

NATIONAL ASSOCIATION  
OF  
CRIMINAL DEFENSE LAWYERS

PROBLEM-SOLVING COURTS  
TASK FORCE MEETING

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NACDL PROBLEM-SOLVING COURT TASK FORCE ATTENDEES:

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- MR. RICK JONES, Co-Chair
- MR. JAY CLARK, Co-Chair
- MR. MARVIN SCHECHTER, Co-Chair
- PROF. ADELE BERNHARD, Member
- MS. ELIZABETH KELLEY, Member
- MS. GAIL SHIFMAN, Member
- MS. VICKI YOUNG, Member
- MR. SCOT EHLERS, NACDL Staff
- MR. EDUMUNDO MARQUEZ, Fordham Law School Student
- MS. ANNIE CHEN, Fordham Law School Student
- MR. JUSTIN BERNSTEIN, Fordham Law School Student

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1           MR. JONES: All right. We are going to start, a  
2 few minutes early, just because experience has taught us  
3 that we want to make sure we have as much time as possible  
4 to engage with our presenters and our witnesses.

5           And so I want to just sort of dispense as quickly  
6 as possible with my opening remarks, although some of them  
7 are more important than others.

8           We appreciate everyone for being here. And we  
9 are excited about the testimony that we are going to hear  
10 today, and the conversations we're going to have. My name  
11 is Rick Jones, and I am one of the co-chairs of the National  
12 Association of Criminal Defense Lawyers Special Task Force  
13 in Problem-Solving Courts. I'm from New York. And in a  
14 moment I will ask all of my colleagues to introduce  
15 themselves and tell you where they're from as well.

16           The genesis of this task force came out of the  
17 Board of Directors meeting we had in Cincinnati. And at  
18 that time it was thought that on the, what we believed was  
19 about the ten year anniversary of the creation of the first  
20 drug court, that it would be a good idea for us to examine  
21 sort of where they are, in the life of drug courts and other  
22 specialty courts with problem-solving courts, in 2008 and  
23 going forward.

24           So we have decided to go on sort of a national  
25 listening tour, in every region of the country. We have, we

1 started out interviewing witnesses in San Francisco. We did  
2 a full day of hearing in Miami. And now we're looking  
3 forward to a full day of hearing in Tucson.

4           Going forward, we will be in New York, and also  
5 in other parts of the midwest and south. So we're excited,  
6 we look forward to today.

7           There are just a couple of people who I think we  
8 need to acknowledge. Carmen Hernandez, who's the president  
9 of NACDL, and Norman Reimer, the executive director, are not  
10 here, but along with the executive committee, they have been  
11 enthusiastic supporters of our work, and we are appreciate  
12 that.

13           Scott Ehlers, who is right now serving as our  
14 cameraman, is really a jack-of-all-trades, and is the point  
15 person for the task force. But for Scott, none of us would  
16 be here today. He really takes care of everything for us,  
17 in terms of acquiring speakers, getting a location, keeping  
18 us moving in the right direction, maintaining the Web site,  
19 staying on top of all of the mountain of testimony and  
20 evidence that we accumulate as we go. So a big thanks to  
21 Scott, we couldn't be here without him.

22           And we are fortunate this semester -- and I say  
23 semester, because we have the benefit of three really  
24 tremendous law students who are working with us, and who  
25 come to us from Fordham Law School, under the direction of

1 Professor Bruce Green, who is the chair I believe of the  
2 Stein Center for Law and Ethics at Fordham Law School.

3 The students have really been incredibly helpful  
4 to the task force. They have done everything from indexing  
5 and digesting the mountain of testimony and evidence we've  
6 accumulated to helping us focus on questions, and  
7 formulating questions for our witnesses, to thinking,  
8 pulling back and thinking about policy issues, and helping  
9 us frame and think, think sort of broadly about the policy  
10 questions involved here, as well as doing work on the  
11 ground, going and observing the actual functioning of the  
12 courts both here in Arizona, and back home in New York.

13 So we want to really sort of take a moment to  
14 recognize them. I think they're sitting behind me, I'd just  
15 ask that they stand up. They are Justin Bernstein, Annie  
16 Chen and Edmundo Marquez. And if we could just give them a  
17 round of applause.

18 (Applause.)

19 MR. JONES: They've really been phenomenal. I'd  
20 also like to, at the outset thank our stenographer, Janice  
21 Fuller, and in our ongoing relationship with Hudson  
22 Reporting. They have been tremendous, and we have tried to,  
23 we have tried to make lots of breaks in our schedule to  
24 accommodate Janice, but I've told her, that if she needs to  
25 stop, she should just let us know at any time, and we'll do

1 that. And I'm sure she would say also that she would like  
2 for everyone to speak in a loud, good voice, so that we get  
3 everything accurately into the record.

4 I think that's a good time for me to stop and  
5 allow the other members of the task force to identify  
6 themselves. So why don't we start with the far end with  
7 Vicki, and just go down.

8 MS. YOUNG: Hi, my name is Vicki Young, I'm an  
9 attorney in California. I practice in San Francisco and  
10 Palo Alto.

11 MS. SHIFMAN: I am Gale Shifman, also an attorney  
12 in San Francisco.

13 MR. SCHECHTER: Marvin Schechter, New York City.

14 MS. BERNHARD: And my name is Adele Bernhard, and  
15 I'm from New York City, also. I teach at a law school in  
16 New York, and I have a criminal justice clinic there.

17 MR. CLARK: I'm Jay Clark, I practice and live in  
18 Cincinnati, Ohio.

19 MS. KELLEY: I'm Elizabeth Kelley, and I'm from  
20 Cleveland.

21 MR. JONES: Okay. The way this is going to run  
22 is that we will have a panel every hour, going through the  
23 day, and some will be a collection of folks, and others will  
24 be individuals.

25 Our first panel will be Judge Meyer, who is here,

1 and who we're very happy about. The way that it works is we  
2 will give each of our presenters, each of our speakers,  
3 about five or ten minutes to make an opening statement,  
4 after which we will engage in questioning.

5 And the questioning will be conducted by the task  
6 force members. And each one of our blocks will have a  
7 primary questioner, for each one of our presenters. One  
8 task member has been assigned primary responsibility for  
9 questioning each of the speakers. They will lead off with  
10 questioning, but then we will open up into a broader, a  
11 broader discussion, which leads me to my introduction.

12 And let me just say about these introductions,  
13 these introductions in no way do credit to the distinguished  
14 careers and lives that our speakers have had. They are  
15 really more by way of reference, and to put in context for  
16 you all the conversations that you will hear.

17 So let me start by welcoming Judge Meyer, and  
18 tell you that Judge William Meyer is retired from the Second  
19 Judicial District of Colorado, in Denver, where he sat for  
20 16 years. He is currently the senior judicial fellow of the  
21 National Drug Court Institute, as well as an arbiter with  
22 the Judicial Arbiter Group.

23 Judge Meyer also previously served as a Deputy  
24 District Attorney in Denver, and has taught in numerous  
25 capacities. We are very pleased today to have Judge Meyer



1 with us, and the floor is now yours.

2 JUDGE MEYER: Thank you very much. And thank  
3 you, committee members, for inviting me. I have a short  
4 Powerpoint here, might be somewhat hard for you to see. I  
5 also have a handout, a monograph on Constitutional issues,  
6 which Scott can give to you.

7 I want to talk about several areas. I'll kind of  
8 start with this cartoon. "Aren't you supposed to be doing  
9 your homework?"

10 "I'm pretty sure the assignment was optional."

11 "Denial springs eternal."

12 "It's not denial, I'm just very selective about  
13 the reality I accept."

14 The reality is, my position here is as a  
15 representative of the National Drug Court Institute. I can  
16 tell you that the statements that I make, many of which are  
17 going to be prescriptive, are backed by the leadership, the  
18 CEO of the National Drug Court Institute, but have not been  
19 adopted by the Board. They are in front of the board at  
20 this time, and I hope for adoption.

21 I want to talk to you about three primary areas.  
22 First area is the First Amendment. Second area is the  
23 Fourth Amendment, and the third area is the Fifth Amendment.

24 I've tried to get information and case law from  
25 around the country, but as you know, doing a national search

1 can be rather daunting. I would ask for your assistance as  
2 well. Give me cases that you think are particularly  
3 indicative of some of the issues arising in the  
4 problem-solving court field.

5 First Amendment, if you're familiar with drug  
6 courts at all, you know that many courts use AA and NA  
7 programs as an adjunct to treatment. And the real issue  
8 involves when you mandate somebody going to an AA or NA  
9 program, what does that mean in terms of the establishment  
10 clause on the First Amendment?

11 Because the 12 steps, there's three of them.  
12 Each of them refers specifically to a higher being, a deity.  
13 And frankly, many drug courts are panicked, panicked by the  
14 thought that they cannot use 12 Step Programs, because  
15 they're a violation of the First Amendment.

16 The cases are in my outline. There are 20 or 25  
17 cases now that hold that mandating somebody to a 12-Step  
18 deity-based program or higher power program is a violation  
19 of the First Amendment.

20 So if this is what we're really looking at, I  
21 don't know, but there are some things that drug courts can  
22 do, and should do, to ensure that defendants' and  
23 participants' First Amendment rights are protected. And  
24 that is provide alternatives.

25 Case law such as O'Connor versus California, In

1 Re Restraint of Garcia, say, hey, you can have somebody go  
2 to a 12-Step program that is deity-based, as long as they  
3 have an alternative that is nondeity based.

4 One of the complaints I've heard going around the  
5 country is that there aren't those type of programs  
6 available in the rural areas. That is not true. That is  
7 not true. Many of these programs now are Web-based, and  
8 therefore they can be involved in a 12-Step, nondeity  
9 program, on the Web. So that is available.

10 What I'm recommending is that judges and other  
11 drug court professionals take an active role to ensure that  
12 alternatives are available. And to the extent that they're  
13 not available, the judges cannot mandate somebody into one  
14 of these programs, unless they desire to go to such a  
15 program.

16 Okay. Two other issues are area restrictions and  
17 association restrictions. Virtually all drug courts use  
18 them now. What is concerning to me is ensuring that such  
19 restrictions are narrowly drawn, so the individual knows  
20 exactly what is or is not prohibited. And these are various  
21 factors that should be used in determining a place or an  
22 area restriction.

23 Many of you are familiar with the fact that your  
24 police now have mobile data terminals in their cars. And  
25 therefore they can quickly check whether an individual is

1 supposed to be in that location.

2 So you've got to watch who you hang out with,  
3 obviously on association restrictions. They have repeatedly  
4 been held to be Constitutional. So I think about this  
5 cartoon: "You ever get that urge, Frank, it begins from  
6 looking down from 50 stories up, thinking about the  
7 meaninglessness of life, listening to the dark voice deep  
8 inside you, and you think, should I, should I, should I push  
9 someone off?"

10 Okay, undoubtedly you're aware of Samson versus  
11 California, it came down in nineteen, or 2006, that said in  
12 parole cases, which also translate into probation cases,  
13 search waivers are Constitutional. Many drug courts require  
14 as a condition of participation in the drug court Fourth  
15 Amendment waivers, okay? Fourth Amendment waivers.

16 And now we have clear US Supreme Court authority  
17 approving that. But we're also starting to see mandating  
18 search waivers in, as a condition of bond. And I think of  
19 this cartoon for that: "Mr. Fernwalter, I'm going to remand  
20 you to the custody of your nephew. Bear in mind, if you do  
21 fail to appear back in court next Wednesday, your nephew  
22 will take your place in jail."

23 "Gee, judge, that's awful nice of you, thanks,  
24 thanks, thanks so much. Hey, is this a great country or  
25 what?"

1 I think that mandating a search waiver as a  
2 condition of bond is problematic, very problematic. I'm  
3 aware of cases, here are several, that approve it, but I  
4 really subscribe to the decision, United States versus  
5 Scott, which gives an excellent analysis of both sides of  
6 the issue, and comes down with the fact that a search waiver  
7 probably is improper as a condition of bond.

8 Okay. Next area I want to move into is, due  
9 process. And there's several things I want to talk to you  
10 about involving due process.

11 And this is Dogbert and Dilbert, are called for  
12 jury duty: "What a stupid waste of my valuable time."

13 "It's your civic duty. It's the small dues you  
14 pay for living in a just and free society. Bid will be.  
15 And you get to play God with other peoples' lives."

16 "Well, they should say that in the letter."

17 Okay, due process. We're familiar with the  
18 standard analysis of when due process issues arise. And  
19 that's when the individuals potentially suffer a loss to a  
20 recognized liberty or property right. Then the question  
21 becomes, what process is due?

22 We know that many drug courts work on a contract.  
23 And we're starting to see cases come out, like Wilkinson  
24 versus State, and Laxon versus the State, where people sign  
25 contracts, and they waive their ability, not only to such

1 things as search waivers, but appellate rights, to move to  
2 recuse the judge, even such things as good time credit.

3 First of all, those waivers in my mind have to be  
4 particularly careful that they are knowing, voluntarily,  
5 intelligently given. There is some case law there, one case  
6 in particular out of Florida, that indicates that some of  
7 these rights are not waivable beforehand. Some of them are  
8 not waivable beforehand.

9 So when we talk about participation in the drug  
10 court, and being terminated from drug court, the issue  
11 arises, what type of rights does an individual have before  
12 they're terminated from drug court?

13 We know under Gagnon versus Scarpelli, when we  
14 look at probation termination or revocation, probable cause  
15 determination, written notice, right to appear,  
16 cross-examine and call witnesses, independent magistrate,  
17 and written factual findings, although the written factual  
18 finding may be just assigned in de minimus, it's a pretty  
19 truncated and abbreviated situation. No right to counsel,  
20 by the way, is required.

21 So I think about this cartoon: "He wants a  
22 lawyer, what cell do we keep the lawyers in?"

23 First of all, I advocate that a lawyer be  
24 available to the drug court participant at any termination  
25 proceeding, and in fact at all drug court proceedings, at

1 all drug court proceedings.

2 We know that many states, many jurisdictions, do  
3 not have defense counsel present, nor the DA present. And  
4 they do that because it might be a diversion court, it's a  
5 free plea court, and frankly they don't have the resources  
6 with the overwhelming caseloads that they're faced with.

7 The CEO of National Drug Court Institute,  
8 National Association of Drug Court Professionals' position  
9 is that lawyers should always be present for the accused at  
10 any type of drug court proceeding.

11 So the question becomes whether revocation is  
12 the, on termination from a drug court, is the same as a  
13 revocation proceeding. In my mind, I believe that it's  
14 appropriate that you have exactly the same rights in a drug  
15 court termination proceeding, even though that judge may or  
16 may not be the sentencing judge, if the person is terminated  
17 from drug court, and their probation or their status is  
18 revoked.

19 I do think it affects the liberty right, and the  
20 same type of protections are deserved. I've got to say  
21 though, that that is not the feeling all the way around the  
22 country. It's very much in a state of flux. A recent case  
23 out of the state of Idaho is indicative of that state of  
24 flux.

25 The Court of Appeals in the state of Idaho said,

1 hey, you know, the person entered into a contract, and we  
2 are going to enforce the contractual rights, just like a  
3 plea bargain, they gave up the right to any type of  
4 termination hearing, and therefore we'll proceed according  
5 to contract.

6 They did make the comment though, to the  
7 contrary, in order to eliminate uncertainty, and the  
8 appearance of unfairness, we encourage courts to do so,  
9 meaning give the person a termination hearing, with the full  
10 panoply of rights.

11 What is recommended, however, is not the  
12 equivalent of what is required. State versus Rogers was  
13 reversed by the Idaho Supreme Court recently. And that was  
14 done this fall.

15 And what is interesting about the State versus  
16 Rogers case, Supreme Court case from Idaho is, they don't  
17 even talk about the contract analysis, that the Court of  
18 Appeals spent so much time on.

19 They also said that this is kind of a sui generis  
20 analysis and only applies to this particular case. So I  
21 don't know what that means for the other 43 drug courts in  
22 the state of Idaho.

23 Other states just flat out say, you're not  
24 entitled to it, although there's some contrary appellate  
25 authority in the state of Florida. Where I see states that



1 say there is no right to a termination hearing, they tend to  
2 be in the south, where they enforce the contractual rights.

3 I think the, in fact, I know my position, and the  
4 position of the executives at the National Association of  
5 Drug Court Professionals, is that if there's a termination  
6 hearing, whether sentencing or nonsentencing, you have a  
7 full panoply of rights as you would have at a revocation  
8 hearing, plus the right to counsel, irrespective of whether  
9 there's, irrespective of whether there's a contract.

10 Drug testing and due process, the only thing I'll  
11 say about this is that noninstrumented testing has some  
12 reliability issues. There should always be conformatory  
13 testing by TCMS, to ensure the reliability of these results,  
14 unless the drug court participant admits to use. If he  
15 denies that he uses, then he should be entitled to,  
16 absolutely entitled to a retest.

17 I'm not going to talk about the other types of  
18 testing, from saliva to hair, et cetera.

19 Due process and judicial impartiality. One of  
20 the areas that crosses not only the legal question of due  
21 process, but the ethical issues under the canons of judicial  
22 conduct is the impartiality of the judge.

23 The bottom line is, if you've been to a drug  
24 court, you know that there is a substantial amount of  
25 interface and colloquy between the drug court participant

1 and the judge. Moreover, the judge has a dramatically  
2 greater amount of information than a judge would have in a  
3 traditional situation.

4 And the question then arises, that if there is a  
5 termination, or if there is a petition to revoke, should  
6 this judge be the judge who makes that decision?

7 There is a great case out of Oklahoma, which I  
8 think takes the best way to resolve this dilemma. Let the  
9 individual defendant or participant make that decision.  
10 Because in many circumstances they will want that particular  
11 judge making those ultimate decisions, because that judge  
12 understands the individual, and the nature of the addiction,  
13 whereas Judge Roy Bean down the hall may not, and will bury  
14 the individual.

15 So let the judge make the decision, and have it  
16 in writing. Once again, NDCEI executive staff supports this  
17 position.

18 This is where I think drug courts are really  
19 missing the boat, frankly, and something that I'm pushing  
20 very hard for. Is an individual entitled to a hearing when  
21 sanctions are potentially imposed? And it's my position  
22 that they are, that they are, irrespective of what the  
23 contract may say.

24 I look at Gagnon versus Scarpelli, which is the  
25 probation revocation standard, and then when you start

1 looking at the cases where people are incarcerated, and  
2 there's some type of potential impact upon their good time  
3 or earned time, are those individuals Constitutionally  
4 entitled to a hearing under the due process clause?

5 Absolutely. So why shouldn't a person in drug court?

6 When I've given this presentation to, I don't  
7 know probably about a thousand drug court professionals  
8 around the country at this point, they think I'm a heretic.  
9 But realistically, those courts that have moved in this  
10 direction find that it works just fine. It is not a big  
11 disruption to the drug court process, and it is just simply  
12 not a problem.

13 I talked about that State versus Rogers case  
14 earlier. It also throws in some dicta, which I found pretty  
15 concerning. Intermediate sanctions imposed in these  
16 programs do not implicate the same due process concerns.  
17 And continued use of informal hearings and sanctions do not  
18 meet the procedural requirements articulated here.

19 If you're talking about jail, and many of the  
20 drug courts are talking about jail, not all of them, but  
21 many of them are, and some of them some pretty substantial  
22 time in jail, up to two weeks, not according the individual  
23 a hearing in my mind is straight due process violation.

24 Is it required around the various states? The  
25 answer is maybe, depends upon your jurisdiction. I think

1 ultimately it will be. I can see no other alternative. And  
2 drug courts ought to institute it immediately.

3 Equal protection. There are several cases that  
4 have raised the issue of equal protection. When I'm  
5 arrested in one county, the DA requires that I have a felony  
6 conviction, but if it was the county next door, I would have  
7 the benefit of entering into a drug court, and if  
8 successfully completing the program, withdrawing my guilty  
9 plea, or never getting a guilty plea, and having the case  
10 dismissed.

11 And those defendants have attacked the nondrug  
12 court jurisdiction on the basis of equal protection. And  
13 those attacks have failed all the way along the line. But  
14 they have not been raised in a state like New York, say, for  
15 instance, where the chief justice has mandated that there be  
16 a drug court in every single jurisdiction, county  
17 jurisdiction. So I think if that were the case there may be  
18 a different result.

19 I'll finish with this cartoon: "No, I don't  
20 think math is a science, I think it's a religion."

21 "A religion?"

22 "Yeah, all these equations are like miracles.  
23 You take two numbers and when you add them they magically  
24 become one new number. No one can say how it happens. You  
25 either believe it or you don't.

1            "This whole book is based upon things that have  
2 to be accepted on faith. It's a religion. And in the  
3 public schools no less."

4            "Call a lawyer."

5            "As a math atheist, I should be excused from  
6 this."

7            One thing is critically clear if you're dealing  
8 with problem-solving courts. They're not going to be able  
9 to somehow sidestep the Constitution. Yes, there are  
10 relaxed procedures in drug courts, but that does not give  
11 them the right to violate First, Fourth or Third Amendment  
12 clauses of the Constitution.

13            Thank you, and I'm open to any questions.

14            MR. JONES: Thank you.

15            MS. YOUNG: Okay. Judge Meyer, when you said  
16 that you had given this program to a thousand drug court  
17 professionals, is that primarily the judges, or the  
18 attorneys, or who do you do presentations to?

19            JUDGE MEYER: It's to different groups. I do the  
20 annual judicial training for drug court judges. We normally  
21 have about 60 of them, attending each year. And I give it  
22 to them then.

23            I travel around the country doing various  
24 presentations, to lawyers, treatment professionals, law  
25 enforcement, so it's a combination of the above. To really

1 get this across, it's got to be given to the judges.  
2 They've got to understand how critical this issue is, or  
3 these issues are.

4 MS. YOUNG: All right. But if you're giving them  
5 to the judges, they're already drug court judges, I assume?

6 JUDGE MEYER: Right.

7 MS. YOUNG: They've been doing it?

8 And as we're doing it, it's seems that the, a  
9 drug court starts out with certain assumptions and  
10 expectations, but then things may get modified because of  
11 the practicality of the caseload and staffing and  
12 everything.

13 In terms of how much time work is spent with the  
14 court or counsel, advising someone about what you're getting  
15 into when you get into drug court, are there any statistics  
16 or data about either how much time or is a separate court  
17 appearance allowed, or -- because you're talking about how  
18 many things are being waived, and it sounds nice when you  
19 talk about it on paper, and it's another thing when you see  
20 a room full of people and everybody in five minutes will  
21 then be in drug court. So is there a disconnect?

22 JUDGE MEYER: I don't think there's a disconnect.  
23 All you can do is try and re-enforce what best practices  
24 are.

25 First of all, the initial advisement by the judge

1 should occur, but also by defense counsel. And there's a  
2 wonderful case out of Florida by a judge who used to be a  
3 drug court judge, Melanie May, on the obligations of lawyers  
4 on all sides to adequately inform the individual of the  
5 rights they're giving up.

6 That advisement, the first one and the second  
7 one, should not be the last advisement. As you know, many  
8 of the individuals we work with are still under the  
9 intoxicants, the influence of the intoxicants themselves, so  
10 you worry about whether or not they can give a knowing,  
11 voluntary and intelligent waiver.

12 So there should be some assurances that the  
13 individual is not still under the influence of the  
14 intoxicant. All I can say is this, in this area, by  
15 repeating the, what the individual's giving up, the more  
16 likelihood is that they're going to enter into an agreement  
17 knowingly, voluntarily and intelligently.

18 We also make very strong points about, you don't  
19 hand them something, and read it. The literacy rate with  
20 people that we deal with by and large is very low. So it  
21 needs to be translated, it needs to be read to them, it  
22 needs to be gone over, multiple times.

23 If the person is not doing well in the program,  
24 they don't understand seemingly the rules of the road, sit  
25 down and go over them again with them, so they understand.

1 I mean, drug court judges and professionals  
2 should want the individual to succeed. And the only way  
3 they're going to succeed is if they understand the program  
4 they're involved in.

5 MS. YOUNG: How is it impacted, because there is  
6 so much discussion required, so that people that are not at,  
7 not fluent in English, is that creating a barrier to  
8 nonEnglish speakers, fully participating in drug court?

9 JUDGE MEYER: It should never create a barrier.  
10 Where English is a second language, you should have  
11 translators readily available. With regards to programs  
12 themselves, programs should be sensitive to the ethnic and  
13 gender needs of the individual.

14 So in Denver, we tried to ensure that there were  
15 multiple programs that were for Spanish speakers, say for  
16 instance. But the resources frankly can be tough sometimes.  
17 They could be very difficult sometimes.

18 MS. YOUNG: And what is the experience if, let's  
19 say, someone -- well, someone was talking about something  
20 the other day, and they just said somebody appeared in  
21 court, and they spoke a language that they didn't have an  
22 interpreter for.

23 So in that particular case, they just had to  
24 dismiss the charge, but, you know, so it was a re-entry.  
25 But what happens when that person, maybe there's an



1 interpreter for the regular criminal court, but if they want  
2 to go into drug court, you're not going to have two  
3 interpreters, they only found one, how, what happens then?

4 JUDGE MEYER: You have to ensure that resources  
5 are available. You need equal access. Absolutely. It can  
6 not be based upon kind of a second tier, or second, second  
7 qualifications for getting into trouble.

8 And I think, frankly I think drug courts are  
9 pretty aware of those issues by and large. I know early  
10 on -- I became involved in drug courts in 1993. We were the  
11 12th drug court in the country. We have 2500 people in our  
12 drug court.

13 From about '96 to 2000, we saw a proliferation of  
14 drug courts, and I think people were jumping on the  
15 bandwagon because they saw pretty available money, and maybe  
16 this is a solution to the program, or the problem, and it,  
17 they just got involved, and didn't think about the  
18 consequences of what they were doing.

19 That is not what we're seeing now. What we're  
20 seeing now is a very structured planning process before  
21 people start opening drug court doors, to ensure the type of  
22 problem's that you're talking about do not occur or at least  
23 are met.

24 MS. YOUNG: And is drug court only available to  
25 people charged with drug crimes? Or if, let's say, someone

1 is charged with theft or robbery, but obviously it's because  
2 of a drug problem, how do they fit into drug court?

3 JUDGE MEYER: Different courts use different  
4 models on what the entry criteria are. I can tell you what  
5 I've seen in the last, particularly five years, is a strong  
6 evolution where drug courts are working with the most  
7 serious offenders. That is where -- and there's some very  
8 good research in this, and I would encourage you to have  
9 Dr. Doug Marlow come down and talk to you about what he sees  
10 is the target audience, for drug courts.

11 It should be the individual that has multiple  
12 failures. The individual who maybe is antisocial, the  
13 individual that needs high surveillance, the person that may  
14 have been in prison multiple times before.

15 That is probably where you can get the most bang  
16 for your buck. Unfortunately, many drug courts opened their  
17 doors en masse. You know, they took people who were first  
18 time offenders, that were going to succeed no matter what  
19 the drug court did, right? What a gross waste of resources.

20 So let's spend our resources where we get the  
21 most bang for the buck, the individual who has what I'll  
22 call a high risk score, a high risk score.

23 Now, of course, every community has got to be  
24 concerned about issues of public safety, but at the same  
25 time, I think we have an opportunity here that we do not

1 have in prison, for turning some lives around, and at the  
2 same time providing for that public safety.

3 MS. YOUNG: It was mentioned that you had also  
4 done some like other articles on ethical considerations for  
5 defense counsel in drug courts. And a friend of mine had  
6 been a supervisor in a drug court in a county, and I told  
7 her I was going to be doing this, you know, her, he's -- her  
8 first comment was, well, you're not really a lawyer.

9 Can you speak to that?

10 JUDGE MEYER: Yeah.

11 MS. YOUNG: How are they a lawyer, or maybe they  
12 aren't a lawyer?

13 JUDGE MEYER: I'm not an expert in your ethical  
14 obligations, and would never pretend to be. But I do know  
15 that being a lawyer is in part being a counsellor, and  
16 providing your clients with various alternatives. And  
17 sometimes drug court is one of those alternatives that could  
18 be very effective for the individual.

19 Where I have written more, and I've not written  
20 on the ethical obligations of defense lawyers, I have  
21 written on the ethical obligations of judges in drug courts.

22 So I feel more comfortable in that area than the  
23 area you're particularly asking me about.

24 MS. YOUNG: But again, and I don't know, do you  
25 get from some judges, although they probably opt into being

1 a drug court judge, is being a drug court judge more like  
2 being a judge or not being a judge? It's almost a -- what's  
3 the reaction there?

4 JUDGE MEYER: That's a great question, because  
5 what I have found as my experience in Denver taught me, and  
6 also as I've traveled around the country, probably the  
7 biggest naysayers in drug courts are not police officers or  
8 law enforcement or providers or defense counsel, it's other  
9 judges.

10 And it's other judges because they think that the  
11 judges in drug court aren't real judges. And what they do  
12 is social work. And therefore they look askance at what's  
13 done and oftentimes do not support it.

14 I know in Denver, for example, there was though,  
15 that very issue arose, and the Denver drug court faded into  
16 oblivion. That was I think about three years ago, maybe  
17 four years ago.

18 And what they saw, and this is what the papers  
19 report, is more people going to prison, more people spending  
20 longer time in jail. And the city refunded the drug court,  
21 and have reopened the doors again. Because they saw it as  
22 an accurate, or a helpful alternative to the resolve,  
23 revolving doors of prison and substance abuse.

24 MS. YOUNG: And the articles that you're writing  
25 specifically as a fellow with drug court professionals, have

1 you expanded that to other specialty courts? Or are you  
2 particularly limited to drug courts?

3 JUDGE MEYER: Yes, to some specialty courts, no  
4 to others. Not DV courts. I have no experience in DV  
5 courts. I can say generally when I do this presentation on  
6 Constitutional issues, I apply it directly to juvenile  
7 courts, juvenile delinquency courts, because of under In Re  
8 Golf, virtually all of the rights accorded to an adult are  
9 accorded to a juvenile. And therefore I do not see  
10 substantial differences.

11 Family dependency courts really are civil  
12 proceedings, very different animals. But the protections of  
13 hearings present by Federal statute.

14 MS. YOUNG: And you said in speaking of hearings,  
15 that when there were revocation or sanction proceedings, and  
16 those courts did involve proceeding, you know, a hearing  
17 versus the courts that didn't involve a hearing, they said  
18 that it hadn't impacted the flow of the court as much, or  
19 what was the reporting?

20 JUDGE MEYER: As you're aware, the drug courts,  
21 most drug courts are based on the ten key components, and  
22 the second of the ten key components is that nonadversarial  
23 measures are used, but still defense counsel protects the  
24 individual's due process rights.

25 Well, the fear was that if you start having these

1 quote, sanctioning hearings, then you raise the whole  
2 problem of an adversarial proceeding.

3 Let's be realistic about what occurs with regard  
4 to when somebody is potentially sanctioned in drug court.  
5 They didn't go to their treatment provider. The fact that,  
6 you know, they had a family emergency, and that's why they  
7 didn't go, is not an excuse. It is mitigation, but it is  
8 not excuse.

9 They went in and tested positive for drugs,  
10 denied use, and it's been confirmed by TCMS. From a DA's  
11 perspective, how difficult it is to prove one of those?  
12 From your perspective as defense counsel, what are the  
13 defenses to those? There's relatively --

14 MS. YOUNG: None.

15 JUDGE MEYER: -- none, you know. You can have  
16 the thing retested if you want to, they saved the sample for  
17 you, you're going to get the same result if you use the same  
18 cutoff levels, assuming that it's confirmatory.

19 So what you end up with is realistically looking  
20 at a consequence, and I hate to use the word sanction, but  
21 it's been kind of engrained, looking at a response that is  
22 going to be best for motivating the client, so they don't  
23 use the next time, so they make better choices the next  
24 time.

25 And so the hearings, they tend to be very quick,

1 the individual is, they tend to be in a couple of days, even  
2 in the afternoon, from the time denial is, usually it's not  
3 denial per se. I didn't do this, you know, I didn't engage  
4 in this conduct. No, it's, I did it, but here's the reason  
5 why. It's not just --

6 MR. JONES: We're going to open up to other  
7 folks, we do have --

8 MS. YOUNG: No, no --

9 MR. JONES: Marvin?

10 MR. SCHECHTER: Yeah, something you just  
11 mentioned, about the, one of the biggest problems are other  
12 judges being naysayers, and regarding the judge in drug  
13 court as a social worker, not a real judge.

14 Do you think that it would be a good use of the  
15 resources of the criminal defense bar associations, such as  
16 NACDL, to devise presentations, courses, or materials to be  
17 presented, mailed, or some way given to judges, in a  
18 particular county, to garner their support for expanded drug  
19 court funding of the cities?

20 JUDGE MEYER: I think education is key in this  
21 area. People who become educated about a well-functioning  
22 drug court, and the successes it has, become instant  
23 supporters. You sit down and you talk to some of the  
24 success stories -- and I'm not talking about somebody that's  
25 a first or second time user. I'm talking about the

1 individual who's been in and out of prison for the majority  
2 of their lives.

3           And what can occur in drug court is simply  
4 nothing less than a miracle. So, yes, it shouldn't be just  
5 for the current crop of judges, or the current crop of  
6 lawyers. It should be in the law schools. It absolutely  
7 should be in the law schools.

8           And then people can make informed decisions on  
9 whether this is the type of alternative that is appropriate  
10 to their particular client, and make those recommendations,  
11 and the client ultimately decides.

12           I can tell you though that it seems to me that  
13 drug courts should not be a program, it should be a process.  
14 If it is as successful as we think it is, then it should be  
15 used in every court, in every drug court.

16           And so it becomes a way of doing business. When  
17 you consider, Vicki Young asked me, you know, is it people  
18 that are involved in drugs only get drug court? Or it the  
19 burglars and the, you know, the people that use fraudulent  
20 credit card devices or what?

21           We know that somewhere between 65 and 80 percent  
22 of the individuals in our criminal courts have a substance  
23 abuse problem.

24           MR. JONES: What was that number?

25           JUDGE MEYER: 65 to 80 percent.



1 MS. BERNHARD: Yeah, the rest of the population  
2 is only around 40 -- just kidding.

3 JUDGE MEYER: That's the part of the population  
4 we're talking about, judges like to talk about.

5 So why shouldn't it be available for all of the  
6 individuals, irrespective of what the nature of the crime  
7 is? It should be a way of doing business.

8 MS. SHIFMAN: What do you mean they should avail  
9 themselves? If somebody comes through on a robbery case,  
10 what do you mean, they should avail themselves of the  
11 process?

12 JUDGE MEYER: That the judge has within his or  
13 her quiver a drug court process as an alternative for  
14 sentencing, either community corrections, department of  
15 corrections, straight probation, ISD. That it's just one of  
16 those other tools that they have.

17 MR. JONES: Could I get you to just give us if  
18 you can, sort of the background and history on the National  
19 Drug Court Institute, its, its role?

20 JUDGE MEYER: Yes. The National Drug Court  
21 Institute is the research, education, training arm of the  
22 National Association of Drug Court Professionals. NDCI is  
23 funded almost exclusively by the White House Office of  
24 National Drug Control Policy.

25 And what we are trying to do is bring to the fore

1 the best practices, not only in terms of what we do as  
2 lawyers, what we do as judges, but also treatment standards.  
3 Using treatment that has been recognized to be effective.

4           Unfortunately, there is a lot of voodoo kind of  
5 treatment out there, where people go in and they watch  
6 videos, and somehow treatment providers think that that's  
7 going to make a change in the individual's life. It's not.  
8 So NDCI really is designed to improve the field overall.

9           The National Association of Drug Court  
10 Professionals was started -- now you're testing my memory  
11 here, was about ten of us that sat down in a hallway at  
12 Caesar's Palace in I think 1995. Isn't that interesting?  
13 The first conference was in a casino, that den of inequity,  
14 in Las Vegas.

15           But I think it started in 1995, there were  
16 probably at that point in time maybe 15 drug courts around  
17 the country. Now there is an excess of 2000.

18           MR. JONES: And what's your sense of your  
19 ability, your persuasive ability to impact best practices or  
20 practices around the country? Is it a bully pulpit, what --

21           JUDGE MEYER: We have very strong backing from  
22 various national organizations, the chief justices that back  
23 drug court, and your organization backs problem-solving  
24 courts, if they're run correctly.

25           I say that, I mean there's some practices by some

1 courts that frankly are foreign to me. You can't get, for  
2 instance, you can't get into drug court unless you surrender  
3 your Fourth Amendment rights.

4 Well, wait a second, why put somebody on the  
5 horns of that particular dilemma? Let's figure that one out  
6 real quick, get it resolved quick, make a determination  
7 whether the evidence is going to be suppressed, or the  
8 individual's going to maybe opt for drug court.

9 But we do have impact around the country on best  
10 practices. We are frankly talking about a certification  
11 process, to ensure that drug courts do adhere to the best  
12 practices. Not only the ten key components, but the  
13 Constitutional issues, so for instance, that we're talking  
14 about. Some of your concerns about, that defense counsel  
15 are relegated to second class citizens.

16 MR. JONES: Is there a draft document of that  
17 certification process that's in public domain that you  
18 could --

19 JUDGE MEYER: Not that I know of, and that's  
20 beyond my camp. That's not one of the projects that I'm  
21 involved in. I have a regular job.

22 MS. KELLEY: I just have a couple of followup  
23 questions to what Rick was asking.

24 With regard to funding, do counties come to the  
25 Drug Court Institute to figure out how to obtain grants or

1 to obtain grants from your coffers?

2 JUDGE MEYER: We don't have money that we give  
3 out directly, but we do provide a lot of technical  
4 assistance absolutely free. So if a drug court was having a  
5 particular problem, say, for instance, that the probation  
6 department feels left out and is not integrating well and  
7 working with the program, we'll bring somebody in to help  
8 resolve those issues.

9 We do provide technical assistance in terms of  
10 how to write grants. We do not write grants. The funding  
11 sources of drug courts started out primarily through the  
12 Federal government as seed money, very little Federal money  
13 is now available for drug courts.

14 So where you see the funding is from state  
15 sources and local sources. Some states that you would be  
16 just amazed have significant funding, like Idaho and  
17 Louisiana. Other states, less so, and they rely upon either  
18 county funding, city funding, like Denver, St. Louis, they  
19 have actually a tax that is used to fund the drug court.

20 Claire McCaskill started that, now a US Senator  
21 from Missouri.

22 MS. SHIFMAN: And a part of the drug court  
23 institute, do you, as member of that team, include some  
24 representatives from the defense lawyer community?

25 JUDGE MEYER: Oh, yes. Yes, we provide annual

1 training to individuals that are either in drug, defense  
2 counsel that are either in drug court, or becoming part of  
3 the drug court team. It's a week-long training.

4 MS. SHIFMAN: Well, how about as far as  
5 establishing the process? I mean, it's an important step.  
6 I mean, do you have someone that's part of the leadership of  
7 the Drug Court Institute who's maintaining policy from the  
8 defense counsel perspective? Or does pop --

9 JUDGE MEYER: I don't think directly. I guess if  
10 there is somebody who doing that, the -- I don't represent  
11 the defense, I represent what I think are Constitutional  
12 requirements, minimum Constitutional requirements.

13 But not directly, although I shouldn't say that.  
14 We just hired somebody who is a public defender.

15 MS. SHIFMAN: Over there.

16 JUDGE MEYER: I have not even met her. So --

17 MS. BERNHARD: Come meet her.

18 JUDGE MEYER: Hello.

19 MR. JONES: Could you please tell us your name?

20 MS. VAUGHN: My name is Augustine Vaughn, and  
21 I've been with the company, I guess this is my fourth week.  
22 And I'm the project director for technical assistance to  
23 adult and family drug courts.

24 My background is I was an assistant public  
25 defender in Durham County, North Carolina. I was only there

1 for about a year. I've represented parents in abuse and  
2 neglect indigent cases, and also juvenile delinquency cases.

3 But I also served as the defense counsel for  
4 family and adult drug courts at the same time for the last  
5 five and a half years, probably from 2002, up until January  
6 of this year, 2008.

7 And prior to being an assistant public defender,  
8 I was in private practice where I practiced criminal law,  
9 family law, and juvenile law. And at one, at one time, I  
10 actually was a defense attorney for all three drug courts in  
11 Durham County, North Carolina, both adult and juvenile.

12 But they, two of the courts started having court  
13 on the same exact day, so I had to give up one. So I did  
14 that for about one year, all three. And then I kept the  
15 other two for the last five and a half years.

16 JUDGE MEYER: So we do have someone that keeps us  
17 on the straight and narrow.

18 MS. KELLEY: Judge Meyer?

19 JUDGE MEYER: All we do, by the way.

20 MS. SHIFMAN: And what about the parties that  
21 participate, the defendants themselves? Does the Drug Court  
22 Institute maintain any kind of analysis or statistics or get  
23 their input on their experience in the various drug courts?

24 JUDGE MEYER: Not only do we do it, but I can  
25 tell you that at our national conference, at virtually every

1 one of our major trainings, a critical piece of it is a drug  
2 court panel, where they frankly, participants, some  
3 successful, some not successful, talk to us about their  
4 experience in drug court.

5 One of the trainings I do is on sanctions and  
6 incentives. I mean, it's a senarian behavioral motivation  
7 kind of analysis, and how to change people's behavior.

8 And one of the things that I strongly recommend  
9 is, if you want to find out what you're doing right or  
10 wrong, ask the participants. They know.

11 MS. SHIFMAN: So is any of this available to us,  
12 from the participants' perspective, from these sessions?

13 JUDGE MEYER: Yes, there's some writings in that  
14 area. I haven't kept up on it, but I know that Sally Satel,  
15 Dr. Sally Satel, from Yale University, wrote some articles  
16 in this area.

17 MR. JONES: I want to get Elizabeth and Jay into  
18 the conversation.

19 MS. KELLEY: Thanks. Early in your remarks you  
20 talked about Web-based deity-free recovery resources. Could  
21 you talk a little bit more about those? Are, who typically  
22 sponsors them? Are they private? Are they nonprofit  
23 corporations? Are they for-profit corporations? And do you  
24 see Web-based education programs of that sort seeping into  
25 other aspects of our system? For instance, with anger

1 management programs, parenting classes, those sorts of  
2 things?

3 JUDGE MEYER: The first part of the question, are  
4 they nonprofit, are they for profit, it depends upon the  
5 program itself. They're interactive, and a person has to  
6 literally work through a case book.

7 I do see that we're going to be doing more and  
8 more of that in the criminal justice field, be it anger  
9 management, or be it just drug court training.

10 Frankly, with 2000 drug courts NDCI is a  
11 relatively small organization. I think we exist on a couple  
12 million dollars a year. We publish extensively. I don't  
13 remember how many trainings we did last year. I think it  
14 was over 150. But we're not reaching all the individuals  
15 that we can reach.

16 Invariably when we do a training, like on  
17 sanctions or incentives, sanctions and incentives, or the  
18 annual judicial training, we have far more applicants than  
19 we have slots available, far more applicants.

