisdiction to start them and to

18 do it very, very good and thorough job of really

19 investigating all the possibilities including

20 defense attorneys on the panels and all the

21 planning committees and then provide an

22 incredible amount of resources to our courts so

23 they can function at an extremely high level.

24 We've been lucky -- so I just want to say that I

25 am in that unique position because I'm coming

1
2 from a really high-quality drug court and mental
3 health court and also I've been on all the
4 planning committees, I've been completely
5 involved in the mental health court planning
6 committee, I've been on the drug court planning
7 committee and the misdemeanor court such that I
8 even was sent by the federal drug court planning
9 office to get training for two weeks. You know,
10 what I consider a pretty high-quality trade, I
11 can talk a little bit about the defense -- which
12 I'm not satisfied with. But, you know, where we
13 got together and really understand a little bit
14 about the process of addiction and used that
15 information to create a court and they put us in
16 a room with somebody who wanted us to create a
17 court where everybody's needs kind of got met.
18 So I really did have a very loud, clear voice.
19 The plans were adjusted because of things that
20 were important to me on that, you know, in that
21 planning process. So I just bring that
22 experience to you and say that just for my five
23 minutes although obviously I can answer any
24 questions you want about that, the single most
25 important thing I think for courts that are

1
2 starting is that there be defense attorneys on
3 the planning teams, however, the second most
4 important thing is that those defense attorneys
5 have an opportunity to get some input from
6 somebody else who has planned in the court and
7 has a larger perspective about the issues that
8 are really important because I've been on
9 planning committees where -- who has not spent
10 the kind of time maybe that I've spent really
11 thinking about these courts and what's important
12 and that person actually -- the reason that the
13 defense is involved when, in fact, you have just
14 like a body at the table who is not thinking
15 about important matters that we have to think
16 about one of which is confidentiality -- HIPPA
17 laws, about other issues concerning
18 confidentiality and convince the people on my
19 teams, if you want to call them that, that they
20 needed to really look at those things in a
21 different way and gotten confidentiality
22 agreements that were different than the ones
23 that they had originally used. So I think this
24 is stuff that is not necessarily in the general
25 knowledge of most public defenders, not

1
2 necessarily would be the knowledge of the chief
3 defender or somebody that a chief might send off
4 to do something like that. I've recently been
5 doing ethics in specialty courts lecture around
6 New York State, which has been created very
7 positively by the attorneys because one of the
8 big problems, of course, that the attorneys that
9 -- peer-reviewed courts don't have a real sense
10 of support when they try to fight some of the
11 stuff that they know isn't really right. When
12 they go into a court and they're told, you're
13 part of a team, most defense attorneys feel
14 uncomfortable with that but they don't think
15 they can stop that or fight that. When they
16 find out that a judge is listening -- staffing
17 in the morning by the way -- doesn't have staff
18 meetings, it's one of the things I fought
19 against, you can't have conversations in the
20 morning where the treatment providers are
21 talking to the judge and I'm not there. They do
22 staff -- during the course of the day -- will
23 provide you with it -- so you know, the defense
24 attorneys are locked out of the room and
25 uncomfortable, for example, in Syracuse, but

1
2 they don't know, they don't think that they're
3 supposed to do anything about that or fight
4 about that. They don't even know who to turn to
5 for help. So this year I'm the president of --
6 I told them our -- could really take on some of
7 that. So I'm trying to work with Syracuse and
8 Rochester to talk about ways in which our
9 association could help, just let them go and
10 advocate for some procedures that are a little
11 more fair or a little more, get a little more
12 advocacy going on in the courts. It's not
13 individual places which -- and difficult to do.
14 I think they do. Even just on a border scale
15 for all of the clients for procedures. So I
16 think that's mostly what I want to talk about.
17 But the main thing, I guess the thing that I
18 think, because we're in the second generation of
19 courts with people who are well-intentioned and
20 are trying to do the right thing and our courts
21 are pretty phenomenal -- clients, we have
22 kidnappings in there and people that push people
23 in front of subways, I mean they just get an
24 amazing opportunity in mental health court that
25 you would not get anywhere else. It's also

1
2 become a public relations nightmare -- there was
3 a camera. There's no cameras in the courtroom
4 -- there's a camera on a client who is talking
5 to the judge. And I just, there's -- I went up
6 to the judge I said, this is totally
7 unacceptable -- all these other things that are
8 going on in these courts to me are peripheral to
9 the exact, you know, manner, but that the lack
10 of -- procedures, the lack of any legislation
11 that enforces whatever might have been worked
12 out, there aren't even court rules that say what
13 can and can't be done. That to me is really
14 where it has to go next -- I mean, I could
15 answer those questions readily, however, what I
16 think really needs to be done, somebody really
17 needs to sit down and think very carefully about
18 what ways due process needs to be enforced, what
19 ways advocacy needs to be enforced, what
20 procedures need to take place in these courts
21 and write them down and have them either be
22 court rules or actually go to the legislature
23 and push positive change, legislative change so
24 that, you know, when the judges change, you
25 know, we have now had two or three judges in

1

2 some of our courts. So the first judge sits
3 down with me and the DA, we work this all out
4 with court personnel, the service providers, we
5 all work together and we work it out, the
6 maximum sentence is 30 days, you know, it's all
7 worked out, and the next judge comes in and
8 says, oh, I don't like that, 30 days, that's
9 crazy, I want a year, if the person blows it.
10 There has to be, I mean -- there's nothing we
11 can do about that, right? There's nothing left
12 to do. So there has to be some way that we can
13 enforce, for example, those graduated sanctions
14 that are written down in a little book and the
15 clients get it but it's not a legally
16 enforceable procedure. So I guess as an
17 attorney to be -- get involved in trainings and
18 all this other stuff, to me that's, that's what
19 I would see as a very good recommendation of
20 this committee.

21 MR. JONES: Thank you.

22 MR. NOISETTE: Good morning. I've
23 been thinking about this for the last couple of
24 days and what I'd like to sort of add is kind of
25 a view stepping back a little. The Neighborhood

1
2 Defender Service was created sort of under the
3 philosophy of doing problem-solving as a
4 defender office to think about client needs more
5 broadly beyond the particular case of the moment
6 and so the concept of problem-solving generally
7 is something to be embraced. We certainly think
8 that the justice system ought think about
9 problem-solving as opposed to just simple case
10 adjudication. Whether or not and what extent
11 the Court ought to have that dominant role is a
12 totally different question in my mind. One of
13 the biggest concerns I have is that, I think
14 that the conversation about problem-solving
15 courts has become very unclear. I mean, what
16 types of courts are included under the label of
17 problem-solving courts, for example, I think,
18 you should raise some concerns. You know, I
19 think there are specialty courts, whether
20 specialty courts and problem-solving courts are
21 the same thing, I think are, here's a question
22 you want to ask yourself, and I think that they
23 are not the same thing. I think in Manhattan,
24 which seems to be a very different experience
25 than in Brooklyn, we have a number of specialty

1
2 courts or projects that focus on particular
3 types of offenses. We have, we have the midtown
4 community court, we have the Harlem justice
5 center, which is a different type of community
6 court, we have a misdemeanor drug court, we have
7 a felony drug court only taking special
8 narcotic's prosecutor cases, we have DTAP
9 programs, one run by the district attorney's
10 office and one run by -- that operates in
11 Supreme Court. We have integrated domestic
12 violence court, we have a domestic violence
13 part, so all of those under some people's
14 definition are problem-solving courts. And I
15 don't believe that they are all problem-solving
16 courts, some of them are problem-causing courts
17 as far as I'm concerned. But I think that, you
18 know, I tried to prepare for this and I looked
19 at some of the literature and all of these
20 things are sort of lumped under this rubric
21 problem-solving court, which I think is
22 something to be concerned about. Whether or not
23 the philosophy behind drug courts that really
24 focus on drug treatment and modalities of drug
25 treatment and graduated sanctions in the course

1
2 and power of the courts, assuming those things
3 are valid for drug courts and, therefore, they
4 can be problem-solving is a whole lot different
5 than what you ought to be doing in the domestic
6 violence part. The domestic violence part in
7 Manhattan is a very punitive part that sets
8 extremely difficult and almost unattainable
9 expectations for clients, and whether it's
10 really solving the problem of domestic violence
11 seems to me to not be a question that's been
12 fully explored. We're just now in our, I don't
13 know exactly how long, but we are in the early
14 stages of the integrated domestic violence court
15 in Manhattan and the practice of having families
16 appear in one courtroom where there's a criminal
17 case pending and there's a family court case
18 pending and one judge adjudicating those matters
19 has caused a lot of degree of concern in my
20 office. And I know that they are going to hear
21 from attorneys in my office tomorrow. I think
22 they can share with you better than I can some
23 of the particular problems that they have
24 encountered. So I guess examining what really
25 are the goals of these courts and what problem

1

2 are they attempting to solve rather than, is
3 this a very targeted way to prosecute a set
4 class of offenders accused of a certain set of
5 crimes, I think there are differences there.

6 And so there's a lot of talk about drug courts
7 and the success of drug courts and it sounds
8 like many of them have been very successful.

9 But I think they're really beginning to examine
10 these other specialty courts and question
11 whether or not that's a valid way to approach
12 the prosecution of cases, I think is important.

13 The last thing I would say is that, I
14 have been concerned for a number of years about
15 whether this move toward the court, I don't want
16 to say this sort of being more engaged in the
17 lives of poor people and attempting to manage
18 their lives and many problems is the right
19 thing. I'm concerned about that on a general
20 level and I'm also concerned about whether or
21 not that results in the Court over time usurping
22 resources that might be better devoted to
23 community-based organizations, defender offices,
24 advocates, people who have different
25 relationships with the client and with the

1

2 client communities that most folks come from. I
3 think that the difference between consolidating
4 all those resources within the court system and
5 the Court controlling them versus a more
6 community-based approach I think is something
7 worth considering. And should the court system
8 grow and grow and grow and manage or should it
9 be a more traditional approach to judge's having
10 discretion. I think judge's ought have
11 discretion to fashion alternative sentences and
12 to attempt to help people improve their lives.
13 Whether or not that has to be by building some
14 massive structure within the Unified Court
15 System is another question and so I'd be happy
16 to answer questions whenever you guys are ready.

17 MR. JONES: Thank you.

18 MS. STEINBERG: I certainly agree
19 with almost everything that my esteemed
20 colleague, Lenny, has said -- of all the years
21 we've none each other, so I'm going to follow up
22 on a couple of points he's made and I will
23 probably pull back the lens even a little
24 further, if I may. I wholeheartedly agree, and
25 the first concern I have is also how we define

1
2 problem-solving court. And I agree with Lenny
3 completely that everything has been lumped under
4 the rubric of the problem-solving courts when in
5 fact what's happened is they've created
6 specialty courts with very different intentions
7 and motivations. We in the Bronx have a gun
8 part. There's no stretch of the imagination
9 that would -- problem-solving part, that was
10 created so that there was consistency in
11 sentencing so one judge would be overseeing all
12 the suppression motions, would be overseeing all
13 the sentences, and not surprisingly, sentences
14 have gone up dramatically and gotten much more
15 harsh as they created this problem solving or
16 specialty court. So I think there's enormous
17 danger in lumping them together. I think
18 there's a lot of agreement certainly between
19 Lenny and myself and maybe a little less with
20 Lisa, because of the jurisdiction she's coming
21 from but the drug courts in large measure are
22 the places where people see some successes. I
23 have my own problems with the drug courts as
24 well. But I do understand and accept the idea
25 that in jurisdictions where there are not

1
2 services that are available to the accused
3 coming to the criminal justice system or
4 defender offices don't have built into them as
5 we do here in New York City, social work
6 services and other services that can actually
7 link clients to services to treat drug problems,
8 that drug treatment court may be a solution for
9 some of those jurisdictions with a lot of
10 concerns. I mean, obviously, you know, the good
11 news about problem-solving courts is that it's
12 shifting the paradigm away from the adversarial
13 -- the bad news about problem-solving courts is,
14 it's shifting the paradigm away from the
15 adversarial system. That really is in the end
16 the concern and I think all of us as defense
17 lawyers have about problem-solving courts
18 generally, which is, you know, what does it do
19 to the adversarial system, what does it do to
20 the idea, as corny as it sounds and in this day
21 and age it sounds particularly corny, to the
22 idea that really what our roles are is to
23 challenge governmental authority and police
24 conduct and to actually be on adversarial sides
25 with complete and utter loyalty to the people

1
2 that we're representing. How does that get
3 dissolved and diminished in problem-solving
4 courts if what you have to do is trade that away
5 in order gain entry into the problem-solving
6 court. Obviously you can imagine systems where
7 all of the litigation can occur in an
8 adversarial nature and when it's time for
9 sentencing then I would say, send people into
10 problem-solving court. I mean, if what we are
11 really saying is, problem-solving courts are
12 providing judges with more discretion to
13 sentence people, what we're really talking about
14 is mandatory sentencing laws have usurped the
15 authority of judges to fashion individual
16 remedies to actually solve problems or provide
17 treatment or provide avenues for people to have
18 alternatives to incarceration. What we're doing
19 is creating problem-solving courts to run around
20 mandatory sentencing provisions, and basically
21 empowering the DA's to decide who goes into
22 those courts, and to decide what the rules are
23 going to be. And that if and of itself is a
24 real concern that turns the system and the power
25 in the system which has always been over

1
2 weighted on law enforcement side on its head as
3 well. Pulling the camera back a little bit
4 further, I have an issue with who is defining
5 what the problem is. We talk about
6 problem-solving courts, and for me, the question
7 has always been, who is defining what the
8 problem is. And in large measure, what that
9 means is, courts are defining our clients as the
10 problems and rather than our clients exhibiting
11 symptoms of much larger problems that happen way
12 outside the court system. And while, you know,
13 that may just sound like politics or rhetoric, I
14 think it really speaks to enormously important
15 things that we have to sort of keep in mind,
16 which is somehow this society has turned its
17 attention away from fighting poverty and given
18 it over to the criminal justice system. And in
19 some measure, I see that's sort of the trend
20 that's happened is, we can't deal with other
21 problems, we can't fix the problems, we can't
22 talk about the larger social problems, so we're
23 going to turn it over to the criminal justice
24 system, we're going to make it bigger, we're
25 going to make it more intrusive, we're going to

1
2 make it more engaged in poor communities and
3 poor communities of color around the country,
4 we're going to cast the net wider, we're going
5 to cast the net longer, we're going to hold
6 people in those courts for a longer period of
7 time and try to deal with the "problem." If you
8 believe like I do, that criminality is not
9 character, it's not about character but about
10 circumstance and lack of opportunity, then
11 defining our clients as the "problem" and fixing
12 the "problem" is a paradigm that I simply won't
13 accept and think that it is perilously dangerous
14 for any of us to accept because the problems
15 aren't actually really solved. What we may be
16 doing is putting Band-Aids on symptoms that our
17 clients are exhibiting and they exhibit symptoms
18 for much larger problems, lack of access to
19 health care, lack of access to education, racism
20 and poverty, you can go down the list, mental
21 health. The list of them are enormous, but
22 those symptoms are being treated in the
23 problem-solving court. I feel much more
24 comfortable calling them symptom-treating courts
25 than problem-solving courts and that may sound

1

2 like semantics but it's not, it really speaks to
3 a much larger question that I think we really
4 have to keep in mind when we're talking about
5 problem-solving courts generally.

6 And my concern that, like Lenny, who
7 has already said that what's happening is
8 enormous amounts of resources are being sucked
9 into the criminal justice system and potentially
10 sucked out of communities. Now, I admit those
11 resources are not normally put into communities
12 that need them anyway but certainly they could
13 be. But rather than thinking about
14 community-based solutions what we're doing is
15 creating larger monolithic criminal justice
16 systems that pick their darlings of treatment,
17 which is another problem -- they pick the
18 treatment providers they want to work with based
19 on the standards they think are important, not
20 individualized treatment for individual clients
21 coming in with very, very different needs and
22 problems and symptoms of bigger problems. And
23 we're creating this net that goes wider and
24 wider. And if you look at the criminal justice
25 system and look at who is being funneled in and

1
2 shoveled into the criminal justice system in
3 this country, in this city, it's poor people of
4 color and across the country, poor people. It
5 should raise some real concerns about
6 problem-solving courts staying longer, more
7 intensively and more, in a more widespread
8 manner over these communities rather than
9 empowering communities to actually move out of
10 the criminal justice system, I think in fact
11 what problem-solving courts is doing is casting
12 a net that stays over people for much longer
13 periods of time creating more and more
14 dependency and more and more interaction with
15 communities that already -- criminal justice
16 system in their lives, rather than actually
17 fostering community-based solutions and
18 independence from the criminal justice system.
19 Our motto has always been at the Bronx
20 Defenders, and mine personally is, get your
21 client out of the system as fast as you humanly
22 can because no good will come from it. And
23 really, if I were to have a perfect world and
24 put resources, you put the resources either into
25 community-based organizations who are actually

1
2 trying to solve larger problems or even treat
3 symptoms or you put them into defender offices
4 that actually can provide sort of confidential
5 social work psychological support and other
6 kinds of networking for clients who can then
7 actually work with clients to connect them to
8 community-based problem solvers and
9 organizations and treatment providers in a way
10 that actually is outside the criminal justice
11 system where I just think it's a -- instrument
12 that, you know, really is not going to ever be
13 able to accomplish the kind of individualized
14 treatment and individualized solutions that I
15 think either the defender offices can or
16 community-based organizations can. That's my
17 two cents.

18 MR. JONES: Thank you.

19 MS. BERNHARD: I'm the leader of
20 questions, which means I get two minutes before
21 all these guys jump in but since I get the first
22 question, here it is, I think I agree with much
23 of what all of you say about drug courts,
24 problem-solving courts and sort of the meta
25 critique of what's going on and the way that the

1

2 criminal justice system has become more and more
3 intrusive in people's lives and the approach
4 that it takes to managing client's lives. But
5 you guys are all in slightly different positions
6 than other people who have looked at these
7 courts because of your leadership role as heads
8 of defender offices. So I'm interested in
9 hearing, how do you kind of leave your lawyers,
10 what kind of instruction, training, help,
11 support are you giving them. I mean, if we're
12 going to try and focus talking to the line
13 defenders, what are the things that we might
14 want to be focusing on and how are you trying to
15 help them handle the system that for better or
16 worse is existing now.

17 MR. NOISETTE: Well, I mean, I think
18 that they, managing cases, the complexity of now
19 on a lawyer's caseload, cases that are in
20 somebody's problem-solving courts makes the
21 responsibility to the client a more complex one.
22 And I think that the kind of supplemental
23 resources you have to provide lawyer s in order
24 to do that job well, to minimize the harm that
25 might come from the client, that's coming to the

1

2 client I think is important. I was talking to a
3 couple of lawyers who I think some of you will
4 speak to tomorrow just about the time, energy
5 and information gathering that is required
6 between court dates to arm yourself for what's
7 going to happen on that status appearance, you
8 know, whether it be helping client meet the
9 expectations that may in some respects be
10 unreasonable, but nonetheless are expectations
11 that are spelled out in a particular contract
12 that they have as a result of getting DTAP or
13 managing their participation in domestic
14 violence program, batterer's programs that has
15 been mandated by the domestic violence part.

16 So the training that has to be given
17 to lawyers in terms of the types of questions
18 they are asked, the types of resources you need
19 to provide to lawyers in terms of social
20 services support and those things I think become
21 layered and even more complex when you have
22 clients in these specialty courts. And so I
23 think that's one thing that you certainly need
24 to focus on.

25 MS. STEINBERG: I think you also need

1
2 to arm your advocates and your lawyers with
3 alternatives to the treatment providers that the
4 courts have already selected. They really have
5 to have a very, very, very good working
6 knowledge of what's available in the community
7 and why this one-size-fits-all solution isn't
8 going to work for your client who is a custodial
9 parent and actually can't go to the treatment
10 center at the time that they are supposed to go.
11 They have to have a very vast knowledge of what
12 else is available to try to push those
13 problem-solving courts into expanding beyond
14 their normal repertoire of their four favorite
15 providers that, by the way, they have huge
16 contracts with for huge amounts of money. You
17 know, I think your lawyers particularly and your
18 other advocates in the office need to understand
19 that your caseloads are going to continue to
20 build, these cases will pend forever. They will
21 pend for 6 months, 12 months, 18 months, two
22 years and two and a half years. And what
23 happens is, we see, I think all across the city
24 caseloads growing and growing and growing and
25 particularly in a city like New York, the

1
2 defender offices are doing a set number of cases
3 a year. So the set number of cases we're taking
4 in hasn't changed, but the pending caseloads are
5 growing and growing and growing. These cases
6 simply never go away. I don't mean that to make
7 it sound like the client is a case, but it is a
8 legitimate work issue for the lawyers and the
9 advocates that are doing this work that it isn't
10 taken into consideration in the numbers that
11 you're taking in that in fact clients' cases
12 will just pend much, much, much, much, much
13 longer and there's a lot of work intensity
14 connected with that, follow up -- report date
15 and just continuing to stay in contact with the
16 client and doing work on their behalf is another
17 problem that you have to have. I think you have
18 to have somebody checking in between appearances
19 as well. So again, like Lenny says, you need
20 social support. To do that with clients, it
21 doesn't have to be a lawyer, but somebody needs
22 to be checking in so that you don't walk in on
23 the problem-solving court day and all of a
24 sudden something has gone terribly wrong with
25 treatment, somebody has a problem with

1
2 treatment, you'd better have somebody in between
3 those dates that can actually help that problem.
4 I will tell you that no matter how hard we
5 counsel people and no matter how hard we talk
6 about this, I know that in my office the Bronx
7 Defenders and I'd like to think that our office
8 is a vigilant trial office that really likes
9 trying cases. I will tell you that with the
10 advent of drug treatment court in the felony
11 situation that even our lawyers have stopped
12 trying buy-and-bust cases and that is horrible
13 and woefully terrifying. It is -- we have, we
14 used to try buy-and-bust cases, the \$5, \$10
15 sales all the time, they were the -- for the
16 young lawyers coming up, beginning to learn how
17 to do felony cases and we tried them all the
18 time, to great success actually, with about an
19 83 percent acquittal rate. Here's the problem,
20 the problem is, when your lawyer as vigilant as
21 they are and as much as they want to try the
22 case and as good at odds they think they have at
23 beating this case, when you talk to a client who
24 is a predicate and you say, look, I really think
25 we can beat this case, right, and you used to

1
2 not be able to say this, but there's this
3 treatment court available so take it, you have
4 to actually now have a conversation that says, I
5 think we're going to win this case, but I can't
6 guarantee it and if we lose, here is what we're
7 looking at, right, you're looking at five years,
8 six years, eight years, ten years, or there's
9 this TASC treatment court available to you, most
10 clients, I'm sure myself, I'm sure my son would
11 opt into treatment because the risk is just too
12 great. And that's a tragedy because these cases
13 that really were going by way of acquittals and
14 really setting people free in cases where they
15 should be set free and not actually sent into
16 the criminal justice system for two years, these
17 cases aren't getting tried anymore, police
18 officers aren't being held to any kind of
19 questioning anymore in drug cases and I think
20 that that's a terrible, terrible danger and
21 we've seen that happen over the past five years
22 in the Bronx. That's something, I don't know
23 how you prevent that from happening. You have
24 an ethical obligation to tell your client what
25 those choices are and, you know, clients are

1

2 wise and don't want to take a risk of spending
3 six years in jail for a \$5 sale. And so people
4 are opting into treatment when I think it really
5 is about as cohesive as it comes because again
6 under the mandatory sentence that is facing them
7 at the end. I don't know how you fight against
8 that. If you guys come up with a solution for
9 that, that would be great because people just
10 aren't trying these cases anymore and they
11 should be trying them.

12 MS. BERNHARD: I just want to follow
13 up one thing. When you were talking, Robin,
14 about arming your advocates with information so
15 that they could go back into treatment and say,
16 well, you know, this provider isn't so great,
17 maybe that provider is better and Robin's office
18 and Lenny's and Lisa's too actually come to
19 think about it, are really focused a lot on
20 doing this job of treatment better than the
21 court, they have social workers, they have
22 knowledgeable people on staff who can provide
23 the advocates with a lot of this information.
24 How is that received in drug court? I mean, if
25 your advocate comes in and says, well, your

1

2 Honor, we've got a better plan, a different plan
3 and, of course, they're all set with the people
4 that they work with, they're, you know, all on
5 the team and you're coming in from outside of
6 the team, how is that kind of thing received.

7 MS. STEINBERG: For our experience,
8 as it is judge specific. I mean, look, we have
9 Laura Espinoza doing one of the drug courts,
10 life couldn't be better, right, she'll listen to
11 anything, she is thoughtful, she is sensible,
12 she'll flex. But in the felony context, we've
13 got other judges who are actually unwilling to
14 ever look at any provider that's not one of the
15 four that they've selected so it becomes very
16 personality and individual judge specific which
17 is one of the problems.

18 MS. BERNHARD: That discourages
19 people from coming up with alternatives and
20 advocating, speaking within that context, if
21 they come up with an alternative that is not
22 going to be listened to.

23 MS. STEINBERG: Right. For sure.

24 MS. SCHREIBERSDORF: I would add on
25 that, in mental health court they're a lot more

1
2 open to alternative because they have so many
3 problems actually -- and because mental illness
4 is so individual -- you know, drugs, it's very
5 much like what Robin is saying, it does take on
6 a sort of one size fits all, it's this problem
7 and you're lumped into it but there's no getting
8 around with mental health that everybody is sort
9 of unique in mental illness. So we do have a
10 lot more success, I think, coming up with
11 solutions. I mean, mainly they throw up their
12 hands sometimes and say, can you figure
13 something out. We have a client right now
14 that's -- we're accessing resources that are
15 unique to her situation. And so --

16 MS. SHIFMAN: Can I just ask a
17 practical question? I'm sorry to interject.
18 The mental health court, for those of us that
19 don't practice --

20 MS. SCHREIBERSDORF: Well, in our
21 mental health court -- do you mean how the cases
22 get in there kind of thing?

23 MS. SHIFMAN: Yeah.

24 MS. SCHREIBERSDORF: There's a number
25 of different screening mechanisms by which cases

1

2 go in. It's only felonies -- there's no
3 misdemeanors, very few misdemeanors in there.
4 Cases go in, let's say if somebody has a
5 competency examination for whatever reason and
6 he comes back fit, competent, that case
7 automatically goes to the mental health court,
8 perceived as somebody who probably has a mental
9 illness and might benefit from it. If the DA
10 can see that the client looks mentally ill,
11 maybe the cops jotted something down -- both
12 parties have to agree. But obviously mostly the
13 defense, it's a mostly defense-driven part,
14 which is why, you know, it's a positive for us.
15 Mostly it's on us to identify cases where we
16 think the client not only has mental illness,
17 but would benefit from that court. So we don't
18 even mention -- unless we think that's the right
19 thing for that client.

20 MS. SHIFMAN: Is that true for the
21 other mental health courts?

22 MS. STEINBERG: We have a tiny, tiny
23 one with like 17 people in there a year or
24 something, very small, to start. But it's
25 mostly defender driven, defender identified.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. SCHREIBERSDORF: If you want me to get back to the question you asked because one of the things I did was, I think in order to eliminate what I think is a very -- of the defense in drug and mental health courts, mostly drug courts, because I went to the training and I got a chance to really witness it in happening, what I did was, I opted not to assign an attorney to drug court. One of the most common things that happens is, a public defender office says, I'm going to put this one attorney in, they're going to be in drug court, okay, say the first day or two they say, oh, that's not right, that's not fair, then they learn that the judge always does the same thing and they just stop fighting. I think it's natural, it's human. So I really made the decision very controversial amongst my staff and amongst the Court which fought me tooth and nail and did everything they could to sabotage it, but the decision was made I was not going to put somebody in drug court that, you know, they wanted us to take Tuesdays and we put a lawyer in there and, absolutely not, that client

1
2 represented by that attorney, there's a benefit
3 to having a variety of attorneys in that court,
4 there's a very significant -- actually to my
5 attorneys to hearing pretty much, I think
6 positive lingo that goes on in drug court, why
7 shouldn't they get to hear relapse as part of
8 recovery and then when they look at a case in
9 another court, they can say that to the other
10 judge that might not buy into it. But I will
11 tell you that -- on a daily basis, they call our
12 cases all the time without the lawyer so the
13 lawyer is running around, running around and
14 they get there, oh, we did it already, we did it
15 already, the client is doing well, we want them
16 to get back to the program. One of the positive
17 reinforcements is to get out of court quicker,
18 he is doing well, we don't need you. I think
19 that really brings me to the next point on that
20 issue, which is attorneys feel useless in drug
21 court. They feel like they are an appendage and
22 I've heard a lot of particularly private
23 attorneys mostly because my attorneys wouldn't
24 -- it in front of me, but I hear a lot of
25 private attorneys, you know, assigned counsel,

1
2 attorneys say, you know, there's no reason for
3 me to go there so I just don't know. When you
4 go to drug court -- you know, I spent a lot of
5 time in mental health court because I really
6 like it there. It is pretty mortifying to see
7 Legal Aid attorneys, you know, Brooklyn Defender
8 Services attorneys, 18-B cases done, outside
9 cases done, no attorney. I will say that,
10 having said that, I won't assign an attorney to
11 drug court. I do have an attorney assigned to
12 mental health cases. That's another thing.
13 They wanted me to assign an attorney to mental
14 health court, I said no. I believe that
15 handling client's cases who have mental illness
16 is a little bit of a specialty much like
17 somebody who has an immigration problem really
18 should be a specialty, certain attorneys can
19 have like a dual expertise. And I think because
20 the way mental illness expresses itself, it's
21 very helpful to clients to have an attorney,
22 exploring all their options -- maybe about their
23 illness, the medications. So I did eventually
24 -- but we assign the cases, not the ones that
25 are just going to mental health court, we assign

1

2 all clients -- and that attorney can sort of
3 decide is that a good case -- and use her
4 expertise for clients who have a mental illness
5 but -- because they do want to tap into your
6 expertise very much by forcing you to kind of
7 limit your expertise to their specialty court.

8 So I think when you ask one attorney to -- those
9 very difficult decisions, right, and then
10 enforcing those decisions on a daily basis,
11 backing up the attorneys, that's the kinds of
12 things that I do. Also, I keep my attorneys
13 very aware of the fact that I have issues with a
14 lot of these procedures and I really let them
15 know that I'm available -- a reader can do, a
16 chief can do, they call me, you know, they're
17 making me waive my client's right to testify in
18 front of the grand jury if he wants to go to
19 drug court. That's the new thing all of a
20 sudden. We have the right for the defendant to
21 testify in front of the grand jury and to use
22 that right. Well, where did that come from all
23 of a sudden? So they call me, and I really have
24 to take that issue up top down to the DA's, why
25 are you doing that, fight with the judge. I go

1

2 in there and I fight it out with them. And the
3 attorneys have to know that they're being backed
4 up. And that's the problem with jurisdictions
5 who don't have -- fighting for those issues or
6 don't have any -- I agree also with having
7 people focus very strongly on the quality of the
8 services, particularly the mental health
9 community. There are some really, really bad
10 services out there. We've had clients in drug
11 programs that were going out of business not
12 feed the clients and then when the clients left
13 they were all charged with absconding. So those
14 are the kinds of things that attorneys have to
15 know about that and understand how to handle
16 something like that because they will throw up
17 their hands and don't know what to do. So, you
18 know, there has to be a very strong leadership
19 role, I think, in the defense bar which is very
20 important.

21 MS. KELLEY: Obviously, the
22 collateral consequences of any conviction are
23 terrible for any defendant, but they are
24 particularly terrible for the immigrant
25 population. Do you find that the presence of

1

2 mental health courts influences your interaction
3 with your immigrant clients? Does it make a
4 difference? Any problem-solving court.

5 MS. SCHREIBERSDORF: We have a very
6 large population in Brooklyn. Immigration is
7 willing to work -- they actually sometimes agree
8 to let the client out to do the drug court. The
9 problem is, the client admits to the crime,
10 which they have to do, even if it's not a guilty
11 plea, that can be used against them in a
12 conventional court so I've worked a little bit
13 to try to help -- limited circumstances, I think
14 the relationship of the clients -- you know, in
15 drug court they work things out with probation,
16 they work things out if the client is on parole
17 or probation. The concept is that, they are
18 trying to work things out with all these other
19 agencies, which is of course the compelling
20 nature of the court, right, that they have the
21 ability to work all these collateral things out.
22 So do I think that our relationship with our
23 client is different, not necessarily; are they
24 to be given a couple more options that might be
25 successful for them -- however, illegal

1
2 immigrants don't have any access to any
3 services. So for most of our clients, they're
4 really -- unfortunately.

5 MR. NOISETTE: I think for us
6 particularly because most of the courts are, you
7 know, plea-first courts -- services for our
8 clients, even if they be considered good
9 services, I think -- for the most part can't
10 take advantage of them because we had no ability
11 to insulate them from being -- so I think our
12 goal, the last vast majority of clients is to
13 get rid of the case and so I think consideration
14 of those services probably doesn't exist as
15 readily when --

16 MS. KELLEY: By get rid of the case
17 do you mean fully litigate it?

18 MR. NOISETTE: Yes.

19 MS. STEINBERG: I think I sort of
20 have that approach more. We -- look, getting,
21 immigrants particularly if they are not here
22 legally, getting them out of the criminal
23 justice system as fast as humanly possible is
24 really the best strategy for avoiding
25 deportation or being sent into custody for

1
2 detention. So frankly, you know, availing
3 yourself of the problem-solving court that's
4 going to keep the criminal justice's eye on you
5 for two years is really not a very good strategy
6 for those clients. So you're going to want to
7 get them out quickly, if they need services
8 you're going to find those services outside of
9 the purview of the criminal justice system, I
10 think.

11 MS. YOUNG: Correct me if I'm wrong,
12 but which came first, the mandatory sentences
13 for drug cases in New York or the drug courts?

