

NACDL Problem-Solving Courts Task Force

Final Schedule

Thursday May 1, 2008

New York County Lawyers' Association

14 Vesey Street

New York, New York

Day 2

9:00 a.m.

HUDSON REPORTING & VIDEO, INC.

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PANEL:

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

SPEAKERS:

PROBLEM-SOLVING COURT ORGANIZATION PANEL
Valerie Raine, Director, Drug Court Programs,
Center for Court Innovation
Mike Rempel, Research Director, Center for Court
Innovation
Carson Fox, Director of Operations, National
Association of Drug Court Professionals
Austine Long, Project Director, Adult and Family
Assistance, Nat'l Assoc. of Drug Court
Professionals

FRONTLINE PUBLIC DEFENDERS PANEL

Analisa Miron, Staff Attorney, Neighborhood
Defender Service of Harlem
Kristin Heavey, Staff Attorney, Neighborhood
Defender Service of Harlem
Tom Bomba, Staff Attorney, Legal Aid Society

NEW YORK CITY PUBLIC DEFENDERS PANEL 2

Kevin O'Connell, Supervising Attorney, New York
County Defender Services
Timothy Rountree, Attorney in Charge, Queens Co.
Criminal Defense Practice, Legal Aid Society
Joseph Vaccarino, Executive Director, Queens Law
Associates
Monica H., Brooklyn Drug Court Graduate
Ira Burnim, Legal Director, Bazelon Center for
Mental Health Law

PHILADELPHIA DRUG TREATMENT COURT PANEL

Erica Bartlett, Assistant Defender, Defender
Association of Philadelphia
Mary Defusco, Director of Training and
Recruitment, Defender Association of
Philadelphia

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Continued:

Hon. Louis J. Presentza, Presiding Judge,
Municipal Court of Philadelphia

DRUG TREATMENT AND REHABILITATION PANEL

Gary Butchen, Executive Director, Bridge Back to
Life Center

Ernest Drucker, Professor, Depts. of
Epidemiology, Family and Social Medicine, and
Psychiatry, Montefiore Medical Center/Albert
Einstein College of Medicine

Steve Rockman, Director, Samaritan Village
Carol Shapiro, Founder and President, Family
Justice

JUDGES PANEL

Judge Laura Safer Espinoza, Bronx Drug Court
Judge Richard Weinberg, Midtown Community Court

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MR. JONES: Good morning. Welcome to

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day two of our New York hearings. Happy Law

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Day. Happy Mayday, whatever other day it might

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be, happy, happy. We have been significantly

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downgraded. We were across the hall yesterday

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in the Augustus room and they tell me that the

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reason that we're not there today is, it's going

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to be a party in that room at the end of our

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hearing today, later on. And so they tell me

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it's going to be a fabulous party, so it better

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be, and you guys are certainly welcome to come.

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We had, as you know, been taking testimony from

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folks who are stakeholders in problem-solving

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courts all over the country and are excited and

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interested to hear what each of you have to say

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today. The way that we operate is, we give each

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of you about five minutes to give us an opening

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statement to benefit your thoughts and then we

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have lots of questions that we want to ask you

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and the way that we do our questioning is that,

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one of our generally takes responsibility for

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beginning the dialogue and this morning that

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would be Vicki Young.

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MS. YOUNG: Good morning.

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MR. JONES: The floor is yours. You can decide who wants to start. I'll leave that to you.

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MS. RAINE: I'm Valerie Raine. I'm not going to start. I'd recommend, if it's all right with the panel, Michael went first because he has a lot of information, that sort of science and research and I think it will be such a good setting the stage, I'm willing to give him a couple of minutes of my time if he runs over.

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MR. JONES: Your reputation proceeds

you.

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MR. REMPEL: So, you know, I guess I wrote out what I wanted to say, I'm going to read it, but I'll try and read it clearly. If it feels like I'm going too long --

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MR. JONES: I'll stop you.

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MR. REMPEL: I think I'll have a good stopping point because I wanted to focus primarily on adult drug courts since -- I could go on and say a few things about mental-health court or domestic-violence court, or we can save that for Q and A or later. Good morning. Thank

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2 you for having me. My role is research director
3 at the Center for Court Innovation. Our
4 research --

5 COURT REPORTER: I'm sorry. Is there
6 any way you can bring the mic down?

7 MR. JONES: I'm going to say one
8 other thing, for everybody's application, we are
9 assisted, very thankfully, by our court
10 reporter, you have to make sure you speak loudly
11 and slowly as you can so she gets everything.