20 So we're going on a Web-based training  
21 initiative. I know in June that I'm going to Williamsburg  
22 to take several of the presentations that I do. Yes, I do  
23 see us using it more and more.

24 What becomes a problem for us though is the  
25 literacy basis of our clients. How many people are really



1 capable of using a program like this, that is interactive on  
2 a computer? And where are the computers available?

3 I think that if we have a mandate that an  
4 individual go to a program, and they choose a non-deity  
5 base, that we provide the resources so that they can access  
6 that.

7 MR. CLARK: Judge, you talked about the ethical  
8 obligations, and not talked really or spent a lot of time  
9 with the ethical obligations of the defense bar, but more  
10 the judges in drug courts.

11 What do you think the biggest differences there  
12 are as ethical obligations of a drug court judge compared to  
13 a judge who is not a true drug court judge? If you, if I  
14 understand this right, your organization's position is, it  
15 should be a process that really all judges are involved in?

16 JUDGE MEYER: It is the laxity of some of the  
17 rules in drug court or laxity of the formality, gives an  
18 opportunity for running afoul of the canons of judicial  
19 conduct. Ex parte conversations is a big one.

20 That because there's all this exchange of  
21 information, people think they can just come to a judge and  
22 say, hey, you ought to know this, this and this about ABC  
23 participant. Well, canons of judicial conduct say, hey,  
24 judge, you can't engage in that, so you need to let  
25 everybody know right away. So it's the laxity there.

1           Number two is, where we see a significant amount  
2 of criticism, is in staffings. How do you deal with  
3 staffings? And if you're familiar with the drug court  
4 process, a staffing occurs immediately before the court  
5 docket is called usually, and defense counsel, the DA, the  
6 treatment provider, the case manager, probation officer  
7 reviews the participant's progress, and kind of makes some  
8 initial calls on what they think should occur.

9           Now, that's not solidified until the participant  
10 has an opportunity to be present in court, and have his or  
11 her input. But, some people say, hey, you're prejudging the  
12 issues, number one. Number two, the defendant is not  
13 present at that. It is only defense counsel that's present.

14           Some judges feel so strongly about it they don't  
15 go to staffing. The staffings are held with the team, minus  
16 the judge.

17           Then there's this whole kind of proactive judge  
18 thing. And I can mea culpa this one. As a drug court  
19 judge, I did a lot of things that probably, no, not  
20 probably, absolutely were over the line in the canons of  
21 judicial conduct.

22           I went to treatment agencies, and at the request  
23 of the group, sat in a group, didn't participate, sat in a  
24 group, just to know what was going on. I did curfew checks.  
25 There's nothing quite like 2500 drug court participants

1 talking about the fact that the judge showed up at  
2 somebody's door at midnight last night, to see if they were  
3 home.

4 MR. CLARK: And I wasn't there.

5 JUDGE MEYER: Yeah. So, there are other things  
6 that judges do. You know, I got a letter from a judge in  
7 California, southern California, I won't tell you which  
8 jurisdiction in southern California, about various things he  
9 did. He went to a law enforcement sponsored night out at  
10 the professional baseball team with drug court participants.

11 I mean, come on, does that show an appearance of  
12 partiality? Absolutely does. Was it meant to be harmless?  
13 Absolutely was meant to be harmless.

14 So the judges, sometimes we get a little more  
15 enthusiastic than we should, and we need to be reined in.  
16 And we're trying to change that, to get the word out about  
17 that.

18 MR. JONES: We're running up against the clock.  
19 I'm going to allow one last quick question.

20 MS. BERNHARD: I just wanted to follow up with  
21 that, 'cause I thought that was so interesting, because you  
22 were also talking about which judges find doing this  
23 attractive, and which judges don't find this attractive.

24 And I'm thinking to myself, well, it's a choice,  
25 right? You don't have to be assigned to drug court. So

1 there are people for whom the interaction with the  
2 participants is more interesting than potentially making  
3 decisions about the legality of a search and seizure, right?  
4 Sort of a different kind of approach.

5 Not that you have to pick, but there's more of  
6 the interaction in the drug court, there's more of the  
7 interpersonal skills. And I can see how that would  
8 encourage you to extend your interpersonal relationships  
9 with the participants outside the four corners of the  
10 courtroom.

11 So is that something that you're training on, or  
12 working with, or do judges get, you know, some education  
13 about that? When you talk about going back to the law  
14 schools and talking to people about this kind of work, you  
15 know, one of the questions I have in terms of defense  
16 counsel stuff, is we don't really have this kind of  
17 training.

18 We're sort of trained to look at the warrants  
19 issues, not that well perhaps, but that's what we're  
20 supposed to know how to do. We're really not trained on  
21 knowing how to motivate people, or decide who's telling the  
22 truth or who isn't or what kind of sanction we'll condone.  
23 I mean, that's a whole psychological and social work skill,  
24 where they try to train people, and we don't really get  
25 that.

1           JUDGE MEYER: Let me respond to your question  
2 this way. First of all, we do a whole lot of  
3 interdisciplinary training. And it's not just for the  
4 judges, or defense counsel, or the DA's, but also for  
5 treatment providers, case managers, law enforcement. That  
6 includes addiction, relapse, motivational interviewing,  
7 sanctions and incentives, psychopharmacology, duly  
8 diagnosed co-occurring disorders.

9           And that is part of a core curriculum. We also  
10 have been more active in starting to inform judges, hey,  
11 here's what the bounds are. We understand what you want to  
12 do, but at the same time, we would like you to keep your  
13 ticket to be on the bench. You continue doing what you're  
14 doing, you're not going to keep that ticket, or you're going  
15 to get slapped real hard with a letter of admonition or  
16 worse, if you go out and visit individuals at their homes at  
17 12:30 at night.

18           So, yes, we do that type of thing.

19           MR. JONES: Judge Meyer, thank you.

20           JUDGE MEYER: Thank you.

21           MR. JONES: This has been incredibly informative  
22 and useful for us. And we will stay in touch with you, and  
23 we hope as well that you will stay in touch with us, if you  
24 think there's any additional information that would be of  
25 benefit.

1 JUDGE MEYER: Please feel free to use me and any  
2 other individuals at NDCI as a resource. Yea, we bring a  
3 certain slant to it, but at the same time you're very good  
4 at weeding out the wheat from the chaff, and you understand  
5 what our slant is, and you can take it from there.

6 MR. JONES: And with your permission, I'd just  
7 ask that before you leave, you get together with Scott, and  
8 if we could have a copy of that Powerpoint, we'd love to.

9 JUDGE MEYER: Absolutely.

10 MR. JONES: Thank you.

11 JUDGE MEYER: I'll give you the whole one.

12 MR. JONES: Thank you.

13 MR. CLARK: Judge Meyer, just real quick, you  
14 said we should contact Dr. Doug Marlow?

15 JUDGE MEYER: Yes.

16 MR. CLARK: Is he at NDCI also?

17 JUDGE MEYER: He is now. He is the director of  
18 public policy. He used to be the senior researcher at the  
19 Treatment and Research Institute, at the University of  
20 Pennsylvania.

21 MR. CLARK: Okay.

22 JUDGE MEYER: But he can be reached through NDCI  
23 now.

24 MR. JONES: Thank you.

25 MS. YOUNG: Can we take a two-minute bathroom

1 break?

2 (A recess was taken from 9:59 a.m. to 10:05 a.m.)

3 MR. JONES: Let's start.

4 We are joined now by Dan Carrion?

5 MR. CARRION: Yep.

6 MR. JONES: And Judge Carey Clark.

7 JUDGE HYATT: Hyatt.

8 MR. JONES: Hyatt, I'm sorry, Judge Carey Hyatt.

9 Judge Hyatt is a sitting judge in the civil department of  
10 the Superior Court of Maricopa County in Phoenix. And has  
11 previously presided over both the criminal and family court  
12 departments.

13 Dan Carrion represents the Maricopa County Public  
14 Defender's Officer, where he serves as the attorney manager,  
15 and has more than 20 years experience as a Deputy Public  
16 Defender. Mr. Carrion is also the sitting president of the  
17 Arizona Association of Court Professionals.

18 This session is going to be led by Adele  
19 Bernhard, but first we'd like to hear from both Mr. Carrion  
20 and Judge Hyatt. So the floor is yours.

21 JUDGE HYATT: Good morning.

22 MR. CARRION: Good morning.

23 JUDGE HYATT: Just a little bit about my  
24 background. The saddest day in my life was a year ago when  
25 they took me off of the drug court assignment, so you know

1 clearly where my biases are.

2 I began in the drug court movement ten years I  
3 was in there ten years presiding over adult criminal drug  
4 courts, moved over to family court, and we created a family  
5 drug court, not on the dependency model, but in the divorce  
6 custody cases, and then came back to criminal, where we  
7 expanded the drug court to include a mental health court and  
8 a domestic violence court.

9 And then I was lucky enough to do that as my  
10 entire caseload. All I did was drug court, DUI court, DV  
11 court, mental health court, for a long period of time.

12 And Judge Meyer is correct, most judges, my  
13 colleagues are more resistant to this type of proceeding  
14 than I think the other partners that are involved in our  
15 system.

16 You all already know all about the drug court,  
17 and how it's modeled, I don't have to kind of preach to the  
18 choir about that, but I think that the key to success in  
19 drug court is making sure that you have a team, including  
20 the judge, who respects the unique roles that each team  
21 member brings to the team, and, you know, I think personally  
22 the defense attorney member is one of the most important  
23 members and probably the most difficult roles to fulfill in  
24 the drug court because of this fine line they have to walk  
25 between advocacy and collaboration.



1           And, but I believe this collaborative effort that  
2 we have engaged in here in Maricopa County now for over 15  
3 years, really has been working to keep these participants  
4 out of the revolving door of our criminal justice system.

5           If, by example, let me just tell you, in terms of  
6 respecting everybody's role, I don't expect a treatment  
7 counsellor member of a team to be recommending sanctions, to  
8 the team for a particular participant. That's the  
9 prosecutor's role if they feel that whatever violation  
10 occurred needs some kind of sanction.

11           What I expect is the treatment provider to be  
12 telling me and the rest of the team how this person is  
13 progressing or not in treatment. And I even draw the line  
14 there as far as not wanting to know the in's and out's of  
15 the daily conversation that a participant has with the  
16 treatment provider.

17           I don't care what they actually said in  
18 treatment. I want there to still be some sort of  
19 confidentiality built into the treatment, so that not every  
20 single word that they're telling the counsellor is going to  
21 come to the team. I just want to know, are they progressing  
22 in treatment, what do you believe we need to do to help that  
23 progress if it's not jelling quite yet.

24           So my prosecutor and my Public Defender member of  
25 the team the is ones that I expect to be an advocate on

1 sanctions. The other key I think to success is having the  
2 ability to impose sanctions and rewards on a consistent  
3 basis.

4           And we do that in Maricopa County, and I think  
5 all drug courts across the country, on a graduated schedule.  
6 So that, you know, the participants, and all the team  
7 members know that with the first violation, whatever it  
8 might be, not going to treatment, or community service, will  
9 amount to this particular sanction. And then the next time  
10 it happens, it might be a little bit more, double community  
11 service.

12           They actually, in our program, they can probably  
13 violate six or seven times before jail even comes into the  
14 picture. So that consistent application of rewards and  
15 sanctions I think is very much a key to the success of the  
16 program.

17           It's hard for me to convey in words the reward  
18 that I personally and our team gets when a participant,  
19 who's been struggling through the program, we've extended it  
20 to a year's program a couple of years ago, it was shorter  
21 than that, someone who's struggled for 18 months, maybe even  
22 two years, in and out of treatment, or intensive treatment,  
23 lesser treatment, maybe even in and out of jail, who comes  
24 to you as a graduate with tears in their eyes and gives you  
25 this big hug and says, you know, thank you, Judge Hyatt, for

1 sending me to jail.

2 I mean, it's just, you know, an amazing dichotomy  
3 to have someone thank you for that. But basically they also  
4 tell me, thank you for not giving up on me. And that's what  
5 I think drug courts do more than anything, we treat people  
6 as people, and we try to give them the tools to succeed in  
7 life, and like I said, stay out of that revolving door.

8 That all being said, I know that there are a lot  
9 of problems. There's a lot of issues that this task force  
10 is trying to investigate, so I encourage you in doing that,  
11 if there's any way I can help from here.

12 Now, you should probably know, I was a prosecutor  
13 before, so take whatever shots you need to take to me. I  
14 wasn't lucky enough to participate in the drug court, as a  
15 litigator, only --

16 MR. CARRION: You started in New York, right, as  
17 a prosecutor?

18 JUDGE HYATT: I did, started in New York.

19 MR. SCHECHTER: Where did you work, what borough?

20 JUDGE HYATT: Queens.

21 MS. SHIFMAN: Okay, Your Honor.

22 JUDGE HYATT: I went to St. John's, I graduated  
23 from St. John's, and I worked with the Queens borough.

24 MR. JONES: Mr. Carrion?

25 MR. CARRION: Well, I asked Judge Hyatt to come

1 down, 'cause she is an enthusiast, and I think one of the  
2 things that I've noticed about successful drug court  
3 programs is really the involvement of the judge.

4 MS. BERNHARD: They want you louder, Dan.

5 MR. CARRION: I know, that's one of my big  
6 problems.

7 MS. BERNHARD: Come on, yell at me.

8 MR. CARRION: Well, I'm ready.

9 JUDGE HYATT: Got a frog in your throat?

10 MR. CARRION: No, you got to understand, I wear  
11 hearing aids, so it amplifies everything, so I'm thinking,  
12 oh, I'm talking too loud.

13 MS. BERNHARD: Right.

14 MR. CARRION: Drug court, I think one of the  
15 biggest issues about drug court is contingent on the judge,  
16 because he or she represents the court. And if the judge is  
17 motivated, it becomes a very good program, and people get  
18 very enthused.

19 But when you have judges who think it's just a  
20 lame assignment, they're not in it. But I've seen judges,  
21 especially -- I got involved with drug court initially with  
22 DUI court. I was the vehicular supervisor at the time, and  
23 one of the things I saw, and Arizona, I think you all know,  
24 has one of the most stringent laws against drunk drivers.

25 And one of my concerns was, you know, if the guy

1 has a felony DUI, he's going to go to prison for four  
2 months, as a condition of probation. And then they're on  
3 probation, and then they get slapped with another DUI, and  
4 now they have to do seven years, because they got two and a  
5 half on the first offense, and five on the next.

6 And I think there's better ways, better than  
7 sending people to prison all the time. Then I heard about  
8 DUI court, and I said, well, I want to be involved.

9 And I went to Washington, and I participated in  
10 setting the groundworks for DUI court in Maricopa County.  
11 And it's a very successful program. As a matter of fact, my  
12 successor, Rebecca Potter, who is the vehicular supervisor,  
13 she said -- when I tapped her to be in DUI court, she said,  
14 I don't want to be involved, that's social work.

15 But once she went to the training, she went to  
16 the national, and eventually she became one of the trainers  
17 for the national. She was really enthused because she saw  
18 the program succeeded, you know, the clients weren't  
19 committing a new DUI, they weren't going back to prison.

20 And so that's what -- and then I was asked if I  
21 wanted to be president of the Arizona association, and I  
22 said yes, because I really believe that it works when we  
23 have the right tools.

24 The problem we have in Maricopa County is the  
25 County Attorney's Office feels that it is some lame program

1 to just babysit people. That it really does nothing but  
2 social work. And they're missing the whole point, because  
3 really they should be in the forefront of drug court, they  
4 should be in the forefront of DUI court, isn't their job to  
5 reduce crime?

6 So they're very hesitant, and they just, they  
7 don't even assign -- well, up until a few years ago, they  
8 didn't assign permanent prosecutors, so you'd have to  
9 re-educate the prosecutor, you have to tell them what their  
10 role is, that is not --

11 JUDGE HYATT: Every session.

12 MR. CARRION: Yeah. And -- well, you've seen it.

13 JUDGE HYATT: Yeah.

14 MR. CARRION: Where they're constantly  
15 interrupting, well, wait a minute, why are we doing it this  
16 way? Did you go to training? No.

17 So I have in, 'cause I manage all the drug  
18 courts, and all the specialty courts that the Public  
19 Defender's Office appear -- you'll see two of my attorneys  
20 this afternoon, Tammy Wray and Robert Lerman. They've gone  
21 to training, they understand the process.

22 As a matter of fact, they can tell the judges,  
23 you're not doing it right, because this is what the protocol  
24 is. And that's what's important, because it defines the  
25 role as to what you can and cannot do.

1           And when she got off the bench, they put in  
2 commissioners. And to me, that gave a signal that the  
3 importance of drug court has diminished, even though the  
4 court still says they're in favor of drug court. And it  
5 also telegraphs something to the other judges, that this is  
6 not as important.

7           But for the judges, you know, like Judge Cole,  
8 Judge Anderson, judges who were hesitant going into it, once  
9 they got into it -- I think that's one of the judges  
10 screaming at me right now -- once they got into it, they  
11 really enjoyed it, because they really felt that they were  
12 doing something proactive and they were helping the  
13 community, and they got to know the client, which is  
14 unusual.

15           Usually, you know, you put a person on probation,  
16 next time you see them is when they're, a petition to revoke  
17 is filed, and the judge says, well, I see you committed a  
18 new offense, they go straight to prison.

19           Whereas, here, the judges know the progress, and  
20 they also know through training that people have relapses.  
21 That's why a petition to revoke has been filed the first  
22 time, and for the second time and for the third time.

23           But there are sanctions when they're not getting  
24 the message. But it isn't a, you know, you will be stuck in  
25 jail waiting for your revocation hearing, you'll appear

1 before the judge, and you can accept the sanction, usually  
2 it's, I think first one is five days? Or is it a weekend?

3 JUDGE HYATT: First jail sentence?

4 MR. CARRION: Yeah.

5 JUDGE HYATT: It's usually no more than,  
6 sometimes 24 hours, in jail.

7 MR. CARRION: And they try to do it during the  
8 weekend, so it doesn't interrupt their work. We also want  
9 to make sure they're still working, and have a job.

10 Whereas in the traditional model, a petition to  
11 revoke is filed, the person is arrested, go to jail, they're  
12 arraigned, the initial arraignment is some days later, then  
13 there they have a revocation hearing, they either admit or  
14 deny, and then may be reinstated, but they're already been  
15 in jail for a month, and they've lost their job.

16 JUDGE HYATT: Yeah. That brings up the  
17 self-surrender, we get a lot of skeptics when we started  
18 doing self-surrender jails for sanctions, 'cause it used to  
19 be when drug court was on a Friday, they would just go to  
20 jail right there from court. And it was, the next day was a  
21 Saturday, they wouldn't lose their job.

22 And then we started doing drug court throughout  
23 the week. So you appear on Tuesday, you don't want someone  
24 to have to serve a sanction that really is so heavy it makes  
25 them lose their job.



1           So we told them, we gave them self-surrender  
2 documents for the weekend. There are a lot of people who  
3 said, oh, they'll never show up, they won't do that.

4           So I would usually tell them, listen, if you  
5 don't show, you know, unless there's some great emergency,  
6 and like your grandmother died for the fifth time, you're  
7 going to get double the time, you know, next time.

8           We really rarely ever have anyone who would not  
9 follow the court's direction at the self-surrender, get  
10 their hand slapped for that 24 hours, and usually they'll  
11 not go back again.

12           MR. CARRION: Right.

13           JUDGE HYATT: It was like putting the ball in  
14 their court more, try and give them the responsibility for  
15 getting back in line.

16           MR. JONES: Adele, you wanted to start this?

17           MS. BERNHARD: Yeah, I mean, there's just so many  
18 different things that come to mind. I mean, on the one hand  
19 I'm very interested in this whole kind of, in these courts  
20 we get to know people, right? And that's more attractive  
21 for me as the judge, and I get to be involved, and I get to  
22 see the success.

23           Versus all sort of those technical questions. So  
24 I hardly know where to start, but I think I'm going to start  
25 on the technical side, as opposed to jumping into the, sort

1 of the emotional, how do we feel, sort of psychological  
2 stuff, just to get a sense.

3 I know that Maricopa County is one of the first  
4 drug courts?

5 MR. CARRION: Yes.

6 MS. BERNHARD: Right? I mean, really this  
7 movement in a sense sort of started here?

8 JUDGE HYATT: We were like the fifth in the  
9 nation.

10 MS. BERNHARD: Yeah, so that's pretty early.

11 JUDGE HYATT: It started in Miami, but we were  
12 the fifth drug court. Judge Bolton is now on the Federal  
13 bench.

14 MS. BERNHARD: Right.

15 JUDGE HYATT: Was the first drug court judge.

16 MS. BERNHARD: So that means that there has been  
17 more time to study what you've been doing here, and is that  
18 true? Have there been more studies or outcomes? I mean,  
19 how is this evaluated? I mean, aside from your saying, I  
20 enjoyed, I feel like I saw people succeed, and lawyers who  
21 worked there saying the same thing, how do you evaluate  
22 their success officially?

23 JUDGE HYATT: That's one of the big negatives I  
24 think with, not only just Arizona, but nationwide, that we  
25 didn't really start keeping statistics other than

1 anecdotal --

2 MS. BERNHARD: Right.

3 JUDGE HYATT: Oh, it's such a wonderful  
4 experience.

5 MS. BERNHARD: Right.

6 JUDGE HYATT: For years, and I mean, I would have  
7 to say probably nine, ten years into the project all we had  
8 was anecdotal, this works.

9 And then we started getting smarter in terms of  
10 drug courts across the country, and started building in some  
11 evaluation pieces with the help of the national  
12 associations, but the only statistics with respect to  
13 Maricopa County is one that you had in a comparison between  
14 when we had our Prop 200 -- I don't know if you're familiar  
15 with that --

16 MS. BERNHARD: I was going to ask you, what that  
17 is? What is that Prop 200, 'cause that's not something  
18 that's everywhere.

19 JUDGE HYATT: No, and it's been modified quite a  
20 bit, because new legislation came in, after the Proposition  
21 200 was passed. It had to --

22 MS. BERNHARD: You might want to explain that to  
23 everyone here, what it is.

24 JUDGE HYATT: It started out as a legislation  
25 that was passed by the voters, wherein the court was

1 prohibited from imposing jail or prison, but jail also, on  
2 any first or second time drug offender. And --

3 MS. BERNHARD: So this came from the legislature?

4 MR. CARRION: No, it came from the public.

5 JUDGE HYATT: It came from the voters, it was --  
6 the legislature --

7 MS. BERNHARD: Ahh.

8 JUDGE HYATT: -- the legislature --

9 MS. BERNHARD: A ballot initiative?

10 JUDGE HYATT: Right.

11 MR. CARRION: Right.

12 MS. BERNHARD: You can't put first time people in  
13 jail?

14 JUDGE HYATT: Right, in jail or certainly prison,  
15 and many of the people in drug court are on for felonies, so  
16 not only could you not impose jail as a term of probation,  
17 but they could never be revoked to prison. And --

18 MS. BERNHARD: So that wasn't even a sanction  
19 that you would be using for first-time drug offenders?

20 JUDGE HYATT: Not only -- there are other people  
21 in drug court, that you could impose jail on because it was  
22 a third offense, or was a time prior to, or after Prop 200.

23 But, so we ended up with a two-tiered program,  
24 one in which there was no jail for sanctions, and the other  
25 where there was.

1           And so ASU did a study on that, and I think had  
2 pretty much found that there really wasn't much of a  
3 difference with the no jail success stories to the jail  
4 success stories.

5           What it created, as a problem with the system, is  
6 that the offenders learned that there's really not much you  
7 could do to them. I mean, they would come into the system,  
8 maybe under arrest, and immediately get released from jail  
9 after the arrest, because they couldn't have jail.

10           And they were going through the system, I mean,  
11 at a speed of light revolving door. I mean, they were there  
12 in and out constantly. And you would frequently see eight,  
13 nine, ten petitions to revoke on somebody where you had to,  
14 you couldn't do anything. And they weren't, you know, going  
15 to treatment, and they knew they couldn't, nothing could  
16 happen.

17           MR. CARRION: They had a protection kind of. And  
18 another one came out, that modified that, and that was  
19 Proposition 302 --

20           MR. JONES: Modified 200?

21           MR. CARRION: Right. And what that did, is if  
22 person refused treatment, the judge can take away that  
23 protection, and you could -- they could go right to jail.

24           JUDGE HYATT: Right, the normal penalties could  
25 be imposed.

1 MR. JONES: The first or second time offender, if  
2 he refused treatment, the judge has the power to --

3 JUDGE HYATT: Right. And unfortunately, as you  
4 know, as legislation goes, and as case law goes, there's  
5 experimentation on how far you could take that, and there  
6 were courts that would interpret that refused treatment --  
7 recently had a case come down that said that the way that we  
8 were interpreting that was too loose.

9 We were saying, hey, if you just absconded,  
10 that's not such a good word, but you if say didn't report to  
11 your probation officer, you were refusing treatment, so  
12 you're now out of Prop 200 and 302, and we can impose jail.

13 The first opportunity to get them out of that no  
14 jail proposition, they took it. And there's recent case law  
15 that came down that said, no, no, they have to have  
16 actually, you know, either failed to go to treatment or  
17 refused treatment.

18 MS. BERNHARD: Just as an aside, to get, you  
19 know, the flavor of this, was this fiscal, was it prompted  
20 by fiscal concerns from the public? I mean, where did this  
21 come from?

22 MR. CARRION: It came from the judges, I think.  
23 There was a little bit of frustration that they couldn't  
24 sanction the individuals, and --

25 MS. BERNHARD: I understand where 302 would come

1 in, but where did 200 come from?

2 JUDGE HYATT: I think the impression from the  
3 public that drug addicts need treatment, they don't need  
4 prison or jail.

5 MR. CARRION: Right, and --

6 MS. BERNHARD: So this Proposition 200 was really  
7 in response to drug court, not to other kinds of courts?

8 JUDGE HYATT: No, it was probably in response to  
9 more traditional probation and prison, because there was,  
10 there were people that maybe it was their second drug  
11 offense, but they had five thefts before that, you know, and  
12 the problem was they were an addict. That's why they kept  
13 getting involved in the system.

14 MS. BERNHARD: Right.

15 JUDGE HYATT: And they either weren't going or  
16 weren't being offered treatment.

17 MS. BERNHARD: Right.

18 JUDGE HYATT: So I think the problems of Prop 200  
19 really gave a good pitch to, why are we locking these people  
20 up in prison or jail, we should be providing treatment, and  
21 maybe they'll stay out of the system.

22 So it was actually kind of a --

23 MR. CARRION: Support program.

24 JUDGE HYATT: -- support program.

25 MS. BERNHARD: It is. 'Cause it sounds like a

1 support group, so I was just wondering, it's very unusual to  
2 have the public interacting with your judicial system in  
3 such a concrete, specific way, saying we like you, we aren't  
4 giving you support, we don't want this to happen, it's an  
5 interesting conversation that's going on between you and the  
6 public.

7 JUDGE HYATT: And the public.

8 MS. KELLEY: Could I just interject one point? I  
9 think this was an initiative that was, that went on  
10 throughout the country and was supported by the Soros  
11 Foundation.

12 JUDGE HYATT: Right.

13 MR. CARRION: It was separate and apart from drug  
14 court, but I think drug court benefited from it, because it  
15 also was a means for the County Attorney's Office and  
16 probation office to deal with treatment, because before it  
17 was easy to just, send them away to prison.

18 JUDGE HYATT: And to get back to your original  
19 question though, about statistics and research on it, the  
20 Coconino County, that we were going to talk about that, the  
21 Coconino County drug court slash DUI court -- they have it  
22 combined -- did a study, I think it was grant funded, where  
23 they actually had a control group and the drug court  
24 participants, and their results showed that the people who  
25 graduated from drug court, following them for about a



1 three-year period, was like, gosh, it was like 92 percent or  
2 something like that -- or was that out of DUI court?

3 MR. CARRION: Well, both DUI courts were  
4 successful. And I talked to the attorney in Coconino, Kevin  
5 O'Brien, and he loves the program. He wished the County  
6 Attorney's Office would allow people more into DUI court  
7 because he feels that it would help the clients in Coconino,  
8 and there were, throughout the entire state.

9 One thing I liked about the rule change is that  
10 the drug courts are much smaller, so the judges can deal  
11 with them on a one-to-one, whereas in Maricopa County it's  
12 pretty well --

13 MR. JONES: Please speak up.

14 MR. CARRION: Thank you. Whereas, in Maricopa  
15 County, it is so big, that now it runs four days a week.

16 MS. BERNHARD: Drug court?

17 MR. CARRION: Drug court. We have one whole day  
18 of mental health court, one whole day of domestic violence  
19 court. So we have a lot of courts running. And it can  
20 overwhelm the system in a way.

21 And what I think Judge Hyatt was trying to get  
22 to, sometimes we are putting too many people in, too soon,  
23 and --

24 MS. BERNHARD: You mean into the drug court?

25 MR. CARRION: Yeah, into the drug court.

1 MS. BERNHARD: And how -- let's transition into  
2 that for a second. I mean, how do people get into the drug  
3 court? What are the eligibility criteria? And do people  
4 have, you know, how much choice do they have about going to  
5 that court versus regular court?

6 MR. CARRION: They have zero choice.

7 MS. BERNHARD: Zero choice?

8 MR. CARRION: What happens is the adult probation  
9 office screens the individual. And they have set up a  
10 series of criteria, or one criteria, it has to be  
11 nonviolent, you can't have a violent prior. So the way he  
12 lucks --

13 JUDGE HYATT: No violent priors.

14 MR. CARRION: Violent priors, they luck out, they  
15 don't get into drug court. So what happens --

16 MS. BERNHARD: Well, we don't consider that lucky  
17 now, right?

18 MR. CARRION: Well, no, I know, but I'm picturing  
19 it now as a defense attorney, you don't have to go to drug  
20 court, but --

21 MS. BERNHARD: Okay.

22 MR. CARRION: -- but so what happens is, we have  
23 two high volume courts, they're called DUC and RCC. That's  
24 where the majority of the people, they are like justice  
25 courts in a way, and the person pleads to drug offense, the

1 probation officer will prepare the terms of probation, and  
2 one of those conditions will be drug court.

3 If it's there, they will be told right then and  
4 there, at sentencing, you are going to drug court.

5 MS. BERNHARD: Okay. So --

6 MR. CARRION: So there's.

7 MS. BERNHARD: -- this is something that doesn't  
8 happen until after you've decided to take a plea agreement?

9 MR. CARRION: That's correct.

10 MS. BERNHARD: Okay. So, you could fight your  
11 case in all sorts of different ways, and that would keep you  
12 away from drug court?

13 JUDGE HYATT: Right.

14 MS. BERNHARD: But once you plead guilty, at that  
15 point, the decision about your sanction slash treatment is  
16 taken over by probation, who is going to do a screening and  
17 decide where you go.

18 JUDGE HYATT: Well, and the judge, because the  
19 judge doesn't have to follow the recommendation, but most  
20 judges, even if they're resistant to do it as a judge, they  
21 believe that it's a good program. So invariably they will  
22 impose that as a term, if it's recommended by probation.

23 In Maricopa County, we have, all of our courts  
24 are post-conviction --

25 MS. BERNHARD: I see.

1           JUDGE HYATT: -- drug courts. And we made a  
2 mistake, in terms of the funnel, by expanding drug court, I  
3 think too quickly, and just pretty much opened the spigot to  
4 take anybody who's got a drug problem, or a drug offense,  
5 comes into the program.

6           And I believe we've now tapered off of that,  
7 we're trying to get the moderate risk drug offender, not  
8 somebody who just got swept up in the system because they  
9 tried marijuana for the first or second or even fifth time,  
10 and got caught.

11           Because the drug court model I think can make  
12 those people fail. Because they don't need that kind of  
13 intensive supervision.

14           At the high end of the risk scale, they don't,  
15 they don't succeed either. They've been an IV drug abuser  
16 for 30 years, we probably won't be able to change their  
17 behavior at this late stage. So it's the moderate risk drug  
18 offender is what we tried to taper back to.

19           It's still big, and we love the program so much,  
20 we wanted to reach more people, but I think we went about it  
21 the wrong way, by just opening that spigot to all offenders.

22           MS. BERNHARD: So it's all post-conviction --

23           JUDGE HYATT: Right.

24           MS. BERNHARD: -- and do they have to have been  
25 convicted of a specific drug case, or can it also have been

1 a nonviolent felony of some other sort, like stealing a car?

2 JUDGE HYATT: Now we're taking all nonviolent  
3 offenders. If there's been --

4 MS. BERNHARD: If there's a drug issue.

5 JUDGE HYATT: If there's a drug issue. It used  
6 to be, when we started, it had to be a drug offense, because  
7 the Federal grant said that. So sometimes it's your funding  
8 agency that's gives you have the parameters.

9 But once we got out of the grant funding, and we  
10 had to take it on ourselves, the budget, we expanded it to  
11 thefts, property offenses, credit cards, anything, crime.

12 MS. BERNHARD: Is there any ability to -- some of  
13 these, some drug courts I know, if you succeed, they wipe  
14 away your conviction. Is that an option here?

15 MR. CARRION: Not in Maricopa County.

16 MS. BERNHARD: Okay.

17 MR. CARRION: And it's primarily because of the  
18 County Attorney's Office. Again, the scope of the drug  
19 court --

20 MS. BERNHARD: So the sentencing --

21 MR. CARRION: -- all dependent on the County  
22 Attorney's Office.

23 JUDGE HYATT: And much, much of our population  
24 though, they're on probation for what's called an  
25 undesignated felony, the lowest level, open. And so when

1 they graduate, they are reduced to misdemeanors right then  
2 and there.

3 MS. BERNHARD: Right.

4 JUDGE HYATT: So they have that benefit. But we  
5 haven't been able to convince our prosecutor in the last  
6 couple of administrations that we should do a complete  
7 diversion program.

8 MS. BERNHARD: Now, the defense attorney who's  
9 representing the person prior to deciding to take the plea,  
10 and is going to be counselling their client about their  
11 options, will they know in advance whether this client is a  
12 likely candidate for the drug court?

13 I mean, how would you have this conversation with  
14 your client, if the final decision about where they're going  
15 is made by the judge and probation together? How do you  
16 talk to your client about whether they should take this plea  
17 or not?

18 MR. CARRION: Well, usually the plea is so  
19 beneficial that --

20 MS. BERNHARD: But do you know that you're going  
21 to get the drug court or not? Doesn't sound like you know  
22 when you take the plea.

23 MR. CARRION: I'd say --

24 JUDGE HYATT: Well, depends on the avenue that  
25 they come in, we pretty much know, pretty much in our system

1 or any of these courts where they're high volume courts,  
2 there's a recommendation that the defense attorney works off  
3 of. And if drug court is included in that recommendation,  
4 then, you know, it's something they talk to their clients  
5 about.

6 MS. BERNHARD: But you can't say, for example,  
7 hey, Joe, you know, we can go to trial, and you can lose,  
8 and you can go to jail, or we can take this plea, in which  
9 case you're going to go to drug court, now let me talk to  
10 you about what happens there?

11 MR. CARRION: Well, the reality is, even if you  
12 go to trial and you lose, you still go to drug court, so  
13 you're going to go to drug court either if you plead or you  
14 go to trial, so...

15 MS. BERNHARD: I see.

16 MR. CARRION: So, you know, unless you're  
17 acquitted, then you avoid drug court all together.

18 MS. BERNHARD: Okay. So that counselling part,  
19 that counselling would be part of any of your conversations  
20 with your client?

21 MR. CARRION: Right.

22 MS. BERNHARD: So regardless of drug issues.

23 I need to ask you another thing as well: Do the  
24 attorneys who initially represent these clients at the  
25 arraignment, and in the pretrial proceedings, do they follow

1 that, and continue to be their lawyers? Do they continue to  
2 represent them when they go to your drug court? Or is the  
3 drug court staffed by a special group of defense attorneys  
4 who are basically, you know, staffing the drug court?

5 MR. CARRION: Again, there -- I have two  
6 attorneys specifically assigned to that court, Tammy Wray  
7 and Robert Lerman.

8 MS. BERNHARD: Right.

9 MR. CARRION: And so they get all the cases that  
10 go before drug court.

11 MS. BERNHARD: So the people who represent the  
12 clients pretrial, will not be following their cases into the  
13 drug court?

14 MR. CARRION: Not at all.

15 MS. BERNHARD: Not at all? So what's it to them  
16 then, you know, in terms of the sanctions, you know, whereas  
17 they might have a different feeling about it if the  
18 violation of probation was going to go back to them, if they  
19 were responsible for this person until they finish their  
20 sentence, let's say, or until they went to state's prison,  
21 they might have a different feeling about this option.

22 I mean, go, it will be Tammy's problem over in  
23 drug court.

24 MR. CARRION: Exactly.

25 MS. BERNHARD: I don't have to deal with this



1 guy.

2 JUDGE HYATT: And that may be unique to larger  
3 counties though, because, I mean, just by economies of  
4 scale, I mean, we just have so many people in the system, it  
5 would be difficult for, I mean, you don't even have the  
6 judges following the case. Once the judge sentences the  
7 fellow to probation, they don't get that revocation back, a  
8 lot of times. It goes to a whole another set of judges.

9 MR. JONES: Let me -- I want to --

10 MS. BERNHARD: You're going to stop me?

11 MR. JONES: I have to, I'm sorry, I know Marvin  
12 was out in Maricopa County yesterday, and wants to get  
13 involved in the conversation.

14 MS. BERNHARD: Okay.

15 MR. JONES: Let him --

16 MR. SCHECHTER: Just, I spent the day yesterday  
17 with Judge Hintze in the mental health --

18 JUDGE HYATT: Mental health, right.

19 MR. SCHECHTER: So two quick remarks. First,  
20 bravo to the citizens of Arizona, who showed the brass and  
21 foresight to pass 200. That's a remarkable --

22 JUDGE HYATT: A conservative state, yeah.

23 MS. BERNHARD: Yeah, it is amazing.

24 MR. SCHECHTER: That's what we really were  
25 astounded by. It's a conservative state, and I daresay that

1 some so-called liberal states, we could not get that passed.  
2 So that's really remarkable.

3 I leave for another day the disconnect, which I  
4 heard all day yesterday, from participants in the mental  
5 health court system, of the blockage by the Maricopa County  
6 District Attorney, for the progress of these courts. It  
7 really pressed down. And it's across the board. But I  
8 leave that to another day, doesn't help us really with what  
9 we're focusing on.

10 Second remark I would make is to you, Dan, that  
11 you should be very proud, as I am yesterday, after seeing  
12 the spectacular defense work of Tammy Wray and Rob Lerman.  
13 They were brilliant. I watched them all day. They  
14 advocated for their clients, that's what they're supposed to  
15 do. They did it very well.

16 My question to you, Dan, is, it's clear that  
17 Tammy Wray and Rob Lerman really are trained and versed in  
18 mental health and drug issues.

19 MR. CARRION: Right.

20 MR. SCHECHTER: We have not seen that among the  
21 defense bar in other places.

22 So my question is this, is it a recommendation we  
23 should make in this report that we will put together a year  
24 from now, eight months from now, that if the defense  
25 function is to be viable in drug courts, mental health

1 courts, problem-solving courts, specialized training and  
2 specific attorneys must be designated for these courts?

3 MR. CARRION: I totally agree with that  
4 recommendation, because only those who have the training  
5 understand what needs to be done to have their clients  
6 succeed. And as you saw -- 'cause I talked to Tammy last  
7 night, and she's very, she's a great advocate, she knows --  
8 the one thing about specialized training, they know where  
9 the treatment providers are, they know which ones are  
10 successful and which ones are terrible.

11 Because Arizona is trying to be an evidence-based  
12 state. And that means if the evidence supports it, we  
13 support the treatment providers. If the treatment provider  
14 is, like the previous speaker, is voodoo, you kick him out.

15 Any of the -- there's a lot of people that get  
16 hired 'cause they're a treatment provider. But Tammy and  
17 Robert, because they do go to training, and every year we  
18 have the Arizona drug court seminars, every I think August  
19 or July, so we get together every year for an entire day,  
20 and we have specific programs for the attorneys, for the  
21 judges, for the treatment providers, for the probation  
22 officers, 'cause it is a small community, and you need to  
23 have, to be able to talk to others who are in that  
24 profession. It is a small group.

25 JUDGE HYATT: I think that has a lot to do

1     though, Mr. Schechter, about the resistance of attorneys,  
2     that has definitely been a problem for us, not only with  
3     this current County Attorney, but a couple of other prior  
4     ones. But there still are ways of, you know, getting them  
5     on board.

6             And although Mr. Thomas doesn't, doesn't full  
7     force support the problem-solving courts, one thing that he  
8     did do that his predecessor didn't do, is he allowed for  
9     part-time positions for prosecutors, which he then assigned  
10    to the problem-solving courts.

11            So we had dedicated state representatives, which  
12    is really key. The one before him, this was going back this  
13    way for 15 years, but he's finally done something to make  
14    that not a revolving door. So there was one plus there.

15            MR. SCHECHTER: And so the record is clear, the  
16    County Attorney in mental health court yesterday, Joanne,  
17    and I forget her second name, is a 25-year veteran of the  
18    FBI.

19            JUDGE HYATT: Um-hum.

20            MR. SCHECHTER: She became a lawyer. And I  
21    thought of all the prosecutors I've seen so far in different  
22    cities we've visited, she was by far and away the most  
23    knowledgeable, one of the sharpest, and also a pleasure to  
24    find one protecting the citizenry, but at the same time  
25    understanding the court that she was in.

1 JUDGE HYATT: Her last name is Sokato. She was  
2 employed --

3 MR. SCHECHTER: Spectacular work.

4 JUDGE HYATT: And a lot of times we do get, back  
5 up what you're doing with the -- it all comes down to money.  
6 If you talk to the money makers and the policy makers about  
7 how much money it saves in jail days, then all of a sudden  
8 they're listening.

9 So even with the very resistance of the county  
10 prosecutor, you can still make some inroads. We haven't  
11 quite gotten to the diversion court yet, but...

12 MR. SCHECHTER: I'm hopeful.

13 MR. CARRION: I'm glad you brought up her,  
14 because having the right prosecutor, having a dedicated  
15 prosecutor also helps in the process. 'Cause one of the  
16 things that happens if you have a fly-by-night prosecutor,  
17 is you have a lot of delays, and you then have to educate  
18 them, where their role is, every week. And you become very  
19 frustrated.

20 And a lot of them don't care. They don't follow  
21 the client. They don't know which client is succeeding,  
22 because the person may have a dirty UA, but may have been  
23 just a slippage, where, you know, that prosecutor that day  
24 was, well, we got to get him a sanction, and we're expected  
25 to follow the protocol, there is no sanction.