14 MS. STEINBERG: Mandatory sentences.

15 MS. YOUNG: So the drug courts were
16 in, from what I'm hearing, the system, whatever
17 system you want to call it, the response to how
18 do we divert offer them a mandatory minimum
19 sentence --

20 MS. STEINBERG: Yeah, I think in
21 large measure that's the motivation, is to --

22 MS. YOUNG: So in part, what we hear
23 from some offices where they say, we really want
24 to litigate first and then we can use a
25 drug-court model as a sentencing model won't

1

2 work in New York because if there's a
3 conviction, there's a mandatory sentence. And
4 then I guess that frames my question, because in
5 another hearing, we had public defender
6 expressed a lot of frustration in why do I have
7 to staff or deal with drug courts because they
8 really want a social worker, not a lawyer and I
9 haven't heard that frustration from the three of
10 you. But I guess in part, because you
11 recognized the reality if there's a mandatory
12 minimum here versus we participate with the drug
13 court here, it's still a better option for your
14 clients. Is that what I'm hearing or is there a
15 frustration?

16 MS. SCHREIBERSDORF: I know a lot of
17 defenders around the country and I spend a lot
18 of time -- different culture, you know, and that
19 is a very -- attitude of, you know, I'm not a
20 real lawyer and they don't get that, you know,
21 there are so many different levels at which we
22 advocate. I mean, plea bargaining is a major
23 portion, more than 90 percent of the cases in
24 New York get plea bargained. This is a
25 different -- you don't stop advocating for your

1
2 client because you're trying to work out a plea
3 versus going to trial and litigating the issue.
4 But people are very frustrated with the kind of
5 plea bargaining, because this does involve
6 social work. So -- beneath them or -- and
7 really what they're doing is really advocating
8 their responsibility because there's a lot of
9 advocating that needs to be done, you know,
10 along the way, right, but also, most public
11 defenders don't have the money to staff these
12 places. So it's frustrating to take a lawyer
13 away from trying cases and put them in charge
14 and standing there and saying, my client is
15 doing great, my client is doing great, put it on
16 for another date. That's really where it's
17 coming from. I don't think it has that much to
18 do with the sentencing structure as much as a
19 certain culture that might develop around, you
20 know, around treatment, you know. And we've
21 come from a sort of holistic-thinking background
22 to start with where we've been trying to -- our
23 clients for a long time. So we kind of bring
24 out, I think, a lit bit more into this process,
25 which isn't always pervasive.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. NOISETTE: I do think that the chronology is correct, at least particularly for us in Manhattan. The other dynamic is the other lack of discovery, which makes the treatment option a more viable option for our client because we don't have as much ability as we would like to adequately assess the alternative of trial and potentially success at trial and so that also kind of makes drug court and the ability to avoid the mandatory sentences more attractive to us because we have very little ability to sort of assess our trial option.

MS. STEINBERG: We had an interesting experience in family court, which just gave me some sort of view as to what would happen if there was no mandatory sentencing, which is in family court we do a representation of parents and they have a family-treatment court there, which is modeled very much on the drug court. It has all these wonderful social workers and doing such great work, and our lawyers in family court kept on refusing to send clients in there until, of course, the supervising judge called us in and they demanded to know why are you

1
2 refusing to send people into family-treatment
3 court, and I said because all the services
4 they're doing in there we do in our office. We
5 do that in the community with the people in our
6 office and that's what we do. And you don't,
7 and you haven't created a legal incentive for
8 people to opt into the court. It was
9 fascinating, they had absolutely no legal
10 incentive, it's not like you got your kids back
11 sooner, it's not like you got an ACD more often,
12 it's not like your cases got disposed of after
13 or your kids got returned to you sooner. There
14 just were no, there were no resources available
15 to any of the 18-B lawyers to hook their clients
16 up with any services so everybody was opting
17 into treatment court. There was no mandatory
18 sentencing so it was fine. But there was
19 absolutely no legal incentive to do it. I mean,
20 the only way they get us in there is because
21 they have the legal mechanism to be able to say,
22 ah hah, he is going to look at four and a half
23 to nine if you don't send him in to treatment
24 court otherwise I don't think we'd be sending
25 people to treatment court. We do it as a

1

2 necessity, but not because we think it's a good
3 solution to much.

4 MR. SCHECHTER: I just had some
5 technical questions and one general question.
6 In the drug court in Brooklyn and the drug court
7 in the Bronx, at the end of the case, when
8 you've done everything that the Court has asked,
9 what happens to the case?

10 MS. SCHREIBERSDORF: The plea is
11 withdrawn and the case is dismissed.

12 MR. SCHECHTER: In the Bronx.

13 MS. STEINBERG: The plea is
14 withdrawn, either you reenter a plea to
15 something else, potentially misdemeanor; if you
16 were a predicate felon, you will reenter the
17 plea -- or there's a dismissal or a whole
18 variety of things.

19 MS. SCHREIBERSDORF: I want to say
20 something, in mental court --

21 MR. SCHECHTER: Let me ask about the
22 mental health court, that's a totally different
23 creature. What happens in Brooklyn at the end
24 of a mental health court felony case, the
25 defendant does everything that has been asked of

1

2 him, gets all the meds, stays out of trouble,
3 what happens to the indictment?

4

MS. SCHREIBERSDORF: That is
5 determined at the beginning. When the treatment
6 providers say -- this is the kind of treatment
7 we're going to have for him, we negotiate up
8 front, what will happen if the person succeeds,
9 what will happen if the person fails and the
10 duration of the treatment because, of course,
11 mental illness never goes away. So all of that
12 is negotiated up front. That's built into our
13 program and that's like one of the examples of
14 something that -- and then whatever was agreed
15 upon happens at the end, however, we do have
16 room to actually approve the positive -- if the
17 person did very well so often, let's say, the
18 agreement was -- probation at the end we'll
19 advocate, look, the person did great, give them
20 a conditional discharge --

21

22

MR. SCHECHTER: What happens in the
23 mental health court cases in the Bronx?

23

MS. STEINBERG: That's too new.

24

MR. SCHECHTER: So we don't know yet.

25

What would be your approach to the mental health

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

court assuming --

MS. STEINBERG: Stay out of it. Stay out of it.

MR. SCHECHTER: -- you're actually going to keep your attorneys out of mental health court --

MS. STEINBERG: No, I mean, we won't -- sometimes you will have a client that you're going to have to send into mental health court because they're either in custody and you can't actually set them up or you're facing sentences that won't allow you to do it, you will have to go in but whenever possible, I think, we would opt to find treatment outside.

MR. SCHECHTER: On the cases where you have to go in, what happens at the end of the case assuming that the client does everything, same as Brooklyn in?

MS. STEINBERG: I believe so. I don't even know yet.

MR. SCHECHTER: Let me go back to the issue you raised, Lenny, about -- this problem of the lack of discovery, when drug-court models came in it was either, if I said I think there's

1
2 a motion to suppress here, they said, really,
3 then you can try the case, Mr. Schechter -- the
4 client had a seizure so they had that either-or
5 model. That still exists, you still can't fight
6 on the legal issue and still have the drug
7 court.

8 MR. NOISETTE: Correct.

9 MR. SCHECHTER: Which is why we don't
10 have the buy and busts anymore.

11 MR. NOISETTE: Right.

12 MS. STEINBERG: Right.

13 MR. SCHECHTER: First, if we can
14 build into the drug-court model a ten-day delay
15 -- give us discovery so that we can then
16 approach the issue of whether or not there's a
17 legal -- that would be part -- but not total --
18 because then our attorneys could make an
19 evaluation.

20 MR. NOISETTE: Right.

21 MR. SCHECHTER: But then you'd have
22 to follow that up, the decision would have to be
23 made assuming that you do -- buy and bust motion
24 to -- would you pursue it in drug court, would
25 you recommend that or would you recommend we

1

2 take the defendant out and pursue it in regular
3 court part in the non-predicate felony case.
4 Which way would you go? In other words, what
5 I'd like to know is, we've got to write a
6 report. How should we tweak the model if we
7 decide the model should remain but remain fairly
8 to approach the problem that our attorneys are
9 giving up on legal issues in the tradeoff for
10 treatment. What should we do? Should we try to
11 get discovery built in so that we can make the
12 evaluation? That's one part. I'd like you to
13 think about that and tell me what you think, and
14 the second part is, in the predicate-felony
15 situation where you get the discovery, and then
16 you go to the judge and you say, there's a real
17 serious issue here on the buy and bust, on the
18 street stop or the car stop, is that any
19 different than the non-predicate felony
20 situation in the drug court. How would we tweak
21 the model to deal with that situation?

22 MS. STEINBERG: But in the -- whether
23 they're predicates or not.

24 MR. SCHECHTER: To me, mandatory
25 sentencing is not going away. That's there for

1

2 a while. That battle was being fought, it's
3 just in its beginning stages across the country
4 because of economics, but I don't see that
5 happening -- the bigger problem, we heard
6 testimony here this morning is that in New York
7 there's a substantial problem, hundreds of
8 thousands of arrests every year and stops that
9 are illegal. One of the panels pointed out,
10 marijuana stories, a huge number of busts. We
11 know from our own knowledge here in New York,
12 that for years there have been stops of people,
13 largely of people of color as opposed to white
14 people in New York, those buy and busts have
15 disappeared and it was candid for you to admit
16 because while I have found that this is across
17 the board -- Legal Aid Society, it's your
18 offices, and private bar, forget about it, the
19 minute the drug courts came in, we all gave up
20 on that. It's just easier on case loads and
21 responsibility --

22 MS. STEINBERG: I don't think because
23 it's easier, I think the risks are too high.
24 It's not about easiest.

25 MR. SCHECHTER: Because the risks are

1

2 too great, how do we tweak the middle?

3 MS. SCHREIBERSDORF: We can get
4 discovery in Brooklyn before we took the plea,
5 they will give us the police reports -- which is
6 not statutory in New York at all. He does
7 actually give open-file discovery on every case
8 mostly. So we worked out that we would get the
9 discovery because it's only a limited amount of
10 stuff, we don't have a whole bunch of time to
11 investigate it and in Syracuse they do have an
12 opportunity to -- which is interesting, that
13 judge will say, he'll look at the police report
14 and say, this is a problem and I want to, you
15 know, I want this dismissed. So that judge is
16 taking an active role, however, if you keep --
17 in my court, for example, the judge is so
18 invested in cohering people into drug court that
19 if you kept the legal issue in front of that
20 judge, much like gun court, you can -- so I
21 don't think that's a good solution, that the
22 drug-court judge who is so invested in people
23 getting treatment for whatever reasons, should
24 not be the person saying, with the right to say,
25 oh, that's not a good search, therefore, the

1

2 case is dismissed.

3

MR. SCHECHTER: Isn't that a problem
4 for the judge ethically as well as us? Isn't
5 that what the problem is, that they've been so
6 invested, the judges, in the treatment center
7 that they have forgotten about the legal rights.
8 We, as defense attorneys, and we heard testimony
9 here this morning from Judge Kluger that a lot
10 of the initial changes that they've made and
11 you, yourself, alluded to it this morning that a
12 lot of changes they made because we, the
13 defense, have urged it upon it. They don't like
14 it, it's begrudging, but they do it. It seems
15 to me -- we're going to hear testimony today
16 from Joe -- in the youth part, can we change the
17 model so that this business of discovery can be
18 brought to their attention and they can do
19 something about it even in the drug-court
20 setting. I also don't accept it as a
21 proposition that -- that's it.

22

23

24

MS. SCHREIBERSDORF: I'm just saying,
you know, you don't want to do a suppression
hearing in front of the same judge --

25

MR. SCHECHTER: Right.

1

2

MS. SCHREIBERSDORF: I want to go to
a different judge.

4

5

6

7

8

9

10

11

12

MR. SCHECHTER: Fair enough. Let's
take that, we have a ten-day delay, discovery is
given to the defense, you say, Judge Ferdinand,
I can't be in your court right away -- there's a
very serious issue here on the motion to
suppress, judge says, okay, go to part seven,
Judge Jones is there, try your motion to
suppress, okay, and if you lose, come back here
to be tried. Any problem with that?

13

14

MS. SCHREIBERSDORF: Why did you
suggest Ferdinand?

15

16

17

MS. STEINBERG: That's the
prosecutors. The prosecutors are going to go,
are you kidding.

18

19

MR. SCHECHTER: Can we urge that? I
know what the prosecutors are going to say.

20

21

MS. SCHREIBERSDORF: I think it would
be great to urge that.

22

23

MS. STEINBERG: There is no down side
to that.

24

25

MR. SCHECHTER: Make that
recommendation, I'm sure the prosecutor is going

1

2 to say, that's insane, what are you, crazy. But
3 you've got to start somewhere. And you'd have
4 no problem?

5 MR. NOISETTE: No problem.

6 MS. STEINBERG: There's no down side
7 to that at all.

8 MR. JONES: Judge Jones says we're
9 almost out of time. Adele, anymore questions?

10 MS. BERNHARD: I think it will be
11 great to advocate for discovery and I think it
12 will be great to advocate for going someplace
13 else to do a motion to suppress, but I honestly
14 think that, once again, it's going to be, if
15 we're forced into evaluating whether we're going
16 to win the motion to suppress, win the trial or
17 go to drug court, unless it's something magical
18 in those police reports like those particular
19 officers under indictment, we're still not going
20 to be able to know, you know. And, you know,
21 we're still not going to be able to push those
22 legal issues or even the factual issues because
23 the down-side risk is to great to the clients.

24 MS. STEINBERG: The truth is, there's
25 not that much discovery in the drug cases. The

1

2 truth is in arraignments, at least in this
3 jurisdiction, you turn to the DA and say, was
4 there stash or cash and they'll tell you what
5 was found where, and you will have some sense --
6 you can even dare to ask the question --

7 MR. SCHECHTER: -- we say, let's have
8 meaningful discovery, not just five police
9 reports -- the accident report, give us
10 meaningful discovery about the stop. Then this
11 is not such a bad solution. It's certainly a
12 recommendation.

13 MS. STEINBERG: I'm always for the
14 anti.

15 MS. SHIFMAN: Which borough is Red
16 Hook in?

17 MS. STEINBERG: Brooklyn.

18 MS. SHIFMAN: -- participation in the
19 community and everybody gets to voice whatever
20 they want and all this, great, with the
21 implementation of that court was your office or
22 some other defender, Legal Aid service
23 consultant, did you have input, do you have
24 continuing input? Is there a mechanism for the
25 concerns of defense lawyers in those courts?

1

2 And also, I'm not sure what you have, you're all
3 over the place, I think, but I'm curious about
4 that, to move away from the drug-court model for
5 a second.

6 MS. SCHREIBERSDORF: Theoretically,
7 there's a mechanism but there's one Legal Aid
8 attorney who is in that court all the time,
9 sometimes two and that person is so part of that
10 system at this point and, you know, they work
11 together, they just have, you know, these same
12 ideas of what should happen to different courts
13 -- to different clients and it's very, very
14 insular like Red Hook itself, you have one
15 judge, one DA, one defense attorney and that's
16 pretty much what's going on over there.
17 Theoretically absolutely. After you have one,
18 two, three or four meetings, you stop having
19 concerns. But I will tell you, Legal Aid was
20 involved in that and they did something in that
21 court that was so offensive to me, I went there
22 to represent my stepson, they agreed -- the
23 lawyers not -- they agreed that the person could
24 be assessed before their arraignment, before
25 they met their attorney. So they go in there

1

2 and they interview, our clients get interviewed
3 by CJA for their community ties and things like
4 that for bail purposes, they actually ask people
5 if they used drugs before they've met a lawyer
6 and the defense office went along with that. So
7 having a defense office there isn't always what
8 you need it to be. I went over to represent a
9 family member and I was freaked out by that.
10 But, you know, theoretically, yes. And are
11 those people very well-intentioned, yes,
12 everything they tell you is genuine from their
13 heart.

14 MR. NOISETTE: I want to very quickly
15 tell you a story about -- the Harlem Justice
16 Center did focus groups and engaged my office
17 because it's in our backyard where the center
18 was going to be created and one of the things
19 that kept being mentioned again and again was
20 dealing with the problems with youth crime and
21 youth arrest and they really -- were not able to
22 respond and build a court that was really
23 addressing that because of the limitations of
24 the source of funding, so they had federal
25 funding and the federal funding had all sorts of

1
2 cases that were excluded -- included in this
3 community-court model and so they had that
4 pressure and then they had the district
5 attorney's office that wasn't really interested
6 in having buy-and-bust cases there because they
7 didn't want to expose their, they didn't want to
8 expose their undercovers. And so what that
9 created was something that was not responsive to
10 the issues the community was addressing at all.
11 What were kids being arrested for in that
12 community -- a lot of sort of fights, sort of
13 assault two's, things for violent crimes so the
14 place where a community-based focus might have
15 been most impactful on an issue that the
16 community identified, the Court wasn't able to
17 create a model because of either the resistance
18 from the district attorney's office or
19 limitation of their funding. So what they ended
20 up doing was prosecuting -- cases and very
21 low-level offenses that weren't going to be in
22 the system at all except that they needed
23 something in that court. And so I mean, you're
24 talking about community engagement and community
25 involvement, there was this perception, but the

1

2 couldn't wasn't responsive to it -- responsive
3 at all.

4 MS. SHIFMAN: So they had money they
5 needed to spend and didn't address the problem.

6 MR. SCHECHTER: The term "community
7 court," the term is really an art form in New
8 York. The midtown community court is not at all
9 a community court. It was designed by the New
10 York Times, an advance of a political convention
11 to clean up prostitution. It does nothing
12 spectacular, except a lot of prostitution and
13 small drug arrests are funneled into that court
14 and you have to do two day's community service.
15 It's staffed by the Legal Aid Society and by the
16 DA and the judge for two to three years. That's
17 one kind of community court, not really
18 community court. There's the Red Hook community
19 court, it's so-called the community court
20 because it's placed in the Red Hook community,
21 but it has no magic to it. I think we're
22 confusing terms here, what you were just talking
23 about, a community court and what we heard
24 testimony about this morning from Fagan and
25 Thompson is a whole different concept, that's a

1
2 court that deals specifically with community
3 problems or community input, even community
4 decision making, that's a different kind of
5 community court. Am I correct about that?

6 MS. BERNHARD: That doesn't make
7 sense.

8 MR. NOISETTE: All of these courts
9 are described as being that latter -- the
10 question is, are any of them.

11 MR. SCHECHTER: Right.

12 MS. SHIFMAN: What's going on in the
13 Bronx?

14 MS. STEINBERG: We don't have them
15 thankfully.

16 MR. SCHECHTER: There's no community.

17 MS. STEINBERG: We're busy worrying
18 about our court house, the new building.

19 MS. YOUNG: When you said that you're
20 not trying the buy-bust cases anymore because of
21 the option or, because of the drug-court option,
22 how has that -- has that changed law-enforcement
23 behavior? Because, you know, if in fact there
24 were bad stops or if in fact there were a lot of
25 acquittals, one would think or one would hope

1

2 law enforcement would take some notice of that.

3 But if on the same hand law enforcement is

4 saying, nobody is challenging anything, does

5 that mean the behavior's gotten worse or it was

6 so bad anyway --

7 MS. STEINBERG: The overall majority

8 of cases in the criminal justice system in the

9 Bronx and citywide go by way of plea bargaining

10 and the police officer's conduct is virtually

11 unchallenged all the time at every single stage

12 of the process including when the prosecutor --

13 initial assessment, you will forgive me. And so

14 I think that the police in the Bronx and I

15 suspect the police everywhere else, I won't

16 speak for other boroughs, go utterly unchecked

17 and they go about their merry way. Actually

18 very rarely is there a thought that they're

19 concerned that they're going to be challenged in

20 a courtroom under oath and questioned and

21 cross-examined by defense lawyers. I don't

22 think that that's changed. I don't think the

23 numbers are big up to have made that change by

24 the fact that we're very rarely trying these

25 cases anymore. I just think it was a very rare

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

thing anyway.

MR. NOISETTE: Can I make one last suggestion, if you don't mind?

MR. JONES: Sure. Absolutely.

MR. NOISETTE: -- one in the Bronx for a longer period of time, maybe this is completely pie in the sky, but when we first had, when we first started in Manhattan, a number of our lawyers sort of raised real concerns about the propriety of a judge sitting -- as a family court judge and the Supreme Court criminal court judge given the different standards of proof and the levels of information that they were getting about sort of clients in cases and we tried to brain storm, didn't get very far in terms of thinking about is there some constitutional challenge to that structure, is there a way to attack the premise that a judge can compartmentalize the information they are getting and fairly adjudicate one matter as opposed to the other. I don't know if -- at some point this committee might be interested in thinking about but I think some insight and some help, the field could use some thinking about

1
2 whether or not there's some challenges to that
3 model. I think it's really troubling to the
4 lawyers in my office.

5 MS. SCHREIBERSDORF: Also because
6 there is a trend in that direction so this is
7 like the first step along the way and I think
8 they want to do more of that, kind of combined.
9 So that's something that's coming. That's in
10 the next wave, I think. MR. JONES:

11 Thank you. Before you'll leave,
12 before you leave, Lisa --

13 MS. SCHREIBERSDORF: I gave it to
14 Scott. Actually, there's a real good outline
15 from the Wisconsin Public Defender that I got
16 permission to use and I also -- it's more of a
17 practice.

18 MR. JONES: Indigent defense in New
19 York is in good hands.

20 MS. SCHREIBERSDORF: Thank you.

21 MS. STEINBERG: Thank you.

22 MR. NOISETTE: Thank you.

23 MR. JONES: Lunch time.

24 (Lunch recess taken.)

25 MR. JONES: Good afternoon. We're

1

2 going to continue with the afternoon session, I
3 will just -- first, let me thank you both for
4 being here. We are quite pleased to have you
5 and I will just tell you that the way we work is
6 that, we give each of you five minutes or so to
7 give us the benefit of your opening thoughts,
8 comments, remarks and then we are -- with
9 questions, we want to get to the questioning as
10 soon as we can because we're interested in
11 having you address some of the things that are a
12 particular concern to us. The way we work is,
13 one of us will begin the questioning and the
14 person who will do that for this panel is Vicki
15 Young. So having said all of that, the floor is
16 yours and I'll leave it to the two of you to
17 determine who will go first.

18 MR. MANSKY: Thank you for the much
19 confident after lunch slot and I'd like to thank
20 the NACDL for inviting me to speak today on the
21 topic of problem-solving courts. I'm Adam
22 Mansky. I'm flattered to be sitting on the
23 so-called academics two panel, but I'm afraid
24 that I might be under semi-false pretenses
25 although not of my own doing. Just to clarify,

1

2 I'm completing my first semester of teaching at
3 Fordham University law school as an adjunct
4 professor and I assume most of this room has
5 served as adjunct professor at some time or
6 another. But before you walk out, if it gives
7 you a measure of comfort, the course is entitled
8 problem-solving justice, problem-solving courts.
9 Unfortunately -- hold on a second -- anyhow, I
10 want to be clear, I don't want to be overstating
11 things that had me represent the academic
12 viewpoint although I was tempted to wear my blue
13 corduroy jacket with elbow patches --

14 MS. YOUNG: I thought they were tan.

15 MR. MANSKY: I actually have both.

16 But I do share some quality of academics, I can
17 be long-winded, rambling and get lost in my
18 train of thought, so I'm going to try to adhere
19 pretty closely to my prepared remarks and spend
20 some time looking down and maybe, I was told I
21 had ten minutes, I may be a couple minutes
22 longer.

23 MR. JONES: That's fine. Don't worry
24 about that. Let me ask you a question and make
25 it twelve minutes now, if you had to more

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

accurately identify yourself, how would you do that.

MR. MANSKY: There we go. I'm not an academic, I'm not an ethics expert, I'm not a defense lawyer. So let me give you my background, in addition to teaching this course in problem-solving justice at Fordham Law School, I'm director of operations for the Center for Court Innovation. The center, as you may know and will be finding out over the course of the next couple of days, is a -- that works for the New York State court system and other jurisdictions around the country and internationally creating demonstration projects around the concept of problem-solving justice. We also think about research, the advocacy of these approaches. I, by way of a little more background, I joined the center 11 years ago as the planner and then first project director of the Red Hook community justice center responsible for all aspects of the problem design, implementation and operations, now I supervise Red Hook, I supervise our midtown community court, I supervise the research

1
2 department and you will meet our research
3 director tomorrow, Mike Rempell, technology
4 department. I have been involved in development
5 of community courts in other jurisdictions
6 including Liver Pool, England and currently in a
7 planning process with Newark, New Jersey, I'm a
8 lawyer and before I joined the Center for Court
9 Innovation 11 years ago, I practiced for several
10 years at a couple of the large New York City law
11 firms. That's me. You will be hearing from
12 some of my colleagues both at the Center for
13 Court Innovation as well as some of the people
14 who work at the Red Hook community justice
15 center of midtown community court. So I'm going
16 to let those guys talk about those places and
17 their experiences in more depth. I'm not going
18 to really talk as well about the stuff I
19 probably spent more time thinking about
20 generally which is the goals and operating
21 principals that I believe problem-solving courts
22 share, and have in common with each other.
23 Today, instead, I'd like to frame the context of
24 problem-solving courts a bit more and I'd also
25 like to address a couple of the issues raised in

1

2 the TASC force admission statement based on my
3 experience working with defense advocates,
4 prosecutors and judges in several
5 problem-solving courts over a number of years.

6 So let me preface my remarks by saying that the
7 work undertaken here by you guys, the TASC
8 force, the NACDL is greatly appreciated. I
9 think it's true that problem-solving courts are
10 expanding or have expanded significantly in
11 application and number and to some degree, some
12 of the concepts are being integrated into
13 central courts. And, you know, I can say on
14 behalf of the Center for Court Innovation,
15 enthusiastically, that we want to see these
16 models and concepts be as good as they possibly
17 can be and they will only become so by bringing
18 issues and concerns to the open and addressing
19 them especially those grade by the defense bar.
20 It's one of the reasons we've gotten involved in
21 some of the academic discussions and theory
22 about this stuff and it's frankly why I'm here
23 today, dressed up as an adjunct professor or
24 otherwise. So we welcome your effort and
25 admission set forth in this inquiry which, you

1

2 know, obviously raises, among other things, the
3 critical issue -- context of problem-solving
4 court.

5 So first thing's first, let me try,
6 as I would, to frame the context in which
7 problem-solving has arose, problem-solving
8 courts arose and in advance I really would like
9 to apologize for any gross generalizations or
10 oversimplification to all of you who are on the
11 front lines during this difficult time. Maybe
12 the best place to start is in the wake of Robert
13 Martinson's 1974 What Works article, which took
14 the provocative and overstated provision that
15 research an alternative to incarceration had not
16 to date demonstrated meaningful effectiveness
17 and as you probably know, what works is
18 ultimately re characterized somewhat, actually
19 very productively as nothing works. And it's
20 served as risks for swelling the -- against
21 rehabilitation. I think this, we would probably
22 look back and say the seventies and eighties
23 were a time where crime and fear of crime was
24 high on the radar screen, public safety was the
25 top theme in presidential campaigns and there

1
2 was a mass exodus from supposedly ungovernable
3 cities like New York, all of which contributed
4 to a politically potent movement for more
5 punitive sentencing, three strikes, mandatory
6 minimums, truth in sentencing. And the
7 retrenchment from rehabilitation may have not
8 been total in those years, but systematic
9 meaningful efforts of rehabilitation were
10 essentially squeezed out of the realm of
11 institutional criminal justice agencies, courts,
12 prisons, even probation departments. In the era
13 of tough on crime, teenage predators and wolf
14 packs, whether it was right or obviously wrong,
15 rehabilitation was seen as too politically a
16 risk and was left primarily to non-governmental
17 entities, non-profits, charities as well as the
18 defense bar. Access and use of such programs
19 and services were ad hoc and unsystematic and
20 probably often relied on the tenacious
21 initiative of a dedicated advocate or a
22 resourceful judge. This is the backdrop from
23 which problem-solving courts emerged. It was a
24 period where defense attorneys pleaded for
25 alternatives to incarceration particularly

1
2 treatment and these pleas fell on deaf ears from
3 the first drug court in Florida when
4 rehabilitation was politically stigmatizing to
5 government institutions and political leaders
6 during that time. Problem-solving courts over
7 the last 20 years have helped create a new space
8 for rehabilitation by the institutional criminal
9 justice system whether it's therapeutically
10 through drug or mental-health treatment or it's
11 restorative for the community through community
12 service or mediation, or it's productive for the
13 defendant through job training or GED courses.
14 With that context in mind and given the time
15 limitation, I want to focus briefly on a couple
16 of the points raised -- problem-solving TASC
17 force. So maybe I'll anticipate some of your
18 questions. So I'll take a little more time. As
19 the TASC force in the first sentence of its
20 mission statement says problem-solving courts do
21 indeed seek to get to the root causes of certain
22 crime and criminal behavior. And that's no
23 doubt a lofty goal. Problem-solving courts do
24 try to take a more outcome-focused approach
25 moving away from an institutional fixation on

1
2 process. What does that mean exactly? It
3 certainly sounds and must sound provocative.
4 When I talk about fixation on process, for those
5 of you who -- live and breathe protecting the
6 Constitution, I imagine -- throwing due process
7 out the window. There certainly is a strong
8 line of criticism with problem-solving courts
9 that I've, you know, read about that frames the
10 issue as a choice between outcomes and due
11 process. But I don't believe, I believe that's
12 a false choice. When the Court systems speak of
13 process, I don't feel -- I know they don't
14 actually mean due process. Again, I think it's
15 important to understand context. In large
16 measure, process for conventional courts is
17 about systems efficiency, making more widgets,
18 or in this case, how many bodies can the Court
19 churn through in a day, a month or in a year,
20 how many cases are clogging up the docket, for
21 how long are they clogging up the docket, how
22 much overtime is required. A conventional
23 criminal court looks only at a few stamp
24 measures of outcomes. Or perhaps I should say
25 few stamp measures of substantive justice,

1

2 here's what it is: Was the defendant convicted
3 and dismissed and was the defendant sent -- and
4 was the defendant sent to prison or it might, if
5 you're lucky, be able to tell you if the
6 defendant was sentenced to probation although it
7 certainly won't look behind the probation
8 sentence to see if there were meaningful
9 services provided, delivered or completed and of
10 course nothing -- it doesn't really look at
11 anything much in between. Taking a page from
12 Herman Goldstein's theory on problem-oriented
13 policing, problem-solving courts do try to shift
14 from measures of efficiency through outcomes
15 asking the question, what indicates whether a
16 court has succeeded and is it effective. But I
17 don't believe that that means problem-solving
18 courts -- or build value in due process. Quite
19 the contrary, in a problem-solving court the
20 idea is to preserve and in some cases enhance
21 existing standards of due process. But at the
22 same time, it seeks to improve substantive
23 justice outcomes by tailoring the sanction to
24 the individual defendant. In essence, it's
25 asking the question, is there something better

1
2 than jail or nothing. One of the first
3 questions raised in the TASC force admission
4 statement is to assess the overall test
5 effectiveness of problem-solving courts, which
6 is a tall order indeed. Over the next couple of
7 days, you will be hearing a bit about
8 effectiveness including from my colleague Mike
9 Rempell. But in thinking about effectiveness,
10 there are a couple of things to keep in mind,
11 first we know one thing, incarceration, the main
12 measure of substantive justice in conventional
13 courts in high volumes doesn't work.
14 Conventional courts obviously haven't marshaled
15 an iota of evidence to show that it does. In
16 thinking about evidence of problem-solving court
17 effectiveness, I would call that the compared to
18 what question to ask. Second, perhaps nearly as
19 important and that of fundamentally, equally
20 fundamental level, problem-solving courts
21 actually ask the questions that conventional
22 courts would not bother to ask because they
23 wouldn't fall within the parameters of
24 efficiency. Our conventional courts cannot tell
25 you how many defendants are sent to drug

1
2 treatment or any alternatives to incarceration,
3 those records -- kept by the system. Our
4 conventional courts can't tell us how many
5 people have been sentenced to an alternative to
6 incarceration instead of prison and it won't
7 tell us whether a mandated alternative to
8 incarceration works. Is the defendant likely to
9 comply with the sanction, or is the alternative
10 -- or is the alternative even setting the
11 defendant up for failure. To some degree I
12 would say, problem-solving courts succeed by
13 virtue of just asking those questions and
14 establishing parameters of meaningful
15 effectiveness. For the remainder of my remarks
16 today, since this is the TASC force of the
17 NADCL, I wanted to clarify a couple of points
18 about problem-solving courts and the role of the
19 defense attorney that I flagged in the TASC
20 force mission statement. These raised several
21 understandable hot-button issues and I think
22 they are somewhat related and I can only offer
23 you my take on them, first, zealous advocacy.
24 Looking at the problem solving TASC force
25 mission statement, I wanted to focus on one

1
2 thing in particular, in the problem-solving
3 court setting, defense attorneys have
4 encountered the most serious conflict since
5 their traditional role as zealous advocates are
6 subordinated to the recovery process. The
7 question is, does a problem-solving court demand
8 that the defender subordinate zealous advocacy
9 for recovery process. Taking a step further,
10 what does zealous advocacy mean to a
11 problem-solving court. I can't speak for all
12 problem-solving courts, but in the courts I have
13 been involved with, and I want to be as emphatic
14 as possible about this, a lawyer's ethical
15 obligation to zealously advocate the names of
16 his or clients at all times. And I'm talking
17 about the stated or articulated interest in
18 their client or the client-centered interest,
19 however you want to frame that approach, or
20 however you want to characterize it. It's true,
21 it may be more complicated for a lawyer to do
22 that in a problem-solving court, for instance,
23 where the different parties such as the defense
24 advocate, the judge, the prosecutor at times
25 look for and at times find area of common ground

1
2 and -- of interest. But I don't know many
3 lawyers who shy away from the concept just
4 because it's more complicated. And just because
5 it's more complicated doesn't mean that it's
6 bad. It just means that the zealous advocacy,
7 the zealous advocacy may not always mean --
8 opposite position from out of the process. The
9 difference between a drug court or mental health
10 court or a community court and a conventional
11 court is essentially that a defense attorney has
12 more options. Instead of prison, there may be a
13 meaningful option to drug treatment, instead of
14 a criminal record, a conviction to a felony,
15 there may be an opportunity for the conviction
16 to be struck from the defendant's record,
17 instead of cycling through the court in jail
18 every month year in year out, there may be
19 another opportunity to reduce the number of
20 times the defendant gets arrested or put them on
21 a crime-free productive path. Zealous advocacy
22 means presenting these options to the client.
23 It may also mean offering the client advice
24 based on the advocate's experience or
25 expectation of success or failure or the risks

1
2 associated with each path, but obviously --
3 proceed including when the decision is not to
4 take the alternative path. Again, it's the
5 compared-to-what question. Considering the
6 context in the past when there were few
7 meaningful treatment options available certainly
8 on any kind of scale and even if you've viewed
9 these interventions with reasonable caution,
10 problem-solving courts have now created more
11 options for defense advocate to present to the
12 client. Second, team approach, is the defense
13 advocate on some kind of team. Well, probably
14 the first thing I was told and learned when I
15 started working at the Center for Court
16 Innovation -- just don't say to a defense lawyer
17 that they're part of the team. Yes, the
18 problem-solving court does try to create a
19 collaborative approach to addressing some of the
20 underlying problems that bring defendants into
21 court. As I said, they do try to find the space
22 for mutually beneficial outcome for the client,
23 the community, a victim, perhaps even the
24 government. But the defense advocate must
25 always be ready or must always -- the defense

1
2 lawyer must serve as a gatekeeper for the client
3 and the client's interest. Again, I can't speak
4 for all problem-solving courts, but I can speak
5 for what I've seen and what I believe are best
6 practices, problem-solving courts and their team
7 should understand and welcome the unique role of
8 the defense advocate, viz a viz the team. I do
9 feel it's a bit of a false -- to insert that
10 problem-solving courts ask defendants to choose
11 between their client and their team's best
12 interests. Are there horror stories and worse
13 practices, yes, you've probably heard or will
14 hear some of those during the course of your
15 extended inquiry. Does it reflect bad judging,
16 lawyering or protocol, yes, but you probably see
17 as much of that in a conventional court at any
18 time an alternative sanction is offered and in
19 other cases as well. How do we deal with it? I
20 think the TASC force is a great place to start
21 or is one place, keeping the defense bar
22 actively involve, and I won't say it's part of
23 the planning team, but involved in shaping
24 program design is another part. In New York
25 City the defense bar, and I think you may have

1

2 heard from some of the panelists earlier, have
3 taken an extremely active role in shaping and
4 designing the mental health court and have had a
5 tremendous impact on protocols and outcomes. At
6 the midtown community court, I know that a Legal
7 Aid lawyer identified issues with the DA's
8 policy for prostitutes and was able to convince
9 the DA's office to change policy in a way that
10 reduced collateral consequences for defendants.
11 In Red Hook, defense advocates and all parties
12 come together monthly to discuss operational
13 protocols and craft new ones that benefit all
14 sides especially including their clients.