12 MR. REMPEL: All right. The
13 Center's research department conduct evaluations
14 of problem-solving justice experiments in New
15 York State and nationally. My comments will
16 focus primarily on the evaluation literature
17 pertaining to adult drug courts about which more
18 is known than any other problem-solving court
19 model. But I will also highlight a few of the
20 most important research findings related to
21 mental health courts and domestic violence
22 courts. I will not comment on or embrace any
23 theoretical or legal position with respect to
24 problem-solving courts but will confine myself
25 to the evidence from a social scientific

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perspective.

The national treatment literature tells us that of those who enroll in substance abuse treatment voluntarily, without a criminal court mandate, a far greater number drop out than completes successfully. Depending on the specific treatment program, only 10 to 30 percent either graduate or are still active one year after enrolling. By contrast, the equivalent adult drug court "one-year retention rate" averages about 60 percent nationally and 66 percent in a study of 11 New York State drug courts. As will be discussed momentarily, the primary reason that explains why drug courts achieve these higher retention rates is the legal pressure entailed by a court mandate.

With regard to re-offending, more than 40 studies have compared the recidivism rates of drug-court participants and the "comparison group" composed of otherwise similar defendants who did not participate in drug court. From examining these studies, a series of literature reviews published in the early to mid 2000's, including one by the U.S. Government

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2 Accountability Office, have concluded that drug
3 courts generally produce significant recidivism
4 reductions. One particularly influential study
5 was a randomized experiment at the Baltimore
6 City drug court, which demonstrated significant
7 reductions over both two-and three-year tracking
8 periods. After two years, 66 percent of those
9 randomly assigned to the drug court and
10 81 percent of those assigned to the comparison
11 group were re-arrested, making clear that drug
12 courts are not a cure-all; yet, the results are
13 significantly better than business-as-usual. In
14 New York State, a six-site evaluation completed
15 by the Center for Court Innovation in 2003
16 demonstrated a 32 percent average recidivism
17 reduction over a one-year "post program" period
18 beginning after program exit or final
19 disposition.

20 Far less research directly examines
21 the impact of adult drug courts on drug use,
22 although studies in Baltimore, Brooklyn, and
23 Maricopa County, Arizona all found that the drug
24 court produced a significant reduction at least
25 in "serious" drug use, involving cocaine or

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2 heroin. Also, preliminary findings from an
3 ongoing multi-site evaluation of 23 drug courts
4 and six comparison sites from across the country
5 demonstrated reduced drug use over an initial
6 six-month tracking period. Final results from
7 that study, to be completed in 2009, will track
8 offenders up to 18 months.

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To help inform evidence-based
10 policymaking, as important as whether drug
11 courts work is to understand why they work.
12 Here the evidence points to the critical role
13 of: (1) legal pressure, (2) insensitive ongoing
14 supervision, and (3) a court process that the
15 defendants perceive to be fair. First,
16 concerning legal pressure, the tangible threat
17 of imprisonment in response to failure is widely
18 believed to explain why drug-court participants
19 have such higher retention rates than retention
20 rates for persons enrolling in treatment
21 voluntarily. Even within drug courts, the
22 evidence indicates that where illegal incentives
23 are relatively greater, the outcomes are
24 relatively better. For example, research by
25 Doug Young and colleagues at the University of

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2 Maryland shows that persons who are
3 court-mandated to treatment perform better, the
4 more that they understand their
5 responsibilities, the more that they are
6 reminded of those responsibilities, the more
7 that they are reminded of legal consequences of
8 non compliance, and the more that they perceive
9 those consequences to be undesirable. Not
10 surprisingly, another study shows that one-year
11 retention rates at the Brooklyn drug court were
12 lowest for participants pleading guilty to a
13 misdemeanor, who face an average of six months
14 in jail in the event of program failure, and, on
15 the other end of the spectrum, were almost twice
16 as high for predicates (participants pleading
17 guilty to a felony with a prior felony
18 conviction on their record, who face an average
19 of three to six years in State prison. Such
20 findings suggest that drug courts are
21 particularly effective with more serious
22 categories of defendants. Second, concerning
23 intensive ongoing supervision, a series of
24 randomized experiments conducted in several
25 Northeastern states indicate that drug court

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2 outcomes are consistently better when
3 participants are required to appear biweekly
4 before the drug court judge than when
5 participants are only required to appear as
6 needed. The impact of appearing regularly
7 before the judge was especially pronounced for
8 "high risk" defendants, defined by these
9 particular researchers as having previously
10 failed treatment or having anti-social
11 personality disorder. Additionally, results
12 from the ongoing multi-site evaluation
13 referenced above demonstrates that drug-court
14 participants have better outcomes than
15 defendants from the comparison sites
16 specifically as a result of: (a) more frequent
17 court appearances before the judge, (b) more
18 frequent meetings with court-affiliated case
19 managers or probation officers, and (c) more
20 frequent drug testing. In short, proactive
21 court-based supervision is critical to the
22 success of drug courts at rehabilitation.