1 JUDGE HYATT: Just a warning.

2 MR. CARRION: It's just a warning.

3 MS. BERNHARD: So just to clarify, you've got  
4 dedicated defenders who are in there all the time?

5 MR. CARRION: Oh, yeah.

6 MS. BERNHARD: But you've got prosecutors who are  
7 coming in on a case-by-case basis?

8 MR. CARRION: Until just recently, until just  
9 recently.

10 MS. BERNHARD: That's the reverse of a lot of  
11 places. A lot of places have dedicated prosecutors and  
12 defense attorneys follow individual clients, from all sorts  
13 of other places, complete other way --

14 JUDGE HYATT: Right.

15 MS. BERNHARD: So let me ask you something. So  
16 Tammy, for example, she's responsible for all the people  
17 that are in her drug court.

18 MR. CARRION: Tammy or Robert.

19 MS. BERNHARD: They share with that?

20 MR. CARRION: Yeah.

21 MS. BERNHARD: So what kind of a caseload do they  
22 have?

23 MR. SCHECHTER: Big.

24 MS. BERNHARD: Are they responsible for like, you  
25 know, 1500 clients on any, you know, is there 1500 cases

1 pending, and they're basically responsible for all of them?

2 MR. CARRION: Well, the thing is, it's an open  
3 system, in a sense that whatever clients are in the court,  
4 they represent.

5 MS. BERNHARD: Right.

6 MR. CARRION: They use them for a year, year and  
7 a half.

8 MS. BERNHARD: And the clients will be there for  
9 a long time.

10 MR. CARRION: The way the caseload is, that's one  
11 of the reasons why, Tammy is actually the one who came and  
12 said, you know, Dan, Robert needs help.

13 MS. BERNHARD: Right.

14 MR. CARRION: And so as a consequence I went to  
15 my boss and said, I really think I've given Robert short  
16 shrift, so I added another attorney, so that there's a  
17 balance.

18 MS. BERNHARD: I was going to ask you, because if  
19 the court's open you said three days a week, that means  
20 three days they're on their feet in court, dealing with  
21 whatever's coming up.

22 But I would assume you have to try to do some  
23 prep work, you would get notice, for example, I would assume  
24 if somebody's violated something, conditions, so somebody  
25 would notify the defense attorney's office, you know, Tammy,

1 this guy's got a whatever it is, problem, and do you want to  
2 contest it or not contest it?

3 And wouldn't she need some advance warning that  
4 this is coming up next week? And do you have social workers  
5 that would help her prepare for that? Or does she just have  
6 to make her decision when she gets to court that day?

7 MR. CARRION: No.

8 JUDGE HYATT: Well, that kind of goes back to  
9 what I was telling you about having a team --

10 MS. BERNHARD: Right.

11 JUDGE HYATT: -- that definitely knows and  
12 respects everybody's roles, because Tammy will get notice  
13 just basically the day before, in a progress report, that we  
14 all do, judge gets the same progress report, the prosecutor.

15 MS. BERNHARD: So to sort of help her prepare for  
16 the next day?

17 JUDGE HYATT: Right. And so when, as I think  
18 Judge Meyer was talking, we all staff the case the next  
19 morning, and we're going to see that offender in an hour or  
20 two, you have to allow some time for the defense lawyers to  
21 go and talk to their clients about, well, okay, look at what  
22 we've got here.

23 So if you don't have that respect or don't  
24 realize that role of the defense attorney, the tendency is,  
25 okay, just we've done the staffing, let's go in, and, you



1 know, lay it on the line.

2 MS. BERNHARD: And let's do it, when the defense  
3 attorney hasn't had a chance to talk to them.

4 JUDGE HYATT: Right.

5 MR. JONES: We're running up against the clock,  
6 and I know some other folks have questions? Let me first go  
7 to Elizabeth, and then get Jay.

8 MS. KELLEY: Thank you. I want to talk for a  
9 moment, or talk to you for a moment about the role of the  
10 private bar.

11 First of all, are any court trainings available  
12 to the private defense bar? And secondly, from the, from  
13 your remarks, and Marvin's remarks, it sounds like you have  
14 a wonderful Public Defender in that court.

15 Is, would a defendant almost be better served by  
16 having someone who was specifically trained, and always in  
17 that courtroom and familiar with the process and players?  
18 But if that, that defendant does not meet the eligibility  
19 requirements for the Public Defender's Office, could they  
20 still, he or she still avail themselves?

21 MR. CARRION: The reality is, the way we have  
22 drug court set up is -- thank you. The reality is that  
23 every single person that's in drug court, will get a Public  
24 Defender representing them. Otherwise, we have a very  
25 expensive proposition for defendants. And --

1 MS. BERNHARD: 'Cause they're going to be  
2 represented, they're going to be back in court so many  
3 times.

4 MR. CARRION: Right. And also, private defense  
5 attorneys, I love you all, but it becomes a very, it's  
6 showing the bucks to the client, you know, being a very  
7 aggressive, when in many case you don't have to be that  
8 aggressive. But you have to be in court every single time,  
9 to make sure your client's interest is protected.

10 JUDGE HYATT: And you have highlighted a weakness  
11 in our system, because we don't generally advertise  
12 trainings to the private bar. And where I see it coming  
13 into play, is within the domestic violence court arena,  
14 because those offenders typically are on the higher economic  
15 scale, and they hire their own lawyers, even though we do  
16 make a Public Defender available, regardless of income  
17 guidelines.

18 And we've tried to, you know, structure some  
19 training for the private bar, but we haven't gotten it yet.  
20 So they do come into the system kind of like, oh, my God,  
21 what is this? And Tammy and Rob end up doing a little  
22 tutorial to the private bar right there in court. So it is  
23 a weakness we have in Maricopa County, I think we need to do  
24 that.

25 MS. YOUNG: May I?

1 MR. JONES: Yes.

2 MS. YOUNG: Could you just give a five minute  
3 summary of how the DUI court works? Because we have --

4 MR. JONES: Or two and a half.

5 MR. CARRION: Say what?

6 MR. JONES: Two and a half.

7 MR. CARRION: All right, here we are go, with DUI  
8 court, essentially again adult probation makes a  
9 determination as to who goes into DUI court. DUI court has  
10 their sessions Friday morning, from 8:00 to 12:00. Staffing  
11 begins around 8:30, ends around 10:30.

12 I have an attorney by the name of Karen Emerson,  
13 and I can send you an E-mail with her phone number. She's  
14 an excellent attorney. Rebecca Potter just came back to our  
15 office. She's another great resource to talk to you about  
16 DUI court. She's been with us for a decade. And she can  
17 give you the in's and out's of DUI court.

18 DUI court also follows the path program, it also  
19 recognizes that occasionally people do slip up. And they  
20 have graduated sanctions.

21 Secondly, somebody brought up about testing. The  
22 ones that they have now, these -- do you know what SCRAM is?  
23 The ankle bracelets that test?

24 Well, I'm not a proponent of SCRAM, I think it's  
25 a waste of time. But it being used in Maricopa County. And

1 Karen one time was able to illustrate that this particular  
2 SCRAM device wasn't working. 'Cause she asked for all the  
3 data to show that it was wrong.

4 So that's another reason why you need to have an  
5 attorney who's there all the time. 'Cause she sees the data  
6 on the other ones, and she says, well, it appears to me that  
7 it's not working. So that's an added protection of having  
8 an attorney who's aware of DUI court and is aware of the  
9 instruments they are using.

10 DUI court is, there was a study done, and it's  
11 been proven to be successful. Any particular area of DUI  
12 program you want to know about?

13 MS. YOUNG: So, again, so if someone goes to DUI  
14 court in Arizona, you're allowed to then be on probation  
15 through DUI court versus a mandatory jail?

16 MR. CARRION: Oh, wait a minute, well, actually  
17 in Coconino, they're much more progressive than Maricopa  
18 County. In Coconino you can have a reduced sentence. In  
19 Arizona, in Maricopa County, you still have to do your  
20 prison term, four years -- four months, thank you -- four  
21 months, and then you go right into DUI court.

22 So it's not deferred, not delayed, you serve that  
23 first, and then you go into probation. Actually probation  
24 begins the same time you do your four months in prison.

25 So Maricopa County, we're still, have to send

1 them to prison, and then on to probation.

2 JUDGE HYATT: On the felony DUI.

3 MR. CARRION: Yeah.

4 MR. JONES: These sessions are never long enough,  
5 and we always end up running up against the clock. But we  
6 could talk to you guys, you know, endlessly. I have two  
7 very quick questions.

8 And I just want to ask, I understand fairly well  
9 the sanctions aspect of it. Could you just tell us a little  
10 bit about the rewards? What are the rewards?

11 JUDGE HYATT: Well, we're always hampered by lack  
12 of funding. So when we have funding, we are able to  
13 provide -- again, it's a graduated scale, but initially,  
14 believe it or not, the most common sanction is praise and  
15 reward by the judge and the team in open court.

16 And Dan and I were talking about this on the way  
17 down, to everybody in this room, that might seem like, oh,  
18 what's that, you know? But it is a big thing for the  
19 participants in this court who've never really had any  
20 authority figures say those things, like you're doing a  
21 great job. And that's initially the thing we do.

22 We also allow them to go first on the calendar.  
23 And that's sometimes a great thing, if we've got 50 people  
24 to take care of on the docket, the people who've done really  
25 well, they're in the superstar segment, and they get called

1 up first, and praised, and they're on their way.

2           When we have funding, we try to give things, like  
3 tangible items, like Target gift certificates, or, you know,  
4 something where they can, you know, help their families  
5 somehow or tickets to games and events in the valley, those  
6 kind of things.

7           Many times we don't have a lot of money, but  
8 we'll have some money. And we'll put them into what's  
9 called a fishbowl, so everybody who's doing well goes into  
10 the fishbowl, and you just draw out one prize.

11           But you'd be amazed how that motivates people,  
12 during the course of the month, 'cause they talk about it  
13 during treatment, say, I want to be in Judge Hyatt's  
14 fishbowl 'cause I want to get those baseball tickets, and  
15 there's only one set of tickets to give out.

16           MR. JONES: We unfortunately don't have time, I'd  
17 love to hear you talk about what you think if any are the  
18 ethical issues of the rewards.

19           But we don't have the time for that. Second --

20           JUDGE HYATT: I tell you, I buy the Tootsie Roll  
21 pops every once in a while, too, so I'm into it financially  
22 for that, too.

23           MR. JONES: And just quickly, if you would, Judge  
24 Meyer this morning --

25           MR. CARRION: Hyatt. Oh, I'm sorry.

1           MR. JONES: Judge Meyer this morning said that  
2 NDCI often goes around to these courts throughout the  
3 country and makes these presentations and recommends that if  
4 someone is going to be sanctioned, that there's a hearing,  
5 but that judges often think that's heresy. I'm just  
6 wondering why you think that they would think that that  
7 would be heresy. To have a sanction, to have a hearing  
8 before you get sanctioned.

9           JUDGE HYATT: Well, in certain aspects of the  
10 court we do that, especially like Dan was talking about in  
11 the SCRAM bracelet malfunction, nonmalfunction, there's, if  
12 the client says, no, I wasn't drinking at 2:00 a.m. when  
13 this graph shows me, they get a chance, a due process chance  
14 at a hearing to determine that.

15           But in terms of the standard rewards and  
16 sanctions, the attorneys, we wait until after staffing for  
17 the lawyers to go out and talk to the clients, this is what  
18 we're talking about in staffing, now tell me what's  
19 happening.

20           I think most judges consider that to be their  
21 hearing. And the good lawyers that do this all the time, in  
22 the run of the mill case, it's just going to proceed that  
23 day.

24           But Tammy Wray, if she thinks there's really an  
25 issue here, with whatever the sanction was going to be

1 imposed, then she'll ask for it to be delayed and put this  
2 on, you know, a different date, give everybody time to  
3 present.

4 So I don't, not one of those group who think it's  
5 heresy to ask for that kind of hearing, but it doesn't occur  
6 regularly. I think if it did, it would kind of throw a real  
7 big wrench into everything. And I leave it to the defense  
8 bar to tell me which cases need that.

9 MR. JONES: Well, thank you. This has been  
10 incredibly useful for us. And I can assure that we are all  
11 looking forward to meeting Tammy Wray this afternoon, and  
12 Rob Lerman?

13 JUDGE HYATT: And Rob.

14 MR. JONES: He's going to be here?

15 He's not on my schedule. Okay, great thank you  
16 very much.

17 MR. CARRION: He's a late add-on.

18 MR. JONES: Yeah, a late add-on. Great.

19 (A recess was taken from 10:54 a.m. to 11:04  
20 a.m.)

21 MR. JONES: All right. We are very pleased to be  
22 joined by our friend and colleague, Bob Hooker, who, in  
23 addition to being one of our honored guest speakers today,  
24 is also a member of the Board of Directors of the National  
25 Association of Criminal Defense Lawyers.



1           Bob has served as the Public Defender of Pima  
2 County since January of 2005, where his tenure has already  
3 yielded noticeable results. Prior to his position with Pima  
4 County, Bob practiced as a private attorney in civil and  
5 criminal defense in Tucson, for over 30 years. He  
6 previously sat as a judge in the Pima County Superior Court  
7 from 1980 to 1982, before returning to private practice.

8           Jay Clark is going to lead the questioning, but  
9 we are thrilled and honored to have the benefit of your  
10 thoughts today about your work, Bob. The floor is yours.

11           MR. HOOKER: Thank you. Let me just preface my  
12 statement by saying, I'm a died in the wool trial lawyer.  
13 I, therefore I'm a cynic. And I am not necessarily an  
14 admirer of problem-solving courts.

15           I understand that they're, they seek to meet a  
16 need, I understand that they're for the most part  
17 well-intentioned, although not always I believe. And I  
18 understand also that most of the people who will be coming  
19 before you are proponents at least today, of these programs.  
20 And I'm not necessarily a proponent.

21           I will also say that I was in Miami and I heard  
22 Bennett Drummer, do his presentation, and I agree almost  
23 entirely with everything that Bennett had to say.

24           My problem with the problem-solving courts are  
25 that I don't think that's a function of the criminal justice

1 system. The problems that those courts are facing are  
2 social problems. I don't think the criminal justice system  
3 is designed, nor do I think it can address social problems  
4 or correct social problems. I believe that all the criminal  
5 justice system was designed to do and can do is to address  
6 symptoms. And it's up to the larger society and  
7 legislatures and other organizations to address these issues  
8 before they become criminal problems.

9           What we're doing by setting up these courts is  
10 backloading the issue, backloading the cost and backloading  
11 the treatment, when in fact we ought to be front-loading  
12 that. We ought to have these facilities available, prior to  
13 any person becoming involved in the criminal justice system.  
14 And that's where the treatment should begin.

15           I fear that by setting up problem-solving courts  
16 like this, we are enabling our legislators and our leaders  
17 to fail to properly fund treatment programs, education, and  
18 health services, because we have given them the excuse not  
19 to do that. And frankly, the reason we have many of these  
20 problems is because they haven't provided that funding,  
21 especially in Arizona.

22           If you look at the statistics and the records,  
23 Arizona is in the bottom 48 and down, in terms of providing  
24 funding for education on a per capita basis, providing  
25 funding for health care, for psychiatric and mental health

1 care, and other rehabilitative services.

2 We're letting them get by with this by having  
3 these kinds of programs, and then saying, we're going to  
4 solve the problem for you. But I don't think they're going  
5 to.

6 I'll give you an example. In 2006 our drug court  
7 prepared a report, and it showed that of the people that  
8 were in drug court, 22 percent were successful. That means  
9 78 percent failed, that went into that program. And even  
10 the 22 percent is somewhat suspect because we don't have  
11 post-program statistics to show whether those 22 percent  
12 continued to be successful and free from drugs.

13 And we also know that there's a certain segment  
14 of that 22 percent are just playing the system, until they  
15 get through the program.

16 So, and most of those in this county, of that  
17 78 percent who don't successfully complete the program, then  
18 get a felony, and get up to six months in jail.

19 Now, you look at the other side of that, and we  
20 as defense lawyers define success differently. We define  
21 success by winning. We define success by getting people  
22 into a probation program where they're successful, and  
23 they're done.

24 And frankly, I mean we do on a personal level  
25 worry about what's going to happen to our client later on.

1 But really as professionals we don't, you know, we don't pay  
2 a whole lot of attention to that, and I'm not sure that we  
3 really should.

4 We've got Proposition 200, as Marvin mentioned a  
5 while ago. Almost every one of the people that go into the  
6 drug court program are Proposition 200 eligible, which means  
7 they're never going to go to jail. They can't, under the  
8 statute.

9 So why are we putting them into that program as  
10 defense lawyers? They're going to go on probation, they may  
11 as a condition of probation, get treatment. They're not  
12 going to have the scrutiny that they have in a drug court  
13 program. And their, the success rate on probation is going  
14 to be much higher than it is in the drug court program.  
15 It's going to be a lot higher than 22 percent. Probably  
16 going to reverse those figures. It's probably going to be a  
17 78 percent success rate. Now, those people may later on  
18 continue to go back to their drug issues.

19 So, and we also know that many of those cases we  
20 would win if we went to trial. And there's no downside in  
21 going to trial because they're aren't going to go to jail  
22 anyway, or they're going to be plea bargained to a  
23 misdemeanor right off the top.

24 Or, in fact, they're probably not going to get  
25 prosecuted in many of those cases anyway, because of the

1 burdens that are on the prosecution, because of the small  
2 quantities involved, and those sorts of thing.

3           And when we have a drug program, court program  
4 like this, we are enabling the prosecution to get involved  
5 in cases that they wouldn't normally get involved in,  
6 because they get the statistics. They get the convictions.  
7 They get funding based on their drug prosecutions and their  
8 drug convictions.

9           And when a person in Arizona pleads as they do in  
10 Pima County to an open-end offense, it's treated for all  
11 intents and purposes as a felony until such time as it's  
12 designated a misdemeanor or later dismissed.

13           That means the prosecution gets their felony  
14 conviction record, they can use that for funding sources,  
15 they are in the cases, in and out quickly, and where we, we  
16 stay with them for an 18-month period of time.

17           So I have some skepticism about that program, and  
18 in particular. If you think about it, and you look at and  
19 address the term problem-solving court, you're therefore  
20 defining an issue, because are we really solving the  
21 problem? Can we resolve the problem? Is it the function of  
22 the court to solve the problem?

23           They can address it, they can punish it, they can  
24 do whatever is necessary. But as I said initially, I don't  
25 believe that it's the court's function to solve the problems

1 of society rather than to treat the symptoms.

2 If you take for an example, somebody with a brain  
3 tumor, you're going to treat the pain, but you're not going  
4 to ignore what causes that pain and suffering. And we in  
5 America are not a retrospective, introspective kind of  
6 society. We don't look at what's causing the problems. We  
7 only look at the problem after it arises and say, okay, now,  
8 how are we going to deal with it?

9 And all we're doing with these problem-solving  
10 courts is we are treating the symptoms, and we are not going  
11 to the root issues that cause people to turn to drugs, that  
12 cause people to turn to drugs, cause people to become  
13 alcoholics or other addicts.

14 MS. BERNHARD: Keep your voice up.

15 MR. HOOKER: Okay.

16 MS. BERNHARD: You're not a soft-spoken  
17 individual --

18 MR. HOOKER: So, if you look at and just think  
19 about the term problem-solving court, I think you can  
20 identify some of the issues that it raises.

21 And to a large extent, I think these programs are  
22 wolves in sheep's clothing, because if you look at one of  
23 the things that I handed out, the plea agreement that the  
24 people sign to get into drug court, they're giving up every  
25 right. They're pleading guilty to what's going to be in

1 effect a felony, 78 percent of them are going to have a high  
2 risk of getting a felony.

3 And they don't have a right even to contest  
4 whether or not they violated the terms of the program. They  
5 don't have a right to appeal. All that's happening to them  
6 is they go straight to sentencing, without a pre-sentence  
7 report, without any kind of background or other information  
8 provided to the judge.

9 And the persons who are deemed to be eligible are  
10 solely determined by the prosecution. And in this county  
11 there's no written criteria. The only answer that I can get  
12 from the County Attorney's Office as to who's eligible is  
13 who we think will be successful.

14 If you look at our 2007 drug court report, it  
15 states in there that one of the areas of concern is that  
16 Hispanics, which is about 28 percent of our population here,  
17 and a much higher percentage of our people in the criminal  
18 justice system, are way under-represented, and  
19 African-Americans had no participants.

20 What that tells me is that whether it's  
21 intentional or not intentional, the County Attorney in his  
22 decision-making process is weighing much more heavily for  
23 Anglos than they are for minorities. And I think that is, I  
24 don't know if that's the same throughout the system or in  
25 other drug courts, but that's what, that's what is happening

1 here.

2 The caveat to that is our juvenile drug court  
3 system. That I think is a very good system. The problem is  
4 that, and this was expressed to me by the drug court judge  
5 in juvenile court, almost every one of the people in the  
6 juvenile drug court have been victims of some kind of abuse,  
7 and many of them it has been sexual abuse.

8 This has been unreported for the most part. And  
9 those people will not report it to the health care providers  
10 that they're given in the drug court because they believe  
11 that that's part of the prosecution, they don't have good  
12 experiences with the probation department, who monitors  
13 these and sets up the program, those issues don't get  
14 addressed.

15 And we need to have, if we're going to have a  
16 drug court like that, we need to have a neutral party,  
17 neutral institution that can provide the kind of care that  
18 those kids who are victims of abuse, even though there  
19 haven't been criminal charges filed, can get the kind of  
20 assistance and treatment that they can, who are going to be  
21 willing to open up to the treatment person and let them know  
22 about these kinds of things.

23 We don't have funding for that, and nor does the  
24 juvenile court have funding for that, and if they did, the  
25 same problems would arise because it would be coordinated by



1 probation or by the courts, and kids just aren't opening up  
2 to those people. Other than that I think our juvenile court  
3 drug program is excellent.

4 I think that pretty much summarizes what I have  
5 to say, except -- and that's why I said I have some  
6 potential questions for you, on what's success and how do  
7 you define success?

8 Our agency does almost all the drug court. Very,  
9 very few private attorneys -- they may get the client in  
10 drug court, but then we take it over, from that point in  
11 time.

12 What's our duty as an agency? When we know that  
13 78 percent of the people are going to fail? Is that a  
14 program that we want to promote? Do we, do we sacrifice  
15 that 78 percent for the 22 percent who get value out of it?  
16 And can we do that?

17 And it's a difficult question to answer. I know  
18 probably the answer is, well, you have to take each case on  
19 an individual basis. And that's true except that we know  
20 what the statistics are. We know what the failure rate is.

21 And we also know what the success rate if we  
22 don't go into that program, and go through the regular court  
23 process. We have the possibility of success, we have a huge  
24 possibility of a misdemeanor plea offer, we don't have the  
25 opportunity of having the total charges dismissed, and we

1 don't have, but you don't also have any possibility of jail,  
2 whereas you do if you go through the program, and go back.

3           And that's an ethical issue that I'm struggling  
4 with, I don't know if other programs struggle with it or  
5 not, but if I had to say on a programmatic basis, do we do  
6 it or don't we don't it? Knowing what the failure rate is,  
7 I'd say we don't do it. Thank you.

8           MR. JONES: Thank you. Jay?

9           MR. CLARK: Well, the 22 percent that do succeed,  
10 I guess my question is this, there's some people who aren't  
11 going to go to treatment, no matter how many resources are  
12 funded for them by government, state, Federal, whatever.

13           Don't you think that there's some argument at  
14 least that the programs will be there, the drug court, to  
15 help the people who, when they get arrested, they get  
16 charged, they've now hit bottom? So if we don't have the  
17 programs, what happens to those people?

18           MR. HOOKER: Well, that's my problem with how  
19 we're doing it.

20           MR. CLARK: Okay.

21           MR. HOOKER: You know, of course that's a service  
22 to those people. But I, but I don't know that that's a  
23 service the criminal justice system ought to be providing.  
24 It ought to be up-front.

25           And people who are motivated to get through the

1 program, be successful in the program, perhaps would be in  
2 those programs if they were available for them up-front.

3 And we know since the Reagan era, but all that  
4 stuff's been cut out. And we used to have a lot of that, we  
5 don't have it anymore.

6 And we're telling the legislature that basically,  
7 we don't need it because if they get caught and we'll take  
8 care of them later on. And law enforcement and the  
9 judiciary to an extent have committed what I think is fraud  
10 on the American public by saying, we can take care of these  
11 problems. And we have to recognize that it isn't our, it's  
12 not our function to take care of those problems.

13 MR. CLARK: I guess my question then goes to the  
14 juvenile program that you think is an excellent program. If  
15 I'm understanding what you're saying, I'm going to guess,  
16 and I'm going to ask you to talk about this, do you think  
17 that that's an excellent program because that is more of a  
18 front-loaded attempt to get to these kids before they get  
19 worse problems?

20 MR. HOOKER: Yes.

21 MR. CLARK: Is that why you have better, more  
22 positive feelings about the juvenile program?

23 MR. HOOKER: Well, and the success rate is much  
24 higher. It may also be a function of the judge who has that  
25 versus the judge who heads the one downtown.

1 MR. CLARK: Okay.

2 MR. HOOKER: The one downtown tends to be  
3 offended much more easily and less likely to work with the  
4 person in a juvenile case.

5 MR. CLARK: So one of the things that I think  
6 we're seeing today is, from you and our other speakers, is  
7 that the judge in any -- and what we learned in Miami, that  
8 the personality of the judge and their enthusiasm for doing  
9 this program and it's succeeding, however it's defined by  
10 that judge, is based on the commitment of the judge?

11 MR. HOOKER: Yes.

12 MR. CLARK: And that's one of the things you're  
13 saying is a distinction between the juvenile program and the  
14 local program?

15 MR. HOOKER: Yes.

16 MR. CLARK: I'm confused, because I understand, I  
17 guess it might be a county difference, but it was my  
18 understanding from Judge Hyatt that in Maricopa County, you  
19 get charged, if you want to have a motion to suppress, you  
20 can litigate that, if you want to have a trial, you can  
21 litigate that, win or -- or if you win, you're done, lose,  
22 you can then go to drug court. Is that not how it works  
23 locally here?

24 MR. HOOKER: No.

25 MR. CLARK: How does it work here in terms of

1 getting into the program?

2 MR. HOOKER: At the initial appearance pretrial,  
3 we have a pretrial services program, they interview people,  
4 and look up their records, and everything, and that's within  
5 24 hours of arrest.

6 MR. CLARK: Okay.

7 MR. HOOKER: At that initial appearance, on the  
8 pretrial services report, written report, they will note  
9 whether the person is eligible for drug court.

10 It then goes to the County Attorney's Office to  
11 determine whether or not that's a person that they want to  
12 allow to go to drug court.

13 MR. CLARK: Let me ask a question, clarify this,  
14 the prescreening that you talked about, there is written  
15 criteria to see if they're eligible?

16 MR. HOOKER: Well, they have --

17 MR. CLARK: Then it goes to the County Attorney  
18 who has no criteria?

19 MR. HOOKER: Right.

20 MR. CLARK: Okay. I didn't mean to interrupt,  
21 but I wanted to make sure I understood that.

22 MR. HOOKER: Primarily the criteria that pretrial  
23 services uses is no prior felonies, no more than two minor  
24 drug offenses.

25 MR. CLARK: Judge Meyer this morning said that, I

1 think I'm right, that the group that he works for has a  
2 belief that those are, maybe the people who shouldn't be in  
3 drug court, that they should be people who have been to  
4 prison before, have the more extensive record, because  
5 they're the higher risk.

6 The people who have one or two minor contacts  
7 with the court, are probably going to succeed anyhow. What  
8 do you think about that flaw in the screening process?

9 MR. HOOKER: I agree with it. It ain't going to  
10 happen here.

11 MR. CLARK: Okay.

12 MR. HOOKER: Just given the political  
13 philosophies of the prosecution.

14 MR. CLARK: Okay. I didn't mean to interrupt.  
15 Go ahead. So they make the recommendation to the County  
16 Attorney, and then --

17 MR. HOOKER: Well, they don't even recommend  
18 them, they just stamp that they're eligible, and those that  
19 they stamp that they're eligible, then goes to the County  
20 Attorney's Office, who then screens them, and makes their,  
21 what appears to be wholly subjective decision as to whether  
22 they think the person might be successful.

23 MR. CLARK: Okay.

24 MR. HOOKER: And the numbers were down in '07  
25 versus what they were in '06.

1 MR. CLARK: Numbers in terms of people who they  
2 let in?

3 MR. HOOKER: Right.

4 MR. CLARK: You started by saying you're a died  
5 in the wool trial attorney. Would you feel different about  
6 those courts if you had a different process, more like they  
7 have in Maricopa County, where you, if you want to have a  
8 motion to suppress, you can litigate it, if you want to try  
9 your case, you can litigate? Would your feelings be  
10 different?

11 MR. HOOKER: Absolutely.

12 MR. CLARK: So is it --

13 MS. SHIFMAN: Would you keep your voice up?

14 MR. HOOKER: Absolutely.

15 MR. CLARK: So is it a question in legal terms of  
16 the due process that these folks are not getting? Is that  
17 one of the, is that a fair way for me to summarize that?

18 MR. HOOKER: Yes.

19 MR. CLARK: Okay.

20 MR. JONES: Why would you, why would your feeling  
21 be different if they had the process here that they have in  
22 Maricopa?

23 MR. HOOKER: Well, I think everybody ought to  
24 have an opportunity for due process.

25 MR. JONES: But then, but then, but then it

1 sounds to me like the, if you are unsuccessful at trial, and  
2 you still have an opportunity to get into the drug court,  
3 after that outcome, then aren't you getting sort of an, sort  
4 of two bites of the apple? And doesn't that sort of not,  
5 doesn't that sort of go against -- I mean, I don't -- I have  
6 a whole raft of questions I could ask Bob, so I don't want  
7 to take up -- I want you guys to jump in, but, but, but, you  
8 know, assuming your notion is right, and, and, and, you  
9 know, I don't know what the political philosophy is, but it  
10 sounds like you have a fairly conservative notion of what  
11 the criminal justice system should be, that we've got this  
12 prison industrial complex, that we're over-incarcerating,  
13 that we're bringing all society's problems to the doorstep  
14 of the criminal justice system, and they don't belong there,  
15 they belong other places. We're letting the legislature  
16 drop the hook, and that the criminal justice system should  
17 be infinitely smaller, and should be about adjudicating  
18 complaints.

19 MR. CLARK: The rule of law.

20 MR. JONES: The rule of law. If that's right,  
21 then, A, it seems like, it seems like we shouldn't have drug  
22 courts at all in that system on the back end, the front end  
23 or anywhere, if that's sort of the philosophy.

24 And B, if that's right, and we are where we are  
25 and it's February of 2008, how do you rewind? How do you



1 roll back? How do put the toothpaste back in the tube of  
2 this over-expansion of the criminal justice system?

3 MR. HOOKER: Well, I think you're right, that we  
4 are about ten years behind the eight ball in having a past  
5 person in the investigation of the whole process.

6 But I think our obligation is to tell it like it  
7 is. Our obligation is to tell the legislators and the  
8 prosecutors and the law enforcement people, that that  
9 philosophy isn't working, that we need to, we need to turn  
10 it around.

11 We need, we need not to put further burden on an  
12 already overburdened criminal justice system. And we have  
13 to start somewhere with the education process. Maybe ten  
14 years ago, the social and political atmosphere in the  
15 country would never have accepted that.

16 But I think they're starting to accept that now,  
17 particularly when you look at the rising cost for  
18 incarceration, and the number of people that we have in  
19 prisons, maybe we are at a point where we can take a  
20 different look at how we're dealing with some of these  
21 issues.

22 MS. BERNHARD: Can I just jump in? So are you  
23 saying one of the things we ought to push for is kind of a  
24 decriminalization, like what things can we take out of the  
25 criminal justice system? Or let me just ask you this: If

1 they were making you God for the afternoon, what would you  
2 recommend?

3 MR. JONES: Specifically, like if --

4 MS. BERNHARD: No, that's my question, Rick.

5 MR. JONES: I know, but if we were, as a  
6 committee going to advocate the abolition of these  
7 specifically --

8 MS. BERNHARD: That wasn't my question.

9 MR. JONES: Oh, I'm sorry, go ahead. Answer her  
10 question.

11 MR. HOOKER: I'd rather play God.

12 MS. KELLEY: You just want him to put the  
13 toothpaste back in the tube.

14 MR. JONES: Go ahead, go ahead.

15 MR. HOOKER: Most of it is driven by poverty.

16 And the people that we represent are the poor. And we  
17 represent 85 percent of the people that come in the criminal  
18 justice system. You got to start by eliminating the poverty  
19 initially.

20 And this may sound like I'm copycatting somebody,  
21 but the poor people don't have hope. So they're turning to  
22 the drugs, they're turning to the crime, and they're turning  
23 to other things. And we've got to first I think deal with  
24 the issue of poverty before we can deal with any of these  
25 other issues.

1           So if I were God, I would take the money we spend  
2 in Iraq, and I would put it into assisting the poor.

3           MS. BERNHARD: And if you were translating that  
4 into a conversation specifically about criminal justice, you  
5 would say, one of the things I don't like about this drug  
6 court initiative is it that it's covering up and hiding some  
7 of the underlying problems that are contributing to having  
8 all these people, and so we're focusing on this, and it's  
9 not allowing us to see what else is going on?

10           MR. HOOKER: And we don't. That's why I say  
11 we're not an introspective society. Every time we have a  
12 problem, we want to treat it with a law, or in a punitive  
13 fashion. And we don't say, what is it about America, that  
14 causes the number of people that do turn to drugs and turn  
15 to alcoholic conditions? What is it that causes America on  
16 a per capita basis to have a higher gun crime rate than any  
17 other country who also has freedom of firearms?

18           Why is that happening? Nobody looks at that,  
19 nobody wants to address those issues. Because then we're  
20 not the America that we think that everybody wants to say we  
21 are.

22           MS. SHIFMAN: Bob, let me ask you some questions.  
23 I read a lot of the materials regarding DV court. With  
24 regard to the drug court and DUI court, even the juvenile  
25 drug court, were those programs and courts originally begun

1 as the same kind of co-opted partnerships between law  
2 enforcement, the probation department and the courts?

3 MR. HOOKER: You know, I don't know the answer to  
4 that, Gail, because I was in private practice, I never had a  
5 person in drug court. I never had a person in mental health  
6 court. I represented a lot of people charged with domestic  
7 violence crimes, but this is the first one that got  
8 initiated when I really was in a place where I was taking a  
9 look at it.

10 I don't know, but I think the one that was  
11 started here and was stopped again, is particularly onerous.

12 MS. SHIFMAN: Right.

13 MR. HOOKER: Now, Jack Peyton, who's the judge  
14 whose going to be coming in here, I don't fault him. I  
15 think his heart is in the right place. But that program,  
16 has as its goals to put more people in jail. And they've  
17 said it. And they formed the partnership. Everybody signed  
18 off on it, and including the judiciary.

19 MS. SHIFMAN: Do you know with regard to the drug  
20 courts, whether or not there are these memos of  
21 understanding signed between law enforcement and the court?

22 MR. HOOKER: I don't think so. I don't believe  
23 so. I think that's, my understanding of it is, is that that  
24 just got put together by the judiciary and the prosecution.  
25 I don't think the defense bar had a whole lot to do with it

1 at the time it was originally set up. Although I can't say  
2 that with a whole lot of certainty.

3 MS. SHIFMAN: Let me just ask some funding  
4 issues, with regard to the drug court, your office  
5 represents, you said you represent 85 percent of the cases  
6 that come through the county, correct?

7 MR. HOOKER: Well, indigent defense does.

8 MS. SHIFMAN: Okay. Is that more than just your  
9 office?

10 MR. HOOKER: Well, we have the legal defender's  
11 office, and we have the court, Office of Court Appointed  
12 Counsel. But in the drug court we have probably close to a  
13 hundred percent of those people.

14 MS. SHIFMAN: And how about in mental health  
15 courts?

16 MR. HOOKER: Almost all of those.

17 MS. SHIFMAN: Do you have a DUI court here in  
18 Pima?

19 MR. HOOKER: No.

20 MS. SHIFMAN: Okay. And how about in the  
21 domestic violence court?

22 MR. HOOKER: My office is not involved, because  
23 that's all on the misdemeanor level. And that is handled by  
24 the Office of Court Appointed Counsel, private counsel  
25 involved in that.

1 MS. SHIFMAN: What about funding issues for you  
2 and the courts in which you send your lawyers? Are you  
3 getting any funding specifically for lawyers to do that  
4 work?

5 MR. HOOKER: No.

6 MS. SHIFMAN: So when --

7 MR. HOOKER: Nor was there any funding in the  
8 domestic violence court with the defense side.

9 MS. SHIFMAN: Okay. So when they apply for  
10 various grants through the court administrators, is there  
11 any -- I mean, does -- has your experience or anything you  
12 have reviewed shown where they have reached out to the  
13 defense bar in any way to sit at the table, to request  
14 funding, going forward?

15 MR. HOOKER: No.

16 MS. SHIFMAN: And so, from your perspective, if  
17 these courts are to continue, what role should the defense  
18 bar really have with regard to the formation and  
19 continuation of the courts? Sort of in an institutional  
20 way. I don't mean individual defense lawyers, but  
21 institutionally to sit at the table or not sit at the table?

22 MR. HOOKER: Well, we ought to be there, number  
23 one, and get our share of the funding, because it certainly  
24 impacts the defense bar. We ought to be able to assist in  
25 the establishment of the goals, and in what the process is

1 if the person has difficulty in the program.

2 My concern about the domestic violence program is  
3 that, one of my concerns is that I suspect there's going to  
4 be a pretty high failure rate because it requires these  
5 people to go to counselling programs three or four times a  
6 week.

7 These are people with families, these are people  
8 with job responsibilities, and they're not exactly the  
9 people that give a whole lot of forethought to things, and  
10 they're going to miss those programs. And they're going to  
11 run into some problems.

12 We, you know, and I think that's an issue that  
13 could have perhaps been resolved, had the defense bar,  
14 somebody looking at it from that perspective, been involved  
15 in setting up the procedures and programs and what happens  
16 if you have difficulties.

17 MS. SHIFMAN: For your drug court in this county,  
18 let's assume that the 28 percent that get through  
19 successfully --

20 MR. HOOKER: 22.

21 MS. SHIFMAN: 22, I'm sorry.

22 MR. HOOKER: I said 20 percent, it's 22, or it  
23 was in '06. The '07 report isn't done yet.

24 MS. SHIFMAN: What benefit do they get  
25 ultimately? They're clean, so, you know, we understand

1 societally and personally the benefit they receive, but from  
2 a criminal justice standpoint, is there any benefit to the  
3 drug court?

4 MR. HOOKER: Yeah, they don't get a conviction.

5 MS. SHIFMAN: They don't get a conviction?

6 MR. HOOKER: Yeah. So they're again eligible for  
7 Proposition 200 next time.

8 MS. SHIFMAN: They remain eligible?

9 MR. HOOKER: Right.

10 MS. SHIFMAN: And so is -- are you instructing  
11 your lawyers to sort of go the Prop 200 route, instead of  
12 going to drug court? Where you're saying just try the  
13 sucker, 'cause they're not going to go to jail?

14 MR. HOOKER: No.

15 MS. SHIFMAN: Why?

16 MR. HOOKER: 'Cause I haven't gotten to it yet.

17 MS. SHIFMAN: I mean --

18 MR. HOOKER: But it's a real --

19 MS. SHIFMAN: Is it because you're hanging your  
20 hat on the 22 percent who might get through the program? I  
21 mean you hope, it's just sort of that hope --

22 MR. HOOKER: Well --

23 MS. SHIFMAN: -- thing?

24 MR. HOOKER: Well, I inherited this program. And  
25 we have a lot of good lawyers dedicated to it -- not a lot,



1 two basically full-time dedicated to the drug court program.  
2 That's in the adult program. We also have one and a half in  
3 juvenile.

4 So it, I don't necessarily think that my  
5 misgivings about the program is absolutely correct. And  
6 those people have had a lot of experience in it, they're  
7 dedicated to it, they think there's a lot of value in it.  
8 So I haven't really stepped in and said, look, here are ones  
9 we ought to take and here are ones we shouldn't take.

10 Well, you tell, you tell a client this, and the  
11 difficulty is, you tell a client, you're eligible for drug  
12 court, and if you successfully complete the program, you're  
13 not going to have a conviction on your record, you're not  
14 going to do any jail time.

15 That sounds real good to people up front. And  
16 probably almost all of them would say, yeah, I'll do that.  
17 Actually think they'll do that. Now, so when you as a  
18 lawyer explain that to them, and they say, yes, I want to go  
19 into it, what do you do then?

20 MS. SHIFMAN: Right, right.

21 MR. CLARK: Bob, let me ask you this, 'cause one  
22 of the things that we're looking at as a task force is how  
23 we can help defense attorneys advising their clients in this  
24 decision-making that you're talking about. What suggestions  
25 or recommendations would you give us, that we can put maybe

1 as guidelines or recommendations to defense counsel in  
2 advising clients whether to go into one of these courts or  
3 not?

4 MR. HOOKER: Number one, there ought to be enough  
5 time for the lawyer to get all of his discovery, disclosure  
6 in the case, to see whether or not they can advise their  
7 client of what the possibilities of success are. We don't  
8 have that really right now. The decision has to be made  
9 fairly quickly.

10 And a component has to be your chances of success  
11 are only 22 percent, you ought to know that up front.

12 MR. CLARK: How do they define success in the  
13 report, the numbers we're using?

14 MR. HOOKER: Complete the program, get a  
15 dismissal.

16 MR. CLARK: No, no, nothing after it's dismissed,  
17 no year staying clean --

18 MR. HOOKER: No.

19 MR. CLARK: No -- okay.

20 MR. HOOKER: And I asked them if they had that,  
21 and they said, no, they don't.

22 MR. CLARK: Okay, with that, I didn't mean to  
23 interrupt.

24 MR. HOOKER: So we don't know what the future  
25 success really has been on those.

1 MR. CLARK: Okay.

2 MR. HOOKER: But they need to know that. And  
3 they need to know it's going to be a rigorous program. They  
4 need to know that they're going to have to take time out  
5 from their jobs and go to the treatment programs, show up in  
6 court, at least once a month, for 18 months.

7 And they're going to have to know that their,  
8 that their fate is in the hands basically of the probation  
9 officer.

10 MR. CLARK: At what point in the process, the  
11 plea form you talked about, do they have to sign that? Is  
12 that when they first accepted a plea --

13 MR. HOOKER: Yes.

14 MR. CLARK: -- basically within 24, 48 hours  
15 roughly?

16 MR. HOOKER: Well, it's a little longer than  
17 that, it's probably about a week from the time of arrest  
18 before they, before they --

19 MR. CLARK: Okay.

20 MR. HOOKER: -- are determined to be eligible by  
21 the County Attorney's Office and then --

22 MR. CLARK: So that one of the things that you  
23 would recommend is some type of, I don't want to say cooling  
24 off, but time period so that the waivers and the things we  
25 talked about in terms of due process rights that are given

1 up, can actually be communicated to the client in a  
2 meaningful way so they understand it, have time to think  
3 about it?

4 MR. HOOKER: Right. And you know, a lot of these  
5 cases arise out of a traffic stop. And where there are  
6 multiple passengers, there are issues as to who's in  
7 control.