15 Finally, I guess I would say, do problem-solving
16 courts eliminate the adversarial system, no, nor
17 should they. Problem-solving courts should and
18 in New York City at least, I believe, do
19 preserve the adversarial process for the
20 adjudication -- and determinations that have
21 consequences -- liberty. That's the way it
22 should be. That's notwithstanding the
23 formulation of the drug court key component,
24 number two, using the non-adversarial approach,
25 prosecution and defense counsel promote public

1
2 safety while protecting participant's due
3 process rights, which must drive defense
4 advocates crazy. To me it's a bit of a red
5 herring and unfortunately one of the drug courts
6 -- making. In the case of community court's, as
7 you will undoubtedly hear from Judge Calabrese
8 and others later, a place like Red Hook actually
9 hears more trials proportionately than
10 comparable conventional courts. It also has far
11 fewer jail sentences. Sanctions for non
12 compliance or any division -- are decided by the
13 judge in a court proceeding with both parties
14 being heard as are a number of others. With
15 drug courts, although a defendant may be
16 eligible for participation, the defendant
17 certainly has the right to -- innocence up until
18 she decides to enter the drug court by taking
19 the plea. Once in a drug court, if a sanction
20 or revocation is contested, it certainly should
21 be subject to an adversarial procedure -- if
22 it's not contested, no hearing may be needed.
23 Do all problem-solving courts practice this way?
24 I can't speak for them, but of course I think
25 that should be the practice. In a domestic

1
2 violence court, those are adversarial pretty
3 much from the beginning to end. Here's the
4 question that I think a defense advocate should
5 be asking in trying to understand the, their
6 role in a problem-solving court, is every stage
7 of our justice system necessarily zero some
8 gain, what benefits one's side, does it
9 necessarily harm the other. If you believe the
10 answer to that is yes, then problem-solving
11 courts do indeed impose a grave risk and the
12 process needs to be all adversarial all the
13 time. If it's possible to identify outcomes
14 that may be mutually beneficial in the short or
15 the long term and that a defense advocate is
16 able to help a client make that calculus, then
17 problem-solving courts at certain times should
18 enhance results for defendants and there's no
19 doubt that the defense lawyer is the right
20 person to help the client make that
21 determination. At the end of the day,
22 problem-solving courts are an effort by an
23 institution of government that provides justice
24 to help ensure, is substantive and not just
25 procedural justice is delivered. They grew out

1

2 of the context of the choice basically became --
3 nothing as the primary institutional responses
4 available to courts. And generally speaking,
5 they do try to help defendants, they do try to
6 help defendants as well as communities in which
7 they serve, and victims. Yes, there can be a
8 risk, there is a risk that some problem-solving
9 courts can be overzealous in their rhetoric or
10 their approach. And as I used to say to defense
11 lawyers in Red Hook that I worked with, they
12 absolutely have the hardest jobs in the
13 community court, they need to be -- the team,
14 but they can't really be part of it. But the
15 fact is that, just because it's the hardest job
16 doesn't mean that it isn't continuing to be the
17 most critical.

18 MR. JONES: Thank you.

19 MS. BROWN-DOUGLAS: I'm wondering do
20 you have my bio or should I give the spiel --

21 MR. JONES: You can give us the
22 condensed bio.

23 MS. BROWN-DOUGLAS: Sure. Certainly.

24 I am now an assistant professor of clinical
25 education at St. John's University School of

1
2 Law, I'm also the assistant director of the
3 center for professional skills there basically
4 teaching students trial advocacy and also
5 teaching seminars with externships. I am also a
6 criminal defense attorney and a family court
7 practitioner. My career started before I went
8 to law school; I was a caseworker, then
9 supervisor one and supervisor two at special
10 services for children, which is now the
11 Administration of Children's Services. After
12 leaving there to go to law school on full
13 scholarship in part because of the work that I
14 did with sexually abused children at my previous
15 career, I entered Hofstra on scholarship,
16 graduated from there, went to the New York
17 County district attorney's office where I stayed
18 with Mr. Morgenthal for a little over four
19 years, I went to the New York State attorney
20 general's office, worked in labor bureau for a
21 year, could not sit still and opened up my own
22 criminal defense practice, a storefront practice
23 in Queens, New York. There I practiced
24 primarily criminal and family law. In
25 particular, my family law practice was over 90

1

2 percent male and that was by extension of the
3 relationships I've formed with the police
4 officers, court officers and to some extent
5 correction officers while I was employed as an
6 assistant district attorney in New York County.
7 When I was in private practice, I had the honor
8 of defending or assisting in the defense of the
9 first person to be tried in a capital case in
10 Queens County, that will be James Gordon and
11 myself along with Christopher Renfro (phonetic)
12 who is lead counsel, and Russell Morea
13 (phonetic) -- you look familiar to me. Are you
14 from Queens?

15 MR. SCHECHTER: Yes, I know --

16 MS. BROWN-DOUGLAS: Chris is my
17 Godfather. On a team headed up by Christopher
18 Renfro, we tried the first capital case in
19 Queens County and we saved a man's life. That
20 man was James Gordon. So I come to this with
21 that in mind because James Gordon was a man who
22 had been victimized as a child, grew up to
23 slaughter three women. So I'm here to talk to
24 you about domestic violence. I understand that
25 you've heard a lot about that today, that there

1
2 are a lot of professors and heads of defense
3 organizations and so forth that have already
4 spoken to you. I believe that my perspective is
5 a little bit different. I come to you from the
6 trenches. I am a professor, but I've been in
7 underground with what I call, people in my
8 community call the underground for a long time.
9 That is to say when men come to your office, big
10 grown men crying like babies because they cannot
11 see their kids, they have come to me. I come to
12 you to tell you -- and I'm going to read just to
13 make it short, I know your time is limited, it's
14 right after lunch, everybody wants to sleep, I'm
15 so tempted to stand up because I'm so used to
16 trying cases. This whole academic thing is new
17 to me. I gave you a handout and it's an excerpt
18 from an article that I'm working on. I hope it
19 sounds and looks academic in the beginning, but
20 you will notice at the end I get basically
21 street because that's where I'm from and I'm
22 proud of it. So I come to you, the defense
23 community, to tell you that you should not be --
24 with the thinking that the integrated domestic
25 violence court is a problem-solving court to

1
2 judicially understand problem-solving courts to
3 be. And that is built on principals of
4 therapeutic jurisprudence. I came to tell you
5 about the due process violations that occur in
6 this court and to tell you about the defendants
7 in this part that are black and brown people and
8 these people want to know how come there are no
9 white men in the batterer's programs that are
10 offered to them by the Court. I came to tell
11 you that you and your clients have been left out
12 on the receiving end of the domestic violence
13 industry and you're on the tail end of justice.
14 I came to tell you what justice in these courts
15 look like to my people and to the people that
16 you represent. I've also been privileged to be
17 employed by St. John's University Law School as
18 an assistant professor of clinical education. I
19 teach students how to try cases, how to go in
20 the court, how to be professional, how to relate
21 to their clients and how to reflect on their
22 experiences, not to be able to tell me what
23 their experiences were, but be able to tell me
24 how they felt about their experiences and how
25 their clients and the other lawyers around them

1

2 felt about their experiences. In the end, I am
3 going to tell you -- well, I want to tell you
4 what I have seen and heard in my experience.

5 And I want to, I hope that the stuff that I say
6 to you can be used to improve the practice of
7 law on the part of the criminal defense bar in
8 this IDV court. But in the end, I am going to
9 tell you that I do believe that the IDV courts
10 should continue to exist, but that this court is
11 going through a birthing process. The defense
12 bar is acting like the absent father who has no
13 money and because of that feels powerless to do
14 anything about his condition. It's as if the
15 defense bar feels it has no voice. I am
16 critical of this court because this court, this
17 court is a necessity. And we must, we must get
18 it right. Judge Judith Kaye came to speak at
19 St. John's law school and she talked about these
20 IDV courts. She said there are people who
21 criticize the court, but she asks: What would
22 you have us to do. Well, I'm here to say, I'm
23 here to express my opinion on what I think
24 should be done. I think we have to identify its
25 problems, its weaknesses and we have to fix

1

2 it -- Tandra Dawson, she is black female judge
3 sitting in the IDV part in Manhattan; she is a
4 wonderful judge and that is a comment that comes
5 not only from me and other members of the
6 defense bar, but this information comes to me by
7 way of the defendants and respondents that go
8 before her. What I'm trying to do in writing my
9 article is not just look in the books and go
10 online to look at research but to go out and
11 speak to defendants and defense attorneys who
12 are actually practicing in this court. So what
13 I am doing and have been doing is going into
14 these courts, I'm sitting listening to these
15 cases, following the defendants and the defense
16 attorneys out of the court and then asking these
17 people to do, to fill out a survey or at least
18 speak to me. I wanted to be able to show you
19 these surveys, but my car was stolen this
20 morning. The surveys that I have, have the
21 defendants' names on them and I promised them
22 complete confidentiality. I edited that out and
23 left the stuff on the seat in my car, which is
24 now hopefully being tracked down by Onstar.

25

MS. BERNHARD: You have the originals

1

2 still?

3

MS. BROWN-DOUGLAS: I have the
4 originals, but I don't have the edited version
5 to provide. I hope that that can be part of the
6 package, and that is because I really think it's
7 important for the defense bar to hear what the
8 defendants, last, respondents have to say. I
9 think that's key here. I say cement Tandra
10 Dawson, the Manhattan IDV court, cement her to
11 the bench, and do what has to be done to put
12 Lenora Gerald back on the bench in Queens IDV
13 court. I'm sure you are all familiar with the
14 politics involved in becoming a member of the
15 bench in New York State. Well, Lenora Gerald is
16 a young woman who was sitting in the IDV part
17 having been appointed who was up for election,
18 was not put up by the democratic club. As a
19 result she was stripped from the bench and
20 pushed into a back office where she became a
21 court referee who oversaw the work of whatever
22 judge happened to be in the part. Lenora Gerald
23 is a young black woman that came out of the
24 Allen AME church, which is a large congregation
25 in Queens. When she was robed, inaugurated, we

1
2 were all there, the entire community, judges,
3 lawyers, defendants, ex-cons, we were all there,
4 we watched this. She was a judge that belonged
5 to the community. And we are, feel very
6 disrespected and disenfranchised in the way she
7 was ripped off the bench. I bring that to your
8 attention because I think part of what the
9 defense bar has to do is to keep an eye on the
10 judges that are in these parts and we see abuses
11 and misuses, we have to speak up. We have to
12 speak up and make sure that this doesn't happen
13 in that court. It's going to be a success. I
14 think that what we have to assure is that the
15 court, the "heads" of these courts, stop sending
16 culturally incompetent judges that speak Yiddish
17 to their people and chastise people that don't
18 speak English and speak Spanish, for speaking
19 Spanish. I say we must put culturally competent
20 people on the IDV bench and we need to tug at
21 this thing until we get it right. Yes, there
22 are due process violations that are going on in
23 this court and I have the names of some of those
24 cases because all of those cases represent real
25 people going through real things. So I give you

1

2 these names of these cases not just to show you
3 that I'm smart and I have done the research, but
4 just because I think it's important to say their
5 names. Some of the best judges in these IDV
6 courts do not identify their cases as clients or
7 cases, they identify them as families, as Mr.,
8 Ms. or Mrs., the children as children, not as
9 kids. I think that's important. It shows
10 respect. It shows a respect for our humanity
11 and I think that the defense bar in its best
12 practices, which I think is something that the
13 defense bar has to get on top of best practices.
14 It should include a statement that we identify
15 these people as people, not cases, and that we
16 identify these groups of people as families.
17 Yes, there are due process violations. Rohan V.
18 Rohan, 13 -- I'm sorry -- 13 miscellaneous
19 third, 1224 A, 831 New York sub second 346, 2006
20 Queens --

21 MR. JONES: Can I stop you for one
22 second?

23 MS. BROWN-DOUGLAS: Sure.

24 MR. JONES: Is that something you can
25 give to us to give to Scott?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. BROWN-DOUGLAS: You know what, the problem is, the handout that I have for you is in my car so I'm working off my draft, so I can e-mail it to him.

MR. JONES: I want to have enough time for us to question you guys so --

MS. BROWN-DOUGLAS: Okay. I'll hurry up.

MR. JONES: Thank you.

MS. BROWN-DOUGLAS: Rohan V. Rohan case out of Queens Supreme Court, IDV judge has an offense petition before her alleging a violation of an order of protection. In the end, she rules that, yes, there was a violation of the order of protection but she also ruled that the respondent was guilty of criminal contempt pursuant to Judiciary Law 753. Where was that in the family offense petition? It was nonexistent. The defendant -- the respondent and an attorney had no notice that this person was going to have to be defended on that charge. Not only that, but in the judge's ruling, she said that -- the judge said that the rule stems from a statute in the Family-Court Act. I don't

1
2 want to say that's a lie. It was wrong is what
3 I'll say. The Family-Court Act in the Court of
4 Appeals is of the opinion that the Family-Court
5 Act itself provides for punishment for
6 violations of order of protection. That judge
7 had no authority to go outside of the family
8 court Act into the judiciary law to find
9 contempt on this case. Not only that -- so that
10 was no notice, due process violation. Not only
11 that, but the judge has the power to transfer
12 this case to the district attorney's office,
13 enforce the district attorney to prosecute on a
14 criminal contempt charge. So the judge is now
15 becoming a prosecutor. And when this judge
16 transfers this case to the prosecutor's office
17 for investigation, prosecutor writes up that
18 criminal court complaint, it comes in front of
19 the same judge for hearings and dispositions on
20 that matter. Due process violation, lack of
21 notice. And then what about the right to
22 counsel? The attorney had a right to have an
23 opportunity to consult with his client regarding
24 those charges. He was in no position to do that
25 because he had no notice. And was the attorney

1

2 that handled the family court matter a criminal
3 attorney, or was there another criminal attorney
4 that was hired by this respondent? All of these
5 are issues -- I can go through a number of cases
6 where there are violations but for the sake of
7 brevity, I won't.

8 MR. JONES: I appreciate that.

9 MS. BROWN-DOUGLAS: There are also
10 right-to-counsel issues here. In family court,
11 historically, has a history of not providing its
12 respondents with counsel, why, because there is
13 no constitutional right according to the United
14 States Supreme Court -- the Department of Social
15 Services. There is constitutional right to
16 counsel. There is a standard that the court --
17 there's a presumption that you receive counsel.
18 But what is happening in Family Courts,
19 historically, and because of the amount of money
20 being paid to 18-B counsel, which has recently
21 been changed, respondents often do not have
22 attorneys in family court. The family court Act
23 revised that in offense petitions, the
24 respondent must be assigned counsel along with
25 the petitioner. It's still not happening. Why

1
2 is that significant in the context of IDV,
3 because there is a culture, a family court
4 culture, which denies respondents their rights
5 that is bleeding into the IDV court and we have
6 to stop it before it bleeds to death. So there
7 are a right-to-counsel violations. And finally,
8 there's a disrespect and cultural incompetence
9 that exists throughout the criminal court
10 system, the family court system and, in
11 particular, with some of the judges that are on
12 the bench in these IDV courts. The defense
13 community has to take a stand with respect to
14 these courts. If we don't examine these courts
15 closely and come up with standards of operation
16 as a unified body, we will continue to have
17 wholesale justice at the expense of clients who
18 serve and the bar we represent. I think the IDV
19 court does solve some problems because it brings
20 consistency to orders issued by the Court. In
21 the past, a claim of domestic violence got a
22 full order of protection in criminal court and
23 an order of protection from family court, which
24 allowed a man to visit his children. It doesn't
25 happen in IDV anymore. In the past, parties had

1
2 to run from court to court; they don't have to
3 do that and that's good. The defense bar has to
4 watch the judges going into these parts and when
5 there is information of abuse, the defense
6 community needs to act swiftly with letters and
7 lobbying to move the judge out of the part, you
8 must provide training for your members, and
9 those that are good must take our students out
10 of the law school and into the courtrooms with
11 them on these externship programs. The IDV
12 courts perhaps should continue to hear both
13 criminal and family cases but maybe best
14 practices means providing two judges to hear
15 each of these cases, criminal and family, or
16 maybe there can be a judge for the criminal case
17 and a referee hearing the family court case and
18 they can work towards appropriate dispositions.
19 You have to file motions to assure the
20 protection of the defendant's medical and mental
21 health records because what the judge and all
22 the attorneys are allowed to see, these mental
23 health and medical records in the family court
24 realm, they're not allowed to see it in the
25 criminal court case but the prosecutors even

1
2 complain that they have access to these medical
3 records. By the way, prosecutors also
4 complained that they've lost the autonomy and
5 that they are beginning to have overwhelming
6 case loads -- their case loads down to
7 accommodate the family-court issues.

8 MR. JONES: I'm going to have to --

9 MS. BROWN-DOUGLAS: I'm done. All
10 right --

11 MR. JONES: Last thing.

12 MS. BROWN-DOUGLAS: I've been in the
13 community long enough to see and remember the
14 kids who were victims of abuse and neglect grow
15 up and do the same thing to their kids and I've
16 been around long enough in my community to see
17 kids whose parents fight each other and these
18 kids are now fighting their partners. No amount
19 of therapeutic jurisprudence from the defense
20 bar is going to change that until and unless the
21 theory of therapeutic jurisprudence becomes a
22 practice from the bench to the pens. Thank you.

23 MR. JONES: We appreciate your
24 passion.

25 MS. YOUNG: Thank you. Professor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mansky.

MR. MANSKY: Adam. Just call me
Adam.

MS. YOUNG: Well, starting from the
beginning, Adam, I did do some research when I
was assigned this topic and I went on Google,
and I am sure you will be pleased to know that I
was, I did determine that you were director of
operations at the court, the center for court
innovation.

MR. MANSKY: That's very good.

MS. YOUNG: But according to Google's
priorities, it was more important to announce
your wedding first.

MR. MANSKY: I've seen that as a
problem. I'm going to have to work on it.

MS. YOUNG: That was the first thing
I saw. I didn't exactly know how it related to
therapeutic justice.

MR. MANSKY: My wife is very happy
about the -- (laughter)

MS. YOUNG: Since you're on the
academic panel and you were or just finished
teaching, it was a course --

1

2

MR. MANSKY: It was a course, a seminar for students, for law students.

4

MS. YOUNG: Therapeutic.

5

6

MR. MANSKY: Problem-solving justice, which I would distinguish kind of from

7

therapeutic.

8

MS. YOUNG: I guess the question I

9

have or we have is, in one of our earlier

10

hearings, someone, I think it was Professor

11

Winnig (phonetic) or it could have been someone

12

else was talking about a need in the law school

13

to address problem-solving justice, to alert law

14

students to the movement and how does that

15

compare or contrast with the litigation skills

16

that they are, of course, learning. And I guess

17

my question would be, can you do that in one

18

semester.

19

MR. MANSKY: Yes. I mean, my course

20

is kind of more on theory than on practice

21

skills. I mean, you know, because, again, it

22

might come out of not being practitioner in one

23

of these courts but in being more involved in

24

planning, writing, thinking about this stuff. I

25

think that there's probably value in -- the

1
2 answer is yes, certainly what I've done, I
3 think, is encapsulated well within one course
4 and has provided a context for something that
5 does have significance in the real world and
6 real courts and probably has kind of
7 sufficiently percolated into the academic world
8 or the legal training world. As far as
9 practice, it really depends on how much we see
10 this practice as different than what regular
11 attorneys practicing in a conventional court is.
12 There are certain skills that are required
13 differently. There are certain education about
14 some of the substantive issues that can be
15 beneficial and training that can be beneficial
16 and so the answer is probably. It's a question
17 I haven't thought about. Yes, is the short
18 answer.

19 MS. YOUNG: Well, I guess in terms of
20 -- in terms of, you know, this is like a course
21 for second or third, 2 L or 3 L and people that
22 are perhaps interested in going into criminal
23 law or not necessarily, do you have a sense of
24 who is enrolling and what their interests are.

25 MR. MANSKY: The interest has been,

1

2 certainly at Fordham, it was the student, mostly
3 students who were involved in the public service
4 fellowship there or scholarship program there.

5 There was, you know, an interesting grappling,
6 you know, with these issues, I think one or two
7 of them, one has a joint JDMSW and is interested
8 in kind of pursuing this path. I think that
9 it's -- yeah, I think it's kind of ripe for
10 students who are interested in practicing in,
11 you know, the state court level and I think that
12 it's -- yeah -- so, yes, there's interest.

13 MS. YOUNG: So do you anticipate it
14 being an ongoing --

15 MR. MANSKY: Well, this is actually
16 the third year we've done it and this is the
17 time my lucky numbers come up and I've enjoyed
18 it, depending on how my student evaluations go,
19 it may be affected because I've spent so much
20 time working on my remarks that I couldn't grade
21 my papers. So we'll see whether there's an
22 academic, I'm invited to speak on any CDL's,
23 academics two panel next year. Based on that --
24 I mean, so this is the third, I believe the
25 third time we've done it and when I say "we," I

1

2 do mean -- Val Rain (phonetic), who you know who
3 did it, who helped create it the first couple of
4 years and I'm now doing it and I'm going to do
5 it again next year. I think it's certainly, I
6 think it's a very engaging topic and I think
7 that it's extremely valuable for people to see
8 -- a lot of what we're talking about I think is,
9 again, it's kind of compared to what and what's
10 really happening in courts, what's really
11 happening in day-to-day practice and I think
12 that this is valuable because it jets another
13 perspective on those kind of issues.

14 MS. YOUNG: Are you aware are other
15 law schools looking into offering that in the
16 curriculum? New Yorker has such a focus on
17 problem-solving courts in New York State so I
18 can see that --

19 MR. MANSKY: We can probably get you
20 more information on where -- I know that we've
21 kind of developed a curriculum that we've shared
22 and I believe that there are several other law
23 schools that have looked at it. I don't think
24 that it's kind of reached full flower yet. I'm
25 sorry. I do think that Brooklyn Law School may

1

2 also be offering a course on that. I'm not
3 100 percent sure.

4 MS. YOUNG: Can you send the syllabus
5 to Scott or would it be possible --

6 MR. MANSKY: Of course I will. It
7 will be my pleasure to, yeah.

8 MS. YOUNG: Professor Brown-Douglas,
9 you started out with the comment that the
10 clients or the defendants and respondents said
11 why is everybody here Black or Hispanic.

12 MS. BROWN-DOUGLAS: Yes.

13 MS. YOUNG: I guess that's my
14 question to you, why -- I mean, obviously
15 everyone has family-law problems. I guess is it
16 because of the ethnic skewing in charging
17 criminal practices that IDV court ends up being
18 skewed as you see it.

19 MS. BROWN-DOUGLAS: Well, I think
20 there are there are two answers, one, I'd like
21 to give you the answer I get from the defendants
22 that are in these courts, their sense is that it
23 has to do with economics, that it's not a
24 product of racism; it's a product of classism.
25 That if they had more money and higher-end

1
2 lawyers, that they would not be pushed into
3 these court-sanctioned batterer's programs. My
4 fix on it is that, that's in part true, that --
5 and I'll give you an example, when I had a case
6 like this, my clients were able to pay \$35,000
7 to a private psychiatrist to counsel him and
8 then later on his family. So we refused to
9 cooperate with family court to the extent we
10 refused to use their court-appointed batterer's
11 program and we went to a private psychiatrist to
12 deal with the issue and came back to the Court
13 three months later with reports from that
14 private psychiatrist and the Court and the
15 agency acknowledged that this was a valid
16 psychiatrist who had some reputation in the
17 community and they were willing to look at this.
18 So I think on the service end, it does have a
19 lot to do with money. How these cases get into
20 the court all together, I don't know that it's a
21 product of racism in the police department and I
22 say this coming off of Sean Bell, I can't even
23 believe I'm saying it, but I don't think it
24 comes out of racism on the part of the police
25 department. I think it's, again, a class

1
2 situation. It's where you live, higher-end
3 people, people making more money can go to
4 private doctors. If my husband is making
5 \$250,000 a year, I'm not calling the police so
6 he can't go to work the next day and we have to
7 explain to all our friends and colleagues what's
8 going on here. So we handle it, we handle it
9 privately. And, you know, I've read the
10 literature and talks about how in certain
11 communities, certain cultures this type of
12 violent behavior is condoned. I'm from Queens
13 County. Queens County -- the black people in
14 Queens County -- and New York Times did a study
15 on this, the black people in Queens County are
16 making more money than the white people. We
17 have beautiful homes, we send our kids to
18 private schools, we're driving around in huge
19 cars, and we're upstanding members of the
20 community. If we have domestic violence issues
21 in our homes, we are not calling the police, but
22 our neighbors out of concern may and when the
23 police get to our homes, they're going to arrest
24 somebody because the police has a, the police
25 department has this must-arrest policy. So it's

1
2 not racism, it's the must-arrest policy on the
3 part of the police department that begins the
4 process. And because in our communities we live
5 much closer together, our neighbors are able to
6 hear there's a problem, call the police, the
7 police come out and the arrest takes place. I
8 think that's more -- but I'm examining that.

9 MS. YOUNG: Okay. Now, when you said
10 that Red Hook and problem-solving courts arose
11 because there were, people wanted to know about
12 alternatives to incarceration and developing
13 those molds, and I can fully appreciate the
14 focus on therapeutic justice, I like that term.
15 What I have problems in reconciling is, is
16 therapeutic justice the same thing as having,
17 you have to have a court to have therapeutic
18 justice.

19 MR. MANSKY: That's a great question.
20 And you will undoubtedly hear people and you may
21 feel, why should the Court be delivering this,
22 the Court is not a social worker, the lawyers
23 aren't social workers, some of you are, but, you
24 know, and you probably do practice that way, why
25 can't the defense bar deliver that or why does

1
2 the system have to do that. I think that's a
3 really valid question, but I also think there's
4 a number of people and valid responses. First
5 of all, it doesn't matter how great the up front
6 system is; we could live in, you know, utopia
7 and there would be a wonderful system where
8 every one gets education they needs, everyone
9 gets services, other kinds of counseling
10 services they need, everyone gets adequate job
11 training and, you know, they do really well and
12 we don't have some of these problems. But at
13 the end of the day, people are going to slip
14 through the cracks in any system and they are
15 going to end up on the doorstep of a court
16 eventually. And the question is, and I think
17 this is something, you know, Judge Kaye has said
18 here in New York, to me, fairly, you know,
19 accurately, the question is, what does the Court
20 do when that person shows up at their front
21 door, do they say, sorry, I'm not a social
22 worker, this is not my job or do they say, we
23 have someone who has slipped through the cracks
24 who is here for whatever reasons, this is an
25 opportunity to intervene or maybe substantive

1
2 due justice. Substantive justice would be more
3 accurately reflected by some kind of
4 intervention and so that's one part of the
5 answer. The second part of the answer is, that
6 we don't live in an ideally centralized planned
7 system. In fact, I've worked with some like
8 England where you could say in England, actually
9 you do have a guns and butter choice -- I mean,
10 they have their own problems, but you do kind of
11 have a fairly simple government that, national
12 government that makes kind of much more broad
13 based decisions on allocations between up front,
14 you know, services like education so forth and
15 back-end services and they kind of get that if
16 they give a dollar to criminal justice, it will
17 be a dollar less to teaching or something like
18 that, schools. First of all, that still doesn't
19 work perfectly -- second of all, that's not the
20 way we work. It's not a question of, why aren't
21 we doing more, why don't we take this money and
22 reallocate it to up front. It's not a dollar
23 that comes to the court system, you know, would
24 otherwise be spent in education, that's just not
25 the way it works. The fact is that, we're

1
2 trying to take the money that is allocated to
3 the criminal justice system and figure better
4 than jail or incarceration. The first part of
5 it is, the question, I'm a defense lawyer, I
6 like to do this in my own practice and, frankly,
7 I think I'm better-suited to do it than a court,
8 which has always this cohesive authority and all
9 these other issues in the government, big
10 brother doing it. Well, I'm glad that you as a
11 defense lawyer feel that way, the prosecutor
12 doesn't necessarily feel you are the best person
13 to do that though. And they are going to have
14 another set of views, they may think actually
15 I'm the best person to do this because I, you
16 know, am going to make darn sure that that
17 defendant is going to go to that, you know,
18 shoplifting education program or I'm going to
19 make darn sure we're going to stay on that --
20 flies the mud into, that they do their
21 batterer's intervention program. That's what
22 their perspective is, your perspective is going
23 to be, well, they're not the ones that wanted to
24 do that, they're just going to set them up for
25 failure. Actually, again, if you think about

1
2 it, to me, it makes a compelling case that
3 actually the court and the judge may not be
4 perfect, may not be, you know, great and I think
5 you've made some good cases today about some of
6 the terrible judges that are out there, but
7 actually, it's not a bad intermediary between
8 these different competing interests, that's kind
9 of what we want a judge to do and have the judge
10 doing that is not bad. And then the final part,
11 again, if this is an institutional response.
12 This is a response of government to some of
13 these situations. I don't see that as
14 inherently bad. There are times that could be
15 dangerous, there are other approaches that are
16 beneficial, if a defense advocacy, you know,
17 agency has resources for social workers to work
18 on some of this stuff, I think that's really
19 good. But at the end of the day, I also think
20 there's something to be said for having, the
21 government as an institution, say, we're looking
22 for something different than, again, jail or
23 nothing and we're going to, you know -- and the
24 final, I guess the final part, not to just
25 belabor this, I think that a judge, not always

1
2 -- but in the best situation a judge can help
3 ensure and provide integrity to the delivery of
4 those surfaces, to make sure that the defendant
5 does do what they're supposed to, to get
6 treatment they need or whatever it is to make
7 sure that the treatment provider does what it's
8 supposed to do to make sure that the treatment
9 provider provides those things that they say
10 they are going to and reports book
11 appropriately. And that is critical for system
12 integrity, that a prosecutor wants to know that
13 if a defendant is being sent to some kind of
14 treatment that the, that that's going to happen.
15 But so do you as a defense attorney, because the
16 most important thing to you obviously is if
17 you're going to get your defendant, you want
18 your defendant released or not in the custodial
19 setting but you also want to know they are not
20 going to be set up for failure. So you want the
21 best likelihood of them getting whatever
22 services they need. And I will say that there
23 is ample evidence in the mandated treatment is
24 more, has a higher effectiveness and a higher
25 efficacy than voluntary.

1

2 MS. BROWN-DOUGLAS: Can I respond?

3 MR. JONES: Sure.

4 MS. BROWN-DOUGLAS: Just as the tail

5 end of it, this is as it relates to the IDV

6 court, your questions suggest that the courts

7 are doing all the work. In the realm of IDV,

8 the Federal Government violence against women

9 act that has funneled 5.1 billion dollars into

10 the domestic violence industry over the last

11 11 years, of that close to 23 million came to

12 New York and the court system only got five

13 percent of that, the rest is reserved for law

14 enforcement, prosecutor's -- and all of these

15 other community services. So there is a lot of

16 money being spent on the front end of this.

17 With respect to the courts, the courts just seem

18 to have a higher or a more visible

19 accountability piece to it. Everybody is

20 looking at the court to see what the courts do.