23 Third, research by Tom Tyler and
24 others has consistently shown that when
25 litigants perceive that they are treated fairly,

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2 they are more likely to comply with court
3 orders. A recent study of the Red Hook
4 Community Justice Center as compared with a
5 nearby "downtown" criminal court demonstrated
6 that defendants processed at Red Hook were more
7 likely to perceive that they were treated
8 fairly, that they understood the judge's
9 instructions, and that they believed they had
10 the opportunity to have their own side of the
11 story heard on the case. The ongoing multi-site
12 drug court evaluations similarly found that
13 relative to the comparison group, drug-court
14 participants rated the judge in particular and
15 the court in general higher on several
16 dimensions of fairness; and that those higher
17 ratings in turn comprised influential
18 explanatory factors leading to lower drug use
19 and criminal activity. The positive, motivating
20 role of the judge has been touched on not only
21 in this quantitative studies but in two more
22 qualitative investigations involving drug court
23 participant focus groups. Taken together, these
24 investigations found that across more than 15
25 distinct drug court sites, participants

1
2 repeatedly linked their positive attitudes
3 towards the judge as critical to their
4 performance in the program. Now, I'm not sure I
5 have time, I'll just say I could give you a
6 paragraph each on mental health --

7 MS. YOUNG: We could be hearing a lot
8 about mental health court.

9 MR. REMPEL: These are very short.
10 Okay. Mental health courts are similar to drug
11 courts concerning the importance they place on
12 the goal of defendant rehabilitation as well as
13 their key policies and practices. For this
14 reason, it is plausible to hypothesize that
15 mental health courts will generate similar types
16 of outcomes. To date, six studies have examined
17 the impact of mental health courts on
18 re-offending in relation to an appropriate
19 comparison group. Four of these six studies
20 reported that the mental health court led to a
21 lower re-arrest rate; a fifth study also found
22 such an effect but only after one year of
23 tracking, not after two years; and the sixth
24 study did not find such an effect. In addition,
25 two studies have examined the impact of mental

1
2 health courts on psychosocial functioning, with
3 both reporting a positive impact in that area.
4 Finally, mirroring similar drug court findings,
5 studies of two mental health courts both
6 reported that participants believed they were
7 treated fairly, especially by the judge, and
8 found that participants did not feel pressured
9 to enroll in the program, a particular concern
10 given the vulnerable status of these
11 participants.

12 Now you can tell from these numbers,
13 more research is clearly needed in this area but
14 these results are at least promising.

15 Domestic violence courts, on the
16 other hand, are unique, in large part because
17 they tend to focus on goals other than defendant
18 rehabilitation, such as increasing judicial
19 expertise, improving stakeholder coordination,
20 expanding services for victims, and holding
21 convicted offenders accountable. With respect
22 to core criminal justice system outcomes,
23 several studies have found that domestic
24 violence courts do not lead to a change in
25 conviction rates. With respect to recidivism,

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2 eight sites have been evaluated, with only three
3 producing a clear reduction in recidivism, four
4 sites showing no impact at all, and the eighth
5 site showing mixed results. Partly explaining
6 these general mixed findings, there is not
7 currently a known and proven effective treatment
8 for domestic violence -- which distinguishes
9 this social problem from, for example, substance
10 abuse and many forms of mental illness. In
11 particular, four or five randomized experiments
12 have not found that batterer programs, the
13 nation's sentence of choice with misdemeanor
14 domestic violence defendants, produce a
15 reduction in future violence.

16 Domestic violence courts, however,
17 appear to have positive effects in other areas.
18 Certain common practices, such as intensive
19 probation supervision and ongoing judicial
20 monitoring, appear to be more promising. A
21 recent study in Rhode Island, for example, found
22 that domestic violence offenders assigned to
23 intensive as opposed to regular probation had a
24 lower re-arrest rate. Also notable, several
25 studies have found that by holding regular

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2 stakeholder meetings, domestic violence courts
3 have spawned increased collaboration,
4 understanding, and confidence in the court's
5 operations across a range of justice system
6 agencies and actors.