8 MR. CLARK: Okay.

9 MR. HOOKER: Whose it is, whether or not it's a  
10 valid stop, and all of those things. And I don't know if  
11 our lawyers do it or not, but they ought to be telling them,  
12 hey, look, you're Proposition 200, you're not going to go to  
13 jail.

14 MR. CLARK: Okay.

15 MR. HOOKER: But the odds are, if you fight this  
16 thing to the end, or if you intimate that you're going to  
17 fight it to the end, they're going to offer you a  
18 misdemeanor. And you're going to get probation, and given  
19 the given the workloads of the probation officers on  
20 misdemeanors, you're probably not going to have much  
21 supervision.

22 MR. CLARK: I've got a real quick short question,  
23 based on something that Judge Meyer talked about this  
24 morning in terms of equal protection.

25 If the County Attorney's Office designated a

1 criteria who they accept or not, is, have you as an office,  
2 or a, maybe even statewide, given any thought to an equal  
3 protection challenge to that, to make them at least have  
4 criteria that have some measure of who gets in and who  
5 doesn't?

6 MR. HOOKER: The question is, have we given  
7 thought to it?

8 MR. CLARK: Yes. I mean, is this something that  
9 you've talked about. You said you inherited the program,  
10 you're still working through it, getting a handle on what  
11 you want to do. Is that something you guys talk about,  
12 thought about?

13 MR. HOOKER: Yeah, I've thought about that. For  
14 some reason they believe that the County Attorney's Office  
15 is the sole arbiter of who's eligible and who's not. Now,  
16 they as a prosecuting agency, clearly they can reject  
17 anybody they want to reject, and say they don't belong in  
18 the program, and we're going to prosecute them.

19 MR. CLARK: Okay.

20 MR. HOOKER: But what we need in this county is a  
21 more neutral body with prosecution participation in  
22 determining who's really eligible and who's not.

23 MR. JONES: Okay, Marvin, Elizabeth and then you.

24 MR. SCHECHTER: I had a very specific question,  
25 Bob. In this county, if one of your attorneys in mental

1 health court asks for a competency hearing, called Rule 11 I  
2 guess here, and an expert has to be hired, to help the  
3 attorney make the case, who pays for that expert? Out of  
4 whose budget does it come, the Public Defender, or the  
5 court?

6 MR. HOOKER: The court. Although we can hire our  
7 own attorney, and we do frequently. And a lot of these are  
8 post-Rule 11 cases, where they've been determined to be  
9 competent, but the recommendation is still up to the County  
10 Attorney.

11 MR. JONES: Elizabeth?

12 MS. KELLEY: It seems to me that the bulk of your  
13 criticism centers around the DUI, or the drug courts, and to  
14 a lesser extent to the domestic violence court. Do you have  
15 the same type of criticisms about the mental health courts?

16 MR. HOOKER: No.

17 MS. KELLEY: Okay.

18 MR. HOOKER: That's all, mental health court is  
19 all post-conviction.

20 MS. KELLEY: Okay.

21 MR. HOOKER: So there's, there has to be a  
22 condition of probation to go into mental health court.

23 MS. KELLEY: Okay.

24 MR. HOOKER: So we've had the opportunity to  
25 fight all of those battles, and to make the determination on

1 competency before that happens.

2 Do I wish we had an equal bite at these specialty  
3 courts? Do I wish we had a pre-conviction mental health  
4 court? You bet.

5 MS. KELLEY: Okay. With the full panoply of  
6 Constitutional protections?

7 MR. HOOKER: Yeah.

8 MS. KELLEY: Okay.

9 MS. YOUNG: Well, just a quick question, so if  
10 the prosecutor says, only these whatever, 20 percent, get to  
11 go to drug court, the person who's then sent to, you're  
12 saying in criminal court has no way of litigating, you know,  
13 that they should be allowed into drug court, it's just you  
14 don't get there?

15 MR. HOOKER: Yeah. The only time we have an  
16 opportunity, Vicki, is in the post-conviction drug court,  
17 when we're arguing for what the terms of probation ought to  
18 be. And we can argue for mental health court as opposed to  
19 prison on those people, but on the --

20 MS. YOUNG: On the diversion drug court, either  
21 the prosecutor says you can go into the diversionary  
22 group --

23 MR. HOOKER: Yeah, I'm sorry, the post-conviction  
24 drug court I'm talking about where we can argue.

25 MS. YOUNG: Okay.

1 MR. HOOKER: We can argue for post-conviction  
2 drug court in lieu of jail time or prison time, or for --  
3 that's where we can have some input.

4 MS. YOUNG: But that just influences the  
5 sentence, it doesn't get into whether or not they can get  
6 completed and have a dismissal?

7 MR. HOOKER: Right. Those people have already  
8 gotten through.

9 MS. KELLEY: Could I just ask one point of  
10 clarification? Because Vicki, Vicki's question raised this.  
11 So, the post-conviction drug court and the post-conviction  
12 mental health court is essentially a probation program?

13 MR. SCHECHTER: Correct.

14 MR. HOOKER: Yes.

15 MS. KELLEY: Okay.

16 MS. BERNHARD: One thing I don't understand is  
17 you like the idea of having the post-conviction drug court  
18 'cause that's, then the drug court is just really part of  
19 the probation, right? It's part of the sentence?

20 MS. KELLEY: It's almost that mental health court  
21 and drug court are august terms for probation?

22 MS. BERNHARD: It's a kind of focused probation,  
23 I guess, right?

24 MR. HOOKER: Right.

25 MS. BERNHARD: But then why did you say you liked



1 the idea of having a pre-disposition mental health court,  
2 but you don't like idea of pre-disposition drug court?  
3 What's the difference there?

4 MR. HOOKER: I prefaced that by saying, if we're  
5 going to have these specialty courts --

6 MS. BERNHARD: Yeah, I know, you did.

7 MR. HOOKER: Because what, I what -- and I'm  
8 going to deal with them. What I like to have, because  
9 people -- first of all, I have a real problem with what the  
10 criteria is for competency.

11 MS. BERNHARD: Okay.

12 MR. HOOKER: And I think that the criteria for  
13 being incompetent is so high -- and I -- that it really  
14 doesn't deal with a whole lot of the issues.

15 And if you've got people who clearly have serious  
16 mental illness, that contributed to the commission of the  
17 crime, those people need, those people don't need  
18 incarceration, they don't need a criminal conviction, you  
19 know, they need some, they need some treatment.

20 But, you know --

21 MS. BERNHARD: So it really is a different  
22 situation?

23 MR. HOOKER: The majority, the majority of the  
24 people that are in those programs, have already been  
25 identified by mental health providers as having a serious

1 mental illness. You know, we pick them up at initial  
2 appearance. And the agencies have already informed us,  
3 'cause they get a list of arrestees, as to who already has  
4 serious mental health issues.

5 MR. JONES: I'm going to risk wading in on one of  
6 Adele's questions again, at my own peril, but --

7 MR. HOOKER: From her or from me?

8 MR. JONES: Her.

9 MR. CLARK: She's the one with the knitting  
10 needles.

11 MS. BERNHARD: He's closer to me.

12 MR. JONES: I'm in the crossfire. I want to  
13 understand the philosophy of it. I mean, we've had folks  
14 who, and Bennett is a classic example, we've had folks who  
15 are clear sort of abolitionists, who don't believe in the  
16 courts. You started off by saying you were a cynic.

17 And then you then, and I thought I heard you say  
18 later on in your, in this conversation that you, your  
19 misgivings may not be correct. I'm not sure if I'm saying  
20 that right.

21 We've also had folks who are clearly full-on, 100  
22 percent, full-scale proponents. I'm wondering, A, where you  
23 think you fall on that timeline, from abolition to  
24 full-scale embracing, and making every court sort of a  
25 problem-solving court; and B, because we have to write a

1 report, and so I like to, as best I can, understand what the  
2 abolitionist, if you're making that argument, what the  
3 abolitionist argument sort of it is practically speaking, in  
4 terms of what do you do on the ground from day one with the  
5 existence of these courts? How do you go from where we are  
6 to where you'd like us to be in terms of your vision of the  
7 criminal justice system?

8           That's a huge question, I understand, so maybe  
9 you could just start by telling us where you are on that  
10 timeline?

11           MR. HOOKER: I guess I'm on the abolitionist  
12 side, I guess I would say what Gail just said, and --

13           MR. JONES: And so --

14           MR. HOOKER: And fight it out, and then once the  
15 battle's been won or lost, dealing with the issue.

16           MR. JONES: And so, and so --

17           MR. HOOKER: That's assuming you don't have those  
18 programs in place that address those issues before they get  
19 involved in crime.

20           MR. JONES: Okay. So then, so then if we are, if  
21 we are going to try to adequately present the abolitionist  
22 perspective in this report that we are doing, would you then  
23 be a proponent of what? With respect to the existing  
24 courts? Defunding them? Putting them out of business  
25 immediately? Gradually getting rid of them? Picking the

1 ones that we like and sort of -- that work for us, or what?

2 MS. SHIFMAN: Making them all post-conviction --

3 MR. CLARK: Yeah, making them all  
4 post-conviction?

5 MS. BERNHARD: Making them post-conviction, that  
6 way you get to do your litigation, and then the treatment  
7 part is part of what happens after you've been convicted?  
8 That's what I'm hearing.

9 MS. KELLEY: Well, that's just called probation.

10 MS. BERNHARD: It doesn't have to be, but it  
11 could be.

12 MR. JONES: And if you're making them all, if  
13 you're making them all post-conviction, aren't you still,  
14 don't you still have the problem of enabling the legislature  
15 and letting them off the hook of not frontloading the stuff  
16 because it's going to get dealt with on the back end after  
17 you've litigated?

18 MR. HOOKER: Probably, probably.

19 MR. JONES: And so would you, would you then not  
20 be a proponent of the post-conviction analysis?

21 MR. HOOKER: I like post-conviction rather than  
22 what we have now.

23 MR. JONES: Right.

24 MR. HOOKER: If I were setting up my own system,  
25 it would be way down the line before people get involved in

1 the criminal justice system.

2 I don't, I don't like the, what a lot of people  
3 do like about these programs, and that is, you've got a  
4 hammer hanging over somebody's head. And because that  
5 hammer is wielded pretty arbitrarily in a lot of  
6 circumstances.

7 And I would much prefer to have people in these  
8 programs before that hammer is hit, if we're going to have  
9 them. Get them out of the judiciary, suspend the  
10 prosecutions. And put them into these programs, and put  
11 them into programs where you have trained professionals  
12 dealing with it, and not the judges setting up there saying,  
13 you better do this or you better do that, or we're going to  
14 come down on you.

15 You know, if we recognize that these people are  
16 involved in the crimes they've committed, and we're all  
17 talking about pretty minor crimes here, or they wouldn't be  
18 in the programs, then why do we need to prosecute them in  
19 the first place?

20 Let's get them into the programs, and get them  
21 the assistance that they need, in what's not an artificial  
22 setting. And I think when you've got, when you've got the  
23 judges and prosecutors and the probation officers and the  
24 defense lawyers involved in the whole treatment program,  
25 it's an artificial program.

1 MR. JONES: Great. Thank you. We appreciate  
2 your time and your candor. Lunch is here. Thanks, Bob.

3 MR. SCHECHTER: Thanks, Bob.

4 MR. JONES: We are going to take a one-hour lunch  
5 break, and we are going to resume with our next panel at  
6 1:00.

7 (A recess was taken from 11:53 a.m. to 1:00 p.m.)

8 MR. JONES: All right. We are sans one of our  
9 members, but we hope that she will be joining us directly.

10 We have a Powerpoint presentation, and so I'm  
11 going to move in very short order, but I want to start the  
12 afternoon session by thanking all of you for being here, and  
13 what I said this morning, I'll say again for the benefit of  
14 the folks who weren't here, is that the biographies of all  
15 of you that I'm about to read into the record in no way, in  
16 no way do service to your distinguished careers, and the  
17 lives that you've led, but are more just as a reference  
18 point, and a jumping off point and to put in context the  
19 remarks that you're going to make.

20 We look forward to engaging in this conversation  
21 with you. The way that this works is that we will give you  
22 -- and I see you've got the Powerpoint -- an opportunity to  
23 make sort of an opening presentation, and then we will  
24 engage you in questioning.

25 The questioning is usually led by one of our

1 number, and in this session it's going to be led by Gail  
2 Shifman. So, let me start by saying that the panel here  
3 represents the Pima County Domestic Violence Court. And in  
4 front of us this afternoon we have Judge Jack Peyton, who  
5 currently presides over the Pima County Domestic Violence  
6 court; Miss Janet Altschuler, a defense attorney  
7 representing clients in the DV court, who also previously  
8 served in the Pima County prosecutor's office.

9 I've got Mr. Jesse Delaney, but I think that's a  
10 typo. Miss Jesse Delaney, the Deputy County Attorney,  
11 representing Pima County Attorney's Office; Mr. Donald  
12 Weaver, the supervising probation officer working with the  
13 domestic violence court; and Miss Amy Arnold, a victim  
14 witness representative.

15 Again, we appreciate you being here, and look  
16 forward to your testimony before us.

17 JUDGE PEYTON: Thank you. And thank you for the  
18 invitation to be present. The Pima County domestic violence  
19 court is operating in the, what is now currently the Pima  
20 County consolidated justice courts, which are eight separate  
21 precincts, political precincts that are consolidated for  
22 purposes of case handling, case processing, in one  
23 courthouse.

24 There are eight judges on that bench. I happen  
25 to be one of them. I also happen to be the presiding judge

1 of the entire Pima County consolidated justice bench. This  
2 is a limited jurisdiction bench. And the domestic violence  
3 court program as it currently operates is handling  
4 misdemeanor cases.

5 And we have everybody here -- I have to  
6 apologize, I got the name incorrect to Scott for Amy Gomez,  
7 she is now Amy Gomez, but her name does appear correctly on  
8 the screen.

9 MR. JONES: And the transcript will so reflect.

10 JUDGE PEYTON: Okay. And just to give you a  
11 sense of this, we began operating this court 10 months, or  
12 11 months ago today. We have been in operation in this  
13 court -- hi, Julie -- for 11 months. And during that 11  
14 months we have seen through this court approximately 2800  
15 people by way of arraignment.

16 And the Powerpoint presentation is intended to  
17 give you a sense of how we operate. This will be brief, I  
18 promise.

19 Currently, all persons charged with any type of  
20 criminal misdemeanor or domestic violence offense are  
21 arraigned in the domestic violence court by the same judge.  
22 That happens to be me. We arraign, we do the arraignments  
23 on Tuesday -- Wednesdays and Thursday mornings, although the  
24 calendar is spilling into other mornings because of the  
25 sheer volume.



1           Prior to the creation of this court, persons  
2 charged with domestic violence offenses were being arraigned  
3 by one of eight judges, on a simple case assignment rotation  
4 to the judge.

5           And we truly didn't know very much about the  
6 persons who were appearing before us, in terms of their  
7 criminal history, prior conviction history, or the number of  
8 open domestic violence files they had.

9           The prosecutorial component undertook at the  
10 outset to run prior criminal history, prior domestic  
11 violence history on each person set for arraignment. So at  
12 the arraignment, the prosecutor is armed. If it's the same  
13 prosecutor -- originally Miss Delaney and now Miss  
14 Glendinning, who is on my far right, Julie Glendinning.

15           So we have the same prosecutor in the domestic  
16 violence court at all times. There are representatives from  
17 the victim witness program this afternoon, represented by  
18 Miss Gomez, and as you see, the prosecutor has prepared  
19 prior criminal DV history, preliminary police reports,  
20 whether they are minor or elderly victims, serious physical  
21 injury, or other charges.

22           What we have kept in the domestic violence court,  
23 of these 2800, are persons who have multiple open domestic  
24 violence cases; or persons who have prior domestic violence  
25 convictions, be it misdemeanor or felony; persons who are

1 alleged to have either minor or elderly victims; persons who  
2 have serious injury allegations, that includes felony waive  
3 downs; and persons where we are aware that the person  
4 alleged to be the victim has a civil order of protection in  
5 place.

6 Occasionally I will move a case into the domestic  
7 violence court, just sua sponte.

8 Let's go on to pretrial process. At the  
9 arraignment, if the case is moved into the domestic violence  
10 court, counsel is appointed, we are not, in Pima County, the  
11 misdemeanor court, the limited jurisdiction courts do not  
12 have access to the Public Defender. Mr. Hooker spoke to you  
13 this morning.

14 We do not have access to the Public Defender. We  
15 have a separate defense component that is funded by taxpayer  
16 dollars known as the Office of Court Appointed Counsel.  
17 These are private attorneys who are on the list for  
18 appointed counsel. Miss Altschuler is one of those  
19 attorneys, Miss Altschuler is an attorney who practices with  
20 great regularity in the domestic violence courts.

21 Counsel is appointed for all cases retained. If  
22 the victims are present, victims are consulted, given an  
23 opportunity to consult with representative from the victim  
24 witness program, and the prosecutor.

25 Release conditions from the initial appearance

1 are reviewed regarding any prohibitions against contact or  
2 modifications of those prohibitions. Visitation, would be  
3 minor children. Financial concerns may be addressed at that  
4 time. And alternative housing issues if there has been a no  
5 contact order, for example, issued at the initial  
6 appearance, and the person charged, the defendant, is being  
7 ordered to find alternative housing.

8 Those types of issues are reviewed. Bond is  
9 reviewed. Bond was set at the initial as opposed to an OR  
10 appearance, and bond has been posted we'll take a look at  
11 bond and see what's appropriate to address at that time.

12 Occasionally, even at the arraignment, disclosure  
13 under Arizona Rule 15, is available, and is made. If not  
14 it's made at the next pretrial conference.

15 MS. SHIFMAN: Does disclosure mean discovery?

16 JUDGE PEYTON: Yes.

17 MS. SHIFMAN: Okay.

18 JUDGE PEYTON: And the next event is set, case  
19 management conference. Occasionally you'll see this  
20 referred to as pretrial. In our parlance we use case  
21 management.

22 The case is not kept in the domestic, in the  
23 domestic violence court, but returned to the regular  
24 criminal calendar and the judge assigned in the ordinary  
25 rotation, and the case management conference before that

1 judge is set at the arraignment. I have a list of  
2 availability of my colleagues.

3 Case management occurs between 25 and 30 days  
4 post-arraignment. That's not a fixed date, if there are  
5 reasons to go beyond or shortened, we're flexible in that  
6 respect.

7 At the case management conference according to  
8 Rule 15 disclosure, expert information, victim information,  
9 witness information and evidentiary or in limine issues are  
10 addressed as well.

11 Status compliance with release conditions and  
12 bond if appropriate is reviewed, and a subsequent appearance  
13 is set. If there are motions to be filed, a motions  
14 deadline is set, and make sure a hearing date is selected.

15 If there are not motions to be filed, but further  
16 time needs to pass for purpose of consultation with defense  
17 counsel or communication between defense counsel and the  
18 state, set a status call. Occasionally we'll set a trial  
19 right at the first case management conference, if that's  
20 what the parties need, or if it's going to change the plea,  
21 if a plea is available, and there's been a determination  
22 that the defendant is going to take the plea, we'll set a  
23 change of plea date.

24 And then onto trial. This is highly subjective,  
25 what you're seeing here. These are some items that I

1 selected when I was creating the Powerpoint. We've had a  
2 chance to discuss it, but this is by no means an exhaustive  
3 list.

4 Issues that keep arising over and again, which  
5 are problematic are that it feels to be a disproportionate  
6 number of victims not appearing for trial, even though they  
7 may have been a valid subpoena issued and served.

8 And of course there is also the question of when  
9 the subpoena has issued and been served, what to do about  
10 subpoena enforcement on a nonshowing victim.

11 Recanting witnesses, recanting victims, whether  
12 that victim is going to be impeached, and if so how.

13 We have a number that seems to be an increasing  
14 number of very young children, who may have been a witness,  
15 or may have been victim, and some of these instances, child  
16 witnesses, come with their own special problems.

17 We are obviously limited jurisdiction courts  
18 here, we do not have jurisdiction over dissolution of  
19 marriage proceedings. But very frequently there is a  
20 parallel proceeding in the Superior Court between the  
21 defendant and the person alleged to be the victim, be it  
22 involving divorce or contested custody or both.

23 There have been a number of instances  
24 particularly at trial, most often at trial, but occasionally  
25 in limine and pretrial, where there have been prior bad act

1 issues addressed, and other evidentiary issues.

2 Self-defense issues arise. In Arizona, by virtue  
3 of a recent case, about a year or so ago, the burden in  
4 self-defense has shifted to the State, to prove beyond  
5 reasonable doubt that the defendant was not acting in  
6 self-defense. So it's a unusual approach, but these issues  
7 do arise quite frequently.

8 Post-conviction, all persons who are convicted  
9 out of the domestic violence court, if they have a previous  
10 conviction under Arizona law, are mandated to be placed on  
11 monitored or supervised probation. And just that so you  
12 know, the cite is 13-3601, sub 01, of the Arizona Revised  
13 Statutes, Arizona Criminal Code.

14 So all of these persons are placed on supervised  
15 probation, if they have a prior conviction, or if the  
16 circumstances warrant.

17 The court maintains continuing jurisdiction for  
18 the period of probation, and I stay involved in this. From  
19 the original sentencing, I generally will set a first review  
20 hearing, 30 to 35 days out, just to make sure that there's  
21 been orientation and registration with the probation  
22 department -- Mr. Weaver is here from the probation  
23 department -- and thereafter, periodic compliance monitoring  
24 for those persons on monitored probation.

25 The defense representation continues throughout

1 the period of monitored probation. Practical concerns that  
2 you see noted there typically have been addressed. What  
3 presents most is getting the attorneys paid, the contract  
4 attorneys paid, on a post-adjudication proceeding.

5 We're working on that, we're a long way from  
6 confirming it, but we're getting there. Periodic review,  
7 followup, after the first 30, 35 days, if appropriate 60, 90  
8 days out, person needs closer monitoring, we'll run on  
9 30-day cycles until it seems appropriate to change it.

10 It will probably come as no surprise to you that  
11 the overwhelming majority of persons convicted of these  
12 offenses, there is alcohol and/or substance abuse problems  
13 as part of the precipitating incident, as well as part of  
14 the ongoing supervised probation.

15 The Pima County Justice Courts also is running  
16 another specialty court, which is a mental health court.  
17 And there's been an interesting dynamic developed between  
18 these two courts, and specifically the persons eligible for  
19 the mental health court, which is a County Attorney's  
20 sponsored, a County Attorney sponsored program as opposed to  
21 the court sponsored, as the DV court is.

22 Persons who are in the mental health court, who  
23 qualify, serious mental illness, if those persons are in  
24 there initially on a domestic violence charge, and reoffend  
25 or have subsequent domestic violence charges, are moved from

1 the domestic violence courts, because they no longer qualify  
2 under the County Attorney's standards, and are moved into  
3 the domestic violence court.

4 This has created a number of concerns, not the  
5 least of which is if there's a conviction, in the domestic  
6 violence court, a person with a serious mental illness, the  
7 sentencing options available out of the criminal  
8 prosecution, I don't believe address the underlying problem,  
9 the mental health problem.

10 The, I mentioned just a moment ago, the domestic  
11 violence court is not a deferred prosecution court the way  
12 mental health courts and drug, or most mental health and  
13 drug courts are. We are not deferring prosecution, rather  
14 this is a specialized prosecution court.

15 I believe in the past 11 months there have been  
16 three deferral pleas out of the 2800 people we've seen. So  
17 this is not a deferred prosecution court.

18 In the early stages, arraignment, case  
19 management, we are always wrestling with the notion of  
20 presumption of innocence, particularly when you have a very,  
21 very engaged victim, versus that victim and his or her  
22 protection during the proceedings.

23 Many, many times when there has been a full no  
24 contact order imposed, person alleged to be the victim will  
25 be present at the arraignment, or at the case management,



1 and will ask that the conditions of release be modified to  
2 permit consensual contact.

3 And this always raises at least the possibility  
4 that once contact is restored, there may be some coercion in  
5 terms of future appearances or the nature of the subject  
6 matter of the victim's testimony, if the matter goes to  
7 trial.

8 And again, failure to, victim's failing to  
9 appear, FTA victims, and what we are currently wrestling  
10 with, whether to issue show cause orders to these  
11 nonappearing victims and to the extent that there has been a  
12 valid subpoena served, how to go about enforcing that  
13 victim, and the push/pull of victimizing the victim.

14 That concludes the presentation. We are all open  
15 to your questions.

16 MR. JONES: And we have many. Gail?

17 MS. SHIFMAN: Thank you, judge. We had an  
18 opportunity, all of us, to review some of the originating  
19 documents that were submitted for your grant funding for the  
20 court. I don't know if I've seen all your documents, but  
21 I've seen quite a few of them.

22 I read them with great interest because from my  
23 perspective as a defense attorney, I found the memorandum of  
24 understanding between the various agencies, law enforcement  
25 and the court, perplexing and troubling, to be quite honest.

1           And so I wanted to spend a little bit of time  
2 talking about that. And I was very glad to see that you've  
3 called it a specialized prosecution court, which, because it  
4 appears from the various memoranda, and the original funding  
5 requests, that this was really an effort -- and correct me  
6 if I'm wrong, anybody who might be appropriate to speak to  
7 this -- an effort to really put in one place all the DV  
8 cases that came through the county, is that correct?

9           JUDGE PEYTON: Not all of the DV cases, all of  
10 the misdemeanor DV cases.

11          MS. SHIFMAN: I'm sorry, I missed that when  
12 looking through that, for the misdemeanor DV cases?

13          MR. JONES: Well, not to put all of them in the  
14 same court. Again, to differentiate, those which would  
15 stay, and those which are returned to the general criminal  
16 calendar.

17          MS. SHIFMAN: And let me ask you about those that  
18 return to the general criminal calendar, those could include  
19 misdemeanors, correct?

20          JUDGE PEYTON: They're all, these are all  
21 misdemeanors.

22          MS. SHIFMAN: All right. And so they, those that  
23 return to the regular calendar, they, those defendants are  
24 represented by counsel, or not, and they proceed with their  
25 trial rights through the sentencing or other disposition,

1 correct?

2 JUDGE PEYTON: Correct.

3 MS. SHIFMAN: Okay. And so for those people who  
4 go on the regular calendar, are they eligible in Pima County  
5 for deferred prosecution?

6 JUDGE PEYTON: Yes.

7 MS. SHIFMAN: And are they eligible in Pima  
8 County for various drug counselling or mental health  
9 services as well potentially?

10 JUDGE PEYTON: Yes.

11 MS. SHIFMAN: Okay. So explain if you will the  
12 point of having this specialized prosecution court.

13 JUDGE PEYTON: The point?

14 MS. SHIFMAN: Yes.

15 MS. BERNHARD: The goal, I guess, the --

16 MS. SHIFMAN: I guess as well --

17 MS. ALTSCHULER: The benefit to the court, as  
18 well as the benefit to the defendant.

19 JUDGE PEYTON: Well, it's not a benefit to the  
20 court. As the judge who's been on the take in this I can  
21 tell you, that the only benefit I've seen from it is that  
22 I've got a great deal more gray hair.

23 MS. BERNHARD: Not much.

24 JUDGE PEYTON: I'd like to go back to your  
25 original question regarding the grant language. I'll be as

1 candid as I possibly can. The original grant language had  
2 some words in there that I didn't know, I didn't see that  
3 language, it was submitted and specifically that language,  
4 that partnership language --

5 MS. SHIFMAN: Right.

6 JUDGE PEYTON: -- that made me hiccup as well.  
7 And I think we got that cleaned up, if I'm not mistaken.

8 MS. SHIFMAN: Okay. So, just so that our record  
9 is clear, in case somebody hasn't read this, the document,  
10 there was a partnership between the Sheriff's Department,  
11 the courts, the probation officer, there was a victims  
12 rights agency, I forget what it's called, battery something.  
13 But there was no -- and maybe some other agencies, county  
14 agencies.

15 JUDGE PEYTON: County Attorney.

16 MS. SHIFMAN: And the County Attorney, I'm sorry,  
17 correct?

18 JUDGE PEYTON: Let me see if I can clear it up  
19 for you, okay? This court has never been in partnership  
20 with law enforcement or any prosecutorial authority, okay?  
21 Never and will not be.

22 I operate as a court, and I operate as a judge,  
23 not as a prosecutor or a partner in law enforcement or the  
24 prosecutors. That's about as clear as I can possibly be.  
25 We got that language cleaned up, I thought we did, and went

1 back to the original grant provider and said, this language  
2 will not do.

3 And this, that was accomplished through the  
4 efforts of the presiding judge of the county attorney, Judge  
5 Kearney, and myself. And we went back to the grant  
6 provider. And I believe we got that cleared up.

7 It was unfortunate at the beginning, but if  
8 anybody has the impression, that I am in partnership, or the  
9 court is in partnership with law enforcement, prosecutors,  
10 or otherwise I'd like to disabuse of you that notion.

11 MS. SHIFMAN: That's good to know.

12 So the goals that were stated for the increased  
13 offender accountability, increased convictions in DV  
14 cases --

15 JUDGE PEYTON: That's not my goal. Increased  
16 convictions is not my goal.

17 MS. SHIFMAN: So all of that language that was in  
18 the funding request, has that been cleaned up? I mean --

19 JUDGE PEYTON: I believe it has.

20 MS. SHIFMAN: Okay. And so is there a current  
21 document, a current funding request? Maybe we have an older  
22 version?

23 JUDGE PEYTON: I think you must.

24 MS. SHIFMAN: Maybe that could be forwarded to  
25 us.

1 MS. DELANEY: I can do that.

2 MS. SHIFMAN: Send it to Scott himself.

3 Now, how about the memoranda of understanding  
4 that was signed between the various agencies, is that still  
5 in effect?

6 JUDGE PEYTON: With the cleaned up language.

7 MS. SHIFMAN: Okay. So we would also then need  
8 the newer memorandum of understanding.

9 JUDGE PEYTON: I'm not sure I -- can I interrupt  
10 for just a quick second?

11 MS. SHIFMAN: Sure.

12 JUDGE PEYTON: When I accepted the invitation to  
13 make the presentation, maybe I misunderstood. I didn't  
14 understand that we were going to be required or solicited to  
15 provide documents, and so forth. Am I misunderstanding  
16 something?

17 MS. SHIFMAN: No, no, you're not required to do  
18 it, but here -- we've done some research and were able to  
19 obtain some documentation from, relating to all of our  
20 speakers, and the counties in which they are operate, and  
21 various funding sources.

22 Because one of the issues we're looking at is the  
23 differences between funding resources for various counties,  
24 different kinds of courts, funding for prosecution resources  
25 versus funding for defense resources, staffing, defense,

1 defendant's voluntariness into the programs, Constitutional  
2 issues.

3           We're looking at kind of a wide range of issues.  
4 So we've done some preliminary research on all of these to  
5 the extent that we were able to locate materials. And so we  
6 got some documentation, which I was just describing, that  
7 talked about the memorandum of understanding, it must have  
8 been some of the original documentation for funding for the  
9 stop grant --

10           JUDGE PEYTON: Sounds like it.

11           MS. SHIFMAN: Yeah. So that's why I'm asking  
12 these questions about it. So if you have something more  
13 current, it would be helpful I think for us to disabuse us  
14 of that language that was in there, because I'll be honest,  
15 some of, one of the, one of the statements that I was recall  
16 from the memorandum of understanding I was concerned about  
17 the independence of the judiciary, quite frankly.

18           Because it talked about the courts being able,  
19 agreeing to sentence offenders in a certain manner, sort of  
20 up-front, before a case was in front of them.

21           JUDGE PEYTON: I sure hope I've disabused you of  
22 that.

23           MS. SHIFMAN: You definitely have, and that's  
24 incredibly encouraging. Incredibly encouraging.

25           So let me ask you, from a defense lawyer

1 perspective, it sounded to me like there was perhaps an  
2 apparent, an initial appearance before the arraignment? Do  
3 I understand that correctly?

4 JUDGE PEYTON: At the time, if the person's  
5 arrested and taken into custody and here in Pima County, my,  
6 my sense of this, just for having been at this for quite a  
7 number of years now, is that on a domestic violence call,  
8 that well over 90 percent of those calls result in an  
9 arrest.

10 So that person is then arrested, taken to the  
11 Pima County jail, booked in, and an initial appearance is  
12 conducted, by a magistrate judge, release conditions set and  
13 bond set, and a date set for the next appearance for the  
14 arraignment.

15 MS. SHIFMAN: Okay. So is there a defense lawyer  
16 present at the initial appearance?

17 MS. DELANEY: There is, the Public Defender's  
18 Office is representing everyone that comes in.

19 MS. SHIFMAN: Okay. And then if it gets diverted  
20 to the DV court, then the Office of --

21 JUDGE PEYTON: Court Appointed Counsel.

22 MS. SHIFMAN: -- Court Appointed Counsel steps  
23 in.

24 MS. ALTSCHULER: The Office of Court Appointed  
25 Counsel steps in when I get notice before the case



1 management conference. I get -- the Arizona traffic ticket  
2 and complaint, the charge sheet for the misdemeanor, and  
3 information about how to contact my client.

4 MS. SHIFMAN: Okay. And so are you present then  
5 at the arraignment as well?

6 MS. ALTSCHULER: No, I am not. I may be, because  
7 I happen to be in that courtroom a lot, but it's just  
8 happenstance.

9 MS. SHIFMAN: So at the arraignment, when the  
10 individuals come through the court, are they advised of  
11 their rights at that point, and the various options? I'm  
12 just trying to figure out when that happens in your system.  
13 Whether it's at the initial appearance or at the  
14 arraignment?

15 JUDGE PEYTON: Whether it happens at the initial  
16 appearance or not, it happens in every arraignment.

17 MS. SHIFMAN: Okay. So --

18 MR. SCHECHTER: Who's the lawyer at the  
19 arraignment? Is it the PD continues on?

20 JUDGE PEYTON: No. Remember, the arraignment at  
21 this point, we've got everybody charged with any type of  
22 domestic violence offense. We don't know which ones are  
23 going to be moved in until the arraignment is complete.

24 Those that are moved in, we appoint.

25 MS. DELANEY: And the people that are moved in

1 are determined by the Pima County Attorney's Office, after  
2 we run priors, if they have priors.

3 MR. SCHECHTER: Serious offenses?

4 MS. ALTSCHULER: So the benefit of domestic  
5 violence court, from a defense attorney's perspective is  
6 that the people that get moved into DV court, get an  
7 attorney, okay?

8 And so that's critical, because of these vicious  
9 consequences of the domestic violence offense, particularly  
10 in a place like Pima County, where we're a military county,  
11 I'm a military lawyer, I have a military background.

12 People who are active duty military, in the  
13 guard, in the reserves, even people post military, who wind  
14 up working for a defense contractor, cannot have a DV  
15 conviction, or they lose their way to feed themselves.

16 MS. SHIFMAN: Right. Okay. So that's a big  
17 purpose of the Court, so -- is that you get the resources of  
18 lawyers?

19 JUDGE PEYTON: Yes.

20 MS. SHIFMAN: Okay.

21 MS. BERNHARD: You mean everybody else doesn't?

22 JUDGE PEYTON: In misdemeanor cases in Arizona,  
23 counsel is appointed only on those cases where the state is  
24 seeking some form of incarceration or there's a statutory  
25 mandate for purposes of incarceration.

1 MS. BERNHARD: So not just where incarceration is  
2 possible?

3 JUDGE PEYTON: Correct. Correct. If the State  
4 indicates at any point, be it arraignment or at any point in  
5 the pretrial process, that should a conviction result, the  
6 State would be seeking some form of monitored probation or  
7 incarceration, then counsel is appointed.

8 MR. JONES: Elizabeth has a couple of questions.

9 MS. KELLEY: My first set of questions has to  
10 deal with the role of private counsel, if any. I actually  
11 had asked this to a couple of previous witnesses. It seems  
12 like you have the regular and steady presence of the Public  
13 Defender's Office in your courtroom?

14 JUDGE PEYTON: The Office of Court Appointed  
15 Counsel, yes.

16 MS. KELLEY: Okay, okay.

17 JUDGE PEYTON: Yes.

18 MS. KELLEY: So that being the case, do private  
19 counsel ever, ever appear in your courtroom?

20 JUDGE PEYTON: Regularly. I'll also add, just so  
21 that you know, every attorney who is appointed out of the  
22 Office of Court Appointed Counsel, is private counsel.

23 MS. KELLEY: Okay. But, but, but can --

24 JUDGE PEYTON: These are not county employees.

25 MS. KELLEY: Do defendants go out and hire their

1 own attorneys?

2 JUDGE PEYTON: Yes.

3 MS. KELLEY: Okay. Okay. And is there any type  
4 of special training program that they can attend as to your  
5 policies and procedures?

6 JUDGE PEYTON: The attorneys?

7 MS. KELLEY: Yeah, the private attorneys, or any  
8 attorneys, I suppose.

9 JUDGE PEYTON: Well, training, training is tricky  
10 ground for a judge. We can provide information, and we  
11 have.

12 MS. KELLEY: Okay. Okay. So --

13 JUDGE PEYTON: We have.

14 MS. KELLEY: And those are in the form of  
15 seminars, or manuals or --

16 JUDGE PEYTON: No, initially when we started the  
17 court, we got as many people together as we could, said this  
18 is how we intend to operate, we solicited comments,  
19 questions, and so on, and so forth.

20 But in terms of ongoing training, the answer to  
21 your question is, we do not conduct ongoing training for  
22 attorneys who may want to enter an appearance on behalf of a  
23 defendant in domestic violence.

24 MS. KELLEY: Okay. If someone doesn't meet the  
25 income criteria -- or do you have income criteria for a

1 Public Defender?

2 JUDGE PEYTON: Do I? No. The County? Yes.

3 MS. KELLEY: Okay.

4 JUDGE PEYTON: It's a branch of the government.

5 MS. KELLEY: So if someone, if someone exceeds  
6 the cutoff, they have to retain private counsel, you don't  
7 appoint?

8 MR. JONES: I do not appoint.

9 MS. KELLEY: Okay.

10 JUDGE PEYTON: I do not, I have no authority to  
11 appoint.

12 MS. KELLEY: Okay. Okay. Second question, I  
13 have, I'm trying to understand --

14 MS. ALTSCHULER: I'm sorry, may I interrupt you?

15 MS. KELLEY: Sure.

16 MS. ALTSCHULER: I think I can add some  
17 information that may be helpful to you.

18 MS. KELLEY: Okay.

19 MS. ALTSCHULER: I have a steady stream of Office  
20 of Court Appointed Counsel clients that are appointed to me.  
21 I also, you know, have my ad in the phone book, and people  
22 call me and I, they retain me and I appear in front of Judge  
23 Peyton, and that's good.

24 MS. KELLEY: Okay.

25 MS. ALTSCHULER: Okay. So, so if people cannot

1 afford me, there is within the Pima County Bar Association a  
2 lawyer referral service. Judge Peyton can't say, oh, hire  
3 so and so, they're wonderful, but he can refer them to the  
4 lawyer referral service, who happens to have developed a  
5 reduced fee panel.

6 I'm on that panel, all my peers are on that  
7 panel, either out of a sense of trying to make a living or  
8 out of a sense of community duty. And that reduced fee  
9 panel is quite economical for people, attorneys do work with  
10 people through that.

11 So there is an avenue for folks who don't, can't  
12 afford perhaps a higher priced attorney, there are  
13 experienced attorneys out there.

14 MS. KELLEY: Okay. The second question I have,  
15 and you touched upon it previously, the relationship between  
16 your court and your county's mental health court. As I  
17 understand it, if there are mental health issues with a  
18 given defendant, and they first go to your court rather than  
19 mental health court, does it matter?

20 JUDGE PEYTON: It's an interesting question.  
21 Let's -- I, believe after our session this afternoon, you'll  
22 be with Judge Warner.

23 MS. KELLEY: Correct.

24 JUDGE PEYTON: Judge Warner presides over the  
25 Superior Court mental health court. What I was referring to

1 is within the limited jurisdiction court, there is also the  
2 specialized mental health court.

3 MS. KELLEY: Okay. That deals with misdemeanors?

4 JUDGE PEYTON: Correct.

5 MS. KELLEY: Okay.

6 JUDGE PEYTON: The person can enter the system  
7 any number of ways. For example, at the time of arrest, and  
8 an arraignment if there's a DV charge, that person is going  
9 to be seen, at least for purposes of arraignment, by me.

10 There are other offenses other than domestic  
11 violence offenses that end up in the mental health court.  
12 Those persons are moved into the mental health court, either  
13 on motion of their attorney, if they're represented, sua  
14 sponte by the judge who's conducting the arraignment, or  
15 very, very frequently, by the County Attorney's Office  
16 itself. So those persons end up in the limited jurisdiction  
17 mental health court.

18 The problem that I identified in the Powerpoint  
19 seems to come when the person has been in the mental health  
20 court, and either is charged with subsequent offenses in the  
21 mental health court with a domestic violence offense, and  
22 then is charged subsequently with additional domestic  
23 violence offenses, then at that point that person no longer  
24 qualifies under the County Attorney's criteria to stay in  
25 the mental health court, because they have multiple open

1 domestic violence cases, are moved into my court.

2 That's problematic most, in my mind, it's most  
3 problematic, because should there be a conviction, the type  
4 of sentencing, on a criminal conviction, I don't believe  
5 addresses the underlying problem, that people who have  
6 mental health issues need.

7 Incarceration is not the answer in my view to  
8 that. And sending a person with a serious mental illness to  
9 domestic violence treatment doesn't really seem to address  
10 the problem.

11 MS. KELLEY: Well, if you have an offender who  
12 has no previous arrests, who has, who's been arrested on  
13 domestic violence, but there are known and measurable mental  
14 health issues, who decides where that offender goes?

15 JUDGE PEYTON: More often than not, I will make  
16 the inquiry of the County Attorney, as to whether or not  
17 this person should be screened for purposes of mental health  
18 eligibility.

19 MS. KELLEY: Okay.

20 JUDGE PEYTON: Sometimes the County Attorney will  
21 do it sua sponte. If the person is in the domestic violence  
22 court, in my domestic violence court, moved in, that person  
23 has counsel. And it can come from counsel as well.

24 So it can come from any component, judicial,  
25 prosecutorial or defense.



1 MS. KELLEY: Okay.

2 JUDGE PEYTON: That that person can be looked at  
3 to make a determination for mental health eligibility.

4 MS. KELLEY: So they have the option of choosing  
5 between your court and mental health court?

6 JUDGE PEYTON: It's not up to them. They have  
7 the option of asking for the person to be screened.

8 MS. KELLEY: Okay.

9 JUDGE PEYTON: Who goes into mental health court  
10 is up to the County Attorney.

11 MS. KELLEY: Okay.

12 JUDGE PEYTON: It's their program, so to speak.  
13 It's a deferred prosecution court. Who gets into domestic  
14 violence court is a function of either motion of the County  
15 Attorney or sua sponte.