21 And then with regards to the whole treatment in

22 the area of IDV, the monies that come in are

23 being provided with the understanding that the

24 money will not be used for treatment because

25 research has shown, and this is what the

1

2 literature says, research has shown that
3 treatment of domestic violence, domestic
4 violence offenders does not work. So the only
5 way you get money is, if you agree to be a
6 monitoring agent of the court and basically what
7 you have in these batterer's programs are
8 privatized probation, presentence probation
9 agencies. So treatment is not even an issue for
10 the batterer's in the IDV courts. The money is
11 being put into the front end to fuel the
12 domestic violence industry or the domestic
13 violence machine. It's not enough money, I
14 think, going into the court system to do it
15 right, which goes to my colleague's point about
16 efficiency becoming the priority.

17 MR. SCHECHTER: I suppose I'm a
18 little bit more confused than where we started.
19 Let me ask you this very direct question, should
20 we do away with the integrated domestic violence
21 court.

22 MS. BROWN-DOUGLAS: No.

23 MR. SCHECHTER: Should we keep it the
24 way it is?

25 MS. BROWN-DOUGLAS: No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SCHECHTER: Should we change it?

MS. BROWN-DOUGLAS: Yes.

MR. SCHECHTER: If we need to change it, can you give me four bullet suggestions on how we could change that.

MS. BROWN-DOUGLAS: Have a judge and a referee in the part, the judge looks at the criminal case, the referee looks at the family case.

MR. SCHECHTER: That's one.

MS. BROWN-DOUGLAS: That's one, yes. Due process rights.

MR. SCHECHTER: Specific.

MS. BROWN-DOUGLAS: Must be the right to notice and the right to counsel. And when I say notice, the defendant's last respondent must have a full understanding of what is going on in the part and it should be the function of the court not the defense bar to make sure that that defendant has an understanding on what's going on in the part. There are several attorneys working in that part, you have the criminal defense attorney, the family court attorney, the one attorney for each child in the part so

1

2 that's at least three attorneys. It's up to the
3 Court, the Court has to provide as they do for
4 the victims of domestic violence a sheet to the
5 defendants explaining who is doing what in this
6 courts.

7 MR. SCHECHTER: Third.

8 MS. BROWN-DOUGLAS: Yes. The third
9 thing I think that has to happen is that these
10 courts must work with the law schools to get
11 these students into those courts on externship
12 programs and clerkship programs so we have what
13 will be new lawyers coming in to the bar with an
14 understanding of how these courts function, not
15 on a theoretical level, but on a practical
16 level.

17 MR. SCHECHTER: Fourth.

18 MS. BROWN-DOUGLAS: Fourth is that,
19 we have, there is a court clerk in all of these
20 IDV parts who have to gather research. I think
21 we have to look at the research that they're
22 gathering. I wanted to know how many, what the
23 ethnic origin of most of the people in the
24 courts were, the court didn't know. I wanted to
25 know how many cases get tried and how many are

1
2 acquitted, the court had research going back two
3 years. So I think it's important to gather
4 research in that part and it should be a
5 function of an employee in that part to gather
6 this research.

7 MR. SCHECHTER: Is the research being
8 gathered but not being distributed?

9 MR. MANSKY: The real research being
10 gathered -- I'm sorry. I didn't mean to
11 interrupt.

12 MS. BROWN-DOUGLAS: No, it's okay.

13 MR. MANSKY: But actually the center
14 for my organization, and you can ask Mike
15 tomorrow -- doing quite a bit of research in
16 IDV's around New York City, around New York
17 State. It's, these are relatively new
18 interventions. We haven't completed any
19 findings and there's obviously a tension to
20 share them and I can tell you that in the
21 context --

22 MR. SCHECHTER: The fourth suggestion
23 is something that's being undertaken --

24 MS. BROWN-DOUGLAS: I'm suggesting it
25 should be a function of the court. I should be

1
2 able to go to the court clerk, the court clerk
3 should have this information and I think that
4 it's important to have information regarding the
5 ethnic background of the people that are coming
6 -- the court.

7 MR. SCHECHTER: I'm just curious, why
8 would the Court clerk have that function? Can
9 you give an example of any court in the State of
10 New York in any setting, drugs, mental health,
11 regular courts where a court clerk has that
12 function?

13 MS. BROWN-DOUGLAS: Yes, I think in
14 all of the courts, the court clerk is
15 responsible for the court calendar; where you're
16 responsible for the court calendar, you're
17 responsible for the numbers. Particularly in,
18 for example --

19 MR. SCHECHTER: The ethnic breakdown?

20 MS. BROWN-DOUGLAS: Oh, you're saying
21 that information in particular?

22 MR. SCHECHTER: If I went to part 72
23 in Manhattan Supreme Court -- and I said, I'd
24 like the ethnic breakdown of all cases in this
25 part over the last seven months, I think

1

2 they'd --

3

4

5

6

MS. BROWN-DOUGLAS: Your question then is, why should the court clerk be responsible for gathering that data? There is no one else --

7

8

9

10

11

12

13

14

MR. SCHECHTER: -- if the court clerk has to do it and answer to his superiors in OCA, great, but I don't understand as a litigant and I litigate in the courts and I know the value, as does everyone in this panel and in this room, the value of getting that kind of research. But I'm not sure that going to the court clerk and saying give me that data is the way to go.

15

16

17

18

19

20

21

22

23

24

25

MS. BROWN-DOUGLAS: Well, I'm suggesting that the court should be held accountable in that respect. And the reason is, because we want to make sure that it was cultural competence on the bench. I mean, if you wanted someone else from court interventions or someone else to sit in the court and monitor who comes in and out, that would be another way. But for the sake of efficiency, I think that the court clerk is in the best position to provide that data.

1

2

MR. SCHECHTER: Let me ask you this,
with respect to this right to counsel --

4

statement in the National Association of the

5

Criminal Defense Lawyers, that is -- we live by

6

that, the right to counsel. So I want to be

7

sure I got this right: Are you telling us here

8

today that in the integrated domestic violence

9

courts of Queens County that in the criminal

10

portion of the case a defendant does not have

11

the right to counsel?

12

MS. BROWN-DOUGLAS: No. That's not

13

what I'm saying.

14

MR. SCHECHTER: Where is this right

15

to counsel violation occurring inside the

16

integrated domestic violence --

17

MS. BROWN-DOUGLAS: The family court

18

aspect of the case. May I give you an example?

19

MR. SCHECHTER: Yes.

20

MS. BROWN-DOUGLAS: I represent a

21

guy, call him Kenyate, he goes in on a family

22

court petition and criminal court complaint, all

23

right, he thinks the whole thing is going to

24

disappear, the complaining witness is not going

25

to come in but he goes in court, finds out

1

2 that's not the case. He hires, me, a criminal
3 law practitioner to handle the case --

4 MS. SHIFMAN: Can you represent him
5 just on the criminal side but not on the family
6 side?

7 MS. BROWN-DOUGLAS: Yes. But I get
8 in court on the criminal case and there's all
9 this family court action going on where he has
10 no right to counsel. Out of concern, I'm
11 thinking, you know what, somebody better watch
12 what's going to go on here, it's going to mess
13 up my criminal case. So I have to make the
14 decision right then and there am I going to sign
15 up for this family court case or let it swing.

16 MR. SCHECHTER: Do you file a notice
17 of appearance.

18 MS. BROWN-DOUGLAS: Yes.

19 MR. SCHECHTER: When a person comes
20 in and retains you, knowing what you know about
21 how the integrated domestic violence court
22 works, do you say to this individual, look, if
23 you retain me as private attorney to represent
24 you on the criminal case, my fee is \$2,500 up
25 front, if you want me to represent you on the

1
2 family court aspect where you don't have a right
3 to counsel, you may not have an attorney, I got
4 to charge you more for that. It's like a second
5 case.

6 MS. BROWN-DOUGLAS: That's right.

7 MR. SCHECHTER: Do you indicate that
8 to them?

9 MS. BROWN-DOUGLAS: Yes.

10 MR. SCHECHTER: Is it your position
11 here today -- we should write a report or
12 advocate or at least mention that in these
13 integrated domestic violence courts there ought
14 be counsel across the board, it's an integrated
15 court, it ought to have counsel assigned to the
16 defendant for all aspects of the case with --

17 MS. BROWN-DOUGLAS: No, I don't think
18 you have to require that counsel be assigned
19 pursuant to the 18-B laws and all of that. I'm
20 not saying that. There's some people who can
21 afford it -- but what I am saying is, if a
22 person represents that they cannot afford both a
23 criminal attorney and a family court attorney,
24 then one must be appointed. And the examination
25 is of that the person, the defendant's finances.

1

2

MR. SCHECHTER: Wouldn't that require
a change in the law though here in New York in
the family court --

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

MS. BROWN-DOUGLAS: No. If there is
a change in the law, it would have to be the
requirement, the salary requirements in order to
get indigent defense counsel. Because I could
charge a guy 2,500 on the criminal case but I'm
charging \$350 an hour on the family court case.
This guy might make \$150,000 a year but with
child support, staying in a hotel because of
order of protection and so forth, he can't
afford to pay that. The Court looks and sees
that this guy is paying me \$2,500 for the
criminal case, he says, the judge says go and
get a lawyer for the family case, the guy says I
can't afford it, the judge says you make
\$150,000 a year, you can afford it. The Court
has a responsibility to assign counsel to that
person.

22

MR. JONES: I've got to stop.

23

24

25

MS. SHIFMAN: You've used a sentence,
you said you teach problem-solving justice,
which you distinguish from problem solving --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MANSKY: No, which I distinguish from therapeutic justice.

MS. SHIFMAN: Okay. The integrated domestic violence court is a problem-solving court --

MR. MANSKY: It's a problem-solving court. It's not a therapeutic court.

MS. SHIFMAN: So you would describe a problem-solving court as what exactly succinctly?

MR. MANSKY: The basic --

MS. SHIFMAN: The four things you went over in the beginning.

MR. MANSKY: You know, certainly the outcome focus, second of all -- shifting from the process to outcome, I would say that the principals are better information.

MS. SHIFMAN: Better information for who?

MR. MANSKY: For the different parties, for the Court itself, I would say certainly better range of options than what currently exists as far as sentencing options, better accountability and then I would also add

1

2 to that collaboration, and I'm going to say it
3 kind of shifts if you're looking in a community
4 court, I would add kind of express community
5 engagement as apart of it. I think that clearly
6 domestic violence courts, IDV's, are not
7 designed to therapeutically help the defendant
8 in part because there is at this point no kind
9 of understanding of what that therapeutic
10 prevention is. It's kind of express purpose,
11 certainly the -- improve public safety for, and,
12 you know, improve accountability with the
13 defendant and enhance safety for the victim.
14 And IDV's are acknowledging that the criminal
15 matter is not necessarily what the central issue
16 is. What may be the central issue is, some kind
17 of custody dispute or other related issues that
18 affect the ability for the victim to, you know,
19 remove herself or find some kind of security or
20 alimony, whatever it is to find security for the
21 matter. So what IDV is trying to do is, again,
22 thinking about safety for the victim so that's
23 kind of the priority. But I don't want to
24 pretend it's therapeutic --

25

MS. BROWN-DOUGLAS: Can I just

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

respond to that one --

MS. SHIFMAN: Quickly.

MS. BROWN-DOUGLAS: If it's a problem-solving court -- solve the problem of the victim, not the defendant.

MS. SHIFMAN: Going back to you for another question, you said that, you believe that the defense attorney has more options from which to choose on behalf of their client, you were talking about this sort of in response to those critics who say zealous advocacy kind of goes out the door in these courts, while I agree with you that it's, there are options that might be available to a defendant outside of incarceration in some of these courts, in practice, in order to obtain these options, they have to give up their rights, do they not?

MR. MANSKY: Well, those are comparable to what the rights are that are given for a defendant who takes a plea to parole, probation, other services --

MS. SHIFMAN: But usually when they decide to take a plea and get parole or probation, they have the opportunity to

1
2 litigation whether or not stops were illegal,
3 they get discovery, they get to see, get notice
4 of how the law enforcement saw the transaction
5 or the events and we've --

6 MR. MANSKY: That may be the case,
7 that may be the case in certain instances, and
8 in certain instances that may not be and the
9 fact, I mean, essentially it's kind of the term
10 of the deal and that's the term of the deal
11 that's kind of established and, you know, that
12 is, I don't actually know that it's all that
13 different than practice. I mean, it may be up
14 fronted in a way and there may be, if -- yes, it
15 may be kind of pushed up front in a way and
16 there may be certain things that are being
17 waived, when you're saying waiving, you're
18 saying contesting the factual issues of the case
19 itself --

20 MS. SHIFMAN: Whether or not the stop
21 and the search were illegal, not the factual
22 issues, the legal issues, the checks and
23 balances on the law enforcement power and
24 actions. I mean, is your organization not at
25 Fordham.

1

2

MR. MANSKY: Right, Center for Court
Innovation.

3

4

MS. SHIFMAN: What kind of
intervention is your organization doing with the
prosecutor's offices and the courts that are
established to ensure that those rights and that
checks and balances are still occurring within
the courts while still solving problems and
having accountability at the end of the day?

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. MANSKY: I can tell you that
certainly that in certain models, for instance
in community court in Red Hook, we do have
mandates that are done essentially; it's
conditions of release. In other words, they're
not post adjudication that, you know,
essentially the judge will say, you know, I will
release you -- able to pursue your case but I
also expect you to get drug treatment or
whatever. And essentially that's a deal that is
favorable to the defense part of the time and
favorable to the prosecution part of the time.
They might be not released and have bail set
otherwise or they might have gotten ROR'd
otherwise. And I think in certain instances

1
2 that's totally appropriate that's done and I
3 think that's actually good practice. I can't, I
4 don't know drug courts as, you know, quite as
5 well, so I can't really speak to that. But --
6 yeah.

7 MS. KELLEY: Adam, at one point you
8 said something along the lines of defense
9 attorneys should be near the team but should not
10 be part of the team. What specifically did you
11 mean by that? And, Victoria, I'd be happy to,
12 I'd love to hear your thoughts on that issue as
13 well.

14 MR. MANSKY: It's a rhetorical
15 flourish. I think that, you know, I want like
16 in a model problem-solving court, I want the
17 defense bar to be involved in helping plan the
18 model. I want the defense bar to be helping
19 shape what the, what the rates of options are
20 and the protocols and I want them to be involved
21 in, you know, following that process throughout.
22 I want them to, you know, obviously be part of
23 any discussions about a defendant's clinical
24 progress or anything else and, but at the same
25 time, and maybe you can say that's being part of

1

2 a team in a way. But at the same time, it's
3 very clear, there are times when they have to
4 stand outside of that team to represent their
5 client's interests. And that's not, I don't
6 think that's -- I mean, clearly there has been
7 rhetoric kind of trying to change, you know,
8 saying something should be different there and I
9 don't agree with that and I don't think -- and I
10 don't think you guys would. I don't think you
11 guys would let yourself be -- I can give you,
12 not only in the mission statement which says
13 it's a conflict for a defense advocate when they
14 have to choose between their client and the team
15 or I've read articles that talk about this, this
16 challenge. You guys aren't making that
17 decision, you're deciding what's best for your
18 client. You should continue to do that and I
19 don't think a problem-solving court should
20 change, so I guess that's what I'm trying to
21 say.

22

23

24

25

MS. BROWN-DOUGLAS: This concept
being near the team but not being apart of the
team, in order to do that, the team has to make
the statement that we are not going to buy into

1
2 this, the incurable violence that comes through
3 this court. The problem is that the 5 billion
4 dollars that is pushed into the domestic
5 violence industry is based on the team agreeing
6 that treatment will not be a function of this
7 machinery. Monitoring is the function. If that
8 is their position, the defense bar cannot be
9 apart of that team because it violates their
10 relationship with that client. That will be the
11 defense bar agreeing that the client should be
12 monitored and buying into this whole thing. So
13 the defense can agree, let's look into this team
14 but before we say we're going to commit to
15 sitting at the table with you, you have to back
16 up off of that part of the agreement. And I
17 don't know how that's going to be done because
18 you're talking about federal grants, you're
19 talking about a lot of money and you're not
20 going to get the money if you move away from
21 that. The other piece to that is that it's
22 somewhat, just from a purely defense counsel
23 position, it's disingenuous to the client. If
24 you agree to be apart of that team, are you
25 going to tell your client, listen, I'm apart of

1
2 the team, we're getting together, we're trying
3 to figure out how to do this, how we can make
4 this work better and this is a model court,
5 look, see how pretty. Are you going to do that
6 to your client -- his closure because I had a
7 propensity for getting along well with the most
8 violent difficult defendants. And the reason I
9 got along well with them is because I was
10 straight up, I was honest and I was willing to
11 fight for them regardless of what they did. I
12 think it's important for a defense attorney to
13 do that. And if you're not going to do that,
14 you have to make it clear to your client that
15 you're not going to do that and then you move
16 away from any possibility of therapeutic justice
17 or therapeutic outcomes, you know. The other
18 thing I wanted to go back to is this idea that
19 the problem-solving court is not a place where,
20 it's not a therapeutic court. That's right,
21 it's not, but when you take the position that
22 the defense bar should come sit at the table and
23 figure out how they can get this done, then
24 you're kind of suggesting, well, maybe there's
25 some therapeutic value here, maybe there's

1

2 something that the defense bar can do so that
3 the defendant will be, will feel better about
4 what's going to happen to him. So I think that
5 if the position is that the problem-solving
6 court is not a place for therapeutic
7 jurisprudence then that needs to be made clear,
8 so when the defense bar comes to the table, you
9 come to the table knowing, this is not about
10 therapy for my guy, it's about monitoring my guy
11 and I am willing to do that and in exchange for
12 what, the violation of his rights, the lack of
13 an opportunity to dispute the legal issues.

14 Your point, Ms. Shifman, is correct, we're not
15 talking about fact, we're talking about law.

16 The problem with the IDV law is the
17 domestic-violence industry, the machinery that
18 pulls it along and that is one that says the
19 facts are more important than the law so if
20 you're beating somebody up, if you're beating a
21 woman up, then you don't deserve the law, look
22 at the facts. There's this blend, family
23 criminal law; this whole blending of the facts
24 outweigh the law.

25 MR. JONES: I hesitate to do this but

1

2 I just have a couple of questions that I just
3 wanted to ask. But, Adam, in your opening when
4 you were talking about the midtown community
5 court, you said something that struck the --
6 court with me and I wanted -- you may not know
7 the answer to this question or the details but
8 I'd be interested to hear them if you do and if
9 you don't, you can -- that would be good. You
10 said in the midtown community court there was a
11 Legal Aid lawyer who was concerned about the
12 collateral consequences occurring with people
13 who were convicted, I imagine, of prostitution
14 and that the Legal Aid lawyer did something to
15 reduce the collateral consequence. I'd like to
16 know, A, what the collateral consequences were
17 of those convictions and what he did to reduce
18 them.

19 MR. MANSKY: Well, the DA's office
20 was taking a stand, there was no offer even for
21 first arrest and it was like a plea to the
22 charge for prostitution, first, second, whatever
23 number of arrests and I think that the defense,
24 midtown, the midtown community court hears all
25 the prostitution arrests in Manhattan that

1
2 happen from Sunday morning to Friday morning or
3 sun afternoon to Friday morning so it has
4 significant volume of the boroughs arrests
5 and --

6 MS. SHIFMAN: What happens on
7 Saturday in --

8 MR. MANSKY: They go downtown.

9 MR. SCHECHTER: Was this post the
10 numbers 2007 change from the B misdemeanor to
11 the A or patronizing prostitution?

12 MR. MANSKY: It was before, I
13 believe. And essentially and Legal Aid has one,
14 has dedicated an attorney to basically hear all
15 of these cases and she, you know, among other
16 things, she knows that whatever, so she saw, you
17 know, that there was a potential for
18 consequences to the defendants who then take a
19 plea to those or to those cases and would, and
20 so none of those cases were pleading out and she
21 was able to make the case to, the DA's office
22 that instead of just offering, you know, a plea
23 to the charge or whatever, that there would be
24 for a first and second and I believe possibly
25 third arrest, it would be, you know, a limited

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

conviction provided that there were certain services.

MR. JONES: What were the collateral consequences?

MR. MANSKY: Well, a number of those defendants are illegal immigrants.

MR. JONES: So there were immigration consequences?

MR. MANSKY: Yes. Yes. I'm sorry.

MR. SCHECHTER: But not on a first offense -- it's the second and third arrest that then bring you into the administrative immigration judge's clause and can kick you out of the country.

MR. MANSKY: I think that's probably right. So they were able to shift the process so that there were frankly a couple more arrests.

MR. JONES: This came about as a result of the conversation with the district attorney's office.

MR. MANSKY: And midtown community court and a judge who observed this.

MR. JONES: And then the question,

1

2 the sort of question/comment I have for you, Ms.
3 Brown Douglas -- and I don't know Tiny Dawson at
4 all --

5 MS. BROWN-DOUGLAS: Tandra.

6 MR. JONES: Tandra. Judge Dawson at
7 all but by reputation, but I certainly support
8 the notion that, more than the notion that there
9 should be culturally competent judges. I think
10 there should be culturally competent prosecutors
11 -- part 72, I think there should be culturally
12 competent folks from stem to stern in our
13 justice society, frankly -- that doesn't exist.
14 So I support that notion. But as a guy who
15 since 1990 has been sort of emersed in
16 practicing what we call holistic defense, in my
17 organization up in Harlem --

18 MS. BROWN-DOUGLAS: That's where I
19 met you when I was in the Manhattan DA's office.
20 Harlem Defenders.

21 MR. JONES: Yeah. Yeah. Okay.

22 MS. BROWN-DOUGLAS: Oh. Do you know
23 Teresa Holmes.

24 MR. JONES: I know Teresa well. But
25 here's the thing that really surprised me about

1
2 what you said, there were -- and the basis of
3 the way we practice was that if a person had a
4 criminal court case which then bounced them into
5 a family court case and there were issues about
6 custody or termination of parental rights or had
7 bounced them into housing court because they
8 were going to be evicted or because they were
9 living in subsidized housing or it took them
10 into matrimony court, we would follow their
11 cases where ever they went -- we represent them
12 in housing court and where ever else their cases
13 went. And from my client's perspective, from
14 the defendant/respondent's perspective, that is
15 so much better, so much, you have so much more
16 power over the system coming from that
17 perspective of going to, where the client's
18 cases take them as opposed to have it
19 consolidated where there are different
20 standards, different burdens. We would use the
21 civil process to get discovery in the criminal
22 cases that we would never get otherwise. And we
23 would have -- but if you're in a part where
24 there's one family, one judge, it seems to me
25 you lose all of those ancillary benefits of the

1

2 system. And so I guess I'm just curious, and
3 this will be sort of the final, you know,
4 responses from this panel, I guess I'm curious
5 as to why at the end of the day you support IDV
6 courts.

7 MS. BROWN-DOUGLAS: I'm for anything
8 that keeps my guy out of prison, out of jail and
9 without a criminal record so he can go out and
10 get a job and see his kids. I agree with what
11 you're saying but the people in my community
12 just can't afford that. You're free, you get
13 the same salary, the Harlem Defender's office
14 all these other defenses services, you get the
15 same salary whether you go to one court or all
16 the courts. But the person who wants to use
17 private counsel cannot afford to pay for an
18 attorney to go to criminal court, pay for
19 another one to go to family court and another
20 one to go to housing court and all of that.
21 Those are all specialty fields that require a
22 certain amount of competence, which people
23 cannot afford.

24 MR. JONES: Isn't is that a small
25 sliver of the population that's going to be in

1

2 that court? Aren't the vast majority of people
3 who are going to be in that court going to be
4 represented by me and not you?

5 MS. BROWN-DOUGLAS: Well, you know, I
6 did some work in the IDV courts and the domestic
7 violence courts in Queens County and most of my
8 work was private. Private. And I'll tell you
9 why, because it makes sense for a guy that's
10 making a lot of money to be pulled into this
11 court if his partner wants him out of the house
12 or wants to take out retribution on him for
13 having other women or whatever, it makes sense
14 to put him in there. So I represented them
15 privately, although I'm on the 18-B panel and I
16 charge \$350 an hour to represent them on the
17 family court case. And again, Queens County,
18 the black people that live there are making a
19 lot of money so they don't get -- to go around
20 to all these different courts. As I said, I'm
21 for anything that keeps my guy out of prison and
22 able to see his kids. Without the IDV court, he
23 would get a full order of protection in the
24 criminal case preventing him from seeing his
25 kids and a family court order that says, you

1
2 can't see the kid, can't go close to them except
3 for visitation with your children, which
4 basically amounted to, you can't see your kids.
5 At least now, the IDV court, I get an order that
6 allows him to see his kids so he is not able to
7 be manipulated in that fashion and that's most
8 important, particularly when you have these
9 child support issues.

10 MR. JONES: Thank you both very much.
11 We appreciate it. I see Mr. Friedman is here,
12 our next panel and say hello to Teresa for me.

13 (Recess taken.)

14 MR. JONES: Welcome. Sorry that we
15 ran a little long. The way that we have been
16 operating is that we will give you five minutes
17 or so to give us the benefit of your thoughts
18 and opening statement and then we will question
19 you with a number of questions that we'd like to
20 pose to you and one of us generally taking
21 primary responsibility for the questioning and
22 in this particular case it will be Marvin
23 Schechter so the floor is yours. Thank you.

24 MR. FRIEDMAN: Thank you for having
25 me and thank you for coming. I just want to

1
2 give you a little background about myself --
3 I've been practicing criminal law for the last
4 23 years. I started off with the Legal Aid
5 Society for three years and I have been in
6 private practice the balance of the time. I
7 practice in Brooklyn. A large portion of my
8 work is 18-B work, court-appointed work. I did
9 some private work in the outer boroughs also.
10 And I've appeared probably most often in the
11 Brooklyn treatment court, also in the mental
12 health court in Kings County and also treatment
13 courts in other counties, as with private
14 matters, not that many. I've also appeared in
15 domestic violence parts in the criminal end or
16 the misdemeanor end and also the felony in the
17 domestic violence part, a little bit of
18 experience in the integrated domestic violence
19 part. And I would tell you that when I, I guess
20 the Brooklyn treatment court is the first one
21 established that I appeared in and I had to say
22 that I was skeptical when I first began
23 practicing there, probably because how I was
24 trained as an attorney and what I viewed as what
25 an attorney does. And I guess one could argue

1
2 that my previously feelings when these courts
3 began, I guess you can call them problem-solving
4 courts, was one of a better term a more macho
5 trial approach to the practice of law in the
6 late eighties. We're talking about there was,
7 the beginning of the crack epidemic, mid to late
8 eighties going into the early nineties and there
9 was just an influx of these cases. I would say
10 that I probably spent a lot of time trying
11 buy-and-bust cases, observation-sale cases,
12 these cases generally ended up in, most ended up
13 in plea, to state time often, there was very
14 little intervention with programs, there was
15 some and ultimately most cases that got tried
16 ended up in convictions. And I have to say that
17 after experiencing the treatment courts and also
18 the mental health court, that I am not a skeptic
19 any longer. I personally would advocate the
20 continued use of these courts and even perhaps
21 the expanded use of these courts. There are
22 problems, no doubt, with these courts in terms
23 of the role of the attorney, there come s
24 sometimes to be -- view, the greatest good for
25 the greatest number, you lose the individual

1
2 approach at times and there is time constraints
3 especially in treatment court, in the drug
4 treatment court in Kings County in terms of
5 making informed decisions or advising a client
6 to make an informed, logical decision and I
7 don't want to go on too much further but I just,
8 as lawyers like to tell war stories, I'll tell
9 you one, this involves the mental health court
10 in Kings County: I had a client I was 18-B for
11 a day sitting in one of the up front calendar
12 parts and I was assigned the case and I'll call
13 him Jeffrey Watt, for purposes of this, and
14 Jeffrey Watt, when I first interviewed him was,
15 want of a better term, a mess. He appeared to
16 have mental illness, he appeared to have a
17 significant drug problem, he had a wrap sheet
18 that probably extended 20 pages long. I was
19 able to ascertain on the first date that Mr.
20 Watt had a significant mental history, but I
21 also was able to ascertain at that time that he
22 had been brought back on a warrant and that he
23 was very close to speedy trial time -- warrant
24 and even before the warrant, we were getting
25 close to that six-month period where the case

1
2 would be dismissed. It hadn't yet reached that
3 point yet. The case was adjourned several times
4 and we were getting very close to that
5 particular time where it appeared to me while I
6 didn't have a lock-solid speedy trial issue,
7 that it was getting real close and my experience
8 with the court it was that with the district
9 attorney's was, it probably wouldn't be ready in
10 time, it was a good chance, and that that case
11 would ultimately be dismissed, Mr. Watt would be
12 released and he would probably die within a
13 month. He had Hepatitis C and that was the
14 least of his problems. And so I was told that
15 mental health treatment was available, it would
16 mean he would have to take a plea and it would
17 mean that he would have to give up his right to
18 any type of speedy-trial motion or any relief
19 based upon that statute. And I spoke to him and
20 I advised him of his options and I advised him
21 of the potential of the speedy trial but I
22 recommended that he enter the program. Somebody
23 I think when I was listening to the other panel,
24 it was -- a holistic approach to a client and I
25 guess over the years my macho view of practicing

1
2 law turned into more of a holistic view of
3 practicing law. And the bottom line was, of
4 course this has to have a happy ending, is that
5 Mr. Watt went through the program with hitches,
6 well over two years later he graduated, I
7 believe he was given a misdemeanor and as far as
8 I know, he hasn't been in trouble again. So
9 with that being said, I'm open to your
10 questions.

11 MR. JONES: Thank you.

12 MR. SCHECHTER: Let me just start
13 with some straight-forward questions. Training.
14 As a member of the private bar, have you -- or
15 been given any special training to handle cases
16 in the drug courts or the mental health courts
17 and is there a need for that.

18 MR. FRIEDMAN: No, I didn't get any
19 specific training. I would imagine during the
20 years there probably was or some continuing
21 education courses or seminars involving the
22 treatment courts, I'm sure there were. I may
23 have actually attended some. It was well after
24 I started taking these cases. So there is no
25 training. It wouldn't hurt to require a few

1

2 hours of training just to get people acquainted.
3 Most people who do 18-B work or private work
4 come out of the district attorney's office or
5 come out of the Legal Aid Society and I actually
6 -- because when I was there, they didn't have
7 these courts. So I think training would be
8 fine. I don't think it has to be extensive.

9 MR. SCHECHTER: Shouldn't it be part
10 mandatory --

11 MR. FRIEDMAN: Yeah, I don't think it
12 would hurt. I think it would be a decent idea.

13 MR. SCHECHTER: Would you have that
14 training imposed by the court system or by the
15 bar association?

16 MR. FRIEDMAN: Probably the bar
17 association.

18 MR. SCHECHTER: You'd be comfortable
19 with that?

20 MR. FRIEDMAN: I'd be comfortable
21 with that.

22 MR. SCHECHTER: Let me ask you a
23 question about ethics, legal ethics. We have
24 looked at a lot of literature -- the role of the
25 defense attorney in this team approach, which is

1
2 really the essence of the drug-court model and
3 we continue to explore how it is possible to
4 honor the attorney/client privilege, be an
5 advocate, a zealous one but at the same time be
6 part of the team. There clearly seems to be a
7 problem with the -- of ethics, there's nothing
8 in the canons that gives you an exception for
9 talking about your client at a staffing session
10 or even an open court or even privately with the
11 district attorney about the -- that will
12 otherwise be confidential. How do we get around
13 that? What could be done about that? Is it a
14 problem? Is it not a problem at all?

15 MR. FRIEDMAN: I don't see it as a
16 problem. I don't see myself as a member of the
17 team, at least in my experience in Kings County.
18 And again, since my vast experience is in the
19 Brooklyn treatment court, basically, when you
20 get into a situation, there isn't much that goes
21 on before the plea is entered. There is an
22 evaluation process done the day after
23 arraignment, there's a determination made
24 whether somebody is eligible for drug treatment,
25 you talk to your client, the district attorney

1
2 gives you the alternate jail sentences, if
3 there's a failure in the program, there's a
4 superior court information drawn up, talk to
5 your client. I think one of the, maybe one of
6 the problems is the time constraint and this
7 whole -- view, you use some of that individual
8 attention you can give because you don't have
9 much time, your client doesn't have much time to
10 make that determination, banging up against
11 180.80 and the time that the indictment has to
12 be obtained. So once that happens and once
13 there's a plea taken and once the individual is
14 in the program and for better or for worse,
15 you're not, I mean, we're not talking about the
16 possibility of a search and seizure issue, we're
17 not talking about the possibility of a trial
18 issue, so I don't see any real, I never really
19 have concerns about attorney/client privilege or
20 not zealously representing my client because my
21 role changes at that particular point. I'm
22 looking for the point of view of making sure he
23 or she completes the program, doesn't go to
24 jail. And I just, Mr. Schechter, I don't find
25 that I'm part of the team. I don't -- I

1

2 approach, I speak to the judge, the district
3 attorney is to a large extent out of it, after
4 the plea is entered into and then there's the
5 staff of the treatment court and I mean you just
6 try to work things out. You really move into
7 the realm and this was what I was probably
8 resistant to in an earlier stage when this first
9 began, you move more to the realm of the social
10 work as opposed to the zealous advocate,
11 although I see the roles can sometimes be -- but
12 I don't, I don't view it as a problem.

13 MR. SCHECHTER: We heard testimony
14 this morning from a number of providers on this
15 Neighborhood Defender's Brooklyn Defenders --
16 that the buy-and-bust cases, the motions to
17 suppress have pretty much disappeared with the
18 advent drug course. Do you find there are legal
19 issues that come up in the initial interview
20 with a client before the client makes the
21 decision about the drug court that should be
22 pursued and if so, how can you pursue those if
23 the offer is drug court or not drug court?

24 MR. FRIEDMAN: You can't. Then you'd
25 have to make the decision. Just like in

1
2 anything else, whether a client is going to
3 testify before a grand jury, what your bail
4 application is going to be, so you have to make
5 that quick, early decision. And it's a problem.
6 Because they give you the piece of paper, this
7 is going to treatment court tomorrow, you're in
8 arraignments, give you the waiver or the consent
9 form, tell your client, are you interested in
10 treatment and generally they say what does this
11 mean and you say, we are not getting into
12 whether it was probable cause or not, now
13 everything is now going to be now geared towards
14 that aspect and that means probably, I could say
15 probably for somebody who is a predicate would
16 mean 18 to 24 months inpatient program and all
17 the ramifications if you fail, and you get into
18 that with a client. And you're right, to a
19 large extent, we kind of, those type of things
20 you might get into if there was a possible
21 search issue or there's a guilt or innocence
22 question, often times get shot to the side. But
23 you have to weigh it because, you know, how
24 often , I mean, you've got to say, if you as the
25 attorney pick up on the possible issue, I mean,

1

2 you weigh it with the understanding that you
3 convey it to your client, I think you have an
4 ethical obligation to talk to your client about
5 the facts of the case and I'm not sure that,
6 maybe there are some attorneys who kind of lose
7 sight of that fact when they know it's probably
8 going to be a treatment situation. And you go,
9 you know -- explain to them there might be a
10 search and seizure issue, he says what does that
11 mean, you might be in jail eight months before
12 you litigate this, to be honest, bail is going
13 to be set because you're a predicate and I'm
14 going to be before a judge who may not be
15 inclined to grant suppression motions so you may
16 not win and you're going to have a tough time at
17 trial --

18 MR. SCHECHTER: After somebody enters
19 the drug treatment program or the mental health
20 course and they're out, there are many
21 appearances that the person has to make and if
22 there's any kind of fall back or the person
23 slips, that adds to the number of appearances
24 and that even adds to the amount of time beyond
25 18 to 24 months. For each and every one of

1
2 those court appearances where the client
3 appears, do you appear with the clients? Do
4 your colleagues do that? Is it your sense that
5 the private bar is following up or is it your
6 sense. I've -- more people in Brooklyn who have
7 told me a lot of the attorneys once it goes into
8 drug court -- unless someone from the court says
9 your guy is really messing up in the program,
10 you better get over here.

11 MR. FRIEDMAN: That's a good
12 question. Look, personally, I try to make my
13 appearances. And interestingly enough, when the
14 rates went up on the 18-B, 75 to --

15 MR. SCHECHTER: Everybody started to
16 make appearances.

17 MR. FRIEDMAN: That's true too. More
18 people did actually start making appearances.
19 No question about that. I hate to be cynical
20 about that but it's true. But what they did
21 was, 18-B used to cover a lot of the calendar,
22 all the calendar parts, but it was costing too
23 much money. They took that away, they said
24 there won't be anymore covering of the other
25 cases for the people in these parts.

1

2 Interesting enough, the only thing that was
3 accepted from that was this special probation
4 part combined with the Brooklyn treatment part.
5 So the only 18-B primary person who is sitting
6 there all day is in that Brooklyn treatment
7 part, which is, to some extent does discourage
8 the individual attorneys from showing up on
9 their cases. And I think Judge Ferdinand is
10 going to be speaking today. There isn't an
11 emphasis by the court -- she does a fabulous
12 job, there isn't the emphasis on the attorney's
13 appearing, especially what we may call run of
14 the mill appearances where everything is going
15 fine. In fact, I guess you had Legal Aid.

16 Did you have Legal Aid testify?

17 MR. JONES: Not yet. Tomorrow.

18 MR. FRIEDMAN: There is a staff
19 person who sits in the part all the time, it's
20 a, it's not, you know, a vertical representation
21 system there. So what happens with the vast
22 majority of cases handled by Legal Aid, there's
23 a person who sits, a traffic cop who would sit
24 in the part, which is a permanent position for
25 an attorney, a staff attorney which is good

1

2 because they get to be familiar with the court
3 personnel and the whole system, but there is not
4 a lot of emphasis on individual Legal Aid
5 attorneys appearing for their cases. So bottom
6 line, an answer to your question because the
7 rates went up I guess I seen more people making
8 appearances for their clients. Certainly, if
9 there's a possibility of that defendant going in
10 because there's a violation of the terms or any
11 violation, you get a call from the court to
12 come. It is not the most widely-attended court
13 that there is and there may be some attorneys
14 who feel, in terms of the panel, I don't know
15 about the private attorneys who come in, I've
16 had a couple of private cases there, it's a
17 different mind set, you get paid, you go. But I
18 don't -- I think that, you know, there's
19 probably a lot of attorneys who then, this is
20 the last thing on their mind -- unless something
21 comes up.

22 MR. SCHECHTER: In addition to the
23 Legal Aid attorney who is assigned to the part
24 by Legal Aid, is there an 18-B attorney?

25 MR. FRIEDMAN: That's what I'm

1

2 saying, the only one, the only general part
3 where an 18-B attorney is assigned is that part.

4 MR. SCHECHTER: If I'm the 18-B
5 attorney assigned for that part that day and you
6 have a case on, do you call me up and say what
7 happened on the case or am I just there to
8 appear, that there's an attorney present to give
9 it the facade of representation?

10 MR. FRIEDMAN: The main purpose of
11 you being there is to pick up cases if there was
12 a conflict. That's the main reason.

13 MR. SCHECHTER: Gotcha.

14 MR. FRIEDMAN: Occasionally, I'll
15 stand up on another attorney's case. A lot of
16 times, it's 10:45, they are finished with their
17 case manager, they come up to the courtroom, the
18 attorney intends on showing up, they're not
19 there for the times when I have gotten there and
20 it's too late, here's your date, come back. Is
21 there a real urgent need? I mean, I make it my
22 point to see my client but if that happens, I
23 understand the situation, there are other
24 problems there. And generally speaking -- and
25 they might even ask the 18-B because they are

1
2 sitting in the probation part first then they
3 come so it's not that the people are abusing the
4 18-B who is sitting in the part handling the
5 cases, they are generally there and they are a
6 backup, but they are generally there to pick up
7 the cases where there's a conflict.

8 MS. SHIFMAN: You said right after
9 arraignment there's this evaluation to determine
10 whether or not they're eligible, right?

11 MR. FRIEDMAN: Right.

12 MS. SHIFMAN: Is the lawyer present
13 for that?

14 MR. FRIEDMAN: For the actual
15 evaluation when the case manager or whoever --
16 no.

17 MS. SHIFMAN: So during that
18 evaluation, I would assume that they ask the
19 individual whether or not they use drugs or --

20 MR. FRIEDMAN: Right.

21 MS. SHIFMAN: So these guys are,
22 before there's a decision really, consultation
23 with the lawyer about what to do, they're
24 already making admissions.

25 MR. FRIEDMAN: I guess. I mean, I've

1
2 never had a situation where they've used
3 anything anybody said to a case manager because
4 sometimes they are not eligible and the case
5 proceeds on. It's an excellent question. I
6 don't know if it's possible an attorney would be
7 allowed to go, which is a matter of course;
8 attorneys don't appear for that evaluation.
9 They are drug tested, their urine is taken,
10 that's a reason --

11 MS. SHIFMAN: Is it part of the
12 evaluation process their urine is tested?

13 MR. FRIEDMAN: Yes. Yes. So -- and
14 I don't believe that they are questioned with
15 regard to the facts and circumstances of the
16 case they are charged with. There's no written
17 report indicating and, you know, Q and A
18 regarding that. It's not like a probation
19 report. I think case studies taken, they
20 confirm addresses, they confirm, they talk to
21 someone, get the idea what the extent of their
22 problem is so they can match them to the
23 program. But as far as I know, no attorneys
24 appear at that session and as far as I know, I
25 don't know whether it's statutorily protected

1

2 but none of that information is ever used
3 against the defendants in the case.

4 MS. SHIFMAN: You're not at the
5 arraignment as an 18-B lawyer.

6 MR. FRIEDMAN: I could be. I might
7 be if I'm assigned to 18-B -- in fact, most of
8 the times I would be. And then what happens is,
9 if I'm in there in day court or night court
10 let's say a Monday that case is put into the
11 Brooklyn -- actually, I have forgotten about the
12 step part, there's two treatment courts in
13 Brooklyn. I don't know why cases go where.
14 There's a case in the Supreme Court building,
15 320 Jay Street, that's the Brooklyn treatment
16 court -- Judge Gabayas (phonetic) in the
17 criminal court building, which also deals with
18 felonies and they also have a misdemeanor
19 treatment part, but it goes into that part the
20 next day. Whether or not your client, sometimes
21 your client says, I don't have a drug problem,
22 most judges still put them in that part. I
23 don't know what the rationale for that is, maybe
24 somebody else could explain. And then they're
25 evaluated, whether they be in or out and the

1
2 determination is made by the time you get there,
3 if you get there and they're still evaluating,
4 you come back, the district attorney also has
5 the offer already -- the superior court
6 information is already ready to go, there's a
7 contract the judge signs with the client and,
8 you know, if the person is in, put it over to
9 verify information and they find a bed for that
10 person, if it's an inpatient program or
11 outpatient, that person is generally released,
12 if they're out, they're released. That's
13 basically how that operates.

14 MS. SHIFMAN: What about the scenario
15 where you've got a beautiful defender, college
16 educated, maybe that age range and they get
17 arrested, they had a little dope on them,
18 they've used some sort of, a recreational user,
19 not really a problem as we defined drug problem
20 user, what about that scenario when they turn to
21 you, yeah, yeah, yeah, I had some dope on me, I
22 used it, you know, a couple of times a month, I
23 smoke pot or I do whatever a couple times a
24 month.

25 What happens to somebody like that?

1

2 What kind of program are they offered?

3 MR. FRIEDMAN: Well, generally
4 somebody who is out, who is not held on bail or
5 who has made bail --

6 MS. SHIFMAN: First-time offender.

7 MR. FRIEDMAN: First-time offender,
8 they're generally going to probably be out. A
9 first-time offender in a situation like that
10 would be probably offered a plea whereby he
11 would get, you do an outpatient program for
12 about a year and then he or she would then,
13 would probably have an alternate, it will be
14 dismissed if they completed the program, often
15 times in cases like that if it was, if it was a,
16 you know, a small sale or it was small
17 possession or not a large possession case they
18 would probably, you know, face a misdemeanor, an
19 E felony, if they don't complete the program,
20 they could plead to that and, you know, maybe
21 face a year a year or a little bit more.
22 There's two -- if you don't complete the
23 program, there's an alternate punishment, an
24 alternate sentence, and if you get arrested on
25 another case and convicted or whatever, then

1
2 there's a higher alternative. But you bring
3 that up and there's something I should share,
4 the hardest cases you have when you're in the
5 treatment part are cases like that where you
6 have got an individual who may even have a job
7 and who may be a recreational user, often time
8 they test positive for marijuana and you think
9 that if they don't take the program, they're
10 probably going to get probation, possibly YO and
11 probation. I had a client who sold cocaine, he
12 had a marijuana problem, he agreed to the plea,
13 he was 18 years old, he tested, he got arrested
14 like three days after he entered the plea but
15 that case was dismissed, but he tested positive
16 for marijuana thereafter and he had to go into
17 an inpatient program for a year. So it started
18 off as something whereby he might have gotten a
19 misdemeanor or a YO and probation early on in
20 the game, he ended up having to do a year
21 program and the end result was he ended up, I
22 guess the case was dismissed but, you know, had
23 he not been able to complete the program -- go
24 away to jail. So what do you tell a client?
25 There's the problem.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. SHIFMAN: You haven't seen the police report.

MR. FRIEDMAN: Not a thing. Not a thing. So you've got a problem. You might have some search issues but you can tell somebody, listen, my experience tells me that you're probably not facing jail if you don't take the program, however, if there's that part of it now that says what if he's got a drug problem, this would be beneficial to him, I mean, the holistic approach. Now I've got a client who has a drug problem and may not be going to jail on the underlying crime but may be coming back, I might not be representing him, he might be coming back on something bigger, he might violate his probation so we've got a problem and he is also hurting his body or she is hurting her body. These are difficult decisions and it's hard to say, well, listen if the person says, it may be an outpatient program, it's going to be 12 months or you can forget about it, reject the program, probably get a YO and probation or maybe a misdemeanor down the line. Ultimately, it's going to be their decision. The problem

1

2 is, what do you think , my position on that is,
3 do you think you have a drug problem. Let's get
4 down to it. If they say yes, I say maybe it's a
5 good idea to take the program.

6 MS. SHIFMAN: What if they tell you
7 no?

8 MR. FRIEDMAN: If they tell me no,
9 then I tell them, I don't push them any further
10 but they are going to be evaluated anyway
11 usually. And generally, if they're not eligible
12 because they don't test positive or based upon
13 the case manager or whoever is doing the intake,
14 they are not going to get the program, they
15 probably wouldn't get it anyway. As I said
16 before in that case I just told you, that person
17 was offered the program. If they say they don't
18 have a drug problem, I don't push them on it. I
19 say, well, this is it, as opposed to somebody
20 who is a predicate --

21 MS. SHIFMAN: Predicate means they
22 have a prior.

23 MR. FRIEDMAN: I'm sorry. Prior
24 felon. My position with that is, it's different
25 obviously when somebody is a first offender ---

1
2 youth offender eligible, they say they don't
3 have a drug problem -- you talk to the person,
4 you see what you think about it, keep an open
5 mind but maybe you don't need it.

6 MS. KELLEY: I'm going to ask you a
7 -- unfair question. You described the world in
8 which you began practicing law, the world before
9 problem solving in courts as being a world where
10 you were basically required to be a "macho
11 lawyer." Had the world been like it is now with
12 problem-solving courts, do you think you would
13 be inclined to be a criminal defense lawyer?

14 MR. FRIEDMAN: That's a good
15 question.

16 MS. KELLEY: And if you want to,
17 speak for some of your colleagues as well.

18 MR. FRIEDMAN: I would still be a
19 criminal defense attorney. It's not the whole
20 part of the practice, and I do take pleasure in
21 seeing people graduate from these programs.
22 When I see them, they are a mess on day one and
23 then two years later they're together, whatever,
24 as far as I know they have controlled or beaten
25 their drug program and they look well and they

1
2 are working. I don't think it will change my
3 decision.

4 MS. KELLEY: Do you think most of
5 your colleagues feel that way in the private
6 part?

7 MR. FRIEDMAN: I think so. I think
8 so. You can separate. Some people are getting
9 \$75, they look at it as an annuity -- you're
10 going to get a nice check at the end of the day,
11 I mean, that's true. The other end of the
12 spectrum as there are probably attorneys who
13 still don't do their role, let's do social
14 working, I don't want to deal with it but I
15 think most people -- they feel it's their
16 obligation. They probably take some pride in
17 the work they do and not knowing that gentleman
18 that went to that mental health court finished
19 at the end of the day, it's not -- I mean, --
20 but not guilty is a great thing at the end of
21 the trial but there are other things that can be
22 good too.

23 MS. YOUNG: In terms of whatever
24 number of clients who've had that go through
25 these treatment courts, do you have any sense of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

how because it takes about two years --

MR. FRIEDMAN: Two years. The least.

MS. YOUNG: -- which is a long time.

Would you say 50 percent of your clients have made it, a quarter, any sense at all or --

MR. FRIEDMAN: Some of them are still pending. I would say it's probably, it's been better lately. It has been better lately. At the beginning -- maybe the programs have gotten better, maybe they're set up better. I don't know. But I think I would say better than 50 percent.

MS. YOUNG: That's actually pretty high because I saw some statistics that someone else said from a public defender office standpoint that they went and said we had X number, you know, in the program but it seemed like less than ten percent actually graduated. And the question is, you know, are we really just setting up for a different kind of failure, should we be putting resources, but you're saying, if it's in a 50 percent rate, that's pretty good.

MR. FRIEDMAN: It's not a large -- I

1

2 mean, Legal Aid probably has better stats than I
3 do because I'm dealing with a smaller group of
4 people.

5 MR. SCHECHTER: The Brooklyn DA keeps
6 stats.

7 MR. FRIEDMAN: And the court keeps
8 states.

9 MR. SCHECHTER: And OCA.

10 MR. FRIEDMAN: Right, and there are
11 other programs also that go beyond the treatment
12 court, the DTAP program, DA runs a program,
13 there's -- there are other programs, mostly
14 treatment court. But again, Judge Ferdinand can
15 address this, there's a lot of patients, people
16 fail, they test positive. They test positive
17 numerous times, there are penalties, one penalty
18 is you sit in the jury box is called the penalty
19 box for a whole day, then it graduates to a
20 weekend in jail. People get re arrested on
21 other crimes, they give them a second chance.
22 So there is, there's wide leeway because people
23 know that people fall off the wagon. So there's
24 -- every opportunity is there for success and I
25 don't know -- I mean, even if it were 10 percent

1

2 or 20 percent, it would seem to me, and I don't
3 know what the numbers are in terms of resources
4 but it would seem to me that it would be worth
5 it because where are these people going.

6 MR. JONES: Thank you very much. We
7 appreciate you coming here and doing this and
8 giving us the benefit of your experience. Thank
9 you very much.

10 We're going to take a very, very
11 brief five-minute break just so people can
12 refresh. There are refreshments in the corner
13 and then we'll start.

14 (Recess taken.)

15 MR. JONES: Thank you all for being
16 here. Nestor, I know, has been here and has
17 heard me say this several times before you other
18 two have not. A, we're very appreciative and
19 are greatly interested in your comments this is
20 afternoon. The way that we operate is that we
21 will give each of you about five minutes to give
22 us an opening statement, the benefit of your
23 thoughts and then what we really want to do is,
24 get to the questioning. And the way that we
25 work is that, one of us will lead the

1
2 questioning and for this particular panel, it's
3 Marvin who you should be listening to talking
4 right now but Marvin Schechter will lead the
5 questioning and then the rest of us will join
6 in. So I leave to the three of you to determine
7 who will go first but the floor is yours.

8 MS. ABRIANO: I'm Gerianne Abriano
9 from the district attorney's office. Five
10 minutes, I will talk fast. I have two
11 experiences in problem-solving courts, I was the
12 prosecutor in the Brooklyn treatment court for a
13 couple of years and now I'm the bureau chief at
14 the Red Hook Community Justice Center. So to
15 just focus on the defense attorney's role and
16 conflicts and my thoughts on that, what was
17 interesting in the Brooklyn treatment court is
18 that, yes, from what I read in the materials is
19 exactly as described, a non-adversarial process,
20 and the sanctions and consequences are all sort
21 of laid out for you. There's not much leeway,
22 however, what would happen is, we would have
23 bench conferences in the back out of the hearing
24 of the defendant and more often than not, what
25 would happen is, you would have the prosecutor

1
2 saying, you know what, I really think we should
3 give him one more chance and you would have the
4 defense attorney saying, I guess it's time to
5 sanction him or to terminate him in the program.
6 And we used to laugh because nothing was as it
7 is expected. I loved that experience. I think
8 that that court is absolutely the best model for
9 a drug court, but I'm biased. And I took that
10 experience with me to Red Hook. Red Hook was
11 very, very different, and I don't know if you're
12 going to come across a Red Hook anywhere else
13 because Red Hook is truly a hybrid community
14 court, problem-solving court in that probably --
15 I'm not going to do percentages, but a
16 significant percentage of the defendants that
17 come through there end up with some sort of
18 mandate that involves alcohol treatment, drug
19 treatment, mental health counseling are a
20 combination of other shorter-term services, and
21 in that, in those instances, we're doing the
22 problem-solving thing, we're saying, do all of
23 these things, jump through these hoops and get
24 your life together, we're going to dismiss your
25 case. And so in some ways we follow the model

1
2 of Brooklyn treatment court and the model that
3 DA Heinz set up in his DTAP program, but what's
4 unique about Red Hook and what I actually love
5 the most about it is that it's a traditional
6 court as well. We hear all of the misdemeanor
7 cases from three police precincts. So we have
8 domestic violence cases, we have drunk-driving
9 cases and what you find is that, it's sort of a
10 schizophrenic experience because one case you're
11 standing there and you're applauding for someone
12 who is doing well and who is moving along in the
13 program and the next case all of a sudden you're
14 in like traditional prosecutor mode. But what's
15 interesting is that, all of the defense
16 attorneys who have come through have spoken
17 about their colleagues saying things like, you
18 know, you've sold out your clients and at the
19 same time, some of my colleagues who are not in
20 the know have said, that's not true prosecution
21 what you're doing, it's soft justice and it's so
22 not, and if you think about it, how could the
23 two things be happening at once. And so for me,
24 it's all perspective and that would be my answer
25 too, how do you weigh the constitutional rights

1

2 that some people may think that the defendants
3 are giving up. And my feeling is this, no one
4 ever said that to be a prosecutor your goal is
5 to put people in jail. And similarly, why is it
6 that the only way to be a defense attorney is to
7 take the shortest exit out of the courtroom. I
8 don't feel that way as a prosecutor and I admire
9 the defense attorneys who have embraced the
10 problem-solving courts and who can see that
11 maybe getting healthy, reuniting with your
12 family, getting a job, that maybe that's what's
13 best for you as opposed to adding a misdemeanor
14 conviction to your record and getting time
15 served. I think there's a value in what they
16 say and I think there's a huge value in all of
17 the programs where he looks to rehabilitate
18 non-violent offenders and I think I have gone
19 over, haven't I?

20 MR. JONES: No, you are fine. Just
21 one point of clarification, in Red Hook, the
22 treatment court calendar is just interspersed
23 with the larger calendars so you don't do the
24 treatment court calendar first and then deal
25 with the rest of the calendar --

1

2

MS. ABRIANO: No. Yes, and in fact,

3

we do arraignments so we do have some days with

4

10 arraignments, some days 30, so you're

5

arraigning cases, you're doing the updates,

6

doing motion practice, arguing hearings, things

7

like that, we do bench trials and we do actually

8

more bench trials. My ADA's have more bench

9

trials than their colleagues and in between the

10

treatment cases as they're ready so it's a very

11

busy court. It's frequently up until 6:00, 7:00

12

at night. You know, people come and they're

13

sort of surprised. I think they think it's some

14

sort of country club. It's, you know, the

15

community court and it's nothing to be further

16

from the truth.

17

MR. JONES: Do you lose out on any of

18

the intensity of the clapping experience --

19

MS. ABRIANO: No, that's because of

20

the staff, because the judge wouldn't let that

21

happen. I mean, he stops court when someone

22

graduates and gets their GED, he stops court and

23

does a little ceremony and we all agree with

24

that and we're all apart of it.

25

MR. FERREIRO: I want as much time as

1

2 Professor Mansky. (Laughter) I'll be just as
3 speedy as she was. I'm not going to talk about
4 myself except for to tell you the courts that I
5 have been involved in setting up so you can get
6 a perspective on what we do in the Bronx and
7 maybe that will trigger some questions. Back in
8 1991 -- when Joe Heinz started the DTAP program,
9 we did not take part in it because my district
10 attorney was very principal and felt that
11 predicates should not get the benefit of
12 treatment, but it should go to first timers. So
13 we turned down the funding for that DTAP program
14 and didn't start receiving funding, accept
15 funding until 1998. We did, however, I have
16 been the chief of narcotics since 1990 since the
17 DA took office. So until now and I have been a
18 DA for 26 years, which I'll get to in a minute
19 because I know you're going to ask me a question
20 after what I say what I have to say.

21 In 1993 I started experimenting with
22 predicates and putting them into drug programs
23 with the DA's consent and we saw that a lot of
24 these people were coming in had drug-filled
25 lives, never really got a chance to rehabilitate

1
2 themselves and we were the first shot at them
3 doing so and the only way to do it was for it to
4 be court-mandated and it seemed like we were,
5 you know, just saw the same defendants coming
6 back and back and back again. So we started
7 doing, getting funding in 1998 for that. We
8 started our own non-funded Bronx treatment court
9 in 1999. We have received funding since then,
10 but when we first started it was not funded by
11 anyone but ourselves. In 2001, we started a
12 process which led to the mental health court
13 which began 2003, the two-year collaboration
14 between providers, defense attorneys, judges,
15 clients and that court has been up and running
16 since 2003. We are one of the five learning
17 sites in the United States. People from all
18 over the country come visit our court. And in
19 2005, we started misdemeanor treatment court and
20 that's up and running also. The differences in
21 the courts, obviously prior felons, predicates,
22 they get their felony back if they complete,
23 there's an alternative set, we will either
24 dismiss the case or give them a misdemeanor
25 depending on how well they've done. The Bronx

1
2 treatment court if they finish, usually it's
3 either dismissal, if they have prior
4 misdemeanors we might give them a misdemeanor,
5 it depends. Mental health court is a
6 combination of predicates, of prior felons and
7 first-time offenders. We started that court
8 because we saw that a lot of the people that
9 were coming in that were drug addicted were not
10 getting the proper health because they also had
11 mental-health problems, that's why we started
12 that court and misdemeanor treatment court
13 speaks for itself. Whatever offer we give on
14 the case, if they except treatment, that will be
15 the alternative in that case. When I became a
16 prosecutor in 1981, I never thought I would be
17 doing what I'm doing, but I will tell you as the
18 defense attorney said to Mr. Friedman that in a
19 sick way, I get a kick out of someone
20 straightening out their life even though I'm a
21 prosecutor. Don't tell anybody. It's heart
22 warming. I see a lot of defendants where we
23 are, they will be walking the street and call my
24 name, hey, you know, thanks for giving me a
25 chance to do what I'm doing. I had one guy, as

1

2 I told Mr. Schechter who is the head paralegal,
3 I don't know if he still is, after receiving
4 treatment, at Dewey Ballantine. So it all for
5 us works out. Now all the cases except for
6 juvenile court cases and the misdemeanors go to
7 a compliance part, okay. In other words,
8 they're all funneled, defendants take pleas in
9 different parts and they're all funneled to one
10 part, which is headed by the administrative
11 judge. And we do updates there depending on how
12 well the defendant is doing or how often we
13 think we needed to see him based upon his, how
14 well he is doing in treatment. What else can I
15 tell you? The treatment court cases stay in
16 treatment court. We do not have an 18-B lawyer
17 in treatment court. There's one Legal Aid
18 lawyer. So the Court will contact the 18-B
19 lawyer when there's a violation. We try to
20 conference every case where there's violation or
21 somebody has messed up and that really has
22 involved, for example, I remember at the first
23 conference that we had and the defendant
24 violated, he had sex with another person in the
25 program and we thought that was, you know ,

1

2 terrible but when you really sit back and look
3 at it, you know, it was not such a bad thing.

4 We warned them, now, where we might have

5 violated them way back when, now, we try to

6 speak to them, give them a different program.

7 There's a lot of different type of violations.

8 I know Robin was here, we do try buys and busts,

9 believe it or not, there are people that get

10 arrested in Bronx county for buy-and-bust

11 operations who do not have a drug problem. We

12 try to help the ones that do. We offer programs

13 where we think, it's based on the record, and

14 the need to almost every defendant but not every

15 defendant takes it. And the last thing is, I

16 read your statement and one thing that really

17 bothered me was in your third paragraph the last

18 sentence, "the lack of confidentiality -- in the

19 absence of immunity may result in incriminating

20 statements being utilized against the

21 defendants." If you show me a DA that does

22 that, I show you someone that should be

23 disbarred because that is --

24 MS. ABRIANO: I agree.

25 MR. FERREIRO: Nobody that works in

1
2 my bureau would ever do that.

3 MR. SCHECHTER: Is that as a result
4 of the contract that's signed?

5 MR. FERREIRO: It's a result of me
6 sleeping at night. Okay. I mean, someone says
7 to me, yeah, okay, I did it, I want the program
8 and then decides not to do it, if I'm going to
9 say the DA who is trying the case, put me on the
10 stand, I'll testify because he told me he did
11 it. That's absurd. That does not happen. And
12 if it happens anywhere, they should be
13 disbarred. And that's it.

14 MS. CARLOW: I'm the chief of the
15 intake bureau -- chief of the grand jury bureau.
16 And before that when I actually gone on board
17 with the mental health court, I was the deputy
18 chief of one of the trial bureaus up in the
19 Bronx. And basically I came on after Nestor had
20 done all of his very good work and basically my
21 responsibilities have to do with screening and
22 talking with the, with the TASC mental health
23 unit, which actually screens and handles -- I
24 end up talking with the defense attorneys and
25 one of my major duties is to talk with or make

1

2 sure that the assistant district attorney has
3 talked with the victims of the crimes because
4 I'm, Nestor does narcotics cases, I am
5 responsible for screening non-narcotics cases so
6 that's attempted murder -- mental health court,
7 assault ones, robbery in the first degree,
8 burglary, gun cases, all of those types of
9 cases, we have, I have allowed to go into the
10 mental health court. And many of those do have
11 victims of crimes and so, therefore, I spend
12 time making sure that they are on board with
13 what we're going to do, if we're going to offer
14 a mental health disposition to a defendant. So
15 since, it's actually, my job is made easier now
16 because, this is part of a long process in which
17 many big meetings with many stakeholders, you
18 know, all kinds of people, the providers come
19 and talk at all these meetings, we have a lot of
20 ongoing education going on in the Bronx,
21 there's, I think -- between all of the parties
22 especially with regard to the using of this
23 information against the defendant. It would
24 never be considered.

25

MR. JONES: May I interrupt you for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

one second on that?

MS. CARLOW: Sure.

MR. JONES: Suppose you have a conversation with a client, a defendant, and he says, I did it, this is in the absence of counsel, he says I did it, I want to be in the treatment program -- and he goes to trial and his lawyer puts him on the stand -- he said, I didn't do it, I wasn't there, you guys are telling me that you will go to your grave with that knowledge and that conversation and you --

MS. CARLOW: That's right.

MR. FERREIRO: It's part of the game, so to speak.

MS. CARLOW: It's part of our commitment to the defense bar and to the treatment providers and we have made that commitment. We're not going to go back on it.

MR. FERREIRO: If I can, when we started the Bronx treatment court, not Robin, she had somebody else there, but that lady, Jen, I'll call her Jen K. for these purposes, because I don't remember her last name.

MR. JONES: Coningfeld (phonetic).

1

2 MR. FERREIRO: Coningfeld. Exactly.

3 Thank you. That was one of the concerns, you
4 know, and also Legal Aid's concern, Irwin Shaw
5 who is now in Manhattan. I said you've got to
6 be kidding, anybody who does that, one,
7 shouldn't be a DA; two, shouldn't be a lawyer.
8 So if we're trying to help somebody, this is not
9 a game, we're going to try to get them to
10 confess to us and go testify that they
11 confessed --

12 MS. ABRIANO: If that happened once,
13 there would be no treatment courts anymore.

14 MR. FERREIRO: It's just not done.

15 MS. CARLOW: With regard to the
16 non-narcotics cases and the violent crimes also,
17 the process actually, you know, takes a little
18 while. I mean, the process is that there is a
19 screen, any one of the parties can send,
20 recommend the defendant for the mental health
21 court -- the prosecutor or sometimes a family
22 member -- that has occasionally happened. So
23 there is a screening, there are interviews
24 forensic psychologists, forensic psychiatrists,
25 and with the violent crime, it takes a while for

1
2 everybody to be -- on board as to whether this
3 is an appropriate risk to the community, a
4 appropriate outcome for the victim and also an
5 appropriate risk for the defendant. If it's a
6 violent crime and the defendant is a predicate
7 felon, a prior felon, the jail alternative, the
8 minimum could be 10. So I heard somebody
9 mention setting someone up for failure, this is
10 something that occasionally happens and you have
11 defense attorneys who offer up their client for
12 a mental health court plea because it's an easy
13 thing to do and also once the mental health
14 professionals actually get involved, the client,
15 the defendant is onboard and for him to take an
16 easy plea can get a jail alternative in after
17 six month -- actually reject some people like
18 that because the defendant is not on board but
19 the defense attorney might be. That does
20 occasionally occur. The screening time can take
21 a while. So, for example, it doesn't save us
22 any time on the violent crimes. I might learn
23 about the defendant within, you know, a day or
24 two after the arrest once we're assigning the
25 case to someone or by the 180.80 date -- but

1

2 very often you can't get all of these things
3 done at that point. And so, and our grand jury
4 panel lasts for a month and often you can't get
5 a complete examination done within a month so we
6 go ahead, we indict the case and it moves along
7 in its regular path but we all know that there's
8 the potential for a mental health disposition
9 and so you know, we don't offer a quick easy
10 early plea that the defendant must accept or
11 reject right then.

12 MR. SCHECHTER: Do you require a --
13 speedy trial for that period?

14 MS. CARLOW: No, we don't require it
15 but almost every defense attorney does. And
16 honestly, in the first few months of a case,
17 we're not even -- speedy trial time because it's
18 all the charge to motions --

19 MS. SHIFMAN: Can I just ask a
20 procedural question?

21 MS. CARLOW: Yes.

22 MS. SHIFMAN: When it's on the mental
23 health court process and you're making a
24 determination about whether or not it's
25 ultimately a fit, is there basically a way to

1

2 provide mental health treatment and services in
3 lieu of jail and it sort of becomes like a
4 treatment plan that they do outside of the jail?

5 MS. CARLOW: Yes.

6 MS. SHIFMAN: And if they complete
7 however long that period is, do they still have
8 a conviction or is there some adjustment?

9 MS. CARLOW: They still have a
10 conviction, yeah. I don't want to say in every
11 time, I believe myself discretion, I can think
12 of maybe one case, however in the last three
13 years where I just dismissed outright or gave an
14 ACD, which would disappear but there is almost
15 always a conviction either a misdemeanor or a
16 felony. And we have been here at the beginning,
17 not just giving the defendant, say, a felony and
18 a conditional discharge, but we would actually
19 ask that the defendant be followed on probation.
20 And we've been working with probation to make
21 sure -- working with TASC and the mental health
22 unit so that, you know, the services don't get
23 all mixed up, have too many people, too many
24 cooks with their finger in the pie. So that's
25 happened, you know; we've imposed that. I don't

1
2 really know how this is going to end up but it's
3 pretty knew. I brought a few statistics if you
4 wanted to just hear, I dug them out. The
5 Research Triangle is an organization, it's been
6 working with us from the very beginning and it
7 does reports and actually generates and works
8 with our clinical director, they've done some
9 publication already on this point. But say, for
10 example, in the last three years, I'm talking
11 September of '04 to September of '07 for the
12 mental health court alone, we screened 771
13 people, 300 were accepted into the mental health
14 court and 92 percent of that 300 were actually
15 -- residential program or an outpatient program.
16 And even though the people who were rejected for
17 mental health court that's, half of them were
18 linked to, say, drug treatment court or some
19 other alternative to incarceration. 84 percent
20 of those 300 were felony arrests, 82 percent
21 have had a prior conviction, only 18, it was
22 their first arrest. I mean the huge, you know,
23 the stimulus to going to mental health court is
24 to avoid predicate felonies -- 77 percent of the
25 arrests were for drug charges, 9 percent were

1

2 charged with New York violent crimes and so that
3 could be a gun or could be a burglary where
4 there is no violence but they're defined as
5 violent crimes. And, you know, they've done a
6 lot of follow-up serving of various defendants
7 and how they've moved through the procedure,
8 through the procedure, you know, this data is,
9 it's not comparative to anything, it's
10 observational. So you can't really, I'm not
11 sure how far they're going to go as far as
12 making recommendations. I can tell you, just
13 let me say about what my own personal
14 observations are, there are not enough providers
15 and there are not enough providers that have
16 secure places where defendants can be safe and
17 can actually be kept in as they should be.