16 MS. KELLEY: Okay.

17 JUDGE PEYTON: Okay?

18 MR. JONES: Jay, and then Marvin.

19 MR. CLARK: I want to pick up where the judge is,  
20 and I have a question for Miss Delaney. You said that those  
21 who get accepted into the DV court, your office decides who  
22 those people are. What criteria do you use?

23 MS. DELANEY: Right. Well, first it's not an  
24 acceptance, it's a, it's -- the criteria is this: If you  
25 have a prior domestic violence conviction, if you have

1 multiple domestic violence cases open, that occurred on  
2 separate dates, if your victim is a child, elderly, if  
3 there's serious physical injury, you know, occasionally a  
4 felony, if someone gets charged with a felony, and the  
5 people that look at it up there, waive it down to a  
6 misdemeanor. If it's a felony waive down, it's probably got  
7 serious physical injury.

8           Those are the basic criteria. I mean, every once  
9 in a while, I would be looking through a file, and notice  
10 that somebody didn't have any priors and say, you know, he  
11 choked her and strangled her and hurt a child, I'd move it  
12 in, because I think that cases like that should be in the  
13 domestic violence court.

14           MR. CLARK: So the list of factors, you say those  
15 are people who get into the domestic violence court?

16           MS. DELANEY: That's correct. And it's not a,  
17 it's not a reward that you go into domestic violence court.  
18 If --

19           MR. JONES: If you get moved out of mental health  
20 into --

21           MS. DELANEY: Right. Well, everything is  
22 separate. Everyone gets arraigned, and they go to the eight  
23 judges that are in the justice court.

24           The difference with domestic violence court is  
25 that every single case that has the appended domestic

1 violence allegations gets arraigned in domestic violence  
2 court. That's so the County Attorney's Office can run  
3 priors on all of these individuals before the arraignment.

4 And at the arraignment, we're sitting there,  
5 we're saying, you know, the State is seeking jail time or  
6 supervised probation, which means it's moving into the  
7 domestic violence court. We do it by motion.

8 MR. CLARK: So if understand this right, if you  
9 don't go to domestic violence court, you're not asking for  
10 incarceration, so the people aren't entitled to counsel,  
11 because you're not asking for incarceration?

12 MS. DELANEY: That's correct.

13 JUDGE PEYTON: It's not entirely correct. Of  
14 course they're entitled to counsel. It's just that counsel  
15 is not appointed --

16 MR. CLARK: Not appointed.

17 JUDGE PEYTON: -- not appointed at taxpayer  
18 expense.

19 MR. CLARK: Okay. Understood.

20 MS. DELANEY: But no matter what, if you're in  
21 the domestic violence court, it's because the State is  
22 seeking jail time or supervised probation.

23 MR. CLARK: Okay. So it's a more intensive  
24 probation for someone who doesn't get jail time?

25 MS. DELANEY: That's correct.

1 MR. CLARK: And then I guess my question to  
2 Mr. Weaver is next, what's the difference in the success  
3 rate for people in the domestic violence court and the  
4 probation, and those who we --

5 MR. SCHECHTER: Wait, what is success?

6 MS. BERNHARD: Yeah, what's success?

7 MR. SCHECHTER: Yeah, how do you define success?

8 MR. CLARK: I haven't got that far yet.

9 Go ahead, answer my question. How do you define  
10 success?

11 MR. WEAVER: Success would be successfully  
12 completing probation.

13 MS. SHIFMAN: And is the probation in the  
14 domestic violence court more intensive? Are there more  
15 requirements of the domestic violence --

16 MR. WEAVER: A little bit more. I mean, they  
17 have court-ordered treatment to go to, and the fact that  
18 they appear regularly before Judge Peyton, and then I also  
19 have a partner, that's a surveillance officer, that goes to  
20 their home, their work, their businesses, to see, you know,  
21 what they're up to.

22 So it's a little bit more intense than normal  
23 misdemeanor probation.

24 MS. SHIFMAN: And of the 2800 folks that come  
25 through on arraignment, how many end up in the DV court?

1 JUDGE PEYTON: On any given day, we have a  
2 running 350 or so preadjudication, and another 100  
3 probationers. That's in the 11 months of operation.

4 But that 350 obviously is a rolling 350, is a  
5 pretty, is pretty accurate.

6 MS. SHIFMAN: And the 350 that are in the DV  
7 court, and the hundred probationers, is that a larger figure  
8 than you had before you had the specialized prosecution  
9 court?

10 JUDGE PEYTON: We don't know. We never had a  
11 baseline, because the County Attorney was not running prior  
12 convictions, prior to the creation of the domestic violence  
13 court. We, we operated without a baseline.

14 MS. SHIFMAN: And in the creation of the court,  
15 and now sort of the overall supervision of the structure of  
16 the court, and the, and the team, is there a defense  
17 representative now participating in the overall structure of  
18 the team, on a regular basis?

19 JUDGE PEYTON: The short answer to your question  
20 is yes, we have what's called a countywide justice  
21 coordinating committee, that addresses not just domestic  
22 violence court, but issues pertaining to the court system  
23 generally.

24 And there is a defense component -- I think  
25 Mr. Hooker, the Public Defender, participated regularly.

1 And we have participation from the defense bar throughout.

2 MR. JONES: Marvin?

3 MR. SCHECHTER: Just trying to zero in on a  
4 couple of specific things. Ms. Altschuler, I suppose the  
5 real question I have for you, as one defense attorney to  
6 another, is one of the things we have heard in the various  
7 cities we have gone to, is that the more specialized  
8 training that defense attorneys have in this specific  
9 problem, the better the system works.

10 So I suppose the question I have is, what  
11 specialized training do you have? Where did you and your  
12 colleagues get it? And, or do you? Or is it on the job?

13 MS. ALTSCHULER: We seek it out on our own.

14 MR. SCHECHTER: That's fine, that answered it. I  
15 just, I pretty much got it.

16 MS. ALTSCHULER: But can I add to that?

17 MR. SCHECHTER: Oh, sure.

18 MS. ALTSCHULER: You know, I got to keep talking,  
19 I'm --

20 MS. SHIFMAN: Defense lawyer.

21 MS. ALTSCHULER: The question is also, how we get  
22 paid? Everybody else got a grant, but the Office of Court  
23 Appointed Counsel did not give defense attorneys a grant.

24 When I have a client assigned to me, I have  
25 tremendous financial incentive to plead that client to a DV

1 offense. Because I'm going to make more money pleading  
2 them, than going to trial.

3 MS. SHIFMAN: Are you paid a flat fee?

4 MS. ALTSCHULER: I'm paid a flat fee of \$350 if  
5 my client pleads, and \$500 if I go to trial.

6 JUDGE PEYTON: Although that, if I may interrupt,  
7 I have made it abundantly clear, not just to Miss Altschuler  
8 but to every other attorney, defense attorney practicing in  
9 my court, if you take a case to trial, and you feel that  
10 that \$500 or whatever it may be, is undercompensating you, I  
11 will, I will submit to the OCAC your billing rate and the  
12 number of hours. And I'll get you approved for payment.

13 MR. JONES: Are those, so those caps are  
14 waivable?

15 MS. ALTSCHULER: The caps are waivable for trial,  
16 and Judge Peyton is absolutely accurate, and we can go to  
17 him and ask for further payment.

18 But the problem really is, I know in domestic  
19 violence court that's there a good chance the victim is not  
20 going to show up and the County Attorney is going to dismiss  
21 that case.

22 I can plea it and get my \$350, or I can go to  
23 trial, victim doesn't show up, there's really no trial, I  
24 submit an hourly bill to OCAC that's much less than \$350.

25 So my peers and I often joke about that, yes, I

1 lost money because I advocated for my client.

2 MR. SCHECHTER: Okay.

3 MS. ALTSCHULER: And yeah.

4 MR. JONES: Can we --

5 MR. SCHECHTER: Can I -- I had one question.

6 MR. JONES: Yeah, I'll let Marvin have one more,  
7 and then Gail, 'cause we're running up against the clock.

8 MR. SCHECHTER: I need shorter answers, I think,  
9 right off the bat.

10 JUDGE PEYTON: You got a table full of lawyers.

11 MR. SCHECHTER: Miss Delaney or Miss  
12 Glendinning --

13 MS. GLENDINNING: Glendinning.

14 MR. SCHECHTER: Glendinning? Do your county  
15 prosecutors get specialized training in these courts, and is  
16 it the same prosecutors in court all the time? Or do you  
17 rotate your prosecutors?

18 MS. DELANEY: Same prosecutors all the time, no  
19 matter what. It was myself until, from February until  
20 November, so I did the beginning. Julie moved in, in  
21 December, early December.

22 And your first question was the training, they,  
23 my County Attorney's Office offers a lot of training. We  
24 have specific training every Tuesday at lunch in  
25 misdemeanors when I was there, specific to domestic violence



1 training. And the national organization for prosecutor  
2 training has a, two specialized domestic violence trainings  
3 every year.

4 We have a new vertical prosecution unit, and I'm  
5 in felonies, now on the a domestic violence unit, but we all  
6 travel and all do the same.

7 MR. SCHECHTER: And my last question to you, Miss  
8 Glendinning, Miss Glendinning is, when do you make the  
9 decision to take somebody out of a mental health court,  
10 because they have repeated offenses or DV? We've heard what  
11 the judge says, how concerned he is, that the real problems  
12 are mental health problems.

13 How do you work with the defense in that  
14 situation? Is the goal really to put the guy behind bars,  
15 take him off the street? Or what is it that you do with  
16 Miss Altschuler behind closed doors? Do you meet with Miss  
17 Arnold and Mr. Weaver and try and figure out, this guy's  
18 really bad, we got to protect the woman, but how do we get  
19 this done? What's really going on, is really my question.

20 MS. DELANEY: That's a case by case basis, and  
21 our goal is justice, it's not just to incarcerate  
22 defendants. When I see or Julie sees a case where the  
23 defendant does have mental issues, where Janet will come to  
24 us and say, you know, this guy is going to do this and this,  
25 and he's not getting treatment from this person, we make

1 arrangements, we make different arrangements at that point.

2 You know, we might ask the judge for a no contact  
3 order and, you know, Janet will agree to that, as long as we  
4 go through and try to get him the help he needs. The goal  
5 isn't to convict them every single time.

6 JUDGE PEYTON: To be perfectly honest with you,  
7 just a little bit of follow up, we have this statutory  
8 mandate in Arizona, which, even on a first DV conviction,  
9 minimum 26 domestic violence sessions of treatment. Second  
10 conviction, minimum 36, and on from there.

11 There have been instances where prosecution,  
12 defense and the court, in open court, on the record, are all  
13 struggling with what to do. And have found alternatives to  
14 that domestic violence treatment by allowing the person to  
15 continue with his mental health provider. It doesn't fit  
16 neatly into the statutory mandate. It simply doesn't.

17 But it's one of those instances where I'm  
18 comfortable enough saying, I'll climb out on that limb for  
19 purposes of this particular individual. 'Cause I'm  
20 satisfied with what I'm mandated to do isn't going to  
21 address the problem.

22 MS. DELANEY: And sometimes we'll remove the  
23 domestic violence allegation, if the underlying crime was  
24 say disorderly conduct or assault, and we've spoken with the  
25 victim, and the victim just wants him to get help for his

1 mental issues, we'll remove that domestic violence  
2 allegation and in a plea.

3 MR. SCHECHTER: You'll do that in case where the  
4 woman had injury?

5 MS. DELANEY: It's, everything is case by case.  
6 So we'll do that with the victim's consent and with the  
7 involvement of the victim.

8 MR. SCHECHTER: Okay.

9 MS. DELANEY: If it's best for the person.

10 MR. WEAVER: And just so you know, I don't have  
11 any input in the prosecution. Everybody comes to me,  
12 they've already been sentenced.

13 MR. SCHECHTER: Well, I tell you why I ask the  
14 question, 'cause I spent yesterday in Phoenix at the mental  
15 health court, and the probation officers in the staffing,  
16 had huge input into what would happen to the defendant,  
17 huge, and by the way, very positive huge, very, very  
18 compassionate understanding of what the problem was.

19 What you're sensing in reaction from us as  
20 defense attorneys is, of all the cases we face as defense  
21 attorneys, these DV cases are real problematic, from our  
22 point of view. And I know Miss Delaney and Miss  
23 Glendinning, you know what I'm about to say, we get a lot of  
24 cases in our area where we think that prosecutions are  
25 false. And I know you all think that they're absolutely

1 correct.

2 We think there's other reasons why the charges  
3 are being brought. We know that you think very strongly  
4 that the reasons are valid. So this reaction that you're  
5 sensing from us as defense attorneys comes from our  
6 practical experience. That's why we're trying to focus in  
7 on the problem-solving part.

8 Is it really problem-solving, or are we trying to  
9 put DV cases, as you pointed out, Miss Altschuler, here in  
10 Arizona, it's the end of the world for a military person who  
11 gets a DV conviction, it's over, right? So that's what  
12 we're trying to really hone in on. And it's a big problem.

13 MS. BERNHARD: So, my, my question really is, I  
14 get the sense, that the reason that this domestic violence  
15 court was created was so that these cases wouldn't fall  
16 through the cracks. So this was a sense of like, let's find  
17 out what's out there, and especially the serious  
18 misdemeanors, and let's put them all in a place and we can  
19 direct our attention to that.

20 So that was the reason for it. And now that  
21 you've been up to it for a while, I would ask, Your Honor,  
22 what have you learned in the last 11 months, now that you've  
23 gotten your eye honed on those? What have you gotten out of  
24 it?

25 JUDGE PEYTON: What have I gotten out of it?

1 MS. BERNHARD: What have you gotten, sure.

2 MR. SCHECHTER: You're the head guy.

3 JUDGE PEYTON: It, it, there's no way to give you  
4 a short answer to your question.

5 MS. BERNHARD: Okay.

6 MR. JONES: Well, may not be okay.

7 MS. BERNHARD: Let's hear it.

8 JUDGE PEYTON: There's simply not a short answer.  
9 I think what I've gained is a sense that these cases, with  
10 the type of attention that we collectively are paying to  
11 them, take a great deal more time, from arraignment all the  
12 way through.

13 They take a great deal more time, when you have  
14 an engaged victim, there are so many other considerations  
15 involved. Mr. Schechter, you mentioned a moment ago, I had  
16 it in the Powerpoint, motivation is in everybody's mind. If  
17 there is a parallel dissolution proceeding, it's never far  
18 from anybody's mind, particularly mine, of whether my court  
19 is being used.

20 MR. SCHECHTER: Used.

21 JUDGE PEYTON: Right. So I think I've learned  
22 that these types of cases cannot be processed -- this is the  
23 highest volume court in the state.

24 MS. BERNHARD: And everybody has the same  
25 problem.

1           JUDGE PEYTON: Right. These types of cases,  
2 these types of cases cannot be moved through with the type  
3 of expediency that you would move a garden variety  
4 misdemeanor. There's too much involved, there are too many  
5 considerations involved. Victim considerations,  
6 consequences, for the defendant.

7           The stigma. We have involvement from Child  
8 Protective Services, very frequently. So they require  
9 attention, and they come in groups of one, I think is what  
10 I've learned, more than anything else, to give you a short  
11 answer.

12           MR. JONES: We are, we are unfortunately up  
13 against the clock, but I'm going to exercise the prerogative  
14 of the chair, and just have Miss Gomez tell us a little bit  
15 about what you do, and what your role is in all this.

16           MS. GOMEZ: I, I'm a court advocate, and I'm  
17 currently assigned to the domestic violence court. There's,  
18 very recently the volume has required that we bring in  
19 another advocate, so it's two full-time advocates, full-time  
20 in the DV court. We're available to victims at any point,  
21 from arraignment, even from pre-arraignment, because  
22 frequently call us between the initial appearance and  
23 arraignment, and we provide information about victim's  
24 rights. We can do some prediction, and preparing, we  
25 encourage them to exercise their rights, help them opt into

1 their rights, and encourage them to participate, if that's  
2 what they want to do.

3           Regardless of whether they are interested in  
4 participating, regardless of their position toward defense  
5 or the defendant. Our services are always available. We  
6 work very, very hard not to discuss outcomes of the case  
7 with them. We very clearly understand disclosure. It's  
8 not, it's not uncommon for defendants to come to us, recant,  
9 and that information goes directly to the prosecutor.

10           But we'll work with them whether they're  
11 recanting or not. I'm going to say a hundred percent of the  
12 time, if a case comes into domestic violence court,  
13 regardless of whether that case proceeds, regardless of  
14 whether there's a conviction, or any movement forward at  
15 all, there are services that a social worker can work with  
16 that family, with the state, with entitlements, with  
17 housing, with the different options.

18           So I get to be separated to the extent the victim  
19 wants to be from the actual prosecution, but I'm still able  
20 to provide whatever services the victim wants or needs or is  
21 willing to discuss, regardless of whether there's any, any  
22 conviction, and the plea, case is concluded or not.

23           MR. JONES: Thank you all. This has been a very  
24 useful session for us, and very enlightening. We hope that  
25 you will be receptive, as we continue the process, if we

1 need to reach out to you all further, that you will allow us  
2 to do that.

3 And if there's anything that you think would be  
4 useful as we exercise our mission, please give it to us. We  
5 are open to receiving any and all submissions that you might  
6 think would be helpful, and we appreciate you being here.  
7 Thank you.

8 (A recess was taken from 1:54 p.m. to 2:12 p.m.)

9 MR. JONES: All right. We are joined here this  
10 afternoon by the Maricopa County mental health court team.  
11 With us is the commissioner, Mr. Michael Hintze.

12 MR. HINTZE: Hintze.

13 MR. JONES: Who oversees the comprehensive mental  
14 health court for Maricopa County, where he also previously  
15 sat as a judge pro tem in the mental health, probate, ADR  
16 and various other courts.

17 Other members of the mental health court team who  
18 are with us are Miss Tammy Wray, who we are excited to hear  
19 from, because we've heard much about her earlier in the  
20 morning. All good things, Deputy Public Defender.

21 Christine Lopez, who is the mental health court  
22 court coordinator. Miss Michele Albo, a representative of  
23 the adult probation serious mental illness health unit --  
24 that's a mouthful, so I'm sure it's serious. And Miss  
25 Shelly Curran, director of court advocacy for the Magellan



1 mental health services, as well as Rob Lerman, who is for  
2 nine years now a Deputy Public Defender.

3 The way that we operate is that we give you all  
4 an opportunity to give us the benefit of your opening  
5 thoughts, and some opening remarks, and then we spend the  
6 vast majority of our time engaged in a question and answer  
7 session with you all. We have much to learn.

8 And one of us generally serves as sort of lead  
9 questioner, has primary responsibility, and in this case it  
10 will be Elizabeth Kelley. So the floor is yours to use as  
11 you wish, and then we will jump in. Whoever wants to start.

12 MR. HINTZE: Sure. Michael Hintze, I'm a  
13 commissioner with Maricopa County Superior Court --

14 MR. JONES: And let me, let me just interrupt you  
15 for one second and say that we are both videotaping this and  
16 having it steno --

17 MS. BERNHARD: Transcribed.

18 MR. JONES: -- transcribed, so we would ask, so  
19 we would ask that you all speak up, and in good voice so  
20 that it gets picked up in all the various forms. Thank you.

21 MR. HINTZE: Certainly. Michael Hintze, I'm a  
22 Maricopa County Superior Court Commissioner. I see that we  
23 were also joined today by Superior Court Judge Carey Hyatt.  
24 She was the first mental health court judge for Maricopa  
25 County. And it came out of a grant through the Bureau of

1 Justice Administration, and a lot of hard work on people at  
2 the court, working together.

3 My position as a court commissioner in this  
4 matter was to put together the comprehensive mental health  
5 court, which was taking the traditional -- it seems odd to  
6 be saying that, traditional -- mental health court, and  
7 moving it to the next phase and the next level.

8 Maricopa is unique. What we chose to do is take  
9 our Rule 11 competency calendar, which is again a competent  
10 to proceed for trial, people are being placed in there to  
11 determine whether they understood the nature and object of  
12 the proceeding, so that they could work with their defense  
13 counsel. And if so, go back to the regular track, in the  
14 criminal proceedings.

15 That calendar plus the SMI probation violation  
16 calendar, which was considered to be the mental health  
17 court, and also the civil commitments, putting them under  
18 one division, and dealing with it in a more unified fashion.

19 Enable to, allowing us to be able to integrate  
20 services for individual and making sure that we're able to  
21 provide what we thought at the court level was good  
22 accountability for all parties, when an individual enters  
23 into the comprehensive mental health court.

24 We moved that from the criminal section, the  
25 division, to the probate and mental health, those calendars.

1 So I'm actually under the jurisdiction of the presiding  
2 judge, Karen O'Connor, on the probate and mental health.

3 Karen came out of a wealth of experience as a  
4 criminal attorney. She became the presiding judge of  
5 probate and mental health. We've actually had three  
6 commissioners in the comprehensive mental health court:  
7 Myself, which does the Rule 11 calendar and the SMI  
8 probation calendar. We currently have Commissioner Vatz out  
9 at Desert Vista, and at the Arizona State Hospital, which  
10 performs the court-ordered evaluations and court-ordered  
11 treatments, commonly known as the civil commitments; and  
12 recently, Commissioner Brian Rees, who has come on as of  
13 February 11th. He also does a blended calendar with  
14 myself, doing the full Rule 11's, the hearings from those,  
15 the SMI probation violations.

16 In addition we added an additional calendar,  
17 which is the probate with mental health, so it's a  
18 guardianship with mental health powers.

19 So we have three commissioners working in the  
20 area. We deal with the segment of the population that do  
21 have needs and services in the mental health areas. And we  
22 try to provide the best and most uniform type of services  
23 and court intervention as appropriate and as necessary for  
24 those individuals.

25 The people you see here today are part of the

1 mental health court team that meet on Wednesday. We  
2 generally have a county attorney, a Public Defender, in this  
3 case two Public Defenders, the SMI, which is the seriously  
4 mentally ill, the probation department supervisor as well as  
5 the case probation officer themselves.

6 We then have a RBHA, which is our Regional  
7 Behavioral Health Authority, court liaison. In this case a  
8 court liaison through Magellan. And let's see, the case  
9 manager and sometimes clinical liaisons, as well as the  
10 court coordinator, Christine Lopez, which is a member of the  
11 court. We meet on Wednesday on the SMI, probation  
12 violations calendar, and we work on various cases that are  
13 proceeding through.

14 With respect to the authority that I have, since  
15 I'm under the probate and mental health umbrella within our  
16 divisions, I can enter civil commitment orders, I can enter  
17 a guardianship with mental health powers, and I can enter  
18 criminal matters.

19 I also, as an extra added detail, as of February  
20 11th, I'm going civil injunctions against harassment, which  
21 really have nothing to do with what we're doing, but that's  
22 just another thing that we do do, so I have do have civil  
23 authority, also.

24 With that, we can talk more in detail about what  
25 our plans are and what we do and how we conduct our

1 hearings, and our matters, and our staffing. But I'd like  
2 to turn it over to --

3 MR. SCHECHTER: Judge, before you get -- could  
4 you just explain for the record and for the panel what you  
5 meant by Magellan, 'cause I don't think a lot people know  
6 that.

7 MR. HINTZE: In the state of Arizona there was a  
8 suit a while ago called the Arnold versus Sarn. Arnold was  
9 the public fiduciary who sued the Arizona Department of  
10 behavioral health services for services for the people that  
11 were seriously mentally ill.

12 In that suit there was a mediated settlement, and  
13 that settlement ended up having a court monitor appointed.  
14 And oddly enough, the court monitor now is supported  
15 through, how shall I say, counsel through Chick Arnold, who  
16 was actually the plaintiff in the original suit.

17 The court monitor works with the RBHA, which is  
18 the Regional Behavioral Health Authority. In that suit, the  
19 settlement, as part of that settlement, each county ponies  
20 up a certain amount of money to the Department of Behavioral  
21 Health Services.

22 The Department of Behavioral Health Services then  
23 contracts with each county RBHA, a local RBHA to provide the  
24 services for the seriously mentally ill and the generally  
25 mentally ill.

1           So in this case Maricopa County has Magellan,  
2    which they now are under a five-year contract. And prior to  
3    them was ValuOptions, another regional behavioral health  
4    authority. They're subject to renewal every five years.  
5    And they have certain programs that they, or standards that  
6    they have to meet, and then there's also a court monitor  
7    that monitors whether or not they're meeting those  
8    standards.

9           At any time, the State could also, because they  
10   are a subcontractor, through their agreement, work with them  
11   in enforcing the actual agreement we have with Magellan, or  
12   altering it.

13           MR. JONES: Okay. Do you want to give us the  
14   benefit of your --

15           MS. WRAY: I'm Tammy Wray, I'm from the Maricopa  
16   County Public Defender's Office. I have been working in  
17   the, whatever name is going to be given to them, the  
18   specialty courts, the problem-solving courts, the  
19   therapeutic courts, or accountability courts I think is a  
20   new name for them.

21           I've worked in the DUI court and in drug court,  
22   in the domestic violence court and in the mental health  
23   court, probably for, I don't know, five or six years now.

24           Mental health has kind of become my specialty  
25   area. The people that you see here are, I've worked with

1 for a long time, they're colleagues, and I certainly respect  
2 them.

3 And I know, I think, that the focus that you all  
4 want to talk about is my interaction with my clients, and  
5 representing their interests and how that interplays with  
6 the therapeutic or the community bases issues that we're all  
7 committed to. So I think, if you don't understand what I  
8 do, you know, ask me, but I'd rather just give you all as  
9 much time to ask what you want to know.

10 MR. JONES: Thank you.

11 MS. LOPEZ: My name is Christine Lopez, and I'm  
12 the current mental health court coordinator for  
13 comprehensive mental health court.

14 And in terms of my function within the court,  
15 originally when we started the creation of the comprehensive  
16 mental health court per statute there was a clinical liaison  
17 to be appointed for certain cases where somebody who was  
18 deemed competent and they moved on to the criminal track,  
19 and they needed someone to monitor the individuals either in  
20 the community or while in custody.

21 And so per the Arizona Revised statutes, ARS  
22 13-4513, the clinical liaison was appointed in certain  
23 cases, and I started the pilot program for that. So that's  
24 how I entered into the comprehensive mental health court for  
25 the probate as an investigator for guardianship matters.

1           And so now, I supervise the clinical liaison as  
2 well as coordinate releases from the jail into the  
3 community, and I work with Magellan in order to make sure  
4 that an individual gets released to the appropriate level of  
5 care as deemed by the clinical team, which is Magellan.

6           I basically help the calendars, I collect  
7 statistics, for evidence-based practice purposes. We also  
8 do, we -- I'm assigned certain cases, if there needs to be a  
9 coordination of care. Provide resources in the community.  
10 I organize tours of different community-based programs, so  
11 that the people who are staffing each case are aware of the  
12 different programs and what's provided, what providers  
13 actually do provide in the community.

14           I move between the probate court and the mental  
15 health court and sometimes the criminal court to provide  
16 resources to the judicial officers. That's basically what  
17 my function is.

18           MR. JONES: Thank you.

19           MS. CURRAN: Hi. My name is Shelly Curran and  
20 I'm with Magellan Health Services, and as Commissioner  
21 Hintze mentioned, we are a behavioral health provider that  
22 contracts, we contract with the State of Arizona to provide  
23 behavioral health and substance abuse services to the  
24 medicated population in Maricopa County, and to those people  
25 that are determined to be seriously mentally ill, regardless



1 of their financial status, they would be eligible for our  
2 services.

3 We have pretty heavy participation in the mental  
4 health court. Case managers attend the mental health court  
5 staffings. They prepare a report for the court ahead of  
6 time in regards to how folks are doing in their treatment.

7 And then there's also a liaison that is with  
8 Magellan that works, that goes to the comprehensive mental  
9 health court just to make sure that if there's any barriers  
10 to treatment, something that a case manager maybe is running  
11 into problems that, accessing services for somebody, they're  
12 the experts that are there to assist the people to overcome  
13 barriers. I'm happy to answer any questions.

14 MR. JONES: Thank you. Miss Albo?

15 MS. ALBO: My name is Michele Albo, I've been in  
16 the SMI unit now for a year. I was a probation officer for  
17 Maricopa County for 18 and a half years.

18 The mental health court from my perspective is  
19 limited to the review hearings and revocation hearings. For  
20 a review hearing, a probation officer contacts the judge or  
21 the JA and requests a hearing in order to address  
22 noncompliant behavior, and utilize mental health court in  
23 lieu of filing a petition to revoke against these people.

24 A lot of problem-solving goes on within the  
25 community before we even reach the courts. 'Cause our whole

1 purpose of the unit is connecting people with treatment,  
2 utilizing also the mental health court, and assisting them  
3 in successfully completing probation.

4 And we do have staffing before court, where all  
5 the parties involved come together. We define what the  
6 problem is, and we work toward a solution to the problem,  
7 which benefits both the community and the SMI individual.

8 For the petitions to revoke, any time we have  
9 filed one, it's nice to have our own court, where we are  
10 already versed on the mental health issues. But we also  
11 bring people back to court to acknowledge their successes as  
12 well.

13 So it's not just something to say, you know, this  
14 is what you're doing wrong, but we also like to give them  
15 credit for what they have done right.

16 MR. JONES: Great. Thank you. Mr. Lerman?

17 MR. LERMAN: My name is Robert Lerman, I'm with  
18 the Public Defender's Office. I work with Miss Wray, and we  
19 work in the mental health, as part of the mental health  
20 court, and --

21 MR. JONES: Just in the interest of fairness, I  
22 should say we heard very good things about you this morning  
23 as well.

24 MR. LERMAN: Well, thank you. Thank you, Marvin.

25 MS. SHIFMAN: And Tammy Wray.

1 MR. JONES: Rob will take care of her.

2 MS. WRAY: Heard better things about me.

3 MS. SHIFMAN: Not how I heard it.

4 MR. LERMAN: So Tammy and I are the two assigned  
5 attorneys to the mental health court. And we represent the  
6 defendants assigned to that court. We also work in the drug  
7 court, and I've been actually doing drug court the longest,  
8 about as long as Tammy's been doing mental health court, so  
9 five or six years at drug court, and then working mental  
10 health court. I've doing that about three to four years.

11 And the two courts are set up pretty similar,  
12 with staffing, staffing cases before court, and then we  
13 represent the clients in court. And that's the general  
14 structure. And they're both set up, as I said, the same.  
15 And that's what I do.

16 MR. JONES: Very good.

17 MS. WRAY: And just to be fair, and you may  
18 already know this, they may have talked about it earlier,  
19 our courts are, they're all post-conviction courts, they're  
20 not diversion courts, so the emphasis is more geared toward  
21 getting people through probation.

22 And there are different -- drug court and mental  
23 health court are a little different, and we can talk about  
24 that if you want. They have different goals, and I guess  
25 different ultimate goals for the defendants, rewards for

1 participating.

2 MR. JONES: I'm going to turn the questioning  
3 over to Elizabeth.

4 MS. KELLEY: All right. Let's take that final  
5 point that you raised, that your court and the drug court  
6 is, are both post-conviction courts. In your professional  
7 estimation, would there be any advantages to having a  
8 pre-trial mental health court, instead of a post-conviction  
9 one? Or in addition to a post-conviction one?

10 MS. WRAY: Well, we don't, in Tempe, in the City  
11 of Tempe, we do have a -- not we, but the city court, they  
12 do have a diversion mental health court, where they go  
13 through this structured program, then their city charges,  
14 which would just be misdemeanors, can be dismissed.

15 MS. KELLEY: Okay.

16 MS. WRAY: I'm sorry, but -- and I think, I  
17 certainly think there would be great advantage to having a  
18 pre-conviction diversion program in Maricopa County. And  
19 that would take the agreement of all the parties, and  
20 conspicuously absent from our panel here --

21 MS. KELLEY: We'll talk about that in a minute.

22 MS. WRAY: -- maybe you can guess who that might  
23 be --

24 MS. KELLEY: Yeah, we'll talk about that.

25 MR. HINTZE: I think you hit the point, early

1 intervention is very important, and I'm going to let  
2 Christine talk a little bit about her intervention, and what  
3 she does as a court coordinator, assisting the court to  
4 identify these issues early on.

5 MS. LOPEZ: We do have an RCC calendar, and  
6 that's basically a regional court center. And we do try to  
7 intervene at the very beginning, whenever possible, to make  
8 sure that the court, that the Public Defender, the County  
9 Attorneys, are aware that there are services in the  
10 community that are available to the individual if they are  
11 deemed to be SMI.

12 Also, I have worked in the Tempe mental health  
13 court as well, and I was a Magellan court liaison prior to  
14 that, and we do do some coordination at that level, as well.

15 And so oftentimes that helps the Public Defenders  
16 who may have a client in court, who they may not be able to  
17 have a conversation with in terms of understanding what the  
18 charges are against them, and so forth.

19 Or they may not be getting their medications  
20 while in custody, or they may not understand that there are  
21 services outside of jail where they could return to in terms  
22 of housing. So all of those things are resources that we  
23 try to provide to the court staff.

24 MR. HINTZE: There was a point that we did not  
25 have the information that we needed in order to do the

1 earlier intervention. And so we were sitting in an office  
2 at one point talking about it, and we thought that perhaps  
3 an administrative order allowing us to capture that  
4 information, to be able to provide it to the parties  
5 appropriately in a confidential way, would assist us, and  
6 said, look, maybe Shelly could tell you about what our  
7 administrative order is that allows us to capture some of  
8 the data that allows for the early intervention.

9 MS. KELLEY: Well, before we get to that, are you  
10 the person in charge of the services?

11 MS. CURRAN: Services, yes.

12 MS. KELLEY: Well, Mr. Carrion, who is still with  
13 us, testified earlier this morning, and a few minutes ago  
14 during the break, he and I were having a conversation, and  
15 we talked about the dilemma that particularly impacts this  
16 population when they have a conviction.

17 All of a sudden they're no longer eligible for  
18 SSI. There are certain types of group homes for which  
19 they're not eligible, those sorts of things.

20 So we were talking about, in an ideal world, this  
21 population wouldn't even be charged.

22 MS. WRAY: Well, there are -- I mean, there are  
23 different, different kinds of offenses obviously. We have  
24 certainly a significant number of clients who get stopped  
25 for traffic stops, or because they might be suspected of

1 shoplifting or something relatively minor.

2           And because of the way their symptoms show  
3 themselves, they wind up getting an aggravated assault  
4 charge against the police officer. And otherwise they  
5 wouldn't have any other contact with the system, or they'll  
6 have charges like trespassing or, you know, criminal,  
7 criminal damage in some cases, or disturbing the peace types  
8 of offenses.

9           Ideally, and you can, after you do it a while,  
10 you can look at a criminal history, and you can see, well,  
11 this is a mentally ill person. It doesn't take that much to  
12 be able to see that.

13           Well, ideally they wouldn't, they would be part  
14 of the mental health system. Ideally we would have a mental  
15 health system that could and would provide the support and  
16 services they need. But sometimes they don't even get into  
17 that system, until they've come through the criminal justice  
18 system.

19           MS. KELLEY: Sure. There have been some veiled  
20 references to the absence of the prosecutor's office. Could  
21 you on -- do they actively participate in the running of the  
22 court? Do they have a regular person stationed to your  
23 court? Is there special training for them? Do they screen  
24 who comes into the mental health court?

25           MR. HINTZE: For the mental health court, we do

1 have a person that's assigned to the morning, and one to the  
2 afternoon. As far as their training, I think it's about the  
3 same as most attorneys coming through the system, whether  
4 you're on defense or the prosecution side.

5 A lot of it's learned over the years. And some  
6 formal. We also have some in-services that we provide for  
7 them. We also have tours of various facilities, including  
8 hospitals, and the halfway houses, to residential centers,  
9 co-occurring centers, to the testing that we do for blood  
10 testing, and we have one set up this weekend, this coming up  
11 week, for another facility, which is outpatient services  
12 provided.

13 So we do have an assigned individual, and they  
14 do, they have been staffing, and that has been through the  
15 agreements, to be at the table as well.

16 MS. WRAY: I mean, but to be effective, even as a  
17 prosecutor, for anybody on the team to be effective, they  
18 have to buy into the whole concept of what the court is  
19 trying to accomplish. We have had a hard time getting our  
20 County Attorney's Office to commit one person and to, you  
21 know, when different people show up each week, they don't  
22 get what we're trying to do.

23 And we've lately had one assigned who's generally  
24 been really good, and very engaged in the process. A lot of  
25 times folks will come and they're just, they're not there



1 long enough to be interested or to really understand what's  
2 going on.

3 MS. KELLEY: Okay. A point of clarification,  
4 when you use the term mental health, I presume that's a  
5 global term that includes not only persons with mental  
6 illness, but also persons with mental retardation?

7 MS. WRAY: Sometimes.

8 MS. ALBO: But the people who participate in  
9 mental health court through a review hearing or a petition  
10 to revoke, like the revocation matters, they are all on a  
11 specialized caseload. They have over 500 offenders on  
12 specialized caseload.

13 And the probation officers initiate the contact  
14 with the court, either through a petition to revoke, or just  
15 asking the JA to put them into the calendar. Calendar only  
16 addresses certain behavior.

17 But also there's, 85 percent of our population,  
18 they have a diagnosis, but they're also diagnosed with a  
19 substance abuse disorder.

20 MS. KELLEY: Okay.

21 MS. ALBO: And so that, I mean, and it's  
22 important for, and the County Attorney is aware of this as  
23 well, but for everybody to understand that, so that, that's  
24 usually an issue.

25 MS. KELLEY: So, but, but the majority of the

1 defendants in the mental health court program are mentally  
2 ill, as opposed to mentally retarded?

3 MS. WRAY: We do have developmentally disabled  
4 clients, but it's a much smaller population -- well, it's a  
5 much smaller part of what we do.

6 Typically Magellan is not involved in their care.  
7 We have the Department of Developmental Disabilities.  
8 They're much harder to engage, much harder to get them into  
9 court, much harder to coordinate care.

10 MR. HINTZE: Probably about 80 percent of the  
11 SMI, with that SMI diagnosis under our statute, and then  
12 also, I'd say about 10 percent, 15 percent, general mental  
13 health, that might be under a court order for treatment.  
14 And then we have that remainder, being the DDD individuals  
15 that she's just talking about.

16 MS. SHIFMAN: If can, I wanted to ask a question  
17 about how you get into your court post-conviction. So, I  
18 mean, one way is a violation, as part of a sentence, they  
19 were ordered to have mental health treatment, they're not  
20 getting it, they get violated, and they end up in the  
21 commissioner's courtroom, correct?

22 MS. ALBO: Well, if, the individual already has  
23 to be on specialized, has to be on SMI caseload. If --

24 MS. SHIFMAN: And how do you get them after  
25 they're in custody --

1 MS. ALBO: Probation officers, one of the  
2 probation officers, must be an individual sentence, and  
3 they're -- they, we have a scoring tool, and if they at  
4 least score 50 percent of the mental health, then they  
5 screen the cases, it's a whole screening process that they  
6 go through.

7 And the individual has to have a qualifying axis  
8 one diagnosis, and also be functioning impaired because of  
9 their mental illness, where they lack certain program  
10 functional possibly.

11 Once some of that is established, then they  
12 become on our caseload. We have two supervisors, we have 14  
13 officers, and a surveillance officer. And each one of the  
14 officers has a caseload of about 40 individuals.

15 MS. SHIFMAN: So it's really once they come  
16 through for their initial probation interview, that this  
17 might even get activated, by and large?

18 MS. WRAY: There are lots of other ways it can  
19 get activated. I've also worked in the Rule 11 court and  
20 the competency court, for people who are pre-conviction, and  
21 if I can see them going in a specific direction, I try to  
22 hook them up with this unit, and get them screened before  
23 they get to a point of, you know, being violated again, or  
24 being in crisis in the community.

25 And there are lots of different ways it can

1 happen. Sometimes other attorneys who are aware of what we  
2 do, will ask at sentencing that, you know, this person be  
3 SMI supervised by the probation department. Probation hates  
4 that, because then they have to take them without screening  
5 them.

6 MS. ALBO: Or mental health terms.

7 MS. WRAY: Or mental health terms. There's lots  
8 of different words that people use for it.

9 MS. YOUNG: Okay.

10 MR. JONES: One second. Elizabeth has one last  
11 question, and then I want to do Adele, and then you can go.

12 MS. KELLEY: This is a bit off topic, but I'm  
13 curious and no one's talked about it thus far. If God  
14 forbid someone is found to be noncompliant, and their  
15 probation is revoked, prison is the next step I would  
16 presume?

17 What are the mental health facilities for, what  
18 are the mental health facilities like in Arizona's penal  
19 system?

20 MS. WRAY: I can't -- well, maybe --

21 MS. KELLEY: Is there, is there a designated  
22 facility?

23 MS. LOPEZ: Within the Department of Corrections,  
24 ADHA, there is actually certain facilities that do provide  
25 mental health treatment within the Department of

1 Corrections. I would have brought actually that document,  
2 but there are certain facilities like the Flamenco Unit, or  
3 the Alhambra Unit, where they do sort of specialize in  
4 dealing with some of the mental health issues.

5 I don't know if you know more about that, Shelly,  
6 but there are, within the Department of Corrections in  
7 Arizona there are certain facilities that divide mental  
8 health population from the other.

9 MS. CURRAN: Something that's been very helpful,  
10 just recently, for us, in coordinating care for folks, is  
11 there are discharge planners in the prisons that work with  
12 people who have mental health issues, and there's a link  
13 between ADHS, the Department of Behavioral Health Services,  
14 and the Department of Corrections.

15 And so any time someone is processed into prison,  
16 the information goes back and forth, and so the prison knows  
17 who's coming into the system that was enrolled as an SMI  
18 consumer anywhere in the state.

19 So they know coming in. So a lot of times people  
20 don't want to self-disclose that for various reasons, so  
21 they know that this person has some mental health issues, at  
22 least let's screen and see what kind of services that they  
23 might need.

24 And we also, it also allows the discharge  
25 planners, when they know that someone's going to be

1 released, six months prior to release, they can be  
2 re-enrolled in our services, and we can assign a case  
3 manager for them to make sure that there's that continuity.

4           And if someone is sentenced to prison -- it seems  
5 like quite a few of the folks, you know, they're sentenced  
6 to not very long, coming out of the court, because I know we  
7 try throughout the process to kind of do them, what do they  
8 say, the installment plan? You know, going for 30 days  
9 here, going for 30 days there, not -- so we can have them  
10 held locally and not have to go to jail.

11           So when they finally do, if their sentence is for  
12 like six months, then we really don't close them, and keep  
13 an eye on them, keep checking on them, so that way they  
14 don't get lost in that system.

15           MS. WRAY: And that's much better than it used to  
16 be, like maybe two or three years ago even. People would  
17 frequently go into DOC, and then when they got out, they  
18 would be just on their own.