18 MR. SCHECHTER: For mental health?

19 MS. CARLOW: Right. And the other
20 thing that is horrible, not enough
21 Spanish-speaking mental health servicers but
22 that is a big, big, big, big, big problem. And,
23 you know, they have done some, you know -- of
24 the data to try and figure out what the
25 recidivism rate over the last seven years since

1
2 the -- and the numbers kind of work out this
3 way, at 12 months after a person has been
4 accepted into the program, the rearrest rate is
5 about 18 percent for outpatient people and 8
6 percent of residential people have been re
7 arrested. At 24 months, 34 percent outpatient
8 have been re arrested -- you know, the estimated
9 rate of successful graduation is about
10 70 percent. That's pretty high. 65 percent of
11 those people are felony offenders, people who
12 have been arrested and charged with felonies.
13 The treatment length of time is long, it's 20 to
14 21 months is the average. Our general plea is,
15 you take the plea to the top count of whatever
16 it is, you have, you go through an 18 to 24
17 months individualized treatment program and then
18 if you are successful, which basically can mean
19 cooperative, but it also can be actually
20 improved, then we have the chance to replead and
21 either to get the misdemeanor if you're a
22 predicate felon or -- probation and plead guilty
23 to a non-violent felony and so that's how it's
24 been working out.

25 MS. SHIFMAN: And sometimes there's a

1

2 probationary tail on the end?

3

MS. CARLOW: Yes. And that was my
4 idea for the violent felons because, let's face
5 it, I'm accepting people, I have accepted two
6 people into the mental health court who were
7 persistent -- their sentence was possibly going
8 to be 20 to life. And so, you know, to give, to
9 change that to 18, 24 months in a treatment
10 program -- it's still a pretty good deal. You
11 know, I was going, I told Nestor I was going to
12 tell the story but, knock on wood, I wish we had
13 some real wood here, we wouldn't have too many
14 failures -- one case I took the plea and I ended
15 up picking that case up myself when he got re
16 arrested for a fairly serious crime in order to
17 try it and, you know, I did the pretrial
18 hearings myself and pled guilty, but there is a
19 certain amount of worry about what we do.

20

MR. JONES: Thank you very much.

21

MR. SCHECHTER: In the drug treatment
22 court, what's the percentage success rate that
23 your office --

24

MR. FERREIRO: In the low sixties. I
25 forgot to mention before, mostly there it's

1
2 outpatient. If a person messes up out patient
3 and we feel along with the defense attorney who
4 takes part of the conferences, a Legal Aid
5 lawyer who is assigned here who is speaking
6 tomorrow, Tom Bomba, will go inpatient on
7 occasion.

8 MS. ABRIANO: If I can add, there is
9 a direct correlation between the level of crime
10 and the amount of jail that you are facing and
11 your success in the drug court, so to
12 misdemeanor offenders, they are the hardest to
13 get to graduate and the predicate felons
14 absolutely win the prize for sailing through
15 treatment and I mean all the research bears that
16 out. So I can't give you exact numbers but I
17 can tell you that, I think that's quite
18 interesting. And that's why I feel
19 exceptionally proud when we make headway with
20 someone who is a misdemeanor recidivist.

21 MR. SCHECHTER: In the Red Hook
22 court --

23 MS. ABRIANO: I can't give you
24 recidivism numbers but what I can tell you is,
25 there are a huge number of offenders as was

1
2 mentioned earlier who cycle through. And I can
3 tell you that anecdotally when they are in
4 treatment, they are not getting re arrested; we
5 are seeing them on their update dates. So they
6 are compiling numbers and hopefully we will have
7 some of the recidivism numbers down the line.
8 But for right now is that, you can look at their
9 wrap sheet and you see, you know, 90 days, they
10 are out for a week, they are re arrested, they
11 are in for 90 days, they are out for a week,
12 they are re arrested and when they are in
13 treatment and you run an updated wrap sheet,
14 they have not been arrested for the most part.
15 So, you know, to me, you have to measure success
16 differently. Success is not completing the
17 program. For me, success is every day that you
18 don't commit a crime, every day that you don't
19 do drugs. And so, you know, if ultimately they
20 fail or don't, you know, don't finish their
21 mandate, they're still on their way to getting
22 healthier because every time you do treatment
23 increases your odds of being successful in the
24 future. So I don't think there's a down side to
25 doing it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SCHECHTER: In Brooklyn when you're arrested for a felony and you're diagnosed with, somebody thinks you have a drug program, 24 hours later you're in the felony drug part.

MR. FERREIRO: Are you talking to me?

MR. SCHECHTER: I'm telling you what happened in Brooklyn.

MR. FERREIRO: I'm sorry.

MR. SCHECHTER: First of all, in the Bronx, what's the time period from the time the person is arrested from the time they go into the Bronx drug treatment program?

MR. FERREIRO: First-time offenders?

MR. SCHECHTER: Yes.

MR. FERREIRO: Three to four days.

MR. SCHECHTER: Is there any discussion that's -- or that's just not even part of the discussion?

MR. FERREIRO: Well, it's funny you should say that. Technically, the discovery is given when they are arraigned. Are you talking about a buy and bust?

MR. SCHECHTER: Any kind of case.

1

2

MR. FERREIRO: Well, basically -- the

3

DA reads what the cop tells us. So if you're

4

talking about like a police report where the

5

officer, you know, put down six foot one instead

6

of six foot two, no. If you're talking about

7

what the facts of the case are in a stop, yes.

8

But we spoke at the break. A big concern of J.

9

Coningfeld and everybody was, hey, you know

10

what, excuse my street language, this is,

11

bullshit, because I know what you're going to

12

do, cases that you wouldn't normally indict,

13

you're going to indict now because you know,

14

right, that they're going to take treatment

15

court. Okay. That doesn't happen. There's

16

been times where the defense has called saying

17

we want treatment court and we say, well, we

18

can't give it to you because we've reduced the

19

case either to a misdemeanor or dismissed it

20

outright.

21

MR. SCHECHTER: How many cases in a

22

given year go that way?

23

MR. FERREIRO: A lot.

24

MR. SCHECHTER: Do you keep

25

statistics on it?

1

2 MR. FERREIRO: If you want me to from
3 now on, we will. I could look --

4 MR. SCHECHTER: This is the first
5 time a DA has done something I'm asking them to
6 do.

7 MR. FERREIRO: Actually, I could
8 because we keep -- and this is sick -- because I
9 have them all since I was a chief, we keep a
10 day-to-day calendar and if the case is what we
11 called D'ed out, in other words -- are you
12 familiar with that? D'ed out means that we're
13 not going to go, go after a felony, then we will
14 -- because the ticker will say D'ed out. We do
15 not do that. I mean, the case is what it is.
16 It's not going to get any better because
17 treatment court is there. I don't get paid by
18 the felony plea and no other DA does. This may
19 sound funny, but it also goes for my 26 years
20 and my change of my job. I get paid to do
21 justice. If justice is, put someone in a
22 program, you know, the most, I don't know if
23 it's either the best part of your job and you
24 have to deal with defendants all the time. The
25 best part of my job, okay, no offense to the

1

2 defense attorneys on the panel, is that I get to
3 talk to the defendants, not talking to the
4 defense attorneys, not talking to my coworkers,
5 you know, they're regular people who somewhere
6 along the line something went wrong, there was a
7 divorce, their parents left, their parents broke
8 up, they were abused, whatever, okay, and if
9 justice is that guy on the street that's selling
10 for somebody else anyway who is drug addicted or
11 has a mental health problem or both, if justice
12 is fixing them up and making them viable people,
13 then great, then that's justice.

14 MR. SCHECHTER: You're basically
15 satisfied at least from the prosecution point of
16 view that on cases that come in the Bronx,
17 felony cases where there's a serious legal
18 problem in the case, the screening taking place
19 on your end and you let the defense attorney
20 know, therefore, if I said to you I'm a defense
21 attorney in the Bronx, I shouldn't have to worry
22 that I'm putting the guy into a drug treatment
23 program who has a viable motion to suppress
24 because you're going to knock that out before I
25 can get to that. Is that a fair statement?

1

2 MR. FERREIRO: No.

3 MR. SCHECHTER: Because.

4 MR. FERREIRO: Because, well, there's

5 different supervisors that review and some of

6 them might miss search issues but if you're

7 talking about possession cases, we're not going

8 to put a guy that has two kilos in drug

9 treatment because that guy is going to show up

10 with a \$30,000 lawyer and tell me that, and tell

11 me that he has a drug problem and I'm not buying

12 that. Okay. He does have a drug problem.

13 MR. SCHECHTER: A minority kid with a

14 couple of grams, that's the problem.

15 Ms. Abriano, you said you were in the

16 drug treatment court -- in Brooklyn it's a very

17 accelerated process from arraignment on the --

18 MS. ABRIANO: The next day.

19 MR. SCHECHTER: So let me ask you

20 this question, Philadelphia has a drug treatment

21 court program, when they did their program, they

22 put a ten-day delay into the process from

23 arraignment on the felony until the time when

24 the department had to opt into the drug

25 treatment program and the reason they put in

1

2 that ten-day delay as a result of meetings with
3 stakeholders, all the stakeholders was for the
4 defense to get discovery. So far this is the
5 only program in the country that I found this
6 ten-day delay. Would that be something that
7 interests you at all? Can you see why defense
8 attorneys might want to have that information,
9 why they might not trust the district attorneys
10 and defense attorneys who have the ethical
11 responsibility to zealously advocate, watch out
12 for their clients, even in a holistic approach
13 that they want to know what's going on.

14 MS. ABRIANO: No, because only in
15 theory it sounds good, but as a prosecutor I can
16 tell you that it's, it changes every day the
17 strength of your case and so you look at a case
18 initially, you think it's the strongest case you
19 have ever seen, by the time you get to trial,
20 it's completely falling apart. And conversely,
21 you get a case that looks like it's, you know,
22 not a good case and you start interviewing your
23 witnesses and it gets greatly enhanced. So
24 there are clear cut, there are some clear cut
25 things that you can look at and say, I see right

1

2 away this is a bad search, but then what we do
3 is reduce it to a misdemeanor or do something
4 else with it. We had a case in Brooklyn
5 treatment court, we had a case once, it was a
6 woman who was riding a bicycle on the sidewalk,
7 they stopped her, the police stopped her, she
8 didn't have identification, they strip searched
9 her. Out from her vaginal area comes a bag with
10 like 35 little bags of crack/cocaine. Okay. I
11 look at this and I'm horrified and I'm thinking,
12 she was riding her bike without ID and she ends
13 up strip searched. It felt horribly wrong to
14 me. And so without mentioning any names, I
15 called a top person in narcotics, I called a top
16 person in the zone and I called a top person in
17 appeals. And I want you to know that I got
18 three different answers, because I wanted to
19 know.

20 MR. SCHECHTER: You were talking to
21 lawyers?

22 MS. ABRIANO: Yeah. Lawyers. I
23 wanted to know what do I do with this, is it
24 complete, should I dismiss it. Should I do some
25 sort of compromise and offer a misdemeanor; or

1

2 is it okay for them to do this? And believe it
3 or not, one person said it's absolutely fine and
4 started saying, whatever, and said, keep it a
5 felony, another person said split the
6 disposition into a misdemeanor and another
7 person said, I don't know, you might want to
8 think about dismissing it. And at that time my
9 decision was to offer a misdemeanor, the person
10 did finish treatment and the case ultimately got
11 dismissed. But that's -- that you would think
12 maybe is pretty clear cut and it wasn't. So I
13 just think it's dangerous to start analyzing
14 every single case before. If you have, if
15 there's someone who is a drug addict and who
16 wants treatment and there's a slight chance that
17 he might win the suppression hearing and, what,
18 and then the case falls apart. But I could see
19 it happening in reverse so often too that they
20 don't win the hearing and they end up in jail
21 instead of getting the help that they need.

22 MR. SCHECHTER: Could you envision a
23 model of a drug treatment program where the
24 defense gets both, in other words, the chance to
25 litigate the legal issue and if they lose on the

1

2 -- to suppress, they get the benefit of -- would
3 you envision a model at all in any way?

4 MS. ABRIANO: You know, it actually
5 exists in a very informal way. There are a lot
6 of cases in Brooklyn that don't end up with a
7 drug treatment option until the day before trial
8 when all of a sudden we get a phone call and we
9 do, they do consider it every step of the way.

10 MR. SCHECHTER: In other words, the
11 scenario is that the defense attorney took the
12 case -- it's the day before trial and now rubber
13 meets the road, the defense attorney concludes
14 this case is bad and somebody calls you and said
15 can we get the drug treatment option.

16 MS. ABRIANO: Well, used to call me.
17 But yeah. Yeah.

18 MR. SCHECHTER: And you gave it to
19 them?

20 MS. ABRIANO: It depends. It
21 depends.

22 MR. SCHECHTER: Does that happen in
23 the Bronx?

24 MR. FERREIRO: Two comments, one, the
25 case she said, the case came on last week, you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

need a search warrant.

MS. ABRIANO: Last wee? This is five, six years ago.

MR. SCHECHTER: For a bicycle?

MR. FERREIRO: Unless there's a reason -- we're getting off the topic. It happens all the time.

MR. SCHECHTER: It happens all the time?

MR. FERREIRO: It happens all the time. One -- two.

MS. KELLEY: What happens all the time?

MR. SCHECHTER: The defense attorney -- the judge says ready for trial and somebody says --

COURT REPORTER: I can only take one at a time.

MS. FERREIRO: They get the case, they get the discovery, they put it in a folder, they never look at it, they speak to their client, the guy says, you know what, it happened the way the cops said but I ain't taking a plea, okay. Did you get the they never looked at it

1
2 part? I have yet to get any phone calls, and
3 when we do, we'll say, look, there's a viable
4 search issue. You know when I get those phone
5 calls, when it's a kilo case, two-kilo case,
6 three-kilo case, you know, and the guy is paying
7 30 gran for a lawyer and he doesn't want to take
8 anything, okay. He is not getting a program
9 anyway, but that's when I get the calls. What
10 happens in the -- will you still offer this,
11 will you still offer that. For the most part, I
12 don't know if we're, maybe we're the fat baby in
13 the nursery, I don't know, but in the Bronx, we
14 don't have the problems that you're talking
15 about. I think that doing the ten-day thing is
16 a great thing for a defense attorney, but I
17 don't think it's good for the problem-solving
18 court, defendants get lost, they don't get the
19 treatment right away, they decide not to get
20 treatment, they abscond. So if you're talking
21 about helping the defendant, okay, down the road
22 and getting them treatment so they don't come
23 back, okay, that is not going to help a guy
24 that's out there selling drugs to support his
25 habit. That will help the guy with an ounce in

1

2 his car who gets stopped by the cops who does
3 not have a drug problem. But I don't think it
4 will help the guy that's out on the street
5 selling to support his habit who is working for
6 somebody else.

7 MS. YOUNG: But --

8 MR. JONES: Let me follow up on this
9 real quick. The analogy you just gave, the 14
10 year old girl on the bike, another ethical
11 question, were you to find out in the course of
12 deciding what to do, we've got these three
13 people you're talking to on the phone, were you
14 to find out at some point in those conversations
15 while you're deciding what to do that this young
16 girl had lawyered up and was going into the
17 Eastern District or the Southern District of the
18 1983 civil rights violation of an illegal strip
19 search, would that change your analysis about
20 what she deserved? Would that change the
21 analysis you got from the three folks you
22 called? How would that impact your decision
23 about what the merit to this thing or knowing
24 that she was going to be suing the City, the
25 police department, anybody else she could find

1

2 for the strip-search violation.

3

MS. ABRIANO: I usually -- on the
4 side of caution, but I don't know that that
5 would have been the factor. And I was, I was
6 very torn, I was very torn with that case. But
7 I think there was case law to support it at that
8 time. And I still felt it was completely wrong.
9 But the fact that, you know, we get so many
10 cases where we know that they've made,
11 defendants have made complaints to CCRB and that
12 does not affect me. We tried a case where one
13 of the defendants talked about how the police
14 officers, you know, bashed his head against the
15 wall and he had made a million reports against
16 this police officer and I can tell you for a
17 fact that that did not happen in that case. So
18 the fact that there was a complaint, that
19 doesn't convince me of anything.

20

MR. JONES: Thank you.

21

MS. YOUNG: I was interested because
22 I didn't realize until you described it that at
23 Red Hook, because I know that there's this judge
24 Calabrese who does the Red Hook court, but
25 you're saying it's sort of a schizophrenic

1
2 court, we've got a problem solver, the
3 problem-solving aspect and then the regular
4 criminal cases. But since it's the same judge,
5 in some of the literature they're talking about
6 trying to import some of the practices of a
7 problem-solving court to a regular court and
8 have you seen whether Judge Calabrese appears to
9 be, you know, changing his strict criminal
10 calendar court practice versus the
11 problem-solving court practice. Or is he
12 wearing two hats?

13 MS. ABRIANO: That's a very, very
14 interesting question. Here's what I believe, I
15 don't think there should be a problem-solving
16 court and a regular criminal court. I believe
17 that every criminal court should do what we do
18 in Red Hook. I think there should be eight Red
19 Hooks in Brooklyn and no 120 Schermerhorn
20 Street. That's what I believe. And in terms of
21 Judge Calabrese, he sat in arraignments in the
22 regular criminal court part at 120 and he was
23 completely frustrated because there would be
24 people who clearly needed drug treatment or some
25 other services and there were no resources and

1
2 there was no way that he could accomplish that
3 which is why he embraced the concept of coming
4 to the community court. But so much of it is
5 simply about resources. If you think about it,
6 we're -- we're handling 4,000 misdemeanors a
7 year. The same kinds of cases that are going to
8 120 Schermerhorn Street, why aren't they being
9 treated different? I believe that you have to
10 look at every case and every offender with brand
11 new eyes and that if a case cries out for drug
12 treatment or mediation or a young kid who needs
13 to do a GED and a whole host of programs, but
14 that's what you need to do. But two points,
15 one, everything that we do is geared towards
16 public safety. Helping defendants, if that
17 makes, if that increases the public safety then
18 that's what we should do and we always speak
19 with our victims before we do anything. But why
20 are there two kinds of courts? We don't have
21 any community courts yet. Your point about the
22 judge is well taken. I think that's one of the
23 best things about Judge Calabrese is that he is
24 not, he also looks at each case individually.
25 He can't be categorized as liberal or

1
2 conservative and I don't think, I don't really
3 respect people who are always one way or the
4 other because can't we all agree that neither
5 side is always right, that every case is
6 different? If you're going to do these kinds of
7 things in the regular court, I think you really
8 have to have intensive training for judges and
9 intensive training for prosecutors and through
10 defense attorneys because it's a whole new
11 world. Did that answer your question?

12 MS. YOUNG: It did, although I guess
13 and in part because I'm not from New York so I
14 know if it doesn't go the drug court route and
15 you go on the trial route, if you're convicted,
16 there's a mandatory minimum sentence -- Judge
17 Calabrese would not have the option to still
18 sentence someone to drug treatment instead of
19 imposing the mandatory minimum.

20 MS. ABRIANO: With misdemeanors,
21 there's really no mandatory minimum. We don't
22 set in advance what the jail alternative would
23 be. Sometimes the alternative is, you walk away
24 with a conditional discharge but you have a
25 misdemeanor conviction, I mean, not every

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

misdemeanor cries out for a jail alternative.

MS. YOUNG: So Red Hook is not a felony correct?

MS. ABRIANO: Correct.

MS. SHIFMAN: You're doing 4,000 misdemeanor cases per year?

MS. ABRIANO: 4,000 misdemeanors, probably 12,000 summonses and that's just criminal court, the judge also does family court and housing court.

MS. SCHECHTER: That's just one community, Red Hook?

MS. ABRIANO: Well, no, it's the three precincts, so it encompasses, Red Hook, Sunset Park, Windsor Terrace.

MR. SCHECHTER: Through that court.

MS. ABRIANO: Through that court. And in addition to the fact that he does criminal, family and housing. At Red Hook there's youth court, there's -- program, the judge, the defense attorney and the prosecutor do the training of the youth court kids who run an actual court for 14 and 15 years old who are getting the JD parts and so he is part of that

1

2 training too. We have, you know, disciplinary
3 staff meetings. It's amazing. You should come
4 visit.

5 MR. JONES: We've also heard from
6 people earlier in the day today who suggest that
7 and it sounds like, in listening, I've never
8 been to Red Hook, and have not seen what you're
9 describing, but in listening to it, it sounds as
10 though you, you've developed this whole sort of
11 almost comprehensive criminal justice system
12 that in part does some of the traditional things
13 but in large part and a significant part does a
14 lot of the problem solving -- incarceration
15 stuff. What's your response to people who say
16 that really what you're doing is you are
17 becoming sort of the de facto social services
18 world that really ought exist outside of the
19 criminal justice system? The criminal justice
20 system ought be about a fifth of the size that
21 it is. It ought really just deal with those
22 cases that, you know, where there's going to be
23 traditional adversarial work done and all this
24 other stuff but not be at the door step at the
25 criminal justice system but really ought to be

1

2 somewhere else in society.

3

MS. ABRIANO: They can call me if they want, they can call the DA, everyone calls us social workers, everyone says, you're prosecutors, you're not social workers and your response is, you know what, if a little social work is what's going to make this community safer, well, then that is part of the penal process. I am a prosecutor and if what's going to keep you safer is giving someone drug treatment or sending someone to mediation, that's what's going to happen. Why not do it? We have a great opportunity to do it because we have, you know, we have a receptive audience and we have resources. That person is not going to get the help probably if they're not coming through the system.

19

MR. JONES: What's your sense of the argument, the over utilization in the criminal justice system in that there are ways that we can do this without bringing people into the criminal justice system, settling them with convictions and all these other consequences that go with those convictions in terms of

25

1

2 franchisement and all the other stuff?

3 MS. ABRIANO: I'm not sure I'm

4 following. You're saying less arrests?

5 MR. JONES: Rather than divert the
6 person who is a recreational user or more than a

7 recreational user or the person who's got some

8 diagnosed mental health issue, rather than

9 divert those people into the criminal justice
10 system, why not divert them into some

11 non-criminal justice system place, track, use

12 the resources that we use for the criminal

13 justice system to divert them somewhere else so

14 that they're not saddled with, you know, the

15 collateral consequences so they don't get

16 criminal records, so we are not increasing the

17 costs to have a judge in the courtroom, a

18 prosecutor in the courtroom, defense attorneys

19 in the courtroom --

20 MS. ABRIANO: But you'd still have to

21 staff that place, right? Are you talking about

22 the police would still arrest them, only they'd

23 bring them to this other place?

24 MR. JONES: Yeah, I'm saying the

25 police would see this as a health problem as

1

2 opposed to a criminal justice problem.

3 MS. ABRIANO: That would work but you
4 would still have to have a facility that's going
5 to do what we're doing and --6 MS. CARLOW: I think we all do have
7 that in --8 MR. JONES: I'd like to hear about
9 that.10 MS. CARLOW: Those are things that
11 I'm not directly involved in, but it's something
12 I have found that a person has brought into the
13 mental health court stream has already had, has
14 a history. So either somehow through the Civil
15 Court there has been -- team assigned to them or
16 through adult outpatient treatment, through
17 children family services or the office of state
18 mental health and hygiene that they've already
19 got in place. Actually, sometimes we end up
20 using that team as our treatment actually if
21 they can all be gotten back on board. But I
22 want, I couldn't agree more with your point. I
23 mean, one thing about this study is that the
24 Research Triangle has done with the information
25 that they've gotten from the people who have

1
2 gone through our mental health court is that
3 their recommendations are the same but maybe
4 backed up by some numbers of what actually
5 happened to people in court -- advocate of any
6 kind of actual increase in our support for the
7 badly-off people in this world which is
8 employment and education. That's what they
9 found that we need to get, you know, in order to
10 get mental health court or better -- to start
11 earlier to try and get them to focus on
12 employment and education, that's number one.
13 Housing, you know, again, to provide them with
14 housing is almost always a key to success. And
15 medical treatment, you know, HIV/AIDS, that's a
16 big problem, the Hepatitis C -- as it is done
17 for many people through the civil proceedings
18 that are done all the time through the office of
19 mental health and hygiene.

20 MR. FERREIRO: The problem is that a
21 lot of times unless you have a criminal case
22 hanging over your head, if you don't have a
23 hammer, criminal justice is still like right and
24 wrong, okay. To answer your question, how do I
25 feel when they tell me, you're a social worker,

1

2 I say that I am basically a social worker but I
3 don't care because it's still about right and
4 wrong, it's just about me righting a wrong,
5 okay. Righting the wrong that this person grew
6 up in a bad family, the parents did drugs,
7 whatever, never had drug treatment, had mental
8 health problems, never had it. I don't have a
9 problem with that, because my thing is to
10 protect the community. You go to community
11 meetings and they're worried about the safety of
12 the community, well, I'm protecting the
13 community by putting these people in programs,
14 sometimes inpatient, sometimes outpatient. I'm
15 making the community safer for them. Selfishly,
16 to them, oh, yeah, okay, the guy is away for 18
17 to 24 months, you know, guess what, he is gonna
18 be back, but he is not going to be selling drugs
19 on the corner anymore. As a matter of fact, he
20 might be helping you go after people that sell
21 drugs at your community meetings. So that's not
22 a problem for me. The problem is what you -- in
23 a happy go lucky world, maybe that model will
24 work, but unless you've got the hammer and you
25 show other defendants, right, that the hammer is

1

2 going to come down once in a while, when
3 somebody takes advantage, it's not going to
4 work.

5 MR. SCHECHTER: I can't imagine the
6 scenario that Rick just posed -- Rob Johnson or
7 Charles -- couldn't sell to the public without
8 getting defeated. What about this possibility
9 which is, you're handling 4,000 misdemeanor
10 cases a year, what if another alternative was to
11 cut out a group of cases where they had been a
12 -- or arrested by the police along the lines
13 Rick has just suggested? Wouldn't that be --
14 and those cases don't go into the criminal
15 justice system, you take a look at it as the DA,
16 you say you know something, this looks like a
17 kid who shouldn't even be in the criminal
18 justice system, let's just divert him into this
19 civil setting. Wouldn't we save money that way
20 without the hammer? Could such a thing be done?
21 Has it ever been thought of before?

22 MR. FERREIRO: It would be a thousand
23 defense attorneys trying to stop them. Okay. A
24 thousand.

25 MR. SCHECHTER: That would try to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

stop that?

MR. FERREIRO: Yeah.

MS. SHIFMAN: Because they would say you're threatening my livelihood?

MR. FERREIRO: Well, no, they would say, what are you doing to this guy, you're violating his rights -- there's nothing wrong with this guy.

MR. SCHECHTER: You can get around that with a contract.

MR. FERREIRO: I'll give you a perfect example because I live in that county, Nassau County, the drug arrests, we're not going to bother drug arrests, we're going to give you a free ride, we're not going to give you a record, you show us. So far, it's been a total disaster.

MR. SCHECHTER: This is under the new DA?

MR. FERREIRO: Yes. I think over 50 percent of them got arrested again and violated -- and now, the hammer is that now they're going to prosecute them. Well, that's not a hammer, with those people have done that,

1

2 okay, knowing that it was a post plea and it was
3 a hammer, right, especially to someone -- you
4 know, it's easy to, it's easy to be a general
5 and send your soldiers to war, but unless you're
6 on the front lines fighting with your soldiers
7 then you really can't make decisions. You've
8 got to see these people in the court, okay, you
9 guys do. You have got to see the people in the
10 court, the way they come into that court, okay,
11 how bad their lives are. I'm talking about the
12 people who sell drugs, okay, and even mentally,
13 that has to do with diagnosis -- the people that
14 have mental health problems, okay, how bad their
15 lives are, if you don't have a hammer going over
16 their heads, if you're not able to guide them
17 along, they are just not going to do it. The
18 reason they were there is because they have
19 never been able to do it on their own.

20 MR. SCHECHTER: Ms. Carlow, let me
21 ask you a question. You alluded before to --
22 there's the long process that got you to this
23 point whereby -- first of all, are those
24 meetings still ongoing?

25 MS. CARLOW: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SCHECHTER: Does the private bar participate in those?

MS. CARLOW: They can. I have to say very often that they do not.

MR. SCHECHTER: Who is it that participates --

MS. CARLOW: The Legal Aid Society, the Bronx Defenders and, again, the president of the Bronx Bar Association has been there.

MR. SCHECHTER: How often does that happen?

MS. CARLOW: The stakeholders' meetings, I would say quarterly. Although we haven't had one in a while.

MR. FERREIRO: When we started, I don't think you were here.

MS. CARLOW: At the very beginning.

MR. FERREIRO: Let me ask you this question, about the CLE and everything else, we had a three day, we had speakers from all over the country come in, we got funding for the mental health court, we got a -- grant for 500,000 a year for five years. So we brought in speakers from all over the country, we invited

1

2 everybody, we had the judges there, DA's,
3 stakeholders, okay, defense attorneys, maybe
4 five showed up.

5 MR. SCHECHTER: Five people showed
6 up.

7 MR. FERREIRO: Maybe five defense
8 attorneys showed up. The other thing that
9 disappoints me a lot is because part of their
10 recovery process is, you know, as these people
11 say that you're in their corner, they see we're
12 in their corner and the judges. Very rarely in
13 this compliance part, which is where all the
14 cases except for Bronx treatment get thrown in
15 to see, you know, how they are doing in a
16 program, they get letters from programs, they
17 graduate there. Very rarely does the defense
18 attorney show up.

19 MR. SCHECHTER: In compliance?

20 MR. FERREIRO: In the compliance.

21 MR. FERREIRO: Unless of course
22 they're going to get violated and then the court
23 has to call them. And sometimes when they're
24 going to graduate, the court calls them and they
25 don't show up. So when I have to ask a judge to

1

2 assign a defense attorney to this person, the
3 one guy wanted to move to San Francisco because
4 he became a chef, okay, and he wanted to get
5 done with the case and that case I wound up
6 dismissing the felony because I didn't want him
7 to have a felony record, the guy had done
8 unbelievably well, they offered him to become a
9 counselor in a program, okay. And I had to get
10 18-B assigned so that he could leave and go to
11 San Francisco because he wasn't going to get
12 that job. Now, you know, I'm not going to tell
13 you that that always happens, a lot of the
14 lawyers show up when they're called, but, you
15 know, in the defense part showing up on these
16 cases even in treatment court except for Legal
17 Aid lawyer being there, I would like, as a
18 prosecutor, to see more of them showing up --
19 just once in a while to see that this, that
20 everybody is in this guy's corner or this
21 woman's corner.

22 MS. CARLOW: There is some efficacy
23 going on in the compliance part. Sometimes we
24 have occasional hearings about whether the
25 defendant has actually failed and whether the

1

2 program has given them adequate notice and we
3 have those hearings, few and far in between. So
4 we've had them. There can be advocacy going on
5 between the defense and the prosecutor about the
6 definition of what failure is. In that case I
7 know that I certainly do and I know Nestor does,
8 we might change the jail alternative -- or we
9 might advocate -- because the program did not
10 treat this defendant correctly or he is in the
11 wrong place.

12 MR. SCHECHTER: You in Brooklyn have
13 quarterly meetings with stakeholders?

14 MS. ABRIANO: We have probably
15 meetings more often than that. We have
16 community advisory board meetings, they're
17 probably quarterly but we have ad hoc meetings
18 all the time and there are smaller groups of
19 people, we also go to all the community
20 meetings, recent council meetings, the tenant
21 association meetings -- for events that are
22 going on in the community.

23 MR. SCHECHTER: Do you meet with the
24 defense bar?

25 MS. ABRIANO: They are welcome to

1
2 everything.

3 MR. SCHECHTER: I know they are
4 welcome. The question is, do you meet with
5 them.

6 MS. ABRIANO: They don't come a lot.

7 MS. CARLOW: In the Bronx, for
8 example, a court from Philadelphia is coming up
9 to the Bronx tomorrow, representatives of all
10 the stakeholders have been invited so I expect
11 the Legal Aid Society to be there, someone from
12 TASC, somebody from the State, the -- some of
13 the forensic psychologists will be there, so we
14 do have these other informal meetings where
15 other courts are coming to us to ask what --

16 MR. SCHECHTER: Ms. Abriano, do you
17 see what Mr. Ferreiro sees in terms of the
18 defense bar showing up during the 18 to 24
19 months of treatment?

20 MS. ABRIANO: Actually, in Brooklyn
21 treatment court, there was significant
22 representation from the defense bar. In Red
23 Hook, it's Legal Aid has the majority of cases,
24 but there's a lawyer there for every single
25 case.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. SCHECHTER: Does the lawyer participate? Because I was, I've been in other jurisdictions with this panel where there's an attorney but the attorney doesn't say anything. I sat in one court in Florida there for almost three and a half hours, the district attorney said absolutely nothing.

MS. ABRIANO: There are two Legal Aid attorneys presently and one of them comes to all the other meetings and the other one doesn't. I just wanted to add one thing because we talked so much about drug treatment and mental health treatment, just really quickly that there are so many other things that we do on cases, not the least of which is, we have a mediation center and that there are so many cases where people come, their neighbors, their coworkers, their colleagues and there's some kind of physical altercation and those kinds of cases in the traditional court especially in their cross complaints, nobody wants to prosecute -- don't want records. So pretty much you get an ACD and an order of protection and nobody ever, ever looks to the underlying reasons of the crime.

1

2 And so we use mediation in those cases and it's
3 just very, very --

4 MR. JONES: Just a couple of quick
5 wrap-up things, just in terms of mental health,
6 I'm curious and maybe everyone else is as well,
7 how do you classify someone as having a mental
8 health issue? Are they bipolar?

9 MS. CARLOW: A couple of times I
10 thought that I forgot to mention this.
11 Actually, in order to get to the Bronx mental
12 health court, you have to be diagnosed with an
13 access one diagnoses, that's bipolar -- we don't
14 have that many people that have access to
15 diagnosis although --

16 MR. JONES: Preexisting diagnosis?

17 MS. CARLOW: It can be preexisting or
18 it can also be if they're going to meet with the
19 forensic -- I mean, it does involve, generally
20 everyone has consented, it also involves the
21 HIPPA form has been signed, we may send off for
22 the prior psychiatric records -- another state
23 and so there might be, and this takes a while,
24 gathering, significant gatherings of information
25 for a psychiatrist to make a recommendation that

1

2 they think this person is appropriate to go into
3 the mental health court.

4 MR. FERREIRO: As part of this mental
5 health court, we developed a separate question
6 form just to find out if they -- you know, a
7 psychiatrist will speak to them. That's done in
8 arraignments by someone from the district
9 attorney's office with the consent of the
10 defense attorney. Every case gets screened for
11 that.

12 MS. CARLOW: Actually, only in
13 narcotics.

14 MR. FERREIRO: Narcotics. Not in --
15 so if they are, based on the separate question
16 form, a candidate for mental health court or
17 they were doing diagnosis and someone from TASC
18 -- you all know who TASC is, right? No. It's
19 treatment alternatives to safer communities.
20 They are basically like a broker. Like when we
21 say put them in a program, they will interview
22 the defendant, they have psychiatrists for
23 mental health and they will broker him into the
24 best, the program that fits that defendant the
25 best, because every case is, every defendant is

1

2 different. So, you know, that's what we were
3 doing.

4 MS. CARLOW: And we trust them as
5 well, so when --

6 MR. JONES: You read my mind.

7 MS. CARLOW: When they say the
8 defendant should be in an outpatient setting and
9 even though we might because of the seriousness
10 of the crime want it to be residential, I am
11 personally willing to accept what they have to
12 say because they monitor their programs very
13 closely.

14 MR. JONES: Thank you. You all are
15 very generous to be here and we appreciate this
16 very much.

17 (Recess taken.)

18 MR. JONES: Thank you, Judge
19 Ferdinand, for being here. I will say your
20 reputation proceeds you here today. We've heard
21 a number of very good things about the work that
22 you are doing and so what we'd like to do now is
23 to give you five or ten minutes to give us an
24 opening statement and give us your thoughts and
25 we have a number of questions we'd like to ask

1

2 you. The way it works is that, one of us
3 generally leads the questions and for this
4 session that person is going to be Elizabeth
5 Kelley so the floor is yours.

6 MS. FERDINAND: Since it's just me,
7 I'd be happy if you want to interrupt me at any
8 time and ask questions. I brought just one
9 packet with me because I didn't know how many of
10 you were going to be here and it's just some of
11 the organizational material --

12 MR. JONES: You should make sure
13 Scott gets that.

14 MS. FERDINAND: Okay. I was looking
15 at your mission statement and I think the first
16 point that I think now that you've been doing
17 this for a while you know is that what probably
18 makes your job particularly hard is that every
19 problem-solving court is unique and that's both
20 the strength and I guess the challenge of
21 finding something universal and done correctly,
22 they're unique because each problem-solving
23 court really needs to reflect the community that
24 it's in, the kind of, the population, the kinds
25 of drugs, the kinds of crimes, what kinds of

1
2 cases a prosecutor is willing to divert into a
3 treatment court or a problem-solving court. And
4 I think those elements that make each court
5 unique makes it very hard to draw
6 generalizations. When I began, it seemed to me
7 and I was adamant when they tried to open other
8 courts that problem, to be called a drug
9 treatment court, a court really needs to follow
10 the ten key components. And I don't know
11 whether anyone has talked about that yet, but I
12 saw some people from the Center for Court
13 Innovation and I suspect they will. I'm not
14 going to describe to you my court in particular.
15 There are a couple of -- what I wanted to say,
16 drug courts can do a better job than individual
17 plea agreements. And there are lots of reasons
18 for that. Drug courts can assess individuals'
19 needs better than an individual. And an
20 individual attorney we have in our court, we
21 have a staff that does that assessment to
22 determine not only that someone is appropriate
23 but what particular needs they have. Drug
24 courts guarantee that individuals will get
25 multiple chances at treatment. There's

1

2 obviously no guarantee of that if you're talking
3 a plea before any individual judge. Drug courts
4 improve the services that treatment providers
5 offer and that's because we have a population of
6 people who treatment providers want and,
7 therefore, we can hold them to higher standards.

8 We can assure that an individual will get bed

9 space in a treatment program. If somebody is in
10 my court and they need a residential bed, we can
11 retain that bed for them in a very short period
12 of time. A drug court makes sure that it's the
13 judge, not the district attorney who decides
14 when additional chances at treatment are
15 granted. Now, drug court started because we do
16 a better job than voluntary treatment and when
17 we first began, that was the big issue, does
18 coerced treatment work, and over these years
19 that I've been in drug court, it's apparent that
20 coerced treatment works. We can help people
21 overcome those barriers to treatment, even
22 somebody who wishes to get help for a drug
23 problem has many obstacles to finding an
24 appropriate treatment program and drug courts
25 can overcome those barriers, help people get

1
2 identification, help them obtain the medical
3 documentation they need, help them find a
4 program that will serve their needs that will
5 accept their insurance, that meets at the hours
6 they need, that has, provides transportation
7 that provides child care. There are all kinds
8 of things that stop people from getting to
9 treatment and drug courts can overcome all of
10 that. Drug courts provides the motivation to
11 enter treatment and until you've sat in a drug
12 court and observed that it may be counter
13 intuitive. But it's often said that some people
14 don't go for treatment until they hit their
15 bottom and in drug court we say, we raise the
16 bottom. You may not appreciate that you've hit
17 the bottom, but drug courts make you aware of
18 it. And today, there was a gentleman who said
19 to me and I could quote a different person every
20 day but, as I was coming here, I listened to
21 what he said, he had just gotten out of a 20-day
22 rehab and he said, I had no idea before I went
23 that I had a problem. I had no idea what a mess
24 was life was. I didn't recognize that I wasn't
25 living, I didn't recognize the pain I was

1
2 causing my wife and children. He proudly
3 introduced me to his wife who was in the
4 courtroom who had never been in the courtroom
5 before. So drug courts take people and force
6 them to recognize the situation that they're in,
7 which they may not be able to see for
8 themselves. Drug courts can provide a wide
9 range of treatment services, mental health
10 services, residential, non residential
11 outpatient programs that work at night, they can
12 provide educational and vocational referrals.
13 We have discovered that getting people off of
14 drugs is really only the beginning of the
15 process of recovery and that if you're going to
16 ensure that their recovery is sustained, they
17 need to go back to school and improve their
18 education. I think I brought just -- these are
19 the GED's earned just in the last year and a
20 half by the participants in my court and I have
21 them because every time someone earns their GED,
22 they bring it to me. I joke around that I could
23 wallpaper my walls with all of the diplomas that
24 I now have and they bring it to me because
25 they're so proud of obtaining it. And for so

1
2 many young people, it's the first thing they've
3 accomplished and it gives them the confidence
4 that they can do something more. So we not only
5 provide educational referrals but we can provide
6 referrals to vocational training, give them the
7 assistance they need to get funding for
8 vocational training. And what drug courts,
9 really what makes drug courts, drug courts is
10 the incentive and sanction model and that is
11 what makes the difference in keeping people in
12 treatment. Just like they bring their GED's and
13 I present them with a congratulations card, not
14 only are incentives crucial to keeping people in
15 treatment, but sanctions are. Without
16 sanctions, addiction doesn't stop. Addiction is
17 a disease of the brain and in order for people
18 to overcome it, they need a lot of assistance
19 and steps along the way, and sanctions are the
20 way that you show someone that the actions that
21 they are taking are leading them in the wrong
22 direction. And the word "sanction" does not
23 mean jail, it does mean punishment. I have
24 spoken to people around the country who had been
25 planning treatment courts. What struck me in

1

2 many places is that criminal defense lawyers are
3 really important in the planning process. And
4 they are not always included, partly because
5 they opt not to and partly because who is doing
6 the planning for the particular drug court
7 doesn't include them. But I believe they
8 really, it's really a crucial role for defense
9 lawyers to play a part in planning, eligibility
10 standards. Who is going to be entered into the
11 drug court is really something that criminal
12 defense lawyers have a different opinion about
13 than prosecutors and it's something that should
14 be discussed when courts are planning.

15 MS. KELLEY: Do you mean when the
16 court is, drug court is initially being
17 formed?

18 MS. FERDINAND: Yes. When it's in
19 the planning stages when --

20 MS. KELLEY: What about when an
21 individual case plan is being formulated for a
22 defendant?

23 MS. FERDINAND: Well, that's a
24 crucial area. What I wanted to talk a little
25 bit about was why I think it's important for

1
2 criminal defense lawyers to be part of the drug
3 court planning process. I mean, there may be, I
4 don't know how many now, there are around the
5 country 2,000 but there are more being planned
6 constantly. So there's still a role to be
7 played and the last thing I just wanted to talk
8 about was how a criminal defense attorney can
9 make a difference in an individual's case in
10 drug court. When drug courts start planning,
11 they decide the parameters of the plea agreement
12 and I know, pleading or not, or a diversionary
13 program is something of great interest to all of
14 you, mine is a post-plea program. We, as part
15 of planning we included members of the Legal Aid
16 Society, the private bar and at that point the
17 Brooklyn Defender Services who is just
18 beginning, which is another public defender
19 office and the end result I believe was a plea
20 agreement, which is highly reflective of what
21 would have happened to somebody who didn't enter
22 drug court and that was as important to me as I
23 believe it is to you that is the jail sentence
24 for failing treatment should not be harsher than
25 the jail sentence the person would have received

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

if they had litigated their case.

Whether or not at the end of the treatment court the case is dismissed or the person receives, left with a conviction but a conviction for a lesser crime, my court cases are dismissed. That may not be realistic everywhere, but a defense lawyer in that planning process can have a part of the police advocating for better results. And the other area I think is, makes the difference in fairness in a drug court that in planning is flexibility and sanctions. And by that I mean, there are some drug courts that say, you know, the first positive drug test, this is the sanction, the second, this is the sanction and there is no individuality, there's no room for saying, you know, nine months happened between the first positive and the second positive, should that be taken into account. So, you know, a system that has flexibility of sanctions I think is really crucial. The ways in which I think a defense lawyer make a difference on the individual case, a defendant's attorney is the only person who can make the real assessment as

1
2 to whether this is an appropriate resolution for
3 that person. As a global resolution, I believe
4 it's an excellent deal; as a global matter, a
5 person who is charged with, in Brooklyn, a
6 felony drug sale who has a drug problem, if they
7 agree to resolve their case and participate in
8 treatment court, they can get their felony
9 dismissed. I think that's an extraordinary
10 deal. The down side if they fail to complete
11 treatment is a year in jail, which is probably
12 on the low side of what would have happened to
13 them otherwise taking into account the kind of
14 offers that are made outside of drug court. But
15 only the person's attorney can really make an
16 assessment of whether this is a defendant, who
17 is motivated, has the support, is interested,
18 whether or not the charges, I would say that
19 overwhelmingly, the people who turn down my plea
20 offer, the case ends up getting reduced to a
21 dismissed. So I assume it's because the
22 attorney felt that the charges were not going to
23 be sustained or were not going to be sustained
24 at the level that they appeared. And only a
25 defense attorney can do that. Once a person is

1
2 part of the treatment program, the defense
3 attorney really can reinforce and encourage
4 compliance. I heard you asking last panel about
5 participation of attorneys and about half the
6 people in my court are represented by the Legal
7 Aid Society, the other half have either private
8 lawyers or other public defenders or private
9 lawyers paid by the state. I would say
10 80 percent of the, not the Legal Aid, 80 percent
11 of the other lawyers do appear. I think lawyers
12 appear when they feel like they have something
13 to say. Lawyers appear when they feel like they
14 are part of the process. And if they are not
15 part of the process, then they don't see any
16 reason to appear. I think every defendant needs
17 somebody standing next to them who is repeating
18 to them everything I say. I think we all need
19 to hear things said to us by different people in
20 different ways. And so I think that that, the
21 appearance by an attorney is really very
22 important. I think it's important for defense
23 attorneys to recognize the legitimacy and
24 necessity of sanctions and that defense
25 attorneys can play a role in that. Lawyers know

1
2 things about the client that I may not know, I
3 may not know it because they've chosen not to
4 share it with me, I may not know it because
5 they're embarrassed to say it, I may not know it
6 for any number of reasons. And so lawyers can
7 bring in information that the rest of the
8 members of the team don't know. And if lawyers
9 recognize the importance of sanctions, in my
10 mind, every member of the team can help me
11 fashion what is the best sanction for that
12 individual at this time if we all trust that the
13 goal is for them to succeed. If the goal is for
14 them to succeed and there's a consensus by
15 treatment, the judge, the treatment providers,
16 the case managers, that this person needs to be
17 remanded, needs to go to jail, there's no magic
18 number. And so a discussion about how long a
19 lawyer can play a part in that, a discussion
20 about whether or not the person needs to go into
21 residential treatment, a lawyer who knows that
22 this young man is living with a woman who is an
23 addict, may know -- and may appreciate that
24 that's not a viable situation, living situation
25 for him to be successful and may support the

1

2 idea of somebody going into a residential
3 program.

4 So in determining sanctions, I
5 believe defense lawyers play a really important
6 role. Defense lawyers can use the drug court
7 team and I don't mean that in a negative way.
8 And there are 400 people in my court and I'd
9 like to say that I know all of them and that
10 each one of them has, you know, is in the best
11 program for them and has the best case manager
12 and, but, you know, life is life and a defense
13 lawyer can advocate for someone. People slip
14 through cracks whether it's at the treatment
15 program or anywhere else, you know. I mean, we
16 all know how it takes 16 phone calls to get a
17 charge off your credit card when it doesn't
18 belong there. A lawyer can help somebody with
19 those advocating just to make sure that they're
20 being taken care of. So I hope that you come
21 away from the study of problem-solving courts to
22 be advocates of it. In my court, I think there
23 are maybe 3,000 felonies that I've dismissed,
24 have been open since 2007.

25 Actually, there's one other thing I

1
2 wanted to, I'm going to explain it but I will
3 leave if with Scott. Part of what we do is, we
4 try to get people to feel invested in their own
5 recovery. So we started a new program that's
6 called Picture Your Recovery and we hand
7 participants a camera and say, go out and take
8 pictures of the things that motivate you to stay
9 clean. And this was a young man who brought me
10 back this, the photos in his camera with
11 pictures of his grandfather, pictures of his
12 nieces and nephews who he says he wants them to
13 look up to him, letter from his friend in jail,
14 he was my codefendant, I saw him every day, now
15 this is the only way we speak, through a letter,
16 a picture of the court which is across the
17 street from where ever he is going to college.
18 He says it's embarrassing to walk out from
19 school into court, a picture of the x-ray lab
20 where he is going to school to be a radiologist,
21 a picture of a drug dealer on the street. An
22 amazing thing happens to people and for those of
23 us who are criminal defense lawyers, an amazing
24 thing happens to people who take charge of their
25 addiction and their lives. This is a young man

1

2 who, you know, smoking marijuana all the time,
3 dropped out of high school, not working and
4 selling cocaine. And when you give, when you
5 intervene and you bring to bear all the services
6 that a treatment court can provide and you give
7 somebody an opportunity to expand their lives,
8 it's just an amazing thing. I think I gave you
9 the wrong number. I have sent 3,700 people to
10 treatment and I have dismissed 1,752 felonies.
11 It's an incredibly successful way of not only
12 resolving criminal cases, but giving people an
13 opportunity to improve their lives. So I hope
14 you come away as supporters of the process.

15 MR. JONES: Thank you.

16 MS. KELLEY: My first question is,
17 just what I know is a quick technical question,
18 you mentioned a few moments ago that you
19 dismissed a significant number of cases but
20 earlier in your remarks you said that your
21 program is a post-plea program.

22 MS. FERDINAND: Yes.

23 MS. KELLEY: So those programs that
24 you dismissed, did you dismiss them post plea
25 after a certain number of years or what?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. FERDINAND: The treatment court, the process in my court is, if someone is arrested for a felony-drug charge and they do not have a prior violent-felony conviction, their case is referred to treatment court. It's a paper referral. And that's so that everyone can have an opportunity to consider if they want to be apart of treatment court. I don't want the, every new DA in criminal court saying, I don't believe in it so the case must come to me, if it fits that standard. The person is assessed and determined whether they have a drug problem, a treatment plan is devised, a treatment plan which is open to discussion, if the person is interested, if the defendant is interested -- I've spent all these years trying not to say the word "defendant," so it's kind of funny trying to make sure you know who I'm talking about. The first verbal change in drug court is, I don't call them defendants, I call them participants. If the defendant is interested in participating in treatment court, they were required to plead guilty. Typically, the plea is to felony two steps down from the

1

2 one with which they're charged. Initially,
3 they're charge with a B felony, the plea is to a
4 D felony. The sentence is deferred, if this is
5 their first felony, it's deferred for 12 to 18
6 months meaning they could complete the mandate,
7 it takes most people 18. If it's a second or
8 more than second felony or if they have more
9 than one felony -- I have people with two
10 felonies -- the mandate is 18 to 24 months. At
11 the conclusion of the mandate, their plea is
12 vacated and the charges are dismissed.

13 MS. KELLEY: That answers the
14 question. Thank you. I asked a similar
15 question of Judge Kluger this morning. And that
16 is, it seems as if judges like you are so
17 intensely involved with each participant who
18 comes before you that there is a potential for
19 burnout or even for coming just too close to a
20 case file. What particular steps do you,
21 yourself, take to ensure that that's not a
22 danger and also, do you have particular, if you
23 will, succession plan for your court once you
24 are no longer in your position?

25 MS. FERDINAND: When I started in the

1
2 treatment court over 11 years ago, I said I
3 would do it for two years, after two years a
4 judge came and took over the statewide expansion
5 of drug courts and I agreed with him that I
6 would stay for two more years while he was
7 involved in that. Over a series of other, some
8 events personal, some not, I've chosen to stay
9 and at the moment, I can't see any reason to
10 leave. So they'd have to -- in the beginning I
11 used to say, I need to leave so that people can
12 see that it's not Judge Ferdinand's court, it's
13 a model that other judges can do. There are now
14 enough drug courts around the country and around
15 the city and around the state but it's clear
16 other judges can do it. I don't think I need to
17 be punished by leaving to prove the point.
18 Burnout is an individual issue for every judge
19 whatever you're doing. People can burnout from
20 doing calendar parts, they can burnout from
21 doing trials. I love what I do. I learn every
22 day. When I began, it was an entire new field.
23 I'm constantly looking for new things. We just
24 added a new population of young adult marijuana
25 users, we added a population of people with

1
2 mental health issues not severe enough to go to
3 the mental health court. We're constantly doing
4 new things. This picture recovery is new.
5 We're having an opening next week, we have a
6 computer lab in the courthouse and I've
7 sponsored the painting of the wall's lab and
8 we're having a ribbon cutting, we brought in a
9 hospital to do medical services for people often
10 the first doctor they've seen in who knows how
11 long. So there's always something new to do.
12 And the other issue, I don't really understand,
13 I've seen decisions, issues, ethical issues
14 should a judge sentence a person where they have
15 this information about them. I am a judge, I am
16 not their counselor, I am not their lawyer, I am
17 not their advocate or their advisor, I'm not
18 responsible for the choices they make. I don't
19 take it personally when they -- they may tell
20 you and graduates will tell you that I deserve
21 the credit or not. I know I don't. When
22 somebody says to me, you know, you're like my
23 mother, I think, if you have a mother who sees
24 you once a month and can put you in jail, that's
25 not much of a mother. I mean, I don't say it.

1

2 So I don't feel like their mother. I have no
3 problem taking someone who has been doing -- I
4 had a young man yesterday, he was doing great,
5 we had a great conversation about the first
6 program that he got kicked out of for getting
7 into a fight and he told me what he could have
8 done different, today he was back, he went back
9 to the program, he got into another fight. I
10 had no problem putting him in jail. It's not --
11 I didn't make those choices. I did the best I
12 could to discuss it so that he would recognize
13 the need to make better choices. I don't see
14 how my knowledge of what he did yesterday makes
15 me less impartial in proceeding with this case
16 today. I don't know anything that I shouldn't
17 know and I don't know anything that everybody
18 else on the team doesn't know. And that is a
19 great thing about drug court. Everybody has
20 access to the same information. It's not trial
21 by ambush. If somebody is doing poorly, there's
22 a conference with the lawyer, the treatment
23 provider, the case manager, you know. You never
24 walk into a courtroom and are surprised. I
25 think you can make better decisions the more

1
2 information you have. I think a judge can make
3 better decisions, I think a lawyer did make
4 better decisions.

5 MS. KELLEY: Are you then assuming
6 that defense attorneys who are part of the
7 treatment team are divulging all information
8 which they know about their client?

9 MS. FERDINAND: No. They are the
10 only ones who obviously, which is why I said in
11 the beginning, defense attorneys often know
12 things that we don't know and they may not
13 choose to share it but at some point in time,
14 they may choose to say it because they believe
15 that, well, help their client succeed. I assume
16 we all start with the same goal. I know in the
17 back of every defense attorney's mind, it is to
18 earn the dismissal of the case whether or not
19 the person has succeeded, whether or not the
20 person is drug free, compliant, I do get that.
21 I was a defense attorney, but at some point in
22 the process I believe we all see the potential
23 for success, not just getting the case dismissed
24 but actually seeing this person accomplish
25 something and just like my court officers who

1

2 believe me didn't start out cheering, you know,
3 successes. Everybody sees it and when you have
4 a client and you see the possibility of
5 overcoming their addiction and accomplishing
6 something, I believe defense lawyers like
7 anybody else is going to want to assist in that
8 process.

9 MR. JONES: In the interest of time,
10 we're going to have to shorten it? Do you want
11 to do one more?

12 MS. KELLEY: One more question. Your
13 passion and your commitment is eminently clear
14 and I'm sure we all respect it but my question
15 for you comes on the tails of some remarks we've
16 heard from other judges across the country
17 during our hearings, that is to say they believe
18 or some of them in fact say they know that they
19 are not respected as much by their other
20 judicial colleagues because they're engaging in
21 -- justice.

22 What's your response to that?

23 MS. FERDINAND: When I first started,
24 it was irksome and I spent a lot of time telling
25 people it's not social work, I'm a judge.

1

2 Ultimately, it's clear to me it's not social
3 work, it's clear to me it's the most important
4 thing I've ever done as a judge. So what other
5 judges say is really not that important. I
6 mean, maybe it comes from being a defense
7 lawyer. I mean, how many times did people ask,
8 how are you possibly defending that person.
9 That's not, that part is not important to me.
10 And what's interesting to me is, 10 years ago
11 judges would, you know, say you're doing social
12 work, who did you hug today and, you know, I
13 hear the applause from your courtroom. At some
14 point I like took the, I would say, you have a
15 defendant who needs to be hugged, send them to
16 me. What was I going to do? I have pictures of
17 me hugging people in newspapers. I now hear
18 judges say, well, you know, it's a disease, you
19 can't just put someone in jail because they got
20 high. And I think, you only know that because I
21 taught you that. So what drug court has done
22 is, taught everyone in the judicial system
23 whether they recognize it or not that when
24 you're dealing with drug addicts, you're dealing
25 with something different and you need to

1
2 recognize it. So it really doesn't matter to
3 me, you know. I joke around the same way I know
4 Gerianne Abriano does, I have people who visit
5 me from around the world to see what I do. When
6 they opened the drug court in Manhattan, I
7 couldn't get the judge from Manhattan to come to
8 Brooklyn. So you do what you do and you don't
9 worry about what other people think.

10 MR. JONES: We are unfortunately
11 running a little behind. I have just one sort
12 of issue, the problem we always have is that we
13 never have enough time to explore this stuff in
14 the way that we'd like to. But a number of
15 folks today have talked about and planted the
16 seed in my head about the over utilization of
17 the criminal justice system in that really what
18 the criminal justice system ought be for is the
19 dispute resolution of serious crimes in that the
20 more problem-solving aspects of what the
21 criminal justice system is doing ought be done
22 outside of the criminal justice system and when
23 you have that conversation, one of the things
24 that people always say is that, well, it's
25 motivation, you need the motivation, the

1
2 motivational aspects of it, but for the fact
3 that we have jail or sanctions, folks might not,
4 you know, clean up or go to the programs or do
5 what they are supposed to do. But one of our
6 speakers today suggested that, you know, that's
7 not an entirely on-point analogy because we
8 find, the vast majority of people -- and you can
9 disagree with this or tell me this is wrong --
10 the vast majority of people in problem-solving
11 courts and drug courts are either poor or people
12 of color, and that we find motivational avenues
13 for folks who are either well off or white. We
14 find motivation for them in other ways that
15 don't have to do with putting them in jail or
16 sanctions. I'm wondering what your response is
17 to, A, the over utilization of the criminal
18 justice system putting all of society's problems
19 at the doorstep of the criminal justice system;
20 and aren't there other ways to motivate people
21 without the threat of sanctions or jail or
22 whatever it might be.

23 MS. FERDINAND: One problem I have
24 with that question is, I don't go out looking
25 for these people. They've come to the criminal

1

2 justice system --

3 MR. JONES: Because the police have
4 arrested them.

5 MS. FERDINAND: Yes.

6 MR. JONES: But if the police who are
7 trained to view these problems not as criminal
8 justice problems but as mental health problems
9 or other types of problems --

10 MS. FERDINAND: That may work for
11 some other court, but if what they are arrested
12 for is selling drugs, I'm not sure how the
13 police are supposed to treat that as something
14 other than a criminal-justice problem. So, you
15 know, I start with, these people are going to be
16 arrested and they are going to be in court and I
17 know what we did with them before I was in drug
18 court. And I believe what we did with them at
19 that point caused a more disproportionate
20 impact, negative impact on poor people and
21 people of color. Because people with means
22 could always find referrals to treatment
23 programs and I've come up with diversionary
24 recommendations or proposals to judges. So, I
25 mean, I do think that there is validity in what

1

2 you're saying, but I don't think that it applies
3 where, what you're talking about, what people
4 are arrested for.

5 MR. JONES: When your colleagues say
6 to you, it's a disease, what --

7 MS. FERDINAND: The disease is the
8 use of the drug. The disease doesn't cause you
9 to go out and sell drugs. Now, what we're
10 saying is, you're selling drugs to support, to
11 get money to support your purchase of drugs.

12 MR. JONES: Anybody who goes into
13 your court is going in not for possession, but
14 for sale.

15 MS. FERDINAND: Sale or possession
16 with intent to sell.

17 MR. JONES: So those folks who are
18 possessing are not going into treatment court,
19 they are going -- if someone gets arrested for
20 possession of some amount of --

21 MS. FERDINAND: If you get arrested
22 for possession of a small amount of cocaine,
23 it's a misdemeanor and there is a misdemeanor
24 treatment court and, actually, the complaint
25 that I hear from private criminal defense

1

2 lawyers is, it's the most ridiculous thing. You
3 can't get someone into misdemeanor treatment
4 court unless they've been arrested 11 times. I
5 have this kid, I know he is a drug addict, and I
6 can't get him into treatment court. I know, I
7 know the reasons why that is, if you don't have
8 a large enough jail sentence to impose, very
9 hard to motivate people to comply and that's why
10 they've chosen in misdemeanor settings to take
11 people who are facing jail, some serious amount
12 of jail time. In other cities, they do take
13 people who are not, who are facing smaller
14 amounts of jail time. So my -- has been
15 arrested for felony possession with intent to
16 sell. Sometimes you're the steerer so you may
17 have a really good defense to the sale or you
18 may have an argument to get it produced and we
19 do take, I do except those cases on pleas to
20 misdemeanors, but still it's not, they're not
21 arrested solely --

22 MR. JONES: Well, do you feel as
23 though some portion of the people that are going
24 through your court may not have drug-addiction
25 problems at all, but they're selling for

1

2 economic reasons and want to use the drug court
3 as a way to divert?

4 MS. FERDINAND: The first thing that
5 happens and I see people the day after they've
6 been arraigned so it's usually within two to
7 three days of their arrest, they're interviewed
8 by a social worker and a drug test is done. If
9 somebody tests drug free, we generally assume
10 they are not an addict. It's pretty hard for --
11 most drug addicts test positive and the studies
12 show, the studies show before drug court started
13 show the percentage of people who are arrested
14 who test positive for drugs which is what led us
15 to believe that the majority of people selling
16 are actually selling to support their addiction.
17 And in addition to the drug tests, there's 45
18 minutes psychosocial assessment that comes out
19 -- the person has a substance abuse problem. It
20 does not have to be an addiction that destroyed
21 their lives, they could be on the downward slope
22 and not have hit the bottom, they may still have
23 jobs, some do, they may still have homes, they
24 may still have family support or they may be
25 homeless, they may be, you know, not working,

1

2 have no support. But at the end of that
3 assessment, I'm pretty clear whether or not
4 someone is an addict. And over time, I say this
5 to lawyers, private and public defenders, it's
6 really not in someone's interest if they are not
7 a drug addict and they think to themselves, this
8 is really going to be easy, all I have to do is
9 test clean for a year. You can't not be an
10 addict and make it through a year of sitting in
11 a treatment program listening to people talk
12 about their addiction, they're not going to
13 succeed. And so I let people think about it if
14 they try to talk me into that they are addicts.
15 You know, maybe over the years a few have gotten
16 through; I'm not upset.

17 MR. JONES: This is obviously a
18 conversation that we can continue for a long
19 time. We appreciate you being hear very much.
20 You also have been very enlightening. Thank
21 you.

22 MR. JONES: Good afternoon, Judge.
23 Pleased to have you. You should know, as I told
24 Judge Ferdinand, that your reputation here has
25 preceded you.

1

2

MR. CALABRESE: I didn't do it. I
want a lawyer. (Laughter)

4

MR. JONES: The way that we operate
is, we give you five or ten minutes to give us
the benefit of your thoughts and opening
statement and then we have a number of questions
that we'd like to pose to you and listen to your
responses and one of us generally leads off the
question and for this particular session it's
going to be Elizabeth Kelley. So having said
all of that, the floor is now yours.

13

MR. CALABRESE: I had prepared
something which is 15, I could probably cut it
to 10. Do you want me to do that?

16

MR. JONES: Yes. Just --

17

MR. CALABRESE: I'll do that. I
wanted to start with this. If you haven't seen
it, it might be something you could use as a
tool. Basically, Marie Claire magazine did
this, they took a mug shot of what they say is a
16-year old high school student, you look across
the top, line two, basically they took her mug
shot, I've used it in the courtroom with
teenagers, I've done it to my own daughters, I

25

1
2 have shown it to youth programs and the reason
3 why I wanted to bring it to your attention is
4 basically she was not offered drug treatment,
5 she came through -- on a consistent basis. You
6 just see what heroin did to her, you also see
7 that a few months after the lower right picture,
8 she died of an overdose. And the reason why I
9 wanted to bring this to you, because I've been a
10 lawyer since '79 is that, I don't want to be
11 part of the system that produces these results.
12 I don't want to be part of it as a judge, I
13 wouldn't want to be part of it as a prosecutor
14 or as a defense attorney. I think I can do
15 better. I think we can do it fairly and I think
16 we can do it -- I want to talk to you about Red
17 Hook a little bit and then about problem-solving
18 courts in general. We've been fortunate along
19 with midtown and Harlem have been a model for
20 community courts across the country. There are
21 about 30 community courts across the U.S. And
22 jurisdictions are constantly coming to us
23 looking to start a community court, Milwaukee,
24 Baltimore , Newark, hopefully soon, we will be
25 starting a community court; internationally, the

1
2 North Liverpool justice center was set up based
3 on Red Hook. The U.K. appreciates their
4 community court approach to the extent that they
5 have set up ten more, Melbourne, Australia has a
6 community court, they are looking to do one in
7 Sydney -- South Africa -- they're looking at 17
8 more. I wanted to then tell you a little bit
9 about Red Hook itself, we opened in April of
10 2000. We've served 200,000 people. We go by
11 police precinct for our criminal court cases.
12 It is a one-judge-multi-jurisdictional court
13 with criminal court, family court and
14 housing-court cases heard in this one courtroom.
15 It's been my privilege to be the one judge since
16 we opened. Traditionally, a defendant found in
17 possession of a small amount of drugs could have
18 a criminal case, whatever, criminal case in
19 criminal court, face eviction from public
20 housing in housing court and be at risk of
21 losing his or her children in family court if
22 ACS brought charges all based upon the same
23 possession of a small amount of drugs. Red
24 Hook's approach is to combine these
25 jurisdictions to bring all the litigants' issues

1
2 to one courthouse with one judge and to give
3 that judge the authority and the social-service
4 tools for a more holistic and effective
5 resolution of our cases. For criminal court, we
6 all hear misdemeanor and summons case from three
7 police precincts. We don't hear serious-felony
8 cases; we don't hear murder, robbery, rape.
9 Because if the defendant is convicted of these
10 crimes, basically the courts usually look
11 towards incarceration to protect society. So
12 it's not really -- we hear all criminal cases
13 with the maximum sentence of up to one year in
14 jail and so our cases involve drug possession.
15 And you're going to hear me talk about drugs.
16 We do alcohol abuse -- we do mental health
17 counseling. But our communities main problem is
18 drugs. So that's the -- example that I use.
19 We'll do assault and domestic-violence cases,
20 drunk driving, shoplifting, prostitution --
21 family court we hear family offense and juvenile
22 delinquency cases. Housing court we hear all
23 cases from the Red Hook Houses. It's the second
24 largest housing develop in the state with, 92
25 buildings. You may have heard, our case load

1
2 last year: 4,000 criminal-court cases, 12,250
3 summons cases, 750 housing court cases, 150
4 juvenile delinquency cases, probably 100 this
5 year, we did approximately 20 hearings and bench
6 trials. Our mandate is to solve problems in the
7 courtroom and in the community. Obviously, we
8 can be a regular court. Cases are prepared for
9 motions, we hold trials, do bench trials and
10 like a regular court. But what makes this
11 different is, we do try to solve problems where
12 it's appropriate. To do that, I use on-site
13 services. Some of the services on site are,
14 first of all and most importantly, social work
15 professionals to do one-on-one assessments.
16 This is particularly helpful for obviously
17 adults with drug issues, but it works great with
18 juveniles trying -- one-on-one assessments
19 speaking to the family is critical sometimes in
20 those family-court cases. Safe Horizon is on
21 site for the victims of domestic violence.
22 Domestic-violence programs -- we actually have a
23 good domestic-violence program, which is a
24 little unusual these days apparently. Family
25 and community mediation, parenting-skills

1

2 classes, job training, which includes computer
3 classes, resume development and job placement.