19           MR. HINTZE: One of the things that we worked  
20 together and collaborated with the Arizona Department of  
21 Corrections in order to assist them to get a grant, they got  
22 a grant at just under a million dollars to start on this  
23 process. And they're attempting to try to get together,  
24 similar to the SMI Adult Probation Department, the SMI  
25 community supervisors, i.e., the parole officers, to have

1 that specialization, so that they know when they're turning  
2 this person back into the community, they would have the  
3 services and link it up.

4 But there are direct services, the individuals  
5 will go to the Alhambra Reception Treatment Center, they'll  
6 have that information ready, there's the Able and Baker  
7 unit, there's the Flamenco unit, and then each of the  
8 facilities has a place that we can make sure that the  
9 services are followed throughout.

10 But more importantly, when a person is sentenced,  
11 there are different things that we can do. And sometimes  
12 the various attorneys have agreed to terminating probation  
13 for time served, early termination of probation, mitigating  
14 sentences, and I think it's been beneficial for everybody.  
15 I think they could probably talk about that if you want, or  
16 they could do that.

17 MR. JONES: Adele?

18 MS. BERNHARD: I guess of all those different  
19 kind of courts that I've heard about today, this is the one  
20 that's hardest for me to get my head around. So, let me  
21 just review this.

22 This is a post-conviction proceeding. So these  
23 are people who've gotten arrested for something, but when  
24 you start looking at it, you see there's a mental health  
25 problem. But they have taken a plea to something, right?

1 So they have now a conviction.

2 So what you're really trying to focus on now is  
3 that they don't get, that their sentence meets who they are  
4 and what their needs are, as opposed to doing something that  
5 would have nothing to do with mental illness and the floor?  
6 Am I right or am I wrong? Is that a, is that a correct  
7 or --

8 MR. HINTZE: I believe that's correct for what we  
9 do at the SMI probation violation calendar, that's probably  
10 the overall objective, is exactly what we do.

11 MS. WRAY: And I mean, that's one of the reasons  
12 the court was created we, you know, we kind of off-handedly  
13 refer to them as the frequent flyers. We want to cut that  
14 out. We don't want them to come, keep getting engaged in  
15 the criminal justice system, because --

16 MS. BERNHARD: With nobody paying attention to  
17 who they are or what they need --

18 MR. HINTZE: We're trying to --

19 MS. BERNHARD: -- or what services might be  
20 appropriate?

21 MR. HINTZE: -- reduce the recidivism and have  
22 accountability for all parties, and then, and also just  
23 making sure that we fashion appropriate sentences and  
24 appropriate probations.

25 For a period of time, for example, there was a



1 thought that we might want to put people on intensive  
2 probation for this population. That was a, not an  
3 appropriate idea, it was actually inappropriate. And we had  
4 to go through that period of time realizing it's not an  
5 appropriate sentence.

6 And that's what sentencing is for, what's  
7 appropriate for that individual, protecting the community,  
8 but also fashion appropriate sentence.

9 So we stopped doing intensive probation for this  
10 population. We haven't done one since 2005.

11 MR. LERMAN: We're trying to ensure the  
12 compliance of the operation, get them to the point to where  
13 they're looking at putting this person, so prison is the  
14 last resort.

15 MS. BERNHARD: Right. So you're sort of trying  
16 to help people manage this responsibility, which might be  
17 difficult for them to manage, for a variety of different  
18 reasons, right?

19 MR. LERMAN: Yes.

20 MS. BERNHARD: But they're already within this  
21 kind of system, so you've got to move outside. So what  
22 difficulties or successes or, are you finding as a Public  
23 Defender, within this fairly constrained -- and there's lots  
24 of ways you can go, but it isn't the whole world, it's a  
25 small world that you're operating in?

1 MS. WRAY: Well, that could be, you know, I could  
2 talk all afternoon about that, but to be brief, the  
3 successes are I guess what I get from it is, I build a  
4 relationship with these people sometimes over years. And I  
5 get to know them, and I get to see, I get to see, not just  
6 this little snapshot of their life, where I'm trying to help  
7 them with this case, but I get to advocate for them in  
8 court, I get to advocate for them with their mental health  
9 provider, I get to know their families in some respects, and  
10 if it all works the way it's supposed to, I get to clap at  
11 the end of their probation, and say, good job, you know, I'm  
12 happy to work with you, I hope I don't see you again.

13 MS. BERNHARD: Now, I know there's lots of other  
14 people with questions, I just want one followup, do you have  
15 in terms of, this is different from what you were really,  
16 the kind of training you got at law school, right? You  
17 know, object to this piece of evidence, or whatever.

18 Do you feel that you have the support and the  
19 training to do this? How did you learn to be this kind of  
20 an advocate? And you, too, Rob, how did you --

21 MS. WRAY: I think trial and error?

22 MR. LERMAN: Well, yeah.

23 MS. WRAY: There's really -- go ahead.

24 MR. LERMAN: Well, initially we were pretty much  
25 thrown into it so to speak.

1 MS. WRAY: Yeah, there really wasn't any  
2 training.

3 MR. LERMAN: I think, and maybe part of it was  
4 based upon our personalities and getting assigned to it, but  
5 I actually did go to a defense training for drug court.

6 MS. BERNHARD: Right.

7 MR. LERMAN: Mr. Carrion sent me to that, and it  
8 was an excellent training, and I learned a lot, so I did get  
9 some training that way. And that assisted me. But it's  
10 pretty much trial and error, is how we learned --

11 MS. WRAY: I think --

12 MR. LERMAN: -- and learning all the players, and  
13 developing rapport, and that is a huge part of what we do.

14 MS. WRAY: Developing a rapport with the clients,  
15 and developing the rapport with the other people on the  
16 team. And actually Michele and I were talking about this  
17 yesterday afternoon, it's kind a double-edged sword. I  
18 know, I've been working with these probation officers for  
19 years, and I respect them, and I count them as my friends.

20 In fact, I work with more probation officers than  
21 I do attorneys. And so in that respect, the good part of  
22 that, is that when, that I have a better rapport with them,  
23 and they know me, and I can go to them and say listen, we're  
24 having this issue with this client, what can we do? How can  
25 we handle it?

1           They're more likely to listen to me than they  
2 would be to listen to an attorney that they didn't know, or  
3 than a standard probation officer would.

4           They do the same thing. We've got this problem  
5 in another court, we can't handle it, we're not getting a  
6 response, can you help with us this, you know, and I do my  
7 best to address that.

8           The other side of the issue is that, you know,  
9 kind of tongue in cheek, one of my clients said to me,  
10 Michele is trying to burn down my house, I'm more likely to  
11 go, no, that's, that's, let's look at that, because, you  
12 know, there might be other explanations for what's going on.

13           And so in that sense --

14           MS. BERNHARD: He has paranoid schizophrenia?

15           MS. WRAY: Well, yeah, maybe but she could be  
16 having a bad day. She might have threatened him.

17           But I just don't have the, I guess a lot of the  
18 objectivity is gone, so for good or for bad.

19           MR. JONES: Vicki, and then Marvin.

20           MS. YOUNG: You were describing the Rule 11  
21 calendar, which seems to me that it's a determination  
22 whether someone's competent or not, and if they're found to  
23 be not competent, then they're sent away until they are  
24 competent. But what if --

25           MS. WRAY: Maybe.

1 MS. YOUNG: -- but what if they're found, they're  
2 not quite not competent, but there's clearly a problem,  
3 then -- but there's criminal charges pending.

4 So from what I'm hearing from you, that doesn't  
5 stay in your court, it goes back to criminal court. But  
6 obviously you've already identified someone with some  
7 issues.

8 MS. WRAY: You're talking --

9 MS. YOUNG: Your court deals with those issues,  
10 so what interface do you have with that person, how, you  
11 know that you then had contact with, maybe to say, you know,  
12 maybe our unit can handle them on probation, when you want  
13 to send them to prison? Is there anything like that?

14 MR. HINTZE: Maybe I could take part of this. In  
15 the competency calendar we have three options to dismiss  
16 without prejudice, to dismiss with an appointment of a  
17 guardian, with mental health powers for an individual, to  
18 dismiss with a civil commitment.

19 Okay, those are our three options. All are  
20 without prejudice, they could be refiled again. And then  
21 there's, we have different, we have the criminal charges and  
22 we have the new probation violations.

23 And that's where Tammy, who does our Wednesday  
24 calendar, is also in the Rule 11 calendar for all the  
25 probation violation matters that are going through, and I'll

1 let her talk, and have her talk to you about how that's  
2 working for her, because that's a part of what you're  
3 asking, is how she's moving those cases appropriately over  
4 to our calendar and where the SMI probation officers work  
5 with those individuals.

6 MS. YOUNG: Well, how does someone with a  
7 criminal, a regular criminal case, and they've already seen  
8 this person clearly has issues, and then how can you help  
9 them get them into mental health probation versus a prison  
10 sentence?

11 MR. HINTZE: As a judge, what do I on some of  
12 those --

13 MS. YOUNG: Well, I --

14 MR. HINTZE: -- and the attorneys, on some of  
15 those when the person comes in, there's obviously going to  
16 be compensation based upon the medical reports we're  
17 receiving. I can order Magellan to brief it, to go in and  
18 do a jail evaluation, to assess for services, so they can be  
19 provided with those services.

20 And they will start that evaluation process  
21 whether they become SMI or general mental health, which then  
22 starts them up with services early on. So that's one of the  
23 things, one of the tools I use.

24 MS. WRAY: We, and this is a little bit off topic  
25 from what we're talking about, but Christine had mentioned

1 the regional court center, the RCC, and that's where a lot  
2 of cases come in, and when they're initially charged, and  
3 they do preliminary hearings, some just get vacated and go  
4 to indictment, with varying levels of success, and right now  
5 not entirely successful, we --

6 MR. CARRION: Zero success.

7 MS. WRAY: Okay, zero success. But I'll let you  
8 know what I'm working on. We, we, people were coming in,  
9 newly charged, not on probation, being identified as having  
10 these SMI issues, and they were identified on this special  
11 calendar.

12 This judicial officer, and some others who were  
13 assigned, were then, like being in charge of these cases,  
14 and when they went to probation track, they were coming into  
15 this unit, or if there was room, ideally they were coming  
16 into this unit. There were a lot of logistical problems  
17 with doing that, and so that's kind of gone by the wayside  
18 now.

19 Still though, a lot of the attorneys who do  
20 mental health cases, who work with mentally ill criminal  
21 defendants, who are initially charged, are aware of the  
22 existence of this court, and they kind of try to, they try  
23 to guide it in the right direction. There's a, there are a  
24 lot of attorneys though who don't even know that we exist,  
25 and don't know that this resource is available.

1           And the other side to that is folks who come in  
2 on a probation violation, who may have been identified as  
3 possibly having mental health issues, or you know, not  
4 necessarily getting services with Magellan, and for whatever  
5 reason, they're not being supported in the community, they  
6 are, they have violated their probation, they go through the  
7 Rule 11 process, the competency process, on their petition  
8 to revoke their probation.

9           I meet them then, and it's becoming, it's much  
10 easier for them, for me to then get them into this court.  
11 Sometimes it works better than others, but ideally that's  
12 what's happens.

13           MR. CARRION: I'll interject, clarify something,  
14 when I said zero, it would be successful if the County  
15 Attorney's Office supported it, because all the players are  
16 ready to do it, if they wanted to make a successful and put  
17 the person into the system, maybe get the case dismissed or  
18 pled to a lower offense and go to SMI court.

19           But the County Attorney's Office thinks that's  
20 too soft on crime, so we're dealing with seriously mentally  
21 ill people who are nondangerous.

22           MS. WRAY: And that's accurate. I mean, I think  
23 the County Attorney puts up road blocks wherever they can.

24           MS. YOUNG: Okay. So it's self-selected in that  
25 they have to be seriously mentally ill, and on probation, so



1 that if they've already been determined to be dangerous,  
2 they aren't put on probation, is that --

3 MS. WRAY: Well, if it's a dangerous offense,  
4 they're not going to be on probation. I also, I also have  
5 some other clients who are dangerous, who go, we call it  
6 guilty except insane, and that's kind of a different route.  
7 But --

8 MR. JONES: Marvin?

9 MR. SCHECHTER: Rob, Tammy, maybe you can address  
10 the issue of the attorney-client privilege, in a setting of  
11 a mental health court. Does that present problems for you  
12 defending? Is it not a problem at all? Is it something we  
13 need to address in our final report for attorneys?

14 MS. WRAY: You want to address that, Rob?

15 MR. LERMAN: Well, I guess Tammy and I were sort  
16 of discussing this, we pretty much, we, I guess we wear  
17 different hats. You know, in staffing, you know, we, we  
18 will talk about the person's case, you know, we get  
19 information from the case managers and that sort of thing.

20 And then we'll go and talk with the client, just  
21 to confirm stuff, and whatever we've talked about in court.  
22 So we're able to put on the different hats. When we talk to  
23 the client about the confidential information, then we  
24 adhere to that. And just like we would with any other  
25 client in any other court.

1           And so I think we're able to just wear those  
2 hats, and as long we, because we're aware of the system and  
3 then, you know, we don't reveal confidential information,  
4 you know, during those staffings, or any other time that we  
5 don't, aren't given permission to do so.

6           So I think it's just a, I guess I look at it as a  
7 wearing of different hats at different times and that sort  
8 of thing. And I was going to add, you know, we wear  
9 different hats during times in the proceedings. I mean,  
10 staffing, we might take off our traditional attorney role  
11 hat but in court, it's different. It depends on the  
12 circumstances of the client, so...

13           MS. WRAY: Yeah, I don't, I don't think it's a  
14 problem. We're, we do have confidential information about  
15 our clients. And the bottom line is we don't reveal that in  
16 staffing or in any other context.

17           Now, there might be a case where we, and it  
18 happens fairly frequently, our client has communicated to us  
19 that they, you know, messed up on their treatment or  
20 violated their probation in one way or another, and we can  
21 see that what, we've been doing this a long time, it may or,  
22 be handled in one way or another.

23           And sometimes I'll say, you know, we're not going  
24 to talk about that, and we just leave it at that. But other  
25 times I can say, we need to call Michele, and we, you need

1 to tell her. Because this is what's going to happen if you  
2 don't. And this is what's likely to happen if you do.

3 I'm not going to tell her, but I can certainly  
4 either sit there with her while she tells her or advise her  
5 that it needs to happen.

6 MR. SCHECHTER: Two questions. This time,  
7 several times yesterday, in mental court, the judge asked  
8 Magellan to have greater consistency with having one  
9 counsellor assigned to a particular individual.

10 And I asked some questions of some of your  
11 colleagues, and of course the problem -- I knew the answer  
12 to the problem, but I wanted to confirm it which is, the pay  
13 is rather low for some of the folks in the Magellan  
14 system --

15 MS. CURRAN: Case managers make very little.

16 MR. SCHECHTER: And you get, you get a lot of  
17 turnover. Is that affecting the process or the ability to  
18 get the work done? I mean, 'cause for the judge to say  
19 that, that really says to me, and I've seen this in other  
20 courts, the judge is concerned about the turnover, it's  
21 affecting what each one of the other players are trying to  
22 do.

23 MS. CURRAN: And it certainly is a concern when  
24 someone has had multiple case managers. But the case manger  
25 is not the only person on that defendant's clinical team.

1 They've got, they've also got a doctor, they've also got a  
2 nurse, there's other people that are on the team, too.

3 But the face in the court changes, and that's a  
4 concern. Because someone can say, well, I wasn't here at  
5 the last hearing, so I'm not quite sure what was discussed,  
6 so that's an issue. I think sometimes the communication can  
7 be an issue, having a new face come to the court is an  
8 issue.

9 But that doesn't mean that that client doesn't  
10 necessarily have good care, the communication with the  
11 court. And that's one of the reasons why we have a liaison  
12 that is a part of that team. Some, one person that  
13 represents Magellan, that tries to work with the  
14 consistency.

15 And I tell my liaisons, if they're upset because  
16 the case manager, if there's inconsistencies or something  
17 hasn't been followed through, I say, you know what, if case  
18 managers were perfect, then we wouldn't need liaisons, and  
19 you wouldn't have a job.

20 So that's one of the things that we've done to  
21 try to remedy that, is to have a liaison to over, to take a  
22 look at what was discussed at the last staffing, what's  
23 supposed to happen between then, and follow up to try to  
24 ensure that that happens.

25 MS. WRAY: And I do have something to add to

1 that, I think we've called it -- the judge has said that  
2 there's accountability for all parties, and that includes  
3 the RHBA, it includes the mental health care provider.

4 And in a lot of instances -- I have the greatest  
5 respect for Shelly, and most people in Magellan, I respect  
6 what they're trying to do. They have a limited amount of  
7 resources, and, you know, that's a discussion for another  
8 day.

9 However, I think the people who appear in our  
10 courts by virtue of this process, generally get better care  
11 from Magellan than --

12 MR. SCHECHTER: The rest of the people.

13 MS. WRAY: -- than people in, who may not have  
14 people, whether it be family or other advocates in the  
15 community. There are more people looking at their care.  
16 And I think that probably more responsiveness.

17 MR. SCHECHTER: My, I wasn't inferring that, just  
18 from my observations yesterday, I was very impressed by  
19 Magellan, the people who were there were incredibly  
20 knowledgeable and caring. And I thought that was pretty  
21 incredible.

22 I have one last question, Michele, I've been  
23 doing this 34 years. I have never seen anywhere in any  
24 jurisdiction a group of probation officers who spoke about  
25 my clients with such compassion and fairness. How did that

1 happen? Is it a function of your supervisor? Is it a  
2 function of your supervisors? Is it an attitude they have?  
3 Or is it really what I suspect, a function of the court, and  
4 the judge who controls the court and sets the tone from the  
5 top down.

6 MS. ALBO: Without taking any credit from the  
7 wonderful staff here, when I decided to apply to the SMI  
8 unit, I just figured that what was just best suited for me.  
9 Because I wanted, I mean, I'm not a police officer, and I  
10 want to try to help these people best I can, and get them  
11 the resources they need.

12 There does come a time when I am done, I'm doing  
13 done more work than they are, and then we'll, you know, have  
14 that discussion at table. But it's, all of the people in my  
15 unit basically have the same feeling, that we are here to  
16 help these people, and so they stay out of the system as  
17 much as they can.

18 There -- and that's why you have I guess when  
19 supervisors start screening people for their caseloads,  
20 they're looking for certain characteristics, but most of the  
21 people in my unit have been there for a long time. I've  
22 been there eight years. And I will retire in that unit, if  
23 the probation departments allows me.

24 But that's, I mean, to me it's just, I take it  
25 for granted, that that's what we're all there for, to be

1 passionate, but we each have our own goals to think of as  
2 well, and our own, our, I guess roles in the community that  
3 we meet. I, I think we do a fabulous job. I rely on mental  
4 health court to be that one tool that I need to, again, hold  
5 everybody accountable, even myself.

6 MR. JONES: We have time for one more question,  
7 and that will come from Jay.

8 MR. CLARK: My question for Tammy and Rob is  
9 this, I think, if I'm right, between you, you guys have ten  
10 to 12 years experience in these specialty courts now.

11 MS. WRAY: More, but go ahead.

12 MR. CLARK: I was trying to be conservative.  
13 You're there every day, and a lot of your answers have been  
14 basically, we've learned through trial and error, what works  
15 and what doesn't work.

16 One of the things we're trying to do is help  
17 attorneys who haven't got that much experience. What  
18 recommendations can the two of you make to attorneys when  
19 they're dealing with their clients, going into these courts  
20 or working in these courts, who don't have the years of  
21 experience that you have, maybe some basic things you go to,  
22 when things aren't going right. Where do you go, what do  
23 you look at, what recommendations can you make?

24 MS. WRAY: That's a pretty broad question. I  
25 think it would have to, you know, the way that we handle

1 something in drug court is very different from the way we  
2 handle something in mental health court, versus the way we  
3 would handle it in the domestic violence court. It's the  
4 tone the judge sets, it's the probation officers we're  
5 working with, it's the local law, the treatment providers.

6 I would find that very hard to answer. And I  
7 know that's not a good, that's not an adequate answer, you  
8 know, maybe I would just have to put some more thought into  
9 it. I mean, I think there's certainly training, and I think  
10 Rob probably has attended more than I have, regarding  
11 specialty courts, and, you know, kind of this collaborative  
12 approach, versus an adversarial approach.

13 You just kind of, I just kind of wing it. It's  
14 whatever works, and then if it doesn't work, I don't do it  
15 again.

16 MR. LERMAN: I think going to training and,  
17 whatever training is available, in how the court works, is  
18 valuable. In the defense, defense attorney training that I  
19 went to, we also went over ethical issues that come up, and  
20 I think that's important, because you do encounter some  
21 unique ethical issues that you might not encounter just, you  
22 know, in regular practice, just because you're representing  
23 multiple clients in the same courts.

24 So, you know, whatever training you can go to is  
25 beneficial. But I think the attorneys need to have an open



1 mind, and they need to be willing to talk to the appropriate  
2 people, get to know them. I sort of, I mentioned that  
3 before, that rapport, and I know Tammy mentioned it, also,  
4 that rapport is a big deal, not just in getting along with  
5 people, but getting to know what they do, knowing what all  
6 the players do in each court is a huge factor. And, and  
7 using them to your advantage.

8 MR. CLARK: Thank you.

9 MR. JONES: I would just say that you have all  
10 lived up to and exceeded your advance billing. And we thank  
11 you very much for this very helpful, very useful, very  
12 informative session.

13 We would only ask that if we need to come back to  
14 you as we continue this journey, that you would be receptive  
15 to any additional questions that we might have. If there's  
16 any information that you come across that you think would be  
17 useful and beneficial to us, certainly forward to us. But  
18 once again, thank you all very much.

19 MR. LERMAN: Can I add one thing? I think it's  
20 really important that as attorneys, as a unit, we educate  
21 the players in the court of what we do. I don't see that as  
22 much of a problem in the mental health court as I do in drug  
23 court.

24 That's where, at least in our drug court, it  
25 tends to slip. And they, the players sometimes look at, oh,

1 well, we're part of a team, and then they start to forget,  
2 that role, of the attorneys, that we have to put on a  
3 different hat. And the more that the legal community can  
4 educate the courts of that, the more benefits to the defense  
5 community.

6 MR. JONES: That's great advice. That's a great  
7 note to end on.

8 Thank you all very much. You should all know,  
9 we're going to take a, ten minute now break, and we will  
10 resume at 3:15.

11 (A recess was taken from 3:05 p.m. to 3:21 p.m.)

12 MR. JONES: We're joined in this session by the  
13 Pima County Mental Health Court team, among who are Judge  
14 Nanette Warner, who was assigned to preside over the mental  
15 health court in 2004, after serving in Pima County, sitting  
16 on benches of the criminal, civil, family law and juvenile  
17 courts of Pima County.

18 We're also joined by Bruce Chalk, who is the  
19 Deputy County Attorney, representing the Pima County  
20 Attorney's Office; Miss Carol Burney, a member of the  
21 specialty trial team at the Pima County Public Defender's  
22 Office, representing clients in the mental health court;  
23 Miss Kim Hart, a Pima County probation officer; Miss Elaine  
24 Calco Gray, a criminal justice liaison, working with the  
25 Community Partnerships of Southern Arizona; and Bryan and

1 Sam -- I'm not sure if we have both of them. We do? We  
2 don't? Just Sam, okay, Bryan is not with us. Sam, who is a  
3 graduate of the mental health court, and who we are very  
4 pleased as well to have with us.

5 The way this works is we give you all an  
6 opportunity to give us the benefit of your experience and  
7 what you do, and then we will engage you in some questions,  
8 a question and answer session. The questions are generally  
9 led off by one of our members, in this case Elizabeth Kelley  
10 will be doing double duty, since she did the last panel as  
11 well.

12 But why don't we start, while we're working on  
13 the technical problems, by just having each of you go down  
14 and tell us a little bit about who you are, and what you do,  
15 and then you will, if the Powerpoint is up, we'll have it,  
16 if not, we'll start the questioning. So if you could, Miss  
17 Calco Gray?

18 MS. CALCO GRAY: Yes, my name is Elaine Calco  
19 Gray, and I'm the criminal justice team supervisor for  
20 Community Partnerships of Southern Arizona, which is the  
21 behavioral health authority in Pima County, and the five  
22 southern counties. And I'm also the liaison to the Pima  
23 County Superior Court, and I'm the clinical support to the  
24 mental health court in our Tucson city court and Pima County  
25 justice courts.

1 MR. JONES: Thank you.

2 MR. CHALK: I'm Bruce Chalk. I'm a deputy county  
3 attorney assigned to the mental health court. My primary  
4 duty is I supervise the vehicular offenses unit and the law  
5 clerks within the County Attorney's Office, and then one of  
6 my other duties is mental health court.

7 MR. JONES: Fantastic. Judge?

8 JUDGE WARNER: Judge Nanette Warner, I'm a  
9 Superior Court judge, been on the bench for 22 years, have  
10 done everything in the courts, was involved in the planning  
11 and development of the mental health court and its  
12 execution.

13 We also have sort of, something that I also  
14 manage, all the competency cases, too, which are not part of  
15 the mental health court, but they're assigned in my  
16 division, and they're the folks that are in both courts.

17 MR. JONES: Thank you. Miss Hart?

18 MS. HART: My name is Kim Hart. I'm one of three  
19 SMI probation officers in Pima County.

20 MR. JONES: Sam?

21 SAM: My name is Sam, and I'm involved, I am  
22 currently a member of the mental health court system, and  
23 that's about it.

24 MR. JONES: Thank you. Thank you. Miss Burney?

25 MS. BURNEY: Carol Burney, I'm with the Pima

1 County Public --

2 JUDGE WARNER: You're going to have talk louder  
3 for her.

4 MS. BURNEY: My name is Carol Burney. I am the  
5 Public Defender who is assigned to mental health court. I'm  
6 the only one, there's not two of us, and I also do drug  
7 court.

8 MR. JONES: Great. Thank you very much. How we  
9 doing on the technology?

10 MR. CHALK: It's rebooting.

11 MR. JONES: Okay. Why don't we then start with  
12 the questions, and if it at some point comes alive, then  
13 we'll have it, if not we'll just have a very interesting  
14 conversation.

15 JUDGE WARNER: Or we could go through the slides,  
16 'cause you all have copies of them.

17 MR. JONES: We have copies?

18 JUDGE WARNER: Yeah. There --

19 MR. JONES: Want to do that?

20 JUDGE WARNER: Yeah, let's do that.

21 MR. JONES: Okay.

22 JUDGE WARNER: Okay. And some of this is stuff  
23 you already know, and I really don't want to bore you with  
24 it, a lot of this was adapted from a presentation we gave to  
25 the American Probation and Parole Association, last week.

1 I mean, you know, I think it's pretty clear as to  
2 why we developed a mental health court, and that was because  
3 there were a lot of people who were falling through the  
4 system.

5 For me, it was really a personal journey. I had  
6 a person who was serious mentally ill on my regular criminal  
7 caseload, his offense was rather benign, it was a  
8 nonresidential burglary, stealing pottery from an outdoor  
9 place.

10 He had, was in on a probation violation, he was  
11 seriously mentally ill, he stopped taking his medications,  
12 was put in jail, he had paranoid schizophrenia.

13 The plan was on disposition that we were going to  
14 get him back to his mother's place, in the midwest  
15 someplace. He had no history of violence. I decided he was  
16 a good risk to be released to the community, and get back on  
17 his medications.

18 He had real problems with the jail, you think it  
19 was bad now, it was really, really bad with having people on  
20 the appropriate medication.

21 Something happened between release and he was  
22 supposed to get over to the provider. That never happened,  
23 he ended up killing -- becoming psychotic and killing  
24 somebody. And to me that seemed so unnecessary, so many  
25 lives -- well, two lives were lost, his life and the life of

1 an innocent person who was exposed to someone psychotic.

2 And so it really reflected that that did not have  
3 to be. That's a dramatic case, but I saw many people fall  
4 into the system because of lack of coordination between the  
5 treatment, probation and the whole court system. These  
6 people didn't have a safety net.

7 And also because of some of the work, that shows  
8 frequent contact with judges can be of help, in keeping  
9 people on track, and so mostly I felt there needed to be a  
10 coordinated connection between --

11 MR. JONES: Hey, guys.

12 JUDGE WARNER: -- a coordinated connection --  
13 giving up? -- a coordinated connection between treatment,  
14 probation and the court. There is a lot of statistics on  
15 the next two slides, and I'm not telling you anything that  
16 you people don't know, so, and that is that there's an  
17 increasing number in people who are mentally ill in the  
18 criminal justice system.

19 A lot of that I think occurred, or has been  
20 reflected upon by other experts in the field, it occurred  
21 because of the shift and lawsuits in the sixties and  
22 seventies, which closed down a lot of the institutions for  
23 people who are mentally ill, and said that we are now going  
24 to treat them in the community.

25 They got put out into the community, probably not

1 adequate treatment as a safety net to keep them safe in the  
2 community, and so the jail has become and places of  
3 incarceration, the new -- that will not work, because all  
4 the video is already embedded here.

5 MR. EHLERS: Oh, it is?

6 JUDGE WARNER: I can't take it to another  
7 computer.

8 MR. EHLERS: Oh, okay.

9 JUDGE WARNER: We have no way to transfer it.  
10 You know, we had it up. I don't understand why it won't  
11 work. We have some really good video to show you, people  
12 who've been in the court, of watching our staffing, of all  
13 of that. I mean, maybe we could -- I know I used this  
14 laptop at the probation conference last week, and it worked.  
15 Kim was there, she can witness that it worked. Huh?

16 MR. EHLERS: Most laptops today provide toggles  
17 to select --

18 MR. CHALK: Yeah, we tried that, it's not doing  
19 it.

20 JUDGE WARNER: We're not toggling. No, the file  
21 is too big. I have -- it's a file with multiple parts.  
22 That's part of the problem. And part of the problem is --  
23 is there somebody, is there someone from the hotel, 'cause  
24 when I was up at the Hyatt, that guy came in and said, oh,  
25 this is what you so do on this computer. Boom. That was



1 it.

2 MS. BERNHARD: Oh, you made him feel bad.

3 JUDGE WARNER: He went to a thing, and it said in  
4 Invideo clone on it.

5 MR. CHALK: In video?

6 JUDGE WARNER: In video clone.

7 MR. CHALK: That's the video card.

8 JUDGE WARNER: That's the video card, so you need  
9 to go to wherever the clone is?

10 MR. CHALK: I got in video on a patch card, for  
11 fixing, to fix a laptop, to run video.

12 MR. CLARK: This is all on the record?

13 MR. CHALK: No one told her to stop writing.

14 MR. CLARK: Getting all this?

15 MR. SCHECHTER: It worked in the office, but it  
16 never works here. When you practice in the office doing the  
17 presentation, works all the time.

18 MR. JONES: I'm all for that. I'm all for that.

19 MS. SHIFMAN: Judge just move on, just move on.

20 JUDGE WARNER: Yes, just move on.

21 So anyway, we have more people in the community,  
22 they're ending up in the criminal justice system, they're  
23 ending up in jails or prisons, not really well-equipped to  
24 deal with it, not prepared to deal with it. So it's a  
25 response to that phenomenon.

1           Our goals are, slide number four, to increase  
2 public safety, by that meaning, fewer new offenses or less  
3 serious offenses, increased efficiency with better  
4 communication and collaboration with the courts, probation  
5 and the behavioral health agencies, staffing and  
6 processing, better service for the defendants. In other  
7 words, hoping for better success in treatment, and greater  
8 compliance with both treatment and probation conditions.

9           Now I'm going to show you a video of Jack,  
10 talking about what -- this is a man who had been in and out  
11 of prison and mental institutions in the past, since he was  
12 age 14, talking about what it meant to be in mental health  
13 court, why things were different. Aggravated assault is  
14 what he was in on. So, he has bipolar disorder.

15           But let's move on, to Kim. On the next slide,  
16 goals of enhancing supervision with mentally ill.

17           MS. HART: First and foremost, I mean, community  
18 safety is absolutely at the top of the game in what we want  
19 to do. What I was realizing, working with the SMI  
20 population, in order to meet the goal of public safety, I  
21 think it's easier to do that while we emphasize the  
22 rehabilitative needs of our defendants.

23           I've -- if we take it to be a multidisciplinary  
24 approach, where we are having collaborative efforts to get  
25 the treatment, the medication and the services, so

1 defendants can then learn the skills that they may not have  
2 had previously, they may even be able to not be a threat in  
3 the community, and therefore the safety risk is, you know,  
4 has been decreased.

5 Also, as an SMI probation officer, we also work  
6 with surveillance officers, that primarily do work in the  
7 field. We also will transport defendants to court  
8 appointments, doctor's appointment, we will transport them  
9 from, if they're released from jail, to halfway houses,  
10 okay?

11 Also provide other services that normally, that  
12 some people can't provide for themselves. We established  
13 the food and clothing bank at our office, for defendants who  
14 do not, you know, have such services, 'cause if they can't  
15 meet the basic needs, then there's no way, or it's very  
16 unlikely that they'll be able to meet conditions of  
17 probation.

18 Promoting continued treatment, the treatment  
19 investment. We, as an SMI probation officer, we utilize all  
20 the components of the mental health court. We work very  
21 closely with the Public Defender, we have staffing, and that  
22 is with the treatment providers.

23 We meet at court for monthly staffings, and we  
24 have hearings. We also will meet at our offices, at the  
25 probation offices, or the treatment agencies, with the

1 defendant is there, possibly defendant's family members, the  
2 treatment providers, the probation officer, and a Public  
3 Defender to discuss what is in the best interests of the  
4 defendant.

5 Consistent use of medications. That is, that's a  
6 huge thing, not only getting defendants where they will take  
7 their medications as part of probation, but as part of that  
8 they can function in the least restrictive environment, you  
9 know, that's available to them.

10 Once people are stabilized on their medications,  
11 we work real closely with the treatment providers to insure  
12 that they remain in compliance with their medications, and  
13 they're not experiencing side effects or different things  
14 because of meds.

15 And then to develop an increased awareness of the  
16 consequences of behavior and importance of treatment, a real  
17 big thing that I realize that works very well is what I call  
18 investing. If I can show my defendants or my probationers  
19 that I'm invested in their treatment, you know, that it's  
20 more than say just a job, then by doing that, then the  
21 defendant also becomes invested, okay?

22 And we do utilize evidence-based practice, where  
23 then we are in a sense empowering our defendants to make  
24 choices for themselves, and they can see where it's not just  
25 I'm saying okay, because the judge and court is telling you

1 to do this, I'm saying okay, I want to do this because I see  
2 how my life is better, because of that.

3 All right.

4 MR. CHALK: Actually, while they're working on  
5 this, I'll take the next slides, I think, mental health  
6 court, we are a post-conviction court, so the people who  
7 come into mental health court have already taken a plea or  
8 been convicted at trial. They are probation available,  
9 either through the plea or through the offense that they  
10 took to trial.

11 In general, we only take people who are diagnosed  
12 SM, SMI and enrolled in CPSA, all right? You look  
13 quizzical?

14 MR. JONES: CPSA?

15 MR. CHALK: That is Elaine's -- we do not take  
16 first degrees, sexual assaults, child molestations, things  
17 that are likely to result in prison, no matter what the  
18 outcome. Those don't come to us.

19 They also can come to the court in several  
20 different ways, through Judge Warner's normal caseload,  
21 she'll get some. Then in any other court, where at some  
22 point they become identified as SMI.

23 And that can be at any point in the process. The  
24 defense attorney can recognize that there's an issue, and  
25 have them evaluated, they become determined to be SMI,

1 they're already in enrolled in it, or were enrolled in CPSA  
2 and become disenrolled or currently enrolled in CPSA, or --  
3 well, that's really pretty much it.

4 And then whatever courtroom they are in, the  
5 defense attorney can move the case to Judge Warner's  
6 courtroom. She may handle them both pre-conviction, some, a  
7 lot of the times at sentencing she'll get them. So she'll  
8 do the sentencing, the other judge will handle it maybe even  
9 through the change of plea, depends on when anybody becomes  
10 aware of what's going on, and when it comes over.

11 On occasion she gets them on like the first  
12 revocation of probation. We do not, we are not a court  
13 where you only come to our court for ROP.

14 MS. BERNHARD: For a what?

15 MR. CHALK: For a revocation of probation.  
16 Sorry, I use acronyms that I realize not everyone is  
17 familiar with.

18 MS. BERNHARD: Right, they're different in  
19 different places.

20 MR. CHALK: I know. They aren't even the same  
21 among us. I -- they use PTR, I use ROP. So it can come at  
22 any time, depending on when they discover the SMI diagnosis.

23 That really covers who comes into the court.  
24 Probation available, post-conviction, SMI diagnosis,  
25 enrolled in CPSA. I keep saying enrolled in CPSA, we

1 generally don't take private pay people, because we don't  
2 get the level of cooperation, and they aren't obligated to  
3 the court in any way, as opposed to people who are enrolled  
4 in CPSA. Oooh, look it?

5 Way to go, Gerald.

6 This is the part where it goes away.

7 MS. BERNHARD: I missed that though. I missed  
8 that. You don't take private pay people, so people who are  
9 getting some kind of treatment for their --

10 MR. CHALK: They're not enrolled in CPSA, are not  
11 eligible.

12 JUDGE WARNER: Only community Partnership of  
13 Southern Arizona can make the SMI determination, in this  
14 state. And that is someone who not only has to basically be  
15 an axis one diagnosis, which is like bipolar --

16 MS. BERNHARD: Serious.

17 JUDGE WARNER: -- yeah, real serious stuff, but  
18 also has a dysfunction in their life related to that, such  
19 as work, education, interpersonal relationships, activities  
20 of daily living, and unrelated to any drug or alcohol abuse.  
21 But the reason --

22 MS. BERNHARD: Unrelated?

23 JUDGE WARNER: Un -- 90 days before they came --

24 MR. CHALK: The diagnosis.

25 JUDGE WARNER: The diagnosis is unrelated.

1 MS. BERNHARD: Oh, I see.

2 JUDGE WARNER: Okay. About 80, 75 to 80 percent  
3 of our people have co-occurring disorders, so that's not the  
4 issue. I just got distracted by the Dell logo.

5 You know, so, if we -- but the problem is, we  
6 can't get the cooperation from anybody else, other than the  
7 provider, 'cause this is a partnership with CPSA, and they  
8 tell their providers, they got to cooperate, so we get them  
9 to the table, we can't, we tried it with the VA, we couldn't  
10 get anyone to the table. We tried it, you know, private  
11 people won't work.

12 So we say, if you want to be involved, you got to  
13 go to CPSA, get enrolled there, if you meet the  
14 qualifications. We'll just -- we're working on the screen.

15 MR. CLARK: Gee, that's kind of out of focus, you  
16 think you could fix it?

17 We're kidding.

18 JUDGE WARNER: Oh, there it is. Okay.

19 MS. SHIFMAN: Have to pay \$24, to get it  
20 connected. Could be 29, yes, but you have to pay.

21 JUDGE WARNER: The presentation.

22 MS. SHIFMAN: I don't think it's in our budget.

23 JUDGE WARNER: Bruce?

24 MR. CHALK: That covers -- the next slide we're  
25 on is the who's on mental health court, the mental health



1 court team is, you see some of it here, however, there's a  
2 lot of people you don't see, who are a part of the mental  
3 health court team.

4           Actually the biggest group of people who aren't  
5 represented are our CPSA people, so I'll let Elaine explain  
6 who's not here, who she represents.

7           MS. CALCO GRAY: Community Partnerships of  
8 Southern Arizona has three primary adult service providers.  
9 All three of those providers have criminal justice teams,  
10 which include a liaison who reports to the court, a case  
11 manager, who all the cases that are involved in felony  
12 courts are transferred to, and then they also have a  
13 representative who goes to the jail and does jail visits,  
14 and on clients that are in custody, and a liaison to the  
15 misdemeanor courts.

16           So each agency has a team of at least five  
17 people, solely dedicated to this population, and the mental  
18 health courts in the county.

19           MR. JONES: Is this legislatively created?

20           MS. CALCO GRAY: No, no, we did it by contract  
21 with the agencies. And there is, the Department of Health  
22 Services, when they wrote their RFP for the last contract  
23 go-round, used some of the concepts that we had implemented  
24 in Pima County, put them in the RFP, so that they should be  
25 covered statewide. I --

1 MR. JONES: Anybody, anybody who is in the court  
2 has to go through you?

3 MS. CALCO GRAY: Who's in the mental health  
4 court?

5 MR. JONES: Yes.

6 MS. CALCO GRAY: We have to identify them, yes.

7 MR. JONES: You got to identify them?

8 MS. CALCO GRAY: And we do that, we have a system  
9 to do that, where the jail twice a day sends a list  
10 electronically to our, to CPSA, we match that against our  
11 member roster. And then we send that information, we send  
12 the matches to CPSA representatives at SIM court, justice  
13 court, and Superior Court, so that in the lower courts in  
14 particular, we can let the team know right away, this is  
15 your person, he's in this court, we need to do something  
16 'cause those are quick turnarounds.

17 People get released very often, and then if we  
18 know right up front that they're SMI, we may be able to get  
19 them transferred to Judge Warner's court sooner. So that  
20 she's involved in the whole process, rather than have the  
21 criminal process start in another court, and then be  
22 transferred over.

23 So I have a team of five people, plus five at  
24 each agency.

25 MR. CHALK: And when we're at the table at

1 staffings, prior to court, the, each of the mental health  
2 providers, La Frontera, COPE and Kodak, provide a liaison,  
3 and they have a unique case manager, who is the case manager  
4 in general for the SMI individuals in our court.

5 JUDGE WARNER: And that was kind of an evolution.  
6 At first, they just had liaisons, and they had all these  
7 different case managers. And that was really unworkable, so  
8 we had one-on-one meetings, the team, with each provider,  
9 and worked with them, and came up with a solution that  
10 they'll not only give us a court liaison, who's in court on  
11 all my competency hearings -- I mean, I have Elaine and the  
12 providers in my courtroom every day, 'cause -- but on mental  
13 health court days, a specialized case manager, who handles  
14 these folks, who understands the court system, the  
15 particular needs, all the services they're going to have to  
16 access, is there, and can be involved in planning from that  
17 point forward.

18 MS. SHIFMAN: Let me ask you, the only way I can  
19 get to your court is if the district attorney agrees, is  
20 that right?

21 JUDGE WARNER: No.

22 MS. SHIFMAN: No? So the court can overrule  
23 their objections to somebody getting probation and mental  
24 health treatment?

25 JUDGE WARNER: No, no, I can't do that, no. They

1 have to, in order to do everything that's, participate at  
2 the core of it, they must have a probation available plea.

3 I will tell you what I've experienced, I don't  
4 know if Bruce will agree to that, since we've been going  
5 some of the prosecutors will say, okay, I'll agree to  
6 probation even though it's a previous prison only plea, if  
7 they will go in the mental health court.

8 And so we have been getting pleas that will say  
9 that that is one of the limitations, as a condition of the  
10 plea.

11 MS. BURNEY: So from my perspective, how I look  
12 at that, is my client's entitled to be in the right court,  
13 and if they're in my office, the clients are entitled to be  
14 in the right court, and as long as there's a probation  
15 eligible plea, they're entitled to the right judge, and the  
16 right plea, and that's how I approach it with my office.