4 This has become more important because what
5 happens is, when you have an area becoming

6 safer, merchants will invest in the community.

7 And if you take a look at Red Hook, and one of
8 the reasons why it probably gets so many

9 visitors is because of the turnaround that Red

10 Hook had. In '92 and '90, there literally was

11 gun fire in the street. Now you've got Fairway

12 opened up, brought in 250 jobs, Ikea is opening

13 up June 18th, it's going to be the largest Ikea

14 in the country. Ikea is bringing in, I think

15 about, 350 jobs. There are also the home ports

16 of the Queen Mary II and Princess Cruises;

17 they're basically symbols of Red Hook's

18 turnaround and they're not docking the Queen

19 Mary there if there's gun fire in the streets.

20 The housing-resource center which has become

21 very helpful to assist tenants with obtaining

22 repairs and paying rent, a free health-care

23 clinic is on site, child care is on site --

24 services, so you can drop your child off and go

25 to obtain, to use these services. We have GED

1
2 classes, we have adult-education classes, we
3 have youth programs like youth court -- teenage
4 workshops, which I'd love to talk to you about,
5 and mentoring programs and a photography program
6 which is a great program, but these are all
7 programs obviously for youth. But these
8 services are available on a walk-in basis and it
9 makes Red Hook -- court where community
10 residents come voluntarily to seek
11 substance-abuse counseling, help with --
12 teenagers, or take adult education or job
13 training, sometimes the police rather than make
14 an arrest will drop somebody off and make
15 referrals to the justice center so it's a
16 different kind of court. The constitution comes
17 first, problem-solving comes second. Your
18 mission statement says, typically
19 problem-solving courts -- the adversarial model
20 in favor of a teen approach. I hate to tell you
21 -- when I read that. My view is that you do not
22 need to undermine an adversarial system to
23 operate a successful problem-solving court. At
24 Red Hook from day one, the defense attorneys
25 have never been part of the team and never

1

2 wanted to be part of the team. That literally
3 was the rule we had from day one and that's the
4 rule they wanted, that's the rule we wanted.

5 Defense counsel there throughout the process for
6 one person and that person only and that's the
7 defendant, our clinicians will not speak with
8 the defendant unless they have counsel's
9 consent. We see treatment as another type of
10 disposition. If the defendant is interested in
11 treatment, because of the charges or his or her
12 criminal record, bail or incarceration would be
13 a possibility on the case. Defense counsel pre
14 arraignment can ask for social-services
15 assessment. If the clinic recommends treatment,
16 counsel may decide to propose treatment after
17 speaking obviously on behalf of the defendant as
18 a condition of release or as a disposition. On
19 occasion where counsel has not requested an
20 assessment pre arraignment and the Court would
21 consider setting bail or making a jail offer,
22 but would instead, if an assessment had been
23 done, would consider drug treatment, the Court
24 will ask counsel if the defendant is interested
25 in assessment. Sometimes where defense counsel

1

2 has requested an assessment, I have indicated
3 that I would offer drug-education classes, which
4 is a lower form of treatment, it's just
5 drug-education classes and any treatment
6 request, it can be voluntary and not mandated by
7 the Court. Simply put, treatment is used as an
8 alternative only if the defendant consents on
9 the advice of counsel, only where the Court
10 would appropriately set bail or offer a jail
11 sentence if treatment were not an option. The
12 interview between the defendant and the social
13 worker is confidential. In reporting their
14 recommendation court, if the clinician puts
15 something on the record which is not
16 appropriate, both sides know it will be
17 stricken.

18 At any given time, we have
19 approximately 120 adults and treatment of 25
20 juveniles, drugs, alcohol -- or a combination.
21 Treatment is monitored closely by the clinic and
22 the court. We use sanctions and rewards
23 following the drug-court model. As we are a
24 community court and not an official drug court,
25 I'm not bound by the strict entrance guidelines

1

2 that some of the drug, that the drug courts have

3 because of their funding strain, which I really

4 appreciate not being bound by that. So, for

5 example, a person who has a conviction for

6 gun-point robbery in the past would be

7 ineligible for treatment as I understand in drug

8 court but I can decide whether treatment is

9 appropriate or not. So I could still do

10 treatment. Basically, I'm doing a screening,

11 I'm not bound by set guidelines in terms of who

12 you can accept and who you cannot accept.

13 Substance abuse makes people lie, cheat and

14 steal, and it's the substance that makes them do

15 that, it is not the defendants, because when

16 they get clean, what our clients or what our

17 defendants can accomplish given the real

18 opportunity to get their lives back on track is

19 simply amazing and I see that. I'm fortunate to

20 see that on a regular basis in Red Hook.

21 I would like to switch to

22 problem-solving courts in general because I

23 think there are six principals to a successful

24 problem-solving court. Many of these directly

25 impact defense counsel. The first principal is,

1
2 due process has to come first, problem-solving
3 comes last. And Red Hook, again, defense
4 counsel -- advise the defendant what will happen
5 if he or she wants to enter a plea, what's it
6 going to be required to do to complete the
7 mandate, what will happen if they fail. They
8 are there to advise them and fight for them if
9 there's a problem in treatment. Testing
10 positive or missing counseling sessions, they
11 will advocate for their client when the court is
12 considering a sanction. They are there to
13 encourage them throughout the treatment process
14 and to congratulate them on successful
15 completion, or if it's unsuccessful, to argue
16 for leniency in sentencing. Their loyalty and
17 -- and should never be divided. They're always
18 there for their client, they are never part of
19 the treatment team. It has been my privilege,
20 the one thing I will tell you, it has been my
21 privilege to travel into different jurisdictions
22 and sometimes observe different courts in
23 action. Now, here's what happened, put yourself
24 in the role of governor official, they hear
25 about drug court somewhere, they say, you know,

1
2 from above the word comes down, we want a drug
3 court, okay, great. So they usually have the
4 prosecutor onboard when the word comes down they
5 want a drug court, who is the one person in the
6 court setting who can cause difficulty in
7 operating the court? Well, it's the defense
8 lawyer. So what do they do, well, the tendency
9 is to hire, what I call, roll-over defense
10 lawyers, defense lawyers who are part of the
11 treatment team setting up these courts who won't
12 fight for their client and will argue somewhat
13 but really be seen as part of the team. This is
14 a critical mistake. It opens these courts to
15 criticism and is completely unnecessary. And
16 fashioning a role for defense lawyer in
17 problem-solving court is critical because what
18 happens is, when it's done the wrong way, we
19 have deserted criticism and that could spell the
20 end of problem-solving courts and it shouldn't
21 be because it's completely unnecessary. We have
22 Legal Aid on site, no one has ever accused them
23 of being docile or complacent. In my view, you
24 need a bigger defense bar to have a healthy
25 court. It is the Court's job, where

1
2 appropriate, to make treatment the best option,
3 where appropriate. It is not the defense
4 attorney's job to sell his or client treatment.
5 So due process comes first, problem-solving
6 comes second. The treatment; second, the
7 treatment mandate required by the Court must be
8 reasonable in light of the defendant's -- it can
9 be tempting. You have a parent in court, you've
10 got a first arrest, charged with a possession of
11 a glassine of heroin. Well, in the traditional
12 courthouse, that case is worth an ACD or a
13 violation and time served or maybe one day of
14 community service or one drug-education class,
15 very low-level value attached to that case. But
16 because the parent is in court or somehow
17 because the defendant is shaking in front of you
18 and the defense lawyer has asked for an
19 assessment, you learn that the defendant has a
20 serious heroin addiction and the clinicians are
21 saying, the person needs detox and long-term
22 residential treatment, okay. It's a mistake to
23 order that, because if you order the person the
24 long-term treatment, let's say, they leave, six
25 months later they leave treatment, if you're

1
2 going to punish the person for failure to
3 complete the judge's order, well, then you've
4 already overvalued the case. You've overvalued
5 the case and it would be wrong to do that
6 because you're punishing someone for leaving
7 treatment when they've been there for six months
8 but the real value is, they pay for one
9 drug-education class or a day of community
10 service. If you don't punish the person, then
11 you're not backing up the order. If you issue
12 an order -- backup. So right from the
13 beginning, that treatment mandate has to be
14 reasonable in light of the crime charged and the
15 defendant's record and it's the role of the
16 defense lawyer to argue the Court that any
17 treatment mandate should be voluntary, not
18 mandated under those circumstances in view of
19 the minimal value of the crime charged. Third,
20 the treatment mandate must be one that the
21 defendant can reasonably be expected to complete
22 successful. If you have a cookie-cutter
23 approach, okay, and you can't reasonably expect
24 every defendant to complete it because it's a
25 cookie-cutter approach where everybody either

1
2 goes to residential or everybody goes to
3 outpatient, it's going to be unsuccessful.
4 Because some are going to need residential
5 because of their addiction and some are going to
6 want outpatient because they're working and need
7 to support their family. The more programs you
8 have to link a person, the better chance you
9 have to match the right person with the right
10 program for success. If you have a single
11 mandate and everybody goes into one program,
12 what's going to happen is, you're going to get a
13 number of treatment failures and defense lawyers
14 are going to believe that the court is simply
15 there to set up their clients for failure.
16 Fourth, defendants' compliance must be monitored
17 closely by the Court and defendants must know
18 they're being monitored closely. It doesn't
19 really involve defense lawyers. It is
20 important, monitoring is important for the Court
21 and for the defendants primarily. The fifth
22 principal, and I'd be happy to answer your
23 questions, if you're interested. Fifth
24 principal is, and basically, it's a principal we
25 followed but I hate to tell you, I came up with

1
2 this last night, so the tag line is not so good.
3 If you're going to work with people, you have to
4 work with people. I kind of like it though
5 because at Red Hook, defendants are -- you have
6 to understand, defendants are members of your
7 community. They're members of your community
8 before they are brought into court, while they
9 face charges in court, and after the case is
10 over, they are still members of your community.
11 Everybody who comes through our front door is
12 treated with respect. It's something our court
13 officers have wanted to do from day one. The
14 BBC did a five-minute special on how people are
15 treated at our front door. If you agree to do
16 treatment, you have to understand that
17 overcoming an addiction is difficult. There
18 will be a number of -- one example I wanted to
19 give you, before I worked at Red Hook, I had the
20 privilege of sitting next to another judge, a
21 friend of mine, okay, a defendant agreed to do
22 treatment for heroin addiction, the case is
23 adjourned two weeks out for an intake at the
24 program. Okay. I'm in court one week after his
25 first arrest and after -- so after his first

1
2 arrest, he is re arrested for possession of a
3 small amount of heroin. The judge says to him,
4 you are continuing to commit crimes, I should
5 send you to jail. And I'm sitting next to this
6 judge thinking, well, what do you expect, he
7 hasn't even started treatment yet. As far as
8 I'm concerned, it shouldn't surprise you if
9 someone is arrested every day until they've
10 started the program and then maybe depending
11 upon their addiction, a week or two into that
12 program -- low-level drugs, you're talking about
13 low-level heroin or cocaine, you're not talking
14 about somebody selling it to get clean, I don't
15 see how you could be upset with that. If you're
16 going to work with an addict, that's what
17 addicts do. If he hasn't started treatment, he
18 is going to continue to use drugs, if he
19 continues to use drugs, there's a chance he
20 might get arrested. It will be nice if he
21 weren't arrested every day you saw him, but is
22 there a chance he is going to do that, yes.
23 Until he has been in the program sufficiently
24 enough for you to say, you know, it's time for
25 you to start getting clean, or we've got to take

1
2 another approach, the next approach may be
3 residential treatment. The outpatient isn't
4 gonna to work, then maybe he has to do
5 residential treatment. Okay. The sixth and
6 last principal for a successful problem-solving
7 court, is that court sanctions for failure, for
8 ultimate failure to complete the treatment
9 mandate must be -- if every treatment failure
10 gets the maximum sentence then the defense
11 lawyers are going to try to persuade the
12 defendant from entering treatment and you may no
13 longer have a treatment court, which is why
14 maybe this should be the number one principal.
15 I know there was a court in California, which
16 was an opt-in court and everybody got maxxed out
17 so nobody got opted in anymore and they'd close
18 the court. As a defense lawyer, I saw
19 defendants at their worst, detoxing in the cells
20 their lives completely taken over by the
21 addiction, they would go to jail for a short
22 period of time; when I was a Legal Aid, we
23 didn't even have treatment. Drug addict going
24 in, drug addict coming out. As a judge in the
25 community court, I've seen people go from

1
2 shaking in court literally as they detoxed --
3 quite frankly, I'm not 100 percent sure they
4 know what I'm saying to them -- towards getting
5 clean, staying clean, reconnecting with their
6 family, obtaining a job, getting married and
7 having children. If properly set up,
8 problem-solving courts can safeguard defendants
9 right and offer a better resolution of cases
10 better for the courts, better for the community,
11 better for victims, better for the defendant and
12 the defendants' family and it's a system that
13 produces real justice for families and
14 communities, a system that we can all be proud
15 of. Thank you.

16 MR. JONES: Thank you, Judge.

17 MS. KELLEY: Are we to understand
18 that you would characterize your court as a
19 community court rather than a problem-solving
20 court or are you both?

21 MR. CALABRESE: We're both. I think
22 -- we're actually a community court. I like the
23 term "justice center," because literally the
24 courtroom is just one pillar of probably four
25 different main pillars you would call, people

1
2 literally come in for community meetings and
3 youth programs -- have nothing to do with the
4 court.

5 MS. KELLEY: So in your building, you
6 don't need to be charged with a crime in order
7 to access those services?

8 MR. CALABRESE: No. No, not at all.
9 In fact, probably -- get repairs done in housing
10 court and stuff like that.

11 MS. KELLEY: In many of the other
12 models, which have been described to us, the
13 prosecutors perform the primary gate-keeping
14 function. Are you the gatekeeper in your court?

15 MR. CALABRESE: I would consider
16 myself the gatekeeper because I'm the one that
17 decides whether to give people an opportunity to
18 do treatment or whether the charges are too
19 serious, so that's my gate keeping. The
20 prosecutors' function in our court is sometimes,
21 I don't know if you really call it gate-keeping,
22 but sometimes obviously the reduction of a plea
23 from an A misdemeanor to a violation or an ACD
24 is very, very important especially with someone
25 with no record, a young person in college,

1
2 things like that and their role becomes much
3 more apart of that process. I guess I would
4 call myself the gatekeeper.

5 MS. KELLEY: If a defense attorney
6 decides to litigate, for instance, a suppression
7 issue, can that attorney litigate the issue in
8 front of you?

9 MR. CALABRESE: Absolutely. It's
10 completely their choice. If we see treatment as
11 just an option, you know, there's always
12 community service, you know, lawyers would argue
13 for different things, but that's really where I
14 put treatment as an option and if they don't
15 want it and they want to fight the case, I'll
16 hear it like a regular case, sometimes I'll set
17 bail, sometimes I won't. There's no punishment
18 for not doing treatment. Quite frankly, there's
19 a tendency when lawyers are litigating cases to
20 make sure that as a judge that you're giving
21 them every fair and reasonable opportunity to do
22 something. In other words, if you have this --
23 treatment, you want to make sure that you are
24 not forcing people into treatment so you're
25 making sure that you're giving them a fair

1

2 opportunity to fight the case.

3 MS. KELLEY: If the pretrial issue is
4 lost, then is treatment still an option?

5 MR. CALABRESE: Yes. You may or may
6 not get a dismissal from the People. You know,
7 district attorney Charles Heinz is very
8 innovative. I think he is the most innovative
9 district attorney in the country. The reason
10 why I say that is because, there are more of
11 these problem-solving courts in Brooklyn and
12 there is a reason for that because he is on
13 board, the sex-offender court, the mental health
14 courts, community courts, I don't know any
15 jurisdiction that -- a lot of times they will
16 agree to dismiss the case. And New York law, if
17 you're convicted of an A misdemeanor possession,
18 there's a six-month license suspension which
19 sometimes affects -- so that dismissal can be
20 major. Obviously if they have a record, it's
21 not as important as lawyers but sometimes it is
22 important to the defendant, you know, on their
23 17th case to get it dismissed by the prosecutor,
24 it's important to them. So, you know, that's
25 what they were considered to do.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. SHIFMAN: I have some questions.

The statistics on cases that you gave, 4,000 misdemeanor cases come through your court?

MR. CALABRESE: And we keep the cases.

MS. SHIFMAN: And an additional 12,000 plus summons cases come through?

MR. CALABRESE: Yes. Open-alcohol container is a big one in Red Hook, yes.

MS. SHIFMAN: And the treatment that you're talking about, you said there are 120 people at any time being treated.

MR. CALABRESE: Adults.

MS. SHIFMAN: So of the misdemeanor cases, the 4,000, how many of those are drug cases?

MR. CALABRESE: If I had to guess, that probably came through, 45 percent came through as drug possession cases.

MS. SHIFMAN: So like 18 or 1,900 cases come through, 120 people are being treated?

MR. CALABRESE: Right.

MS. SHIFMAN: And the other 1,700

1

2 people, what kind of dispositions are coming
3 through?

4

MR. CALABRESE: Some could be
5 fighting the case, some could get drug education
6 classes if it's a first arrest. Again, you
7 know, ordering someone to do treatment on a
8 first arrest, you have to be very careful
9 because you'd be valuing the case more than the
10 justice system would value the case downtown.
11 So we'd rather do drug-education classes and
12 then try to engage them voluntarily. Sometimes
13 what I will tell them is, look, if you've got a
14 heroin or cocaine addiction -- drug education
15 classes -- but you can work with our social
16 workers in that class to figure out what program
17 you need, we will help you get into that program
18 but it's voluntary.

19

MS. SHIFMAN: And the 12,000 summons
20 cases that come in, is there an assessment made
21 about whether or not they are a drug user as
22 well?

23

MR. CALABRESE: They would very
24 rarely come in as a drug case. I would, I can't
25 even think of a drug case. The only kind of

1

2 assessments that we'll do on those is, we'll do
3 referrals to youth court which takes you right
4 out of the criminal court process -- for like
5 possession of a box cutter in school, fighting
6 in school, things like that, parent in the
7 courtroom, I'll usually bring -- find out what
8 the issues are, can make a referral if it's
9 appropriate for youth assessment. You know,
10 there are a lot of things we can do with the
11 social-work staff on site. It really depends on
12 how out of control the teenager is, what the
13 charge is and, again, you've got to be careful
14 not to overvalue. I'd rather refer them to
15 youth court because youth court is voluntary,
16 it's voluntary but it would be a mandate of the
17 court -- address any sanctions there and then
18 the criminal court case you get dismissed.

19 MS. SHIFMAN: Let me ask a few other
20 questions to clarify. Because you're calling
21 the community court a problem-solving court.

22 MR. CALABRESE: Yes.

23 MS. SHIFMAN: We've heard a lot of
24 testimony both here and other jurisdictions
25 around the country about problem-solving courts

1
2 being along the lines of the drug treatment that
3 you're talking about either pre plea or
4 post-plea-drug treatment programs, the success
5 at the end --

6 MR. CALABRESE: Yes, we do all that.

7 MS. SHIFMAN: But a lot of the cases
8 that are coming through, the vast majority of
9 the cases that are coming through, a court that
10 you're calling problem-solving court are really
11 not the traditional problem solving type of
12 cases.

13 MR. CALABRESE: We don't take a
14 problem-solving approach. But we do take a
15 problem-solving approach on those 4,000 on line
16 cases where appropriate with, again, about
17 45 percent drug cases. The number that I think
18 that is a large number and surprised everyone
19 would be how many people we have in treatment at
20 any given time, that's 120. To my
21 understanding, that's a pretty large drug
22 treatment population -- in misdemeanor court
23 because the hammer is not so great. But, you
24 know, you see the cases come through and
25 obviously, you know, I'll see people with

1

2 lengthy records, I will see people -- it's a
3 little off track. It amazes me that I will ask
4 people, you know, charged with possession of
5 drugs, but the addiction clearly goes back to
6 the eighties, have you ever been in drug
7 treatment, they say no -- yeah, the parole had
8 something that if you went for six weeks, you
9 might get out early, which is not really drug
10 treatment. I mean, when I have the visitors,
11 one thing I say is, what kind of a business
12 model is this; forget about compassion and
13 justice. It's like designed to produce
14 recidivism. So we have a number of people with
15 lengthy records, women with prostitution
16 records, both men and women of drug possession.

17 MS. SHIFMAN: You said you served a
18 community of 200,000 people and based on the
19 other numbers that you gave us, at any given
20 year you've got -- percent of the population
21 coming through on summonses and misdemeanor
22 cases. Do you think since -- do you think since
23 the creation of the community court in Red Hook
24 that you've actually seen more law-enforcement
25 action and arrests in bringing people through

1

2 the court for 12,000 plus summons type offenses?

3

4 MR. CALABRESE: I never compared our

5 summonses to downtown, if you're asking me what

6 I would guess, I would guess no. I mean,

7 there's no, there's been no police response that

8 says, all right, now we've got a community

9 court, let's galvanize Queens resources, that is

10 not -- since we started, there's never been an

11 increase in the number of offices or anything.

12 So that has not happened. And I think that

13 again, you know, the summons cases, there's not

14 really very much punishment attached to these

15 summons case. What we'll do is, we'll ACD them

16 with the quality of life, it's a class that they

17 go through. If they want to do that, it gets

18 them -- it's about a half-hour class discussing

19 how some of these issues affect the quality of

20 life -- they literally run it. Some will say,

21 you know, it doesn't affect anybody but it's

22 interesting because you've got one person

23 talking about, you know, I still have my dog off

24 the leash -- and another person will say, you

25 know, I'm scared of dogs and I can't go to the

park because I'm afraid of dogs. It's small but

1

2 that's how they resolve it. The most important
3 thing on those cases in my view is not to
4 criminalize people for these kinds of offenses.
5 Actually, a lot of offenses -- unclassified
6 misdemeanors, park rules and regulations, being
7 in the park -- it's actually a misdemeanor,
8 amazingly.

9

MR. SCHECHTER: I just had a question
10 I was in a court in Florida, drug court, where
11 it was a status conference and the judge had the
12 report in front of me and it was clear that the
13 defendant at that point had relapsed and had
14 actually been in court and arrested with cocaine
15 so the judge with the defendant in the court
16 with his attorney next to him said that the
17 defendant, what happened, and the defendant
18 replied, he said, well, I screwed up, you know,
19 I got upset, I had a fight with my girlfriend, I
20 went out and got some coke, et cetera, et
21 cetera. This went on for about two minutes, the
22 defense attorney didn't say anything. My
23 question to you is, how do you handle that
24 situation --

25

MR. CALABRESE: A lot of times when

1

2 they test positive is in the program or in our
3 court because we test people when they come to
4 court. The defendants are not going to be re
5 arrested. Again, I'm dealing with misdemeanors
6 here. So the lawyers know that the defendant is
7 not going to be re arrested for and charged with
8 possession of cocaine or heroin based upon a
9 positive test in court. And I think they also
10 realize, look, if you're agreeing to do
11 treatment, then your client is going to be
12 tested. So you have to know what's going to
13 happen if my client tests positive. Now, some
14 of this probably comes on the reputation of the
15 court and some of this probably comes on the
16 reputation of the judge and some of this
17 probably comes on, you know, what has the
18 prosecutor done in the past. Anybody
19 participating in any drug court is going to be
20 tested. And so it's appropriate to have
21 questions like, what happened.

22 MR. SCHECHTER: You would talk to the
23 defendant in open court, court reporter going?

24 MR. CALABRESE: Yes, because I think
25 that's actually very effective.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. SCHECHTER: Here's my question, the defense attorney is not part of the team, he doesn't want to be part of the team, shouldn't be part of the team due to the principals you enunciate. How is the defense attorney protecting his client?

MR. CALABRESE: Because there's already been a plea on the case. I would never ask if there's an open case, never. In fact, that's what I mean by sometimes, you know, sometimes, if someone is on parole or probation, the district attorney may agree to dismiss upon completion of, you know, six months intensive outpatient treatment but they will do that without the defendant pleading guilty. So just as a condition of release sometimes, defendants will be placed in the treatment; it actually works out great for them because when they're telling the parole officer their new case -- I started here, I started, so the defense lawyer likes that approach and the case ends up getting dismissed but we have to be very careful about what to put on the record, so we are. So if there's a mistake made by the clinician, that

1
2 could be restricted from the record and both
3 sides know that I would do that. In your case,
4 the example you gave, if there is going to be a
5 new prosecution based upon someone testing
6 positive in a program, then the defense lawyer
7 would be jumping in and saying, don't answer
8 that question. But that case has been resolved
9 so there's no -- and there are times when it's
10 reported that the defendant tested positive but
11 the defendant wants to fight that. So either
12 the lawyer or the defendant will say, you know,
13 he doesn't agree, he disagrees with that test so
14 we will take it from there, sometimes we'll
15 offer retests sometimes. It's done on a
16 case-by-case basis depending upon what the facts
17 are. But the lawyers, I believe, in Red Hook
18 have seen enough of a pattern where they know
19 there is not going to be a new prosecution and
20 they also see the effect, there's an undeniable
21 effect of the relationship between a defendant
22 who is undergoing treatment and the court.
23 Maybe it's simply because someone in authority
24 is paying attention to them, maybe it's because
25 someone is interested in them. Maybe -- and I

1
2 am, and I want to know about their kids and I
3 want to know how their kids are doing. I want
4 to know all that because I want to use, those
5 are the triggers for the person. And in fact,
6 sometimes, quite frankly, one, my favorite and
7 the first sanction I almost always use, if the
8 defendant is not doing what they need to do and
9 not being able to get clean, I'll have them
10 write an essay why it's important for you to get
11 clean. So they write the essay, it sounds like
12 the biggest slap -- here's what happens --
13 months later, they're still not getting clean
14 and I'm pulling out their essay, wait a minute
15 -- you said, you know, your 12-year old daughter
16 hasn't talked to you in two years. So then I'll
17 say to them, look, if you don't do what you need
18 to do in this case, you don't show up for the
19 program, yes, I could send you to jail for X.
20 But the thing is, especially the misdemeanor
21 court, and if I'm working with people that have
22 been arrested 10, 20, 30, 40 times, me
23 threatening to send someone to jail for 60 days
24 or 100 days, it's not the biggest threat in the
25 world. But then me saying, that's why I love

1

2 that thing because I know it's not the biggest
3 threat -- look, that's what could happen on this
4 case, but here's why you need to get clean and
5 you pull out and you read back to them a little
6 bit; I mean, it's personal, so you want to be
7 careful. You read it back to them, some of what
8 they said and what they basically wrote down is
9 their own -- then they're sitting there saying
10 you're right, you're right, I want my 12-year
11 old daughter to talk to me, my wife won't let me
12 see the kids, we used to have a great
13 relationship. These are all things that people
14 have written, I used to have a great
15 relationship with my wife.

16 MR. JONES: Judge, we're running past
17 the clock. Just a couple of issues I want to go
18 over with you before you pack up, one is, do you
19 hear family-court cases.

20 MR. CALABRESE: Yes. Juvenile
21 delinquencies.

22 MR. JONES: Do you consider yourself
23 an integrated court? I know we have used the
24 word "problem-solving," I know we've used the
25 word "community court," but it seems to me --

1

2

MR. CALABRESE: You've got to be careful when you integrate across jurisdictions, you have to be careful. Yes, we are sometimes.

5

6

MR. JONES: So are you one judge for one family in the sense that the integrated domestic-violence court is one judge, one family?

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

MR. CALABRESE: Or hoping that they don't, you know, come across, come in front of me on three jurisdictions, occasionally they do. But, again, the model is designed to work with the community, in other words, we're designed to figure out ways to assist them. Now, it may sound kind of patronizing or something but if you're on your seventh order to show cause and any other housing court would have thrown you out and here's the judge saying, let's talk about what the issues are and why you're really not able to pay the rent, what you're doing with public assistance. It's better that you and your five kids --

23

24

25

MR. JONES: But it is possible I could be appearing in front of you on a criminal matter -- and a housing-court matter. It's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

possible.

MR. CALABRESE: It's possible, yes.

So the judge has to be careful in those kinds of context, yes.

MR. JONES: The other question I

had --

MR. CALABRESE: If it ever gets, if

the Court feels it ever gets too much, there's always the ability to recuse yourself. In community court, every once in a while you have got to recuse yourself.

MR. JONES: How often does that

happen, recusal?

MR. CALABRESE: I would say maybe

twice a year because I know people from the community.

MR. JONES: What's the basis for

recusing yourself?

MR. CALABRESE: If I think it would

look like the person was receiving treatment, was receiving a benefit, it's the appearance --

MR. JONES: It's the appearance.

MR. CALABRESE: It's the appearance

of impropriety --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. JONES: What percentage of the people that come in front of you are poor and are low-income class folks?

MR. CALABRESE: I would say the majority of the people who come into the lower-economic category.

MR. JONES: Are you talking 90 percent?

MR. CALABRESE: Well, we hear domestic-violence cases which goes across all -- driving with suspended license cases which goes across all, I guess if I had to guess, between 65, around 65, maybe 70.

MR. JONES: And what percentage --

MR. CALABRESE: I'm only talking criminal cases, right? You're not really talking --

MR. JONES: I'm talking about the criminal cases, not the DAT's.

MR. CALABRESE: Yeah.

MR. JONES: What percentage of those same cases are people of color, black or brown folks?

MR. CALABRESE: I would say a good

1

2 85 percent, if I had to guess.

3

4

MR. JONES: Those numbers don't
surprise me.

5

6

MR. CALABRESE: I know. I worked for
120 Schermerhorn Street --

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. JONES: The question I really
have, one of the things that sort of raised my
hat, I heard it all day, is this notion of
needing a hammer to motivate people. Because it
seems to me that rich people sell drugs and rich
people use drugs and rich people, and white
people sell drugs and white people use drugs and
it seems as though in large measure we find ways
to motivate them without putting them in the
context of the criminal justice system without
having to have that same motivational hammer.
And I'm wondering if you think that
problem-solving courts continue to be over
utilization of the criminal justice system?

MR. CALABRESE: I'm not so sure I
agree that they get motivated to get clean. I
think maybe they don't come in contact with the
justice system. But I'm not so sure they solve
their problems on their own.

1

2

MR. JONES: I mean, the people tell me they do outbound, they do other things that get you to the same place but without having the -- of the criminal justice system or the hammer coming down.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. CALABRESE: I would question the nature of their addiction, whether it was a true addiction. And I would be surprised if, if the majority of them could actually say that they've addressed their addiction. That would really surprise me. But the other part of that is, I don't think so. I mean, I think that the people are brought through our back door and I think that in most of those cases, what you're trying to do is figure out what they need to get back on track and it is, as social workers tell me, a strength-based model, it's not a punitive model. The one thing about Red Hook is that, I don't have that big a hammer and I've got misdemeanor cases. And again, I'm also conscious of not maxxing anybody out, the fact that the few times I would max somebody out, I would tell the lawyers right up front, it's one-year treatment or one-year jail -- half the time if I'm doing a

1

2 large amount of jail, I'm telling the defendant,
3 look, take this plea. You want to do it, that's
4 fine -- but you could probably, if you want to
5 just take this to get out, another thing is,
6 jail, corrections doesn't deliver, they just
7 pick up. So I put someone in treatment, they're
8 not in jail. So they are released. So they are
9 told up front, look, if you're just taking this
10 plea to get out, you may be able to get a better
11 deal in a few days, I'll hear your lawyer on
12 bail, I may not. But half the time I will be
13 talking to them about they may want to go
14 downtown, if you're looking to get out -- they
15 will get a better deal from downtown than if you
16 were to take a plea.

17 MR. JONES: We appreciate you being
18 here and the generosity of your time.

19 MR. CALABRESE: Thank you for having
20 me.

21 (Time noted: 6:03 p.m.)

22 Subscribed and sworn to
23 before me this _____ day of _____, 2008.

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, SHANASIA ILGNER, a Shorthand Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

SHANASIA ILGNER

1 April 30, 2008

2 E R R A T A

3 I wish to make the following changes, for the
4 following reasons:

5 PAGE LINE

6 _____ CHANGE _____
7 REASON _____

8 _____ CHANGE _____
9 REASON _____

10 _____ CHANGE _____
11 REASON _____

12 _____ CHANGE _____
13 REASON _____

14 _____ CHANGE _____
15 REASON _____

16 _____ CHANGE _____
17 REASON _____

18 _____ CHANGE _____
19 REASON _____

20 _____ CHANGE _____
21 REASON _____

22 _____ CHANGE _____
23 REASON _____

24 _____ CHANGE _____
25 REASON _____

_____ CHANGE _____

_____ CHANGE _____

_____ CHANGE _____

_____ CHANGE _____

Judge Alex Calabrese
Transcript Edits
New York
Wednesday April 30, 2008

page 350, line 9
the "- -" should be "reasonable"

page 354, line 7
"Heinz" should read "Hynes"

page 358, line 14
after the word approach, please add: "on summons cases."

page 360, line 8
please change the word "Queens" to "police"