17 MS. KELLEY: So notwithstanding the fact that you  
18 characterize the mental health court as a post-conviction  
19 remedy, ostensibly someone can transfer to your docket  
20 pre-plea?

21 JUDGE WARNER: That's true, and I do have a  
22 number of people that come in early, and if they're on  
23 release in the community, they're on pretrial services, and  
24 they have a specialized case worker manager there, that will  
25 serve, coordinate with all of these folks, also.

1 MR. CHALK: But we don't get to the whole mental  
2 health court staffing and the rest of it until post-plea.

3 MS. KELLEY: Understand. Understand.

4 JUDGE WARNER: Right. But they can come in and  
5 the coordination of treatment starts early on. In fact, I  
6 want to have them, I like them by, certainly by sentencing,  
7 preferably by plea.

8 MS. HART: What happens a lot times is in  
9 pretrial, the person is working with the potential mental  
10 health court, a court defendant, she will contact, he or she  
11 will contact an SMI probation officer.

12 Then we will staff that case, staff it with the  
13 mental health agency to figure out what the primary issue,  
14 what the primary difficulties will be for this, for this  
15 defendant, and what can happen, to ensure that the probation  
16 is acceptable, and they receive probation.

17 MS. KELLEY: Okay. If, if someone is mentally  
18 ill, but they are still competent to stand trial, and indeed  
19 they and their counsel want to go to trial, can they try the  
20 case in your courtroom?

21 JUDGE WARNER: Yes.

22 MS. KELLEY: Okay.

23 JUDGE WARNER: Yes, I, I handle the whole trial,  
24 yeah, it's tried in my court.

25 Now, the defendant has to agree --

1 MR. CHALK: Well, I got to --

2 JUDGE WARNER: -- for the case to be there,  
3 they've got to sign a release of information. Go ahead,  
4 Bruce.

5 MR. CHALK: Yeah, and we have to agree.

6 MS. KELLEY: For someone to go to trial?

7 MR. CHALK: No, for someone to go to trial in her  
8 court. In other words, if it's not already assigned to her,  
9 if it's not already assigned to Judge Warner, in Arizona you  
10 have a right to affidavit the judge.

11 MS. BERNHARD: Affidavit the judge, is that  
12 recuse the judge? Affidavit the judge?

13 JUDGE WARNER: Yeah.

14 MR. CHALK: Yeah. And so --

15 MS. BERNHARD: That's not true every place.

16 MR. CHALK: Right. But we have that right in  
17 Arizona, and not for cause, just because.

18 MS. BERNHARD: You don't like them?

19 MR. CHALK: So there's more to it than that, but  
20 in any event, so when I say that, if the prosecutor decides  
21 they don't want to have it, and it gets assigned to Judge  
22 Warner, they can do that.

23 JUDGE WARNER: And I will tell you, I've not had  
24 one mental health court case that's ended up going to trial,  
25 you know, they just haven't. Usually the issue isn't

1 whether they did it or not, it's if they were insane at the  
2 time, we, usually is a GEI, guilty except insane, that's the  
3 law in Arizona, is worked out.

4           Also, in addition, sometimes, I, we have one case  
5 we're working on where it could have gone GEI, but then the  
6 person would have been in the state hospital for a lengthy  
7 part of time, and it was agreed that he would do a no  
8 contest plea, then get in mental health court on probation.  
9 'Cause if it was a violent offense, so we wouldn't be -- and  
10 there's a clear insanity defense.

11           But the decision strategically made between the  
12 client and his attorney, was to go no contest, probation  
13 available, mental health court.

14           MS. KELLEY: Well, I --

15           JUDGE WARNER: So there's a lot strategy involved  
16 with it, the defense attorney has to weigh, you know, as  
17 opposed to putting him in a hospital, for what would have  
18 been seven and a half years.

19           MS. KELLEY: Well, as a group of criminal defense  
20 attorneys, I think we're all aware of the fact that  
21 sometimes there are innocent clients, and sometimes we want  
22 to take these cases to trial.

23           JUDGE WARNER: Right.

24           MS. KELLEY: Notwithstanding the mental issues,  
25 and we also want to make sure that in order to get into a

1 mental health court docket or program, that other issues,  
2 like suppression issues and such, are not waived.

3 JUDGE WARNER: No, they're not waived if you go  
4 into mental health court. You don't waive those at all,  
5 unless you're entering, if you enter into a plea, you waive  
6 all that.

7 MS. KELLEY: Sure, sure.

8 JUDGE WARNER: But, I, you know, I have regular  
9 trials, that, yes, someone could notice me, they could  
10 notice me on my competency cases, the few that are assigned  
11 to me. I've not ever had that happen, but theoretically it  
12 is possible.

13 The way many of them get into mental health court  
14 is they file a request for reassignment to mental health  
15 court, with a signed release by their client, that's sent  
16 over to, faxed over to Elaine, she verifies whether they're  
17 enrolled, who they're enrolled with, and if they're SMI, I  
18 check to make sure that the offense is an appropriate  
19 offense, and then I can accept them.

20 MS. SHIFMAN: If they're in another court -- just  
21 a quick question to follow up on that. If they're in  
22 another court, and they go to trial and they're convicted,  
23 can, they can be sent to you for sentencing?

24 JUDGE WARNER: They can be.

25 MS. SHIFMAN: They can be?



1 MS. KELLEY: Yeah, I think it would be really  
2 great if we heard from Sam. What do you think about the  
3 mental health court? Was it a good thing in your life? Bad  
4 thing in your life? Do you have suggestions about how these  
5 folks can improve it?

6 SAM: I think this, the mental health court gave  
7 me an opportunity to restart my life. I was, I was involved  
8 with mental health court system for quite a while. And I  
9 was given a chance two years ago, maybe a year, or two years  
10 ago, whatever it was, but I wasn't serious about that  
11 opportunity.

12 And, but needless to say, everybody that was  
13 working with me, in my situation, everybody was so kind,  
14 they were so caring, compassionate, they were helpful. I  
15 mean, I'm not going to go name people, but just the mental  
16 health court system in full really works for me.

17 And I know a few people that are involved with it  
18 as well, and, you know, I'm thankful that it's there. You  
19 know, I had a few things go wrong in my life, and I was  
20 given an opportunity to make it better, and now that's what  
21 I'm doing today.

22 That's, that's what I can really say about that.  
23 Everything is, works so fluently together, I mean, I don't  
24 see all the behind the scenes stuff that goes on. I just go  
25 to court, take a plea, whatever, you know, and then, comply

1 with my probation.

2 MS. KELLEY: So do you still have contact with  
3 the court? Or is that over?

4 SAM: I sure do.

5 MS. KELLEY: Okay.

6 SAM: It's coming up to an end.

7 JUDGE WARNER: He was in court this morning.

8 MS. BERNHARD: They dragged him down here.

9 MR. CLARK: What are you doing this afternoon?

10 MR. EHLERS: How often do you have to go to  
11 court?

12 SAM: Right now it's set up to about every three  
13 months, approximately. When I first got let out of  
14 treatment, it was every month or some, there was a lot less  
15 time, just to keep tabs on me, and they gave me some, they  
16 gave me some slack, they gave me some trust, and I held my  
17 end of the bargain, you know, I complied with what I was  
18 supposed to do.

19 It's not as hard as I thought it would be. I  
20 just tried it, and it, you know, it was very simple. But,  
21 you know, as time went on this, the span started to expand,  
22 and it wasn't as frequent as I was thinking it would be.

23 JUDGE WARNER: Wasn't simple at first, was it?

24 SAM: No.

25 JUDGE WARNER: The first time in.

1           SAM: Not even, no. I've learned, learned to  
2     communicate with people nowadays, and, you know, it wasn't  
3     necessarily mental health court taught me all this stuff,  
4     but it was the opportunities that I received through mental  
5     health court, that I was able to, you know, find this stuff  
6     out on my own.

7           And then my Public Defender, and PO, judge and  
8     Elaine, she, everybody, helped me to realize that maybe this  
9     life wasn't for me, you know, this previous life that I was  
10    living.

11           But it's, it's been a good journey, and I'm  
12    really thankful to be invited here today. And it was really  
13    cool for me to sit here and be talking about my experience,  
14    free, being a free man, you know, and I have much respect  
15    for these people, who saved my life pretty much, so...

16           JUDGE WARNER: Want to see a video of another  
17    graduate?

18           MR. SCHECHTER: Yes. I'll hold off.

19           JUDGE WARNER: All right. This is Jack.

20           JACK: -- that I hadn't been able to accomplish  
21    much of anything in I'd say 15 years, in that 15 years I  
22    would use the easy way out on certain things, when the  
23    situations get tough, what today meant is that I've  
24    accomplished something that has been very hard for the past  
25    two years, for me to do, to speak.

1           In this 15, or 14 year relationship that we had,  
2 I've either been in jail, in prison or in in-patient drug  
3 rehab, or in halfway houses. So this was the first time  
4 that we've actually been a family unit together.

5           And we are learning how to live together as a  
6 unit with, you know, me being a father, a husband, and it  
7 was very hard for us to adjust to that.

8           And the judge ordered me to go to parenting  
9 classes, I had to go to anger management classes, 'cause in  
10 my past, I've had some anger management issues I've had  
11 aggravated assault cases, and with my disease, not my  
12 disease, so to speak but my, my chemical imbalance, at times  
13 I can flip out, and become angry at times, what the judge  
14 was talking about when she presented me with a flat plea, to  
15 the people there.

16           So I was able to go to my classes, and learn how  
17 to live with myself and deal with my, deal with issues that  
18 come up.

19           MR. SCHECHTER: Judge, the percentage of  
20 pre-pleading cases that you've handled since you've been on  
21 the bench, in mental health court, how many of those cases  
22 did defense attorneys argue motions to suppress, submit  
23 memos of law on legal issues, and so forth?

24           JUDGE WARNER: I don't know. 'Cause I don't  
25 really, I don't separate it out that way. I really don't.

1           MR. SCHECHTER: Does it happen frequently or  
2 infrequently?

3           JUDGE WARNER: You don't get motions to suppress  
4 frequently in any, in anything, you really don't. You just  
5 don't. I mean, you get them, you know, you get them  
6 occasionally.

7           There's a plea policy in this state that the plea  
8 goes away if you're going to start filing various motions,  
9 so I think they assess whether or not that, and Bruce can  
10 talk about this, or Carol can, if you're going to file a  
11 motion, and then that plea is gone and then, you know, you  
12 takes your chances on the motion, and if it's granted,  
13 you're going to, you know, how you're going to do at trial.

14           But there is, once the, I guess if the motion is  
15 granted, sometimes I see a plea, if it's not granted.

16           MR. CHALK: Suppress the evidence, sometimes  
17 there's a better plea. But you take the chance on the other  
18 flip, on the flip side is that often if you file a motion to  
19 suppress, we win, now you're going to trial.

20           MR. SCHECHTER: Is that policy of the county?

21           MR. CHALK: It is the general guideline of the  
22 County Attorney's Office.

23           MR. SCHECHTER: So if the defense in the mental  
24 health court files a motion, the mere filing of the motion,  
25 is that enough?

1 MR. CHALK: You just, you -- see, I don't know  
2 what your motion practice is like in New York. I mean, if  
3 you file a motion, then you're expecting a response, and  
4 you're asking for a hearing, that's the whole thing.

5 MR. SCHECHTER: Right. Exactly.

6 MS. BERNHARD: Yeah.

7 MR. CHALK: So once that's down the pike, there's  
8 no plea.

9 MR. SCHECHTER: No plea?

10 MS. BERNHARD: That doesn't happen everywhere?

11 MR. SCHECHTER: Right. I just wanted to be sure  
12 I understood what the defense is facing. And you understand  
13 that right, on your side?

14 MS. BURNEY: My trial team colleagues do, yes.

15 MR. SCHECHTER: All right. So from the defense  
16 perspective, it's good to be in the mental health court,  
17 because the client may need those services, but on the issue  
18 of defending, if the person has real need, good legitimate  
19 issues, for example, they may be guilty, but they have a  
20 valid motion to suppress, given the County Attorney's  
21 position, you might not file that motion?

22 MS. BURNEY: I'm going to have to give you an  
23 idea of what I do, because I don't do that practice exactly.  
24 Because -- I have something like 90 cases right now, in  
25 mental health court, and I also do drug court. I only take

1 cases post-sentencing. I am not, I don't do, I can't work a  
2 case up for trial and do 90 cases.

3 MR. SCHECHTER: Who would take the case pre-plea?

4 MS. BURNEY: That would be our trial team.

5 MR. SCHECHTER: Okay. And do you know if your  
6 trial team faces the issue that I just gave to you?

7 MS. BURNEY: They, I'm sure --

8 MR. SCHECHTER: They all do.

9 MS. BURNEY: I'm sure that they do face it, and  
10 I'm sure that each one must make their own ethical call on  
11 that, 'cause I do talk to them, occasionally they'll call me  
12 and ask me about mental health court, and my opinion as to  
13 whether it's worth the risk to, just forgo the chances.

14 But I can't answer for the staff on that, 'cause  
15 I'm really not in that end.

16 MR. SCHECHTER: So in the final analysis, the  
17 question really should go to you, Bruce. How many motions  
18 to suppress have you done in the mental health court or your  
19 colleagues --

20 MR. CHALK: But I'm in the same boat as her, I  
21 only go --

22 MR. SCHECHTER: You also don't do them?

23 MR. CHALK: I don't handle mental health court  
24 cases, I can speak in a general term, because as a trial  
25 attorney, I am a trial attorney, I do mental health court,

1 but I have my own caseload and do vehicular manslaughters  
2 mostly.

3 So there aren't all that many motions to  
4 suppress. By and large most of them are for narcotics, like  
5 you'd suspect.

6 MS. BERNHARD: Do they all have to do with  
7 stopping cars? Everything has to do with cars.

8 JUDGE WARNER: No, no.

9 MS. BERNHARD: Okay. It's different 'cause so  
10 many things have to do with cars, vehicular homicides,  
11 stopping people in cars, you know, arresting people for car  
12 offenses, and then finding things.

13 If you live in New York, it's a difference for us  
14 to see everything related to vehicles.

15 MS. SHIFMAN: We do see motions to suppress  
16 cases, voluntariness --

17 MS. BERNHARD: Searching a house.

18 MS. SHIFMAN: Miranda, other cases --

19 MR. CHALK: Wait, wait, we're getting off, 'cause  
20 we all do motions so we know what -- but the issue here is,  
21 I mean, if I'm issuing a case, charging a case, whatever you  
22 want to call it, from wherever you are, you know, I'm  
23 looking at, we have what we call, CES, case evaluation  
24 system.

25 We do not do completely vertical prosecution, as



1 in an officer brings me a case, I charge it, then I'm going  
2 to take it all the way through. We bring it to a charging  
3 attorney, who then makes that decision.

4 Now, they're going to make, if they see a  
5 potential issue with the case, and on an otherwise good  
6 case, with let's say, search and seizure, they may base the  
7 plea, the CES plea is used, is supposed to be the first and  
8 best plea that the defendant gets.

9 So as a defense attorney, you make the -- the  
10 system we work and live in, so everybody is aware of what  
11 the guidelines are, in general. So, you know, when you're  
12 looking at a case, I can only presuppose this, since I'm not  
13 a defense attorney, never been one, that when you see the  
14 plea coming across from CES in the beginning of the case,  
15 and then you read the case, then you've got to decide on,  
16 from your side, well, I got this motion and I got the, this  
17 issue, what am I going to do?

18 I know that if I win this motion, I might get a  
19 better plea, I might get the case dismissed. I lose this  
20 motion, this plea is gone. And my guy's going to do  
21 something else. He might get a plea, but it probably won't  
22 be, it won't be as good. He may end in up trial.

23 And that's just, you know, I mean, that's a  
24 normal, that's the normal thing with practicing law anywhere  
25 at some point in the case.

1 MS. KELLEY: But theoretically he could then,  
2 even if he or she lost the suppression motion, he or she  
3 could just plead to the indictment, and as long as that was  
4 not --

5 MR. CHALK: Almost no one pleads to the  
6 indictment in Pima County.

7 MS. KELLEY: Okay.

8 JUDGE WARNER: And most of the thing is going to  
9 be, you got priors, you're going to be able to prove, which  
10 is going to make the person only know they got a probation  
11 available plea, do they want to take the probation available  
12 plea?

13 'Cause if there's only one prior, depending on  
14 the offense, you'll usually get a probation available plea,  
15 even though it's a second felony offense. So do you want to  
16 take that plea, forgo the motion to come into mental health  
17 court, short circuit that?

18 And I know the client has to be involved in this  
19 decision, 'cause they've got to make the decision, what dice  
20 do they want to roll? And sometimes they'll plead something  
21 down to an open-ended offense, so they're going to be able  
22 to get a misdemeanor, so that's a great deal, too.

23 You know, rather than, then you're not going to  
24 have a felony on your record, which is going to close doors  
25 for a lot of people who rely on government housing and those

1 kinds of things. So there's a lot to think about, other  
2 than, can I win this motion?

3 MS. BURNEY: Exactly. Can I say something? My  
4 office is calling me often to talk about mental health court  
5 in that context, that's exactly the kind of calls that they  
6 make. But I don't get involved in those.

7 JUDGE WARNER: And sometimes I will call counsel  
8 to the bench for going over things, and I'll talk to the  
9 prosecutor, go back and discuss, what if we did this, what  
10 if we did that, I mean, I'll do sort of a mini settlement  
11 conference, and everybody will go talk.

12 And sometimes that, you know, well, I remember  
13 when Michael graduated, he had a personnel, he had a  
14 settlement conference, the probation officer gave him a  
15 probation available plea, he graduated from mental health  
16 court, he did great, you know. He's --

17 MR. CLARK: Did you say the probation officer  
18 gave him probation?

19 JUDGE WARNER: I mean, no, the prosecutor.

20 MR. CLARK: The prosecutor.

21 MR. CHALK: Yes, you're right.

22 JUDGE WARNER: After seeing him at the settlement  
23 conference.

24 MR. SCHECHTER: Has your court been running long  
25 enough for you to compile recidivism statistics?

1           JUDGE WARNER: No. I, well, we haven't run that  
2 yet. I'd say of the people that actively participate, about  
3 42 percent graduate. That means one year of substantial  
4 compliance. And that's a lot that they have to do.

5           Of the remainder, Carol could probably tell you  
6 from her point of view, how she thinks her clients fared in  
7 terms of what they got out of the court.

8           But I, you know, we've had, yeah, there's been a  
9 few who have come back on new offenses, not many, but, you  
10 know, very, you know, a few.

11          MS. BURNEY: And it's usually they've gotten out  
12 and drifted away from their provider, and not stayed on  
13 their medication. And not stayed engaged with their  
14 treatment. That's the ones that seem to fall apart.

15          But I really haven't had very many. You know,  
16 occasionally, their physiology and chemistry will change.  
17 And through no fault of their own, they'll just fall  
18 backwards into more offenses. And they need to have a med  
19 review. And we'll, can see them back again for something  
20 like that, get them in, get their medication fixed, and  
21 they're back on their feet again.

22          MS. BERNHARD: What's your -- I'm sorry.

23          MR. JONES: Before you jump in, Jay wanted to ask  
24 a question.

25          MS. BERNHARD: I'm sorry.

1 MR. CLARK: For sure we talked about the case  
2 evaluation system, and that's usually when the best plea  
3 would be made to the defense. How long after, where does  
4 the discovery for the defense fit into that? Do they have  
5 discovery at that point, or I think it's disclosure here.

6 MR. CHALK: Yes, we have -- the initial  
7 disclosure usually comes with the arraignment. In our --  
8 okay, we got, let's just say an arrest, in Arizona it's ten  
9 days after arrest you have to go to a Grand Jury or PH, if  
10 you're in custody, 20 days if you're out of custody.

11 MR. CLARK: Okay.

12 MR. CHALK: So you got, we've got ten days to  
13 take it to the Grand Jury or preliminary hearing. We do the  
14 ten days, let's say we take it to the Grand Jury on the  
15 tenth day, we get a true bill, ten days later they'll get  
16 arraigned.

17 Whatever we have when we issued the case or is  
18 developed between now and then on the arraignment will be in  
19 the initial disclosure package, and for that matter most of  
20 the time, if it's a nonvictim case, there'll be a plea in  
21 that package, too.

22 MR. CLARK: Plea offer?

23 MR. CHALK: Is in that arraignment.

24 MS. BERNHARD: Thanks. I just wanted to ask  
25 Carol, so your job, when you're working for these 90 clients

1 that you're representing, what are you mostly doing? What  
2 kind of things are you advocating for or --

3 MS. BURNEY: I don't have quite all of them,  
4 maybe 85 percent --

5 MS. BERNHARD: Well, right.

6 MS. BURNEY: I have the bulk of Pima County.

7 MS. SHIFMAN: Yeah, yeah.

8 MS. BURNEY: My job doesn't start until  
9 sentencing.

10 MS. BERNHARD: Right.

11 MS. BURNEY: The day of sentencing I get most of  
12 them. And my goal is -- 'cause your component as Kim  
13 says -- my goal is to pull my client through probation.  
14 That is my goal. Just to get my client through this  
15 journey.

16 We start off the day of sentencing, we  
17 immediately start staffing, we start working with providers.  
18 We get to know family, we front load cases as much as  
19 possible, so that we can determine how much focus we need to  
20 put on this client, and what the needs are going to be --  
21 sometimes we don't get close to them --

22 MS. BERNHARD: Can I ask you, what's different  
23 about your job, Kim's job and the provider's job?

24 MS. BURNEY: The provider provides therapy and  
25 medication.

1 MS. BERNHARD: Right.

2 MS. BURNEY: And occasionally if we can squeeze  
3 it out of them, some money for housing.

4 MS. BERNHARD: Okay.

5 MS. BURNEY: We fight about that all the time.  
6 My job is, essentially it's a legal job, but honestly, I do  
7 more case management and problem-solving and collaborative  
8 work with probation and the treatment providers, than legal  
9 advocacy.

10 MS. BERNHARD: Right.

11 MS. BURNEY: 'Cause for me a PTR is a failure.  
12 And that's where the Maricopa County court seems to start,  
13 but for me, that is a devastating trauma, to have a PTR,  
14 because our, my goal is to pull them through without a  
15 petition for revocation.

16 MS. BERNHARD: And do you have the training and  
17 the support that you need to do this job? Because this  
18 isn't the job that you got training for in law school,  
19 right?

20 MS. BURNEY: No, not at all.

21 MS. BERNHARD: This is a different job.

22 MS. BURNEY: Just on-the-job training, just  
23 learned to do it on my own, made mistakes, and got the, back  
24 on the right track, and a couple of times the judge would  
25 say, no, you're going the wrong way.

1           No, there is no -- it's new. I've been doing  
2 this two and a half years, it's four years old.

3           MS. SHIFMAN: Let me ask you a question. You  
4 said sometimes you, when you get the case at sentencing, so  
5 that day your client is going to be sentenced? Or no,  
6 that's gets continued, that gets put over to another day?

7           MS. BURNEY: Well, the sentencing isn't --

8           MR. CHALK: Yeah, but she -- the sentencing  
9 lawyer is the trial lawyer, and then at the conclusion of  
10 sentencing, here's your new lawyer.

11          MS. SHIFMAN: I see.

12          MS. BURNEY: The trial team keeps the case  
13 through the sentencing.

14          MS. SHIFMAN: Okay.

15          MS. BURNEY: Most of the time. Every once in a  
16 while. And then at that time, I'll go to the client, I'm  
17 you're new lawyer, that's where I come in.

18          MS. SHIFMAN: So all the special conditions that  
19 get attached to mental health court actually somewhat get  
20 attached after sentencing?

21          JUDGE WARNER: At sentencing.

22          MS. SHIFMAN: At sentencing, even though you  
23 don't know really what meds, what programs, what housing?

24          MS. HART: But that is where probation works  
25 pretrial services. Because what we will do is we'll do the



1 staffing before the sentencing. The pretrial officer will  
2 be there. The treatment provider will be there, explaining  
3 that, these are the meds, this is the therapy, these are the  
4 groups, this is the housing situation.

5 Then when we sit down and we staff it, then one  
6 of the conditions of probation is abide by the mental health  
7 case plan, take prescribed medication, live at this house,  
8 and attend these programs.

9 MS. SHIFMAN: Okay. So it would be fair to say  
10 that when it comes to these kinds of issues, you're much  
11 more skilled in these areas generally than the trial lawyers  
12 who represented them at trial, and at the sentencing?

13 MS. BURNEY: They have no idea what I do.

14 MS. SHIFMAN: Right. So when the judge sentences  
15 the individual to whatever the conditions will be, that  
16 person is there with a lawyer who doesn't necessarily  
17 understand all of his conditions, correct?

18 MS. BURNEY: Our attorneys have a pretty good  
19 grasp of the transition. I wouldn't say any of them are  
20 completely blind-sided, although we have had to tell them to  
21 do this and that.

22 MR. CHALK: That implies that they aren't exposed  
23 to it, but they are. I mean, they get training, and we go  
24 do joint trainings with the court on Rule 11, or mental  
25 health court or Title 36.

1           So they all have exposure. They don't have it,  
2 they don't have it to the in-depth detail that we do and  
3 Carol has, working with it day in and day out, call Elaine,  
4 send an E-mail, all the rest of it.

5           But they have a basic understanding of what's  
6 going to happen, and where it's going to go. And they also  
7 have Carol there as a resource always in their office.

8           JUDGE WARNER: And if you go to the case  
9 processing slide, I do the sentencings on the mental health  
10 court day, so they can see the other people participating in  
11 mental health court, and the clients there, you get the  
12 certificate, we try to come, mix up people doing well and  
13 people not doing well, so they can maybe see something that  
14 if you don't, the world is not all rosy out there if you  
15 don't do what you're supposed to do.

16           So we really try to educate them at sentencing  
17 about what to expect with mental health court.

18           MR. JONES: I'd like to go back -- go ahead, I'm  
19 sorry.

20           MS. CALCO GRAY: And the other thing I was going  
21 to add is that from the time the person takes a plea or is  
22 found guilty, we have 30 days before the sentencing. So  
23 I've been doing this for a long time, somehow involved in  
24 it, so that I know a lot of attorneys.

25           So they'll call me, and if the person is enrolled

1 in the system, and they're not in Judge Warner's court, I  
2 can call the agency and say, so and so is not in Judge  
3 Warner's court, but they're going to be sentenced on this  
4 date, and we need to have a plan ready, and then they're  
5 going to be -- and they're also going to be transferred to  
6 Judge Warner.

7           So we could -- so the mental health piece of it  
8 on sentencing day can already go in with a plan. They know  
9 who the provider is, where the person can live, usually,  
10 hopefully we know where they can live, what their meds are,  
11 we arrange with the jail for them to get transition  
12 medications, three days worth of medications, so they're not  
13 without medications.

14           Sometimes we arrange for them to be released at a  
15 certain time, so that someone can pick them up. So all  
16 that's put in place before sentencing, so the attorney that  
17 was handling the case, as well as the mental health court  
18 team, know what we are going, what we have to offer.

19           MS. SHIFMAN: Judge, so a lot of -- I mean, these  
20 are terrific services, and Sam is a good example of how well  
21 services can go, but someone has to suffer a criminal  
22 conviction in order to obtain these services, that maybe in  
23 the old days they could have gotten on the front end,  
24 without a criminal conviction, when we used to fund those  
25 services. I mean --

1           JUDGE WARNER:  It's not a diversion court, and  
2   that, that's the way it is, you know, for the, you know,  
3   when we started it -- and that's different than the  
4   misdemeanor courts, which do have a diversion.

5           And, you know, the County Attorney does have some  
6   diversion programs.  Actually, I have a few people in my  
7   court now who were in a traditional diversion program,  
8   flunked that program, and are now over with me.  In fact,  
9   I've never had anyone taken a plea, gone through the  
10  diversion program, who hasn't failed it and come back,  
11  because they really need the structure of the court, the  
12  real -- this is what you do, this is what you do, this is  
13  what you do.

14           And if they're not doing everything right, they  
15  get an action plan, which sort of, okay, from now until the  
16  next time you come back to court, do these things, it's very  
17  clear, very concise so they know exactly what -- it's very  
18  much structured life for people who really haven't had a  
19  real structured life.

20           And it's very individual.  It is not a rubber  
21  stamp court.  What worked for Sam may not work for Susie,  
22  may not work for Joe.  So Joe's going to be looked at  
23  different, Susie's going to be looked at different.  Where  
24  we put the bar for success may be different, depending on  
25  how bad is their illness, are their hallucinations getting

1 to them, how, what resources do they have?

2 MR. SCHECHTER: Judge, both pre-pleading and  
3 post-pleading, aren't -- if somebody relapses, and they  
4 violate, are there sanctions, are they graduated, are there  
5 rewards, for good conduct? What are those rewards, and how  
6 are they administered? Who does that?

7 MR. CHALK: Oooh.

8 JUDGE WARNER: Yes, yes, yes.

9 MR. CHALK: But you're jumping ahead in the slide  
10 show.

11 MR. SCHECHTER: Story of my life.

12 JUDGE WARNER: We'll just move right on to the  
13 next slide then.

14 Okay, yes, we reinforce their successes. We --  
15 they get a certificate, that's kind of progressive. And Sam  
16 got one today, he's going to be graduating which -- our drug  
17 court is only six months, and I'm like this is a year in  
18 length, it's very, very intense.

19 But they get certificates. We start at 30 days,  
20 then go 45 days, then it varies between 30 and 90 days. As  
21 Sam said, depending on how well you're doing.

22 A lot of this is we, you can see if you want, a  
23 video of some of the staffing we do, we reinforce in court,  
24 the -- this is a group decision-making. If there's a  
25 difference in the sides, I get to be the tie breaker, 'cause

1 I have got to --

2 MS. BERNHARD: I'm the judge.

3 JUDGE WARNER: Yeah, I get to break the tie. We  
4 had one of those today in our staffing, and as to whether  
5 someone got a certificate or not, and I was the tie breaker  
6 on that, no, they didn't get a certificate. But there was  
7 some steps that they could get one.

8 And so they get their certificate -- what does it  
9 mean when you get a certificate?

10 SAM: Well, it was, it was really, to put it  
11 plainly, very special to receive our certificate from  
12 somebody that basically is looking out over my life, you  
13 know, to put it like that, because I don't necessarily, you  
14 know, feel bad when I don't get a certificate, but at the  
15 same time, it's like, well, what am I doing wrong? Why  
16 didn't I receive one?

17 You know, so when I do get, you know, a piece of  
18 paper with everybody's signature on it, it means somebody  
19 took time to think about me, and look at this piece of  
20 paper, sign it, and it has some value to me.

21 Actually, just on a side note, I have a big  
22 folder with all my certificates in there, so that's  
23 something to look at. I look back when I feel down or  
24 whatever, just look at all these pieces of paper, and it  
25 means a lot to me.

1 MR. JONES: Can I ask --

2 JUDGE WARNER: And we have a staffing before,  
3 where I get reports from the treatment providers, from him,  
4 and we all sit around and we all have the same information,  
5 and we talk about what's going on.

6 If they're not doing well, is it the point, I  
7 mean, do they need to get their meds checked, do they need  
8 to be -- what kind of group or something could they need?  
9 Do we need to look at their housing situation? Does that  
10 need to be changed?

11 And everybody, the attorneys participate, both of  
12 them, the providers, and sometimes even go into court and  
13 ask the probationer about it, but most of the time we make  
14 the decision, and then in terms of the certificate, we give  
15 them an action plan, as I talked about, if they're not doing  
16 completely great, spelling everything out that they need to  
17 do, and then ultimately there's the graduation, which is a  
18 party.

19 MR. CHALK: Want to see a staffing video?

20 JUDGE WARNER: Want to see a staffing video?

21 MR. JONES: I want to go back to Jack for a  
22 second though.

23 JUDGE WARNER: Yes.

24 MR. JONES: You don't have to show the video  
25 again though --

1 JUDGE WARNER: We've got more Jack.

2 MR. JONES: I have a question.

3 MR. CHALK: He comes up later, too.

4 JUDGE WARNER: He comes up later, too.

5 MR. JONES: Jack, I'm assuming that Jack is a  
6 success story?

7 JUDGE WARNER: Yeah.

8 MR. JONES: And that Jack's journey has been long  
9 and he's done -- he's traveled that long and hard journey.

10 JUDGE WARNER: Yeah, he had a petition to revoke  
11 in there, and went back to jail.

12 MR. JONES: And it looked like, and it looked  
13 like the woman next him to, his significant other --

14 JUDGE WARNER: Wife.

15 MR. JONES: -- his girlfriend, his wife had  
16 traveled much of that journey with him.

17 My question is this, we heard from Judge Peyton  
18 and his team earlier today. Suppose if somewhere along  
19 Jack's road -- and Jack's in a good place now -- he had  
20 seriously beaten up his wife. Would you, your office have  
21 the power, the authority, the inclination to then snatch  
22 Jack out of that successful place where he was, and put him  
23 in the domestic violence court, which might be less  
24 beneficial to him?

25 MR. CHALK: Peyton's court is a misdemeanor



1 court, not a felony court. And yes, depending on the facts  
2 and circumstances of what you described, would we charge it?  
3 That's the first issue. Is it a misdemeanor or is it a  
4 felony? That's the second issue.

5 That would result probably in a petition to  
6 revoke probation, in this court, so there's -- you can't  
7 make a -- there's no concrete answer to that, because  
8 there's so many different facts and so many different  
9 outcomes, depending on what those facts mean.

10 JUDGE WARNER: And judges can pick up phones and  
11 talk to each other, like Mike Lex, who runs the city court  
12 mental health court, we have people in both -- guy has a  
13 misdemeanor going over there and a felony going over here --  
14 we do coordinate on that.

15 So you can be in two courts at the same time, a  
16 lower court and our court. And like I'll say, my, one of my  
17 conditions is you comply with the misdemeanor mental health  
18 court.

19 So I don't, I never had anyone in Peyton's court,  
20 but that's feasible. But there would be a PTR, and how we  
21 dealt with that, a petition to revoke, maybe, do we go  
22 forward, do we continue and see how well he does in that?

23 You know, it's all again, very, very individual.

24 MR. CHALK: It's like, what do you do when they  
25 commit a new offense?

1           JUDGE WARNER:  What was his response to the  
2  offense?  Did he own up to it?  Did he -- what was  
3  happening?

4           MR. JONES:  So there's some calculation that  
5  says, this guy's seemingly thriving in mental health court,  
6  he's got this DV problem, and so there must be some --

7           MR. CHALK:  He wasn't thriving that well if he  
8  committed a new offense.

9           MR. JONES:  I mean, you know, you know, Bruce, I  
10  mean, you know, I think there's thriving and there's  
11  thriving, and there's release and there's relapse, right?  
12  So I mean -- you can tell where my stripes are.

13          JUDGE WARNER:  She's got one person, just put it  
14  in that same case that she's dealing with right now who's in  
15  our court.

16          MS. HART:  I do.  I have -- this is a young guy,  
17  he is 19 years old, and he has so much on his plate.  He's  
18  in high school, he has a new baby, his, he's in a very  
19  dysfunctional, very immature relationship.  He has a mental  
20  illness, and he's in recovery as far as his substance abuse  
21  problem goes.

22                 He has an aunt, who's his own family in the  
23  world, okay?  He over, he received a certificate at his last  
24  court date, which was about three and a half to four weeks  
25  ago.  Well, after that he and his girlfriend got into a

1 domestic violence situation, both were arrested.

2 The charges were dismissed. I'm dealing with  
3 these guys three weeks ago, every Friday, I'm meeting with  
4 them, Carol's been there a couple times, his aunt, his  
5 girlfriend. For the past three Fridays, coming up with a  
6 plan, to keep him from revocation status, okay?

7 I staffed this case with the treatment providers,  
8 I staffed it with Judge Warner just to keep everyone, all  
9 the parties are aware of what's going on.

10 So this was a holiday weekend, he went out and  
11 did, he went out and partied this weekend, and tequila is  
12 not part of his treatment plan, just to let you know.

13 MR. SCHECHTER: Might be for some people.

14 MS. HART: So he, we're trying and working with  
15 him, I mean, working and working with him with his aunt. He  
16 was supposed to show up with his aunt, and with Carol, with  
17 me, at my office yesterday. He didn't show up. His aunt  
18 showed up.

19 MS. BURNEY: Carol showed up.

20 MS. HART: Carol showed up. I have a call in the  
21 evening, his aunt called me, he ended up returning back to  
22 his aunt's house. I talked to him, and I told him, wait,  
23 wait, this is what I need from you. You need to do this,  
24 this and this, you need to report to post.

25 If, if you do not do this, I have, I've already

1 completed a petition to revoke probation, I will hand carry  
2 it to Judge Warner tomorrow morning, and there will be a  
3 warrant out for your arrest.

4 JUDGE WARNER: And it's sitting on my desk. I  
5 haven't finished it yet. We're waiting.

6 MS. HART: We're waiting on the probation. And  
7 that's, that's, this is not an atypical situation. I mean,  
8 this is where the balancing act comes from, and it's not one  
9 size fits all, with these people. And it's amazing how it  
10 does work.

11 MS. BURNEY: Can I just do a followup on that?  
12 Because this is a situation where this young man, he's 19,  
13 he has all these, he has reactive detachment disorder, all  
14 these dreadful diagnoses, and he has exactly one person in  
15 this whole world. That is his aunt, who's very sick.

16 And some of allegations in the petition are  
17 information that we came into information through this  
18 person. And we're talking now, we don't want her to be a  
19 witness against whatever. We do not want to set, or in any  
20 way compromise the relationship he has with the only person  
21 on earth that he's connected to.

22 So we're trying to figure out, what are we going  
23 to do about the allegations? Are we going to do the PTR?  
24 And we're trying to find a way and oddly enough, we're --  
25 I'm trying to propose ways -- and she wants him in

1 revocation status, okay, but it doesn't require the aunt to  
2 have to be involved.

3 So I mean, that's a hybrid. I mean, I guess you  
4 could say I should have ethical problems with that, and I do  
5 worry about that, but I'm trying to negotiate a way that we  
6 can get him into revocation, because she needs that to get a  
7 grip on her probation status, with the probation desk and  
8 leave the aunt out of the equation.

9 MS. CALCO GRAY: Can I go back to your original  
10 question?

11 MR. JONES: Yes, ma'am.

12 MS. CALCO GRAY: On misdemeanor cases, in the  
13 Tucson City Court, they have a DUI court. Judge Lex, in the  
14 mental court in the city court, will take all the cases,  
15 except the DUI, even if the person has a mental illness, and  
16 the charge is a DUI, he has to go to their DUI court.

17 He -- there have been cases where there's a DUI  
18 and another charge, and sometimes the individual has to go  
19 to both courts. But that's the way the DUI judge wants it.

20 Judge Peyton is the same thing. This may change,  
21 because there's being some changes made in the justice  
22 courts. But up to now, Judge Peyton will take a person out  
23 of mental health court, if the charge is domestic violence,  
24 and treat them in his court, even though -- if it's a  
25 misdemeanor, even though it's a person with a serious mental

1 illness.

2 And that creates a lot of havoc with families,  
3 who know there's a mental health court, and really believe  
4 their family member should be in mental health court, and we  
5 have no power to change them.

6 MR. JONES: Right. We're out of time.

7 JUDGE WARNER: Okay.

8 MR. JONES: We appreciate you all being here, and  
9 this has been incredibly useful and helpful for us as we go  
10 forward.

11 I would only ask that if, as we continue to work  
12 through this, if there are questions we didn't get to ask or  
13 things that we'd like to follow up with you guys on, if  
14 you'd be amenable to that and accepting to that, we'd  
15 appreciate it. And also to the extent that you come across  
16 things that you think would help us, we would certainly  
17 encourage you to forward them along.

18 JUDGE WARNER: Our contact information is in the  
19 presentation.

20 MR. JONES: Yes, it is. Thank you very much.  
21 Appreciate it.

22 (A recess was taken from 4:27 p.m. to 4:41 p.m.)

23 MR. JONES: Okay. Our last session of the day,  
24 last but certainly far from least, is the, you guys correct  
25 me if -- I've been practicing -- Pascua Yaqui.

1 MR. JOSHEVAMA: Pascua Yaqui.

2 MR. JONES: -- Pascua Yaqui tribal drug court,  
3 who are represented here today by Mr. Jon Joshevama --

4 MR. JOSHEVAMA: Joshevama.

5 MR. JONES: -- Joshevama, an adult therapist and  
6 quality manager for the tribe's centered spirit program, and  
7 Mr. Nick Fontana --

8 MR. FONTANA: Correct.

9 MR. JONES: -- who is the Chief Public Defender  
10 of the tribe. We are very pleased to have you. The way  
11 that we have been running these sessions is that, we'd like  
12 to hear from you, give each of you five or ten minutes to  
13 tell us a little about yourselves and the work that you do,  
14 and then we will engage you in a discussion, ask you some  
15 questions.

16 One of us generally leads those sessions, and the  
17 lead questioner for this panel is going to be Marvin, Marvin  
18 Schechter, lucky you. So having said that --

19 MR. SCHECHTER: Where's my lawyer?

20 MR. JONES: -- it won't be that bad.

21 MS. BERNHARD: She's wearing pink.

22 MR. JONES: Having said that, the floor is yours,  
23 and we invite you to tell us what you will.

24 MR. FONTANA: Thank you very much for the  
25 invitation to appear and to talk about the program that we

1 have on the reservation. I have been in indigent criminal  
2 defense for about 15 years. I've been the chief Public  
3 Defender for the Pascua Yaqui tribe for the last four years.

4 I'd like to just give you kind an overview of the  
5 Pascua Yaqui tribe. The tribe is originally from Mexico,  
6 and the real Yaqui is the Indians, probably the holy land  
7 for the Yaquis -- in the 19, early 1900's, there was a  
8 campaign of genocide against the Yaqui people by the Mexican  
9 government, and so they fled the genocide, headed north,  
10 crossed the border, and a large number of Yaquis settled in  
11 what is now Arizona.

12 The tribe has a current -- the tribe was  
13 Federally recognized 26 years ago. So the joke is PYT also  
14 stands for pretty young tribe. The tribe is 26 years old.  
15 It's really in its infancy, compared to say Jon's tribe, the  
16 Hopi tribe, which has been recognized for a very long period  
17 of time.

18 The total enrollment of Yaquis right now is about  
19 14,500, and those Yaquis are scattered throughout various  
20 communities in Arizona. Also in California, there are  
21 pretty large Yaqui populations.

22 The tribe has a very small reservation, that is,  
23 which is located in, southwest of Tucson, just outside of  
24 Tucson city's limits. There are about 2500 Yaquis that live  
25 on the reservation.



1           Last year -- the tribe does have its own tribal  
2 court, we have a tribal prosecutor, we have a Public  
3 Defender's Office, which has been in existence for ten  
4 years.

5           Last year the tribal court handled 390 adult  
6 criminal cases. Those cases represented 1425 separate  
7 criminal counts. So the, considering the size of the  
8 population that lives on the reservation, it's a very active  
9 and very busy court.

10           About six years ago, the tribe received a grant  
11 to create a drug court program. And it was a three-year  
12 grant. So the tribe at that point established, established  
13 the drug court program. The grant expired about two years  
14 ago, but the tribe has continued to run the drug court  
15 program, because we have found it's been a terrific program.

16           Substance abuse, alcoholism, they are crushing  
17 issues on the reservations. They are absolutely  
18 devastating. And I notice right now Congress is very  
19 excited about methamphetamine in the country, but that's  
20 just another layer of the scourge that exists in Indian  
21 country.

22           The drug court last year had 18 participants, 15  
23 of those participants graduated. So there were only three  
24 people that did not complete the drug court program.

25           The way the process is initiated is if somebody

1 has a criminal charge, and it is somehow related to  
2 substance abuse, if it's a drug offense, if it's an offense  
3 that involves alcohol, we kind of evaluate the individual  
4 and decide -- and this is speaking as a Public Defender --  
5 is this person a good candidate for our drug court program?

6 The program is very intense. It's nine months,  
7 correct?

8 MR. JOSHEVAMA: Can be nine months, sometimes  
9 more.

10 MR. FONTANA: Yeah, nine months or more. So it's  
11 a long commitment on the part of the participant in the  
12 program. So at that point we start pitching the  
13 prosecutor's office as to whether or not they will give us a  
14 drug court plea offer.

15 And if they decline to give us a drug court plea  
16 offer, then there's nothing we can do, and the program is  
17 not available to that individual. So I'm going to turn it  
18 over to Jon at this point and he can --

19 MR. JONES: Before you do, let me just ask you a  
20 couple of quick questions. How large is your office? How  
21 many lawyers?

22 MR. FONTANA: We have two lawyers, that's  
23 including myself, so there's me, one associate. We have an  
24 officer manager. We have one legal secretary. And we have  
25 a lay advocate.

1           On the reservation you can practice law in tribal  
2 court, even if you're not an attorney, if you are certified  
3 to practice by the tribal court. So the lay advocate -- and  
4 I'm sorry she's not here, she's one of the people who got  
5 hit with our virus -- she handles our drug court cases. She  
6 is the one who is our drug court person.

7           MR. JONES: And of the 390 cases that were  
8 brought, how many of those folks do you think might have  
9 been eligible for the drug court? I know 18 went through.

10          MR. FONTANA: I would say a much larger number in  
11 that 390. And when we were originally under the grant,  
12 there were certain restrictions in the grant, for example,  
13 anybody accused of a crime of violence, could not  
14 participate in drug court program.

15          So any of the domestic violence cases, we could  
16 not get those people in drug court. And unfortunately that  
17 created kind of a lingering rule in the prosecutor's mind  
18 that we haven't been able to erase. We're no longer subject  
19 to the requirements of the grant, we can admit whoever we  
20 choose to, but getting them to admit people can be  
21 problematic.

22          MR. JONES: And is there a tribal prosecutor's  
23 office?

24          MR. FONTANA: Yes, there is.

25          MR. JONES: How large is that?

1           MR. FONTANA: They have three attorneys, three  
2 lay advocates, one legal secretary, and one clerk.

3           MR. JONES: Thank you.

4           MS. YOUNG: Could you just tell us, if you're  
5 offered the drug court plea, what is the benefit -- so  
6 there's still a conviction if you go through the drug court?

7           MR. FONTANA: No, the way the drug court pleas  
8 are structured, it's a deferred entry of guilt. So the  
9 client pleads to the charge, and then is admitted to the  
10 drug court program.

11           In the event they do not complete the drug court  
12 program, the sentence is spelled out in the plea agreement.  
13 So there, you waive your right to a trial, you waive your  
14 right to an appeal. If you're kicked out of the drug court  
15 program, you go back to regular tribal court, the judge then  
16 imposes the sentence that was contained in the plea  
17 agreement.

18           MR. CLARK: So if it's completed, it's dismissed?

19           MR. FONTANA: If it's completed, it's dismissed.

20           MR. CLARK: Okay.

21           MR. FONTANA: That's, that's the incentive for  
22 our clients, is to get the charges dismissed.

23           MR. JONES: Jon -- go ahead. I just wanted to  
24 see if Jon, give him a chance to speak, but go ahead. If  
25 you want to ask a question, go ahead.

1 MS. KELLEY: Okay. And you're probably going to  
2 think I'm the stupidest attorney you've ever heard of, but  
3 I'm confused as to the jurisdiction under which you're  
4 operating, or the laws under which you're operating.  
5 Stereotypically I think of reservations as being governed by  
6 Federal law.

7 But this is incorrect?

8 MR. FONTANA: Are you ready?

9 MS. KELLEY: Jon is shaking his head.

10 MR. FONTANA: We are not telling this to defense  
11 attorneys.

12 MS. KELLEY: Who pays your salary, that is the  
13 State or the tribe or --

14 MR. FONTANA: I am paid by the tribe.

15 MS. KELLEY: Okay.

16 MR. FONTANA: The tribe does have a casino, we  
17 are a gaming tribe, and my office is 100 percent funded  
18 through gaming revenues. There are no Federal or State  
19 funds for indigent defense in any way.

20 MS. KELLEY: And the laws which your defendants  
21 are charged with violating are State laws?

22 MR. FONTANA: No, they are tribal laws.

23 MS. KELLEY: Tribal laws? Which pretty much  
24 mirror the State laws, the Federal laws? Doesn't?

25 MR. FONTANA: No, the -- when tribes are, if you

1 look at the history of the tribes, there's the period of,  
2 what's called the period of conquest, which is where the  
3 Europeans were encroaching on the Indian lands, and was a  
4 straight up conquest.

5           Following the period of conquest, there was also  
6 an era of treaty making, where for political reasons, and  
7 just to make things cheaper and easier, the Federal  
8 government engaged, entered into treaties with the tribes.

9           There's a period of time where the Federal  
10 government said, we're tired of making these treaties  
11 because we want to break them. So, they said we're just not  
12 going to make these treaties anymore.

13           So then the next period in Indian law history is  
14 called the period of assimilation, which was give, give  
15 every Indian a plot of land, a mule and 40 acres, we'll send  
16 missionaries in, we'll Christianize them, we'll assimilate  
17 them, and turn into good model citizens.

18           And they stopped recognizing tribes at that point  
19 as political entities. They just said, you know, you're  
20 Americans now, we don't care what your tribal structure is,  
21 we're going to assimilate you.

22           That was a phenomenal disaster, that was, lasted  
23 for a period of about 75, 80 years. And then in the early  
24 1900's, there was the era of, they called it the era of  
25 Indian, it was Indian reorganization.

1           And the federal government's policy at that point  
2 was to try to reestablish and support the tribal governors  
3 and the tribal systems. So that was a fairly progressive  
4 period in Indian law.

5           And that of course was followed up by the era of  
6 termination, which started in the late 1940's and went  
7 through the 1950's. During this period of time Congress  
8 terminated the Indian tribes. They said, you no longer  
9 cease to exist and as a political entity or as a native  
10 sovereignty, you are terminated. And literally just said,  
11 you don't exist anymore.

12           There was about 60 tribes that were terminated,  
13 mostly around the Great Lakes area. A bunch of the smaller  
14 bands were also terminated.

15           Since that time, there was a new era where they  
16 said, termination was bad, and now there's strong focus on  
17 tribal self-government. So this is now what's called the  
18 era of self-determination, that we're in now. The Federal  
19 government's supposed policy is to encourage, foster and  
20 promote Indian self-determination.

21           So that's kind of a quick history of what the  
22 tribes have been through up and down over the years. The  
23 one thing that I love sharing with defense attorneys is that  
24 the Bill of Rights does not apply in Indian country. There  
25 is no right to the appointment of counsel in Indian country.

1           So the only restriction on tribal governments are  
2 the tribal constitutions, or the Indian civil rights act.  
3 The Indian civil rights acts only guarantees the right to  
4 counsel at your own expense.

5           MR. JONES: Thank you. Jon?

6           MR. JOSHEVAMA: Sure. So the, following the  
7 creation of the reservation, at some point the Pascua Yaqui  
8 tribe worked to organize a mental health facility. And so  
9 what we have now is the Pascua Yaqui tribe's centered spirit  
10 program.

11           And so the centered spirit program works as a  
12 tribal regional behavioral health authority within the state  
13 of Arizona. And so basically what had occurred is the tribe  
14 entered into an agreement with the state to, I think in  
15 effect what happened is they gave up some sovereignty in  
16 order to be able to receive funding from the state.

17           So the mental health, or I'm sorry, the  
18 behavioral health services that are provided, are provided,  
19 and are regulated largely through regulations that the State  
20 creates, and the tribe does pick through the regulations and  
21 make sure that no where in there are issues that, I guess no  
22 where in there is there anything that has to do with giving  
23 up sovereignty to the individuals, giving up.

24           So overall the behavioral health services mesh  
25 with the drug court. And basically what, what the process



1 is, so people will be referred to mental health services.  
2 At that point they come through the regular assessment  
3 private process, which is making sure that they're enrolled  
4 as a tribal member first.

5 At that point they are also enrolled in AHCCCS  
6 because we are, we receive our funding through AHCCCS, and  
7 also we, because if a person is enrolled as a tribal member,  
8 we also at no point charge the person fees. So funding will  
9 come through both AHCCCS or the tribe.

10 At that point they go through the assessment, and  
11 a counselor is assigned to them. So they both see within  
12 the centered spirit program an assigned mental health  
13 specialist, who will be their assigned therapist, as well as  
14 the drug court coordinator.

15 So I served as the drug court coordinator from  
16 March of last year until I think about October, October of  
17 last year. And during that time I helped, basically what I,  
18 what I saw my role as is helping this person go through the  
19 legal process that they needed to in order to come out the  
20 other side with all, basically all the credentials that they  
21 would need to drop the charge on them.

22 And so for me, I think it was a pretty rewarding  
23 experience to be able to go through alternative sentencing  
24 with this person. And at the same time I think, also being  
25 there to explain exactly what it meant, when the court said

1 that they needed to comply with the court requirement.

2 So when they came in, when they come in, they  
3 usually start with, they progress through three levels. And  
4 the initial level of course is the strictest, with the  
5 requirement coming in for weekly counselling, attending  
6 three, three group sessions a week, and those were groups  
7 that we offered, as well as providing three drug screenings  
8 a week, and then attending drug court.

9 So that's a pretty high load for them to go  
10 through. And of course they, we do as much as we can to  
11 encourage that, this is what it's like now, and we'd like  
12 to, you know, move towards it being less than that, versus I  
13 know it's really rough now, and including them within that,  
14 and say you've got to be tough.

15 So I think that's the difficult dance that  
16 therapists always have, as clinicians, is that, yes, life is  
17 usually hard, and those things are always going to be there,  
18 yet at the same time, here we are as resources to try and  
19 help you get through this.

20 So I think the other, the other important part  
21 is, as a person progresses through these steps down, and  
22 steps basically off away from us, the encouragement is  
23 always, is always there. And I think the thing that I  
24 really like to see is the, when a person with this,  
25 basically the accomplishments that they had for the week, or

1 for the two-week period, that there's always encouraging,  
2 you know, encouraging response from the drug court people.

3 One of the notable I guess incidents that I saw  
4 happen when I was working with the drug court is one of, one  
5 of the people that also happen to be, happen to be one of my  
6 clients, was having a very difficult time staying away from  
7 alcohol. And this person, like many people do, also had an  
8 additional, additional factors of marriage difficulties,  
9 difficulties with being away from his kids, and of course at  
10 the same time joblessness, the desire to be able to provide  
11 for his family, as well as the geographic location within  
12 Pascua rez, Pascua Yaqui reservation.

13 And so historically there's been a lot of drug  
14 use in that reservation, even before it was considered  
15 reservation land, there's been a lot of heroin use, a lot of  
16 alcohol use.

17 And as this person would come out of, whatever  
18 rehabilitation program that they had, he would return into  
19 the community, and of course friends being there, relatives  
20 being there, that used, it's a very difficult environment  
21 for someone to stay clean.

22 The way that I had seen the drug court, and of  
23 course if their therapist is continuing encouragement, is  
24 that this person had gone in and out of rehab, and the drug  
25 court was always encouraging with that.

1           So they always provided, if a person was in a  
2 full-time residential treatment facility, that they could  
3 also get credit for that time that they spent in there,  
4 because it's much more intense than what we would, because  
5 when you look at what we're intending to provide, it's the  
6 same thing, except in an out-patient setting.

7           So if a person successfully completes the  
8 residential treatment facility, that also goes towards  
9 credit for advancement in the drug court program.

10           And so the last I had spoken to this person was  
11 at his graduation, and it was a really moving ceremony,  
12 because we like to involve a little bit of ceremony in it  
13 for whoever has tribal roots, and just being able to witness  
14 this person bringing in his nieces and nephews, who he had a  
15 great love for, and being able to address them as well, and  
16 saying that, you know, we have a person here that is  
17 committed to be able to be a resource to his young people,  
18 in a negative way, an adult male is going to be a person who  
19 provides learning experiences for his younger relatives.

20           And the judge also included a prayer song in the  
21 final ceremony. And it was really, when you look at that,  
22 when you look at it at a clinical level, what you're looking  
23 at are ways that we're looking at keeping the client engaged  
24 in services.

25           The ways that we are looking at keeping the

1 client engaged with what we are trying to convey, and what  
2 we're saying and also in the actions and the legal, legal, I  
3 guess processes that this person needs to go through.

4 At the, at the much more personal level, what  
5 we're doing is providing this person with a spiritual  
6 grounding for what this person has accomplished, and to me  
7 that, that kind of, leading a person through that kind of  
8 process is exactly what alternative sentencing is intended  
9 to do.

10 So for me, when it's able to be provided like  
11 that, I think that's where you're going to see best benefit,  
12 is we're leading the person where they're at, both  
13 intellectually as well as in terms of, okay, what can they  
14 really accomplish, and also at a spiritual level. And  
15 that's where you're going to have people come to what we're  
16 talking about.

17 Of course, we do have challenges. As you heard,  
18 I only served as drug court coordinator for a very short  
19 time, and that was because we lost someone, and my, so I  
20 filled another role about six months into my time there.  
21 And I do the quality management now utilization review.

22 So of course that gives me a broader picture of  
23 what's going on within the organization. But we do have  
24 staff, staffing issues, where we don't have full staffing to  
25 help us, and that can put a real crunch upon the time the

1 drug court coordinator is able to provide, the kind of  
2 services that we would like to see the people receive. So  
3 that's one of the challenges I have.

4 I think, I think overall, our therapists do want  
5 to provide the best services that they can, at same time I  
6 think we kind of run into the caseload issue, where we have,  
7 in addition to, you know, we usually get to juggling several  
8 acts, in addition to the high caseloads that we have, and so  
9 that's, that can be a difficulty as well.

10 I do strongly believe in alternative sentencing,  
11 especially with tribal people, because as we've heard,  
12 issues of historical trauma are going to be what really  
13 drive a lot of underlying, actually the motivations for the  
14 kinds of behavior that we're, that we're seeing.

15 And so being able to have the way of not so much  
16 letting a person off the hook, but making sure that there's  
17 a process going where this person can be able to have those  
18 issues resolved, and move towards resolving these issues in  
19 a more healthy way, I think that's the better approach than  
20 saying, okay, yes, we just flat out have a person that  
21 misbehaves, and let's punish them for that.

22 And in this case where we have a lot of native  
23 Americans that have gone through historical trauma, and in  
24 the case of the Yaquis, we're looking at persecution from  
25 the Spanish government, persecution from the Mexican

1 government, that being able to, I think it's not historical,  
2 it still goes on in Mexico, and so you have people that,  
3 that are still traumatized.

4 And so when you look at the high incidence of  
5 things like anxieties, and the different, the different  
6 anxieties or the issues that come up from bearing children  
7 under the influence of alcohol, or other drugs, all those,  
8 those are all the push from historical trauma, and the push  
9 from the current trauma.

10 And so having alternative sentencing as a capture  
11 point to that I think is better than just sending the person  
12 straight to jail. I think it's great for that purpose.  
13 Thank you.

14 MR. JONES: Thank you. Marvin?

15 MR. SCHECHTER: I suppose I'd like to start at  
16 beginning with Nick, and it's a sort of a unique situation,  
17 to have not the government of the United States or State or  
18 County or Village or Town involved. When the court was set  
19 up, the drug court, who participated in setting it up?

20 MR. FONTANA: The initial drug court was pushed  
21 very hard by a judge by the name of Margaret Florez. And  
22 Margaret Florez is an enrolled member of the Yaqui tribe.  
23 And she's also an attorney. She's not admitted in Arizona.

24 And she was the major pusher behind that. The  
25 Chief Public Defender at the time was Maria Avalez, who's

1 now a judge in Suaharita, a town outside of Tucson.

2 I don't know who the pusher was that set up the  
3 centered spirit, you know, who the player was. I don't know  
4 who the original participant was for the centered spirit.  
5 And the prosecutor at the time was an attorney by the name  
6 of Tamara Walters. And Tamara was very open to trying to do  
7 something different.

8 The tribe has a, in terms of criminal justice  
9 system, we don't have a lot of options. The tribe has a  
10 holding facility on the reservation, which is basically two  
11 cages in a converted house. Under the BIA guidelines,  
12 you're not supposed to hold anybody there more than 24  
13 hours.

14 The tribe does not have its own detention  
15 facility. So the tribe contracts with Corrections  
16 Corporation of America. And our inmates are housed in  
17 prison in Florence.

18 MR. SCHECHTER: How far is that from the --

19 MR. FONTANA: It's 89 miles from the reservation.  
20 And there are, the facility is called FA -- let's see,  
21 Florence -- can't remember -- Central Arizona Detention  
22 Center, CADC, is where they're housed. CADC offers pretty  
23 much nothing in terms of services. Almost nothing.

24 And our clients are housed there pretrial as  
25 well, if they can't make bond, that's where they're housed



1 is out in Florence.

2 MR. SCHECHTER: And the way the court is  
3 constructed, what is the defense function?

4 MR. FONTANA: The defense function would be the  
5 same as any other defense function. It's a very traditional  
6 court. The laws that the tribe has are basically, if you  
7 look at any of the tribes in Arizona, look at their criminal  
8 code, they are pretty much identical, because the BIA,  
9 during the, at the beginning of the self-determination era  
10 went and said, here's some laws, adopt them, here's your  
11 criminal code, here's your civil code, here's this -- so  
12 they're all pretty much identical.

13 So for example, we have a crime on the books  
14 called route, and you don't find that in many state  
15 statutes, but it's on the books for pretty much every single  
16 tribe in Arizona, 'cause the tribes just adopted this one  
17 and same language.

18 Since then, tribes have added to it, removed  
19 stuff from it, but it's all pretty much uniform across the  
20 tribes in Arizona.

21 MR. SCHECHTER: So when, when somebody is  
22 arrested on the reservation for a crime, you're notified,  
23 your office?

24 MR. FONTANA: No.

25 MR. SCHECHTER: Go through that process, that

1 gets the person from the moment of arrest, into a drug  
2 court.

3 MR. FONTANA: If someone is arrested, they would  
4 then be booked into a detention facility, they have 24 hours  
5 in which to initial the person. So the prosecutor's office  
6 has to file a complaint, and they also have to attach an  
7 affidavit.

8 At the initial appearance, the judge reviews the  
9 affidavit and the complaint, and makes a determination as to  
10 whether or not there's probable cause to let the case go  
11 forward.

12 If the judge finds that there's probable cause,  
13 and also at the initial the defendant will be advised of  
14 their rights. You have the right to remain silent, you have  
15 the right to a lawyer at your own expense, they, the court  
16 will go through the handful of rights that are contained in  
17 the Civil Rights Act.

18 If there's probable cause, the judge will then  
19 set release conditions, bond, release them on their own  
20 recognizance, certain conditions, not consume alcohol, not  
21 leave the reservation, without the court's consent.

22 It's then set for an arraignment. Defendant can  
23 also waive the time for arraignment and proceed immediately  
24 to arraignment, enter a plea of guilt and be sentenced that  
25 moment.

1 MR. SCHECHTER: Is there a defense counsel  
2 present?

3 MR. FONTANA: No. The defense counsel is not  
4 present. The only way we get involved is if while the  
5 person is in custody at the detention center, he or she  
6 makes a call to our office, or makes a call to relatives,  
7 who then call our office, or there are some detention  
8 officers, being very sympathetic, and will say to the  
9 person, do you want to call the Public Defender?

10 And that's the only way we find out about these  
11 people. So let's assume the person has been arraigned, pled  
12 not guilty, and then if we're then representing them, we  
13 start looking at their case, talking to this person, trying  
14 to figure out whether or not they're a good candidate for  
15 the drug court program.

16 If they are, we make the pitch to the prosecutor,  
17 hey, let's get this person into drug court. And then if the  
18 prosecutors agree, then we get a drug court plea offer.

19 MR. SCHECHTER: Are there criteria that the  
20 prosecutor uses to decide that written down anywhere?

21 MR. FONTANA: No.

22 MR. SCHECHTER: What are they unofficially?

23 MR. FONTANA: What they are unofficially is that  
24 they do not like repeat offenders. They do not like violent  
25 crimes. We have a lot of people charged on the reservation

1 with contempt of cop. They have a statute on the books for  
2 refusal to obey a lawful order.

3 So if the officer says, come over here right now,  
4 and the person says, no, they get charged with that. If  
5 they resist arrest to the slightest degree, they're going to  
6 be charged with assault on the law enforcement official, as  
7 well resisting arrest and everything else.

8 So if the cops are involved, very difficult to  
9 get a drug court offer. If there are serious injuries to a  
10 victim, they're not going to get a drug court offer.

11 MR. SCHECHTER: Who gets into drug court?

12 MR. FONTANA: The clients who we typically have  
13 get into drug court are people that do not have prior  
14 convictions, that are charged with a drug offense, or a lot  
15 of our domestic violence cases are domestic violence  
16 disorderly conduct, which are basically a loud shouting  
17 match, or somebody acting out and the family calls the  
18 police and says, would you calm him down or take him over to  
19 his uncle's house, or something like that.

20 The occasional DUI gets into drug court. That's  
21 pretty much it.

22 MR. SCHECHTER: Assuming that you make your pitch  
23 to the prosecutor, and the prosecutor, says, X is eligible  
24 for the drug court, what happens next?

25 MR. FONTANA: We would then hammer out a plea

1 agreement, because being defense attorneys we naturally plan  
2 for the worst case scenario, we need to hammer out a  
3 sentence, that we can, you know, if this person has been  
4 designated for drug court, we want to try to mitigate what  
5 they're looking at in terms of their sentencing.

6 So that would be the next step. Then we've got  
7 to convince the client, do they want drug court? Some  
8 people will tell me, no, I would just rather sit in Florence  
9 for 90 days, than spend nine months minutes going to groups,  
10 meeting with Jon, doing random UA's, so we get a lot of  
11 people who just don't want drug court.

12 So at that point, once the plea has been  
13 finalized, and it's presented to the judge, the judge  
14 accepts the plea, defers the entry until, refers the person  
15 to drug court, at which point they go to centered spirit,  
16 and start the intake process and assessment and all of that.

17 MR. SCHECHTER: Jon, when a person goes to you,  
18 and they start the process, nine months long, let's say  
19 they're four months in, and they violate, they do something  
20 wrong. What happens?

21 MR. JOSHEVAMA: They'll usually, whatever has  
22 occurred will be presented at the court. And  
23 recommendations are made by either the prosecutor or lead  
24 prosecutor, the defense, the drug court coordinator, and the  
25 judge.

1           So usually that's a closed door discussion before  
2 the people roll in. And so that discussion is usually held  
3 for all the people that are participating in drug court,  
4 before they come in.

5           MR. SCHECHTER: Does that include defense  
6 counsel?

7           MR. JOSHEVAMA: Yes.

8           MR. JONES: So this is really a staffing meeting?

9           MR. FONTANA: Correct.

10          MR. SCHECHTER: And the decision is made -- is  
11 there an acceptance at that staffing meeting, that people  
12 who, with a drug problem or mental health problem, relapse,  
13 and what are the sanctions that occur, and how many times do  
14 they allow the person to relapse before they close the door  
15 to them?

16          MR. JOSHEVAMA: Usually I think that's where,  
17 it's the role of the coordinator to work closely with the  
18 therapist, to find out where the, where the person is at in  
19 terms of motivation towards, you know, motivated towards I  
20 guess decreasing or eliminating the drug use.

21          So, and I think that's where, that can, drug  
22 court coordinator has that leeway in terms of being able to  
23 say, okay, it sounds like this person is using marijuana,  
24 hasn't really shown that -- and this would be the  
25 presentation at the staffing -- yes, this person is

1 positive, although they knew that they popped positive two  
2 weeks ago, and they, it was discussed with them, that if  
3 their PHC level rises in the next urine test, that we'll  
4 consider that continued use, if they continue to pop  
5 positive.

6           It would be at that point that we could say, we  
7 recommend some kind of sanction in the court. In order to  
8 have it provide consequences, and making sure that the  
9 person knows that, that they're aware of the consequences  
10 will be occurring if they continue to use drugs.

11           So being able to discuss it that if way is where  
12 we are able to be able to have that. Of course there's the  
13 other side, where it may be a one-time occurrence, and you  
14 don't see it after that, I think that's where those  
15 discussions happen, too, so there's a little bit of  
16 flexibility.

17           MR. SCHECHTER: Let me ask both of you this,  
18 aside from a cash infusion of a million dollars, to make  
19 everything work better, what other things need to be done in  
20 the drug court center program, to make it better?

21           MR. FONTANA: I think I would, I would like to  
22 see our drug court program codified. I would like to see it  
23 written into the laws of the tribe. Right now, it's not.  
24 It exists at the sufferance of the prosecutor's office.

25           And we did at one point have a prosecutor who

1 said he didn't like drug court, and he was not going to give  
2 us any more drug court pleas, so basically we were without  
3 our drug court for about nine months.

4 He later left, and there was a change of  
5 administration with the tribe, we have a new chairwoman that  
6 came in, who came from centered spirit, and so she has  
7 naturally told the new prosecutor, there will be a drug  
8 court.

9 So I would like to see it codified and made part  
10 of our code.

11 MR. SCHECHTER: Who would be the progenitor of  
12 something like that?

13 MR. FONTANA: It would probably take the entire  
14 drug court team to write legislation, present it to Council,  
15 and then have Council adopt it.

16 MR. SCHECHTER: And is that being done?

17 MR. JOSHEVAMA: They would also need to be on  
18 board --

19 MR. SCHECHTER: Pardon me?

20 MR. JOSHEVAMA: I said Council would also need to  
21 get on board with that as well. And I think, I think doing  
22 that would also probably take the concerted effort from the  
23 community as well.

24 Because I think, I guess from my point of view,  
25 I've seen also that from, from centered spirit, that at



1 times there can be a lack of professionalism and it's  
2 because people are not always at the level qualified to be  
3 able to have the perspective of, okay, I see this person as  
4 a person that has come through a lot. And so we need to, in  
5 any way, as a therapist be supportive of their issues.

6 And I've seen people that actually don't have  
7 that perspective, and instead have a blaming approach.

8 MR. SCHECHTER: From a therapist?

9 MR. JOSHEVAMA: So, yes, so that occurs. And so  
10 being able to hire people that are qualified to be able see  
11 this as a, as a, as basically empowerment relationship with  
12 the person, I think that if we get them to the point where  
13 we're blaming the person that's coming through the drug  
14 court process, if anybody in that process of any influence  
15 has that perspective, it's really difficult to have anybody  
16 continue to advocate for the drug court.

17 MR. SCHECHTER: Okay. One big advantage of  
18 putting this into a codification would be you wouldn't have  
19 to worry about different prosecutor's personalities?

20 MR. FONTANA: Correct.

21 MR. SCHECHTER: So what is it that's holding that  
22 up? Is it time?

23 MR. FONTANA: It's time, and it's resources.  
24 It's time and resources. What I have found is, is that when  
25 it comes to alternative programs, such as drug court, it's

1 ultimately the Public Defender's Office that has to be the  
2 advocate for the client.

3 And my office is very small. We are absolutely  
4 strapped for resources and time. We have our hands full.

5 The other issue, too, is also a political issue.  
6 The tribal Council is elected in its entirety every four  
7 years. They do not have staggered terms. So every four  
8 years there is a change of administration. And with that  
9 change of administration, comes, you know, out with the old,  
10 in with the new, scores are settled, and a lot of people get  
11 cold feet right before an election and say, you know, time,  
12 time to look for a job elsewhere.

13 And within, within the Council, there is even a  
14 split from there, we have some Councilmen who are, lock them  
15 up, throw away the key, get them off the rez, we don't want  
16 them here, we don't need them here, if they're going to do  
17 drugs, get them of out here, we don't care.

18 There are other Council members who say, no, wait  
19 a minute, these are our people, we help our people, that's  
20 what we're supposed to do.

21 So politically there's kind of a split there. To  
22 be honest with you, my next priority is to get my office on  
23 the books. But the Public Defender's Office doesn't have  
24 any legislation. And I've been working on that for two  
25 years, and I go to Council various times, and it becomes

1 clear to me, it's not going to go this time.

2 So I have to pull back and wait. So it's, and it  
3 can become discouraging. And I have to remind myself that  
4 this tribe is only 26 years old. United States didn't have  
5 drug court when it was 26 years old, and didn't have the  
6 right to counsel when it was 26 years old.

7 So, you know, the tribe is in its infancy, and so  
8 we don't have a lot of the foundational structures, and  
9 we're building them. So the fact that we do have drug  
10 court, is something I am very proud of.

11 And I can tell you anecdotally, we see very few  
12 people that have completed drug court come back through our  
13 office or the court system. I can only think of two in the  
14 four years I've been there, that graduated and then yet went  
15 out and picked up new criminal charges.

16 The overwhelming number of people graduating drug  
17 court end up either going back to school or going to work.  
18 Tribe does have a casino, so that's the other thing, the  
19 tribe is a drug-free workplace, and they do that through  
20 urinalysis. So if these people are still addicted, they  
21 cannot work for the tribe.

22 So getting them and clean getting them sober is,  
23 it opens the door to them, to continue their life's journey  
24 from the place they were at to become productive members of  
25 the tribe.

1 MR. SCHECHTER: One last question.

2 MR. JONES: Okay, go ahead, then Elizabeth.

3 MR. SCHECHTER: If you had outside resources from  
4 a bar association, to help you work on that project of  
5 codification, that would be one way to approach it?

6 MR. FONTANA: That would be a tremendous  
7 resource, that would be incredibly useful.

8 MR. SCHECHTER: Have you gone to bar associations  
9 to ask for that kind of help?

10 MR. FONTANA: No, I have not.

11 MR. SCHECHTER: Okay.

12 MR. JONES: Elizabeth, then Vicki.

13 MS. KELLEY: It's almost as if we've come full  
14 circle, because this morning we heard from retired Judge  
15 Meyer from the National Drug Court Information Center, and  
16 he talked about how so many different drug courts have an  
17 NANA component. And then he cited various court rulings who  
18 have found that that is a violation of the establishment  
19 clause.

20 You don't have that problem, if you will, for a  
21 couple of reasons. Number one, you don't have the Bill of  
22 Rights, as, as applied. And number two, the whole concept  
23 of spirituality is critically important to the success of  
24 your program.

25 If, for instance, you had a defendant before the

1 drug court who took serious umbrage to that spirituality  
2 component, what could he or she do, if anything?

3 MR. JOSHEVAMA: And I think that's, that's  
4 usually offered, because of course we do operate, as a  
5 treatment, we do operate, with the requirement that we  
6 provide culturally competent services as well. So that when  
7 a person comes in, as part of the screening we're looking at  
8 what kind of, what kind of resources does this person want,  
9 and that includes, inclusion of -- or excuse me, not  
10 inclusion of, of either culturally relevant, being a Yaqui  
11 person, if they want a Yaqui counsellor, they can request  
12 that. Or if there's certain kinds of services that they  
13 want, they can request that as well.

14 So that's, on the behavioral health side, that's  
15 where the person is intersecting the majority of the time at  
16 centered spirit.

17 MS. KELLEY: So accommodation is being made for  
18 that person?

19 MR. JOSHEVAMA: Um-hum.

20 MS. KELLEY: Okay.

21 MR. JONES: Vicki?

22 MS. YOUNG: Okay. You said that the tribe then  
23 contracts with this institution at Florence, as its jail or  
24 whatever. Are we talking only prosecution at a misdemeanor  
25 level, or felonies, but they're not going to serve more than

1 a certain amount of time, at that Florence facility or --

2 MR. FONTANA: The tribe doesn't distinguish  
3 between felonies and misdemeanors. What it says in the Code  
4 is that homicide is an offense. The Indian Civil Rights Act  
5 that says that the person, upon the conviction of an  
6 offense, will be incarcerated for a period of one year, and  
7 fined up to \$15,000.

8 There is a split among two district courts as to  
9 what that means. There is a case from Nevada called Pyramid  
10 Lake, where it said, for example -- going to use DUI as an  
11 example -- for DUI you have an impairment charge, and you  
12 will also have a blood alcohol charge.

13 The Arizona State Court, those merge for purposes  
14 of sentencing, and it's a misdemeanor, so the maximum  
15 exposure that person has is six months. The Pyramid Lake  
16 case says, well, it says per offense, so if the complaint  
17 has six, seven, eight, nine offenses in it, then the tribal  
18 court can stack.

19 There's a more recent case from Minnesota in 2005  
20 that said, that's a bunch of hogwash, it's the same course  
21 of conduct, it merges, and you cannot stack offenses.

22 Neither of those cases has gone up to the Court  
23 of Appeals. The strong sovereignty view, which our judges  
24 espouse is, absolutely we have the right to stack, and we  
25 will stack.

1 MS. YOUNG: So is there a maximum term, so there  
2 is no maximum term that they can impose, they can do  
3 whatever, is that --

4 MR. FONTANA: It's limited by the prosecutor's  
5 charging creativity. So if the prosecutor can take a single  
6 offense and manage to charge eight charges, ten charges,  
7 that's the individual's exposure. Could be up to one year  
8 stacked for each of those offenses.

9 MS. YOUNG: And then if the person is convicted,  
10 they serve that entire term at Florence then?

11 MR. FONTANA: Right now, due to cost, the tribe  
12 is only keeping people at Florence for six months. If  
13 they're serving more than six months, they are transferred  
14 to McKinley County Jail in New Mexico.

15 MS. YOUNG: And then I always get confused on who  
16 gets charged with homicide in Federal court versus tribal  
17 court, when it occurs on the reservation, 'cause some go to  
18 Federal court, and some don't.

19 MR. FONTANA: It's, it's concurrent jurisdiction.  
20 So they can be prosecuted both in tribal court and in  
21 Federal court as well.

22 My experience in the last four years, none of my  
23 cases where there was Federal exposure has gone Federal.  
24 The US Attorney's Office in Tucson, for whatever reason,  
25 chooses not to handle the major crime cases from the

1 reservation.

2 MR. SCHECHTER: Lucky.

3 MS. SHIFMAN: Well, there norther district of  
4 California does that, too.

5 MR. SCHECHTER: Well, it's not, it's not totally  
6 the Wild West, because a few months after Crawford versus  
7 Washington came down, one of the first cases I think in the  
8 country, where somebody got Crawford to be applied to a  
9 parole revocation hearing, was on your reservation, was your  
10 case --

11 MR. FONTANA: Yes, was my case, was a probation  
12 revocation hearing.

13 MR. SCHECHTER: I know, 'cause I used that case  
14 to try to convince a judge in Brooklyn, and I won't tell  
15 you, we're in hearing on the record, so I can't tell you  
16 what the judge said to me, about the case, but I did win  
17 that evidentiary hearing based upon your case.

18 MR. FONTANA: Whoa.

19 MS. BERNHARD: That's great, that's great.

20 MR. SCHECHTER: So it's not the Wild West  
21 totally, but it's not great.

22 MR. FONTANA: No.

23 MS. YOUNG: Just one, you have the funding for a  
24 Federal application for a drug court, but is, there's no  
25 equivalent to treating an alcohol problem, on the



1 reservation, through the court? I mean, there is through  
2 your spirit center, but that's just on a personal level?

3 MR. FONTANA: Treatment is available to any  
4 tribal member that's enrolled for whatever reason. They can  
5 go to centered spirit, and there's no charge, if they're an  
6 enrolled tribal member, they get services, and there's no  
7 fee, and it can be for gambling, alcoholism, drugs,  
8 parenting classes, you name it.

9 MS. YOUNG: But if a person commits an offense  
10 and their underlying problem is alcohol, not drugs, there is  
11 not a judicial way in your court system to address that,  
12 separate from just criminal sentencing?

13 MR. FONTANA: No, we'll put them in drug court.

14 MS. YOUNG: Oh, okay.

15 MR. JOSHEVAMA: Alcohol is a drug.

16 MR. JONES: We've only got time for one last  
17 question, and I'm going to let it come from Scott.

18 MR. EHLERS: Regarding the treatment modalities  
19 that you're using, you said that there's a lot of heroin  
20 addiction on the reservation. I'm wondering if you're using  
21 opiate replacement therapies, like methadone or  
22 buprenorphine?

23 MR. JOSHEVAMA: Um-hum.

24 MR. EHLERS: And beyond that, I'm also wondering  
25 about your culturally specific types of treatment

1 modalities, how that may differ from, you know, I guess  
2 traditional western medicine, you know, types of treatment.

3 MR. JOSHEVAMA: I think that's always a work in  
4 progress because of staffing issues. We also have  
5 clinicians that are Yaqui as well. And so we combine that  
6 with licensure. So we also have people that are within the  
7 State of Arizona licensed independent substance abuse  
8 counsellors. We also have licensed clinical social workers  
9 as well as LPC's.

10 In terms of what is provided in individual  
11 sessions, a lot of times that that will be a reflection of  
12 what this person, what the therapist's understanding of  
13 where this person should be in terms of the different things  
14 in their life that they are required to do as a Yaqui  
15 person.

16 So those are some of the things that are used in  
17 that kind of treatment. We also have a, every Wednesday  
18 night we have sweats as well, and that's something that, we  
19 have two people out of our office that are, that provide  
20 that on a weekly basis.

21 During, I think, I think one thing -- well, let's  
22 see, something that really seems to be helping is we have a  
23 clinician now that provides a very open kind of heart  
24 healing second, and although that's not Yaqui, it seems to  
25 be very effective with people that have substance abuse as

1 well.

2           And then also, aside from that, there's also a  
3 lot of encouragement that, if the person is participating in  
4 ceremonies, and right now we're in the earlier part of the  
5 lead-in to the Easter ceremony that's coming up in April,  
6 there's that encouragement for people to participate in the  
7 ceremonies as well.

8           And so that includes, there are people that when  
9 they been participating in the Lenton ceremony it goes all  
10 the way from, I think it's late, actually late January, all  
11 the way 'til April.

12           And so that's something that we also communicate  
13 that, with the, and this -- yeah, would have, too. So to  
14 the different residential treatment facilities, and letting  
15 them know that it is appropriate and approved for Yaqui  
16 tribal members to return back, I think for Friday overnight,  
17 and then return the next day, in order to allow them to  
18 participate in ceremonies.

19           MR. EHLERS: And what did you say about like the  
20 methadone and buprenorphine?

21           MR. JOSHEVAMA: So we do have medication assisted  
22 treatment program, and it's, it's providing methadone. So  
23 we do have that program, and so people that are  
24 participating in methadone have their own separate track,  
25 services that they're required to engage in, in order to

1 continue to receive dosage, so...

2 MR. JONES: Gentlemen, fascinating conversation.  
3 We appreciate your time and the good work that you do.  
4 Thank you.

5 MR. FONTANA: Thank you.

6 MS. BERNHARD: Thanks very much.

7 MR. JONES: This concludes the Tucson portion of  
8 our work. Thank you all for being here, staying all day,  
9 and those of you who came in now.

10 MS. BERNHARD: And thank you for taking  
11 everything down.

12 MR. JONES: Wonderfully. We will see you all in  
13 New York.

14 (Whereupon the proceedings concluded at 5:33  
15 p.m.)

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STATE OF ARIZONA        )  
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COUNTY OF MARICOPA    )

I, JANICE G. FULLER, hereby certify that the foregoing pages numbered from 2 to 300, inclusive, constitute a full, true and accurate record of the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 7th day of March, 2008.

\_\_\_\_\_  
JANICE G. FULLER,  
Court Reporter  
Certificate No. 50552

My commission expires:  
June 11, 2010

1 February 21, 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 \_\_\_\_\_

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**Carol Burney**  
**Transcript Edits**  
**Tucson Hearing**  
**Thursday February 21, 2008**

Page 228, lines 11 through 16, should say:

“So from my perspective, the (mental health) client is entitled to be in the right court. As long as there is a probation eligible plea, the client is entitled to the right Judge.”

Page 239, lines 1 and 2, should say:

“cases post-sentencing. I do not work the cases up for trial.”

Page 239, line 13, should say:

“whether it’s worth it to forego the Motion.”

Page 239, line 15, should say:

“involved at that stage.”

Page 243, lines 3 through 6, should say:

“in my office, attorneys call me often to talk about Mental Health Court in that context.””

Page 244, line 14, should say:

“treatment. Those are the ones that seem to fall apart.”

Page 244, lines 18 through 21, should say:

“backward into more offenses. Some may need to have a med review and we’ll see them back again. We will then get them in to get their medications fixed.”

Page 246, lines 3 and 4, should say:

“I don’t have quite all the Pima County mental health court clients, roughly 85%.”

Page 246, lines 11 to 15, should say:

“The day of sentencing is when I get most of my clients. And my goal is, as Kim says, to pull the client through probation.”

Page 247, line 13, should say:

“but for me, it is a devastating failure to have a PTR.”

Page 247, line 23 to Page 248, line 2, should say:

“learning to do it on my own. I made mistakes and got back on track. A couple of times the Judge would now a better way to proceed. Now, I’ve done this 2 ½ years in a 4 year old program.”

Page 248, lines 12 to 17, should say:

“The trial team keeps the case through Sentencing most of the time. Every once in a while, I’ll be there at that time and go to the client and let him know I’m his new lawyer, and that would be where I come in.”

Page 260, line 19, should say:

“witness against her nephew. We do not want to hurt, or in any way”

Page 260, line 24 to Page 261 line 2, should say:

“I’m trying to propose ways to structure the revocation terms without requiring the Aunt to become involved.”

Page 261, line 7, should say:

“grip on the probation status and leave the Aunt out of the equation.”



**Judge William Meyer**

**Transcript Edits**

**Tucson**

**Thursday February 21, 2008**

Page 17, line 23 should be GCMS not TCMS

Page 18, line 16 should be NDCI

Page 29, line 8 should be Gault not Golf

Page 30, line 10 should be GCMS , not TCMS

Page 33, line 15, should be ISP, not ISD

Page 39, line 2, should be Skinnerian not sederian