7 Overall, the major conclusions to be
8 drawn from this testimony are that: adult-drug
9 courts are an effective model for increasing
10 retention in treatment and reducing future
11 recidivism and drug use. Furthermore, the
12 benefits of drug courts will be maximized to the
13 extent that strong legal incentives are in
14 effect, the court plays an ongoing, proactive
15 role in overseeing the treatment process, and
16 defendants perceive the court process to be
17 fair. The research on other problem-solving
18 models is not as advanced; but it is reasonable
19 to hypothesize that some of the same types of
20 findings will emerge especially with respect to
21 mental health courts, whose guiding principles
22 mirror drug courts and whose early results to
23 date are broadly similar as well. Thank you.

24 MS. RAINE: Good morning. Thanks for
25 inviting me here. To be helpful, I know a

1
2 couple of you here but I spent many years,
3 14 years as a criminal defense attorney as Legal
4 Aid in Kings County and then I spent the last
5 12 years at the Center for Court Innovation --
6 when it first started -- problem-solving world.
7 I do work both statewide and nationally on drug
8 courts; I'm including documents for best
9 practices. And for the last three years, I
10 taught a course at Fordham law school on
11 problem-solving justice, which has been a very
12 cool experience. I too want to preface my
13 remarks with a big distinction about domestic
14 violence courts. They are, in fact many
15 practitioners in the field will argue will
16 whether they even are problem-solving courts in
17 the way that term has evolved and certainly was
18 originally intended. There is no rehabilitative
19 goal in domestic violence courts. It is
20 strictly about protecting the victim, delivering
21 services to the victim and the victim is always
22 the word used in trying to monitor and hold
23 accountable the defendant. So my remarks and my
24 recommendations that I'm going to make do not
25 apply to domestic violence courts. I come to

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2 this hearing, since the defense attorney
3 believes in the role of problem-solving justice
4 and problem-solving courts but also maintain a
5 very deliberate, if not cautious approach to
6 implementation. I think that, you know, to cut
7 to the chase, it really is at what cost. You
8 know, I think most of us here, defense attorneys
9 included, would agree that, you know, reduced
10 recidivism is a good thing, reduced substance
11 abuse is a good thing, but, you know, at what
12 cost. You know, we can get all the guns off the
13 street if we forgot about the Fourth Amendment.
14 That's too great a cost. So I'm going to make
15 some recommendations about, that apply to the
16 drug court but also to the mental health court.
17 Recommendations that I believe place drug courts
18 and mental health courts squarely within
19 permissible and desirable constitutional and
20 legal principals. And, you know, one other
21 comment before I can get to these series of
22 recommendations is, Eric Lane, who is a
23 professor of law at Hofstra, you may or may not
24 have read some of his work on problem-solving
25 justice, makes an interesting point. He

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2 contends that you really should compare
3 problem-solving courts not to traditional courts
4 but to real courts. And that is real life
5 courts, the court, you know, down the street on
6 Centre Street, the Court on Schermerhorn in
7 Brooklyn. That's not to say that cohesive and
8 bad practices are occurring in real life courts
9 that that makes problem-solving courts okay. It
10 is though to just say that some of the -- about
11 problem-solving courts are comparing these
12 courts to these idealized, if not romanticized
13 notions of legal principals. And I think that
14 that's not necessarily the best analysis. So my
15 kind of series of recommendations goes, kind of
16 follows the path of the case. I think that in a
17 good drug or mental health court, the defense
18 attorney should be full, active partners in the
19 development of the particular model being
20 created in any given jurisdiction. They should
21 be part of setting the legal incentives, the
22 legal consequences, dismissal of case, discharge
23 from probation favorably, whatever those
24 consequences may be, they should be part of
25 setting the sanction in sentence scheme. They

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should be part of setting the procedural due process that is due when sanctions or indeed termination are going to be imposed. So they have to be a very full partner in that.

The requirement of guilty plea has often been raised as troublesome and it can be. However, first I would point out that not all drug courts require a guilty plea up front -- nationally more in New York State. And in lesser cases, lower-level misdemeanors, they do not in a diversion model can and is used. As far as ones that do require a plea to plead guilty, it's part of the deal that defense attorneys make all the time. If you feel the evidence is weak, if you feel you want to go to trial, if you feel your client is innocent, or whatever host of reasons that go into making decisions, then you proceed along in normal path. If you find that the "deal" being -- rehabilitation treatment -- whatever the deal is, is desirable based for that client, then you do that. It's cohesive nature of drug courts. I would recommend an opt-out period so that you at least alleviate the problem of clients being

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2 -- position, the withdrawal, they're mentally
3 ill and, you know, do everything you can to
4 ensure that they are, knowing, voluntary and
5 intelligent and then just to make double sure
6 you allow some period for them to opt out.
7 Waiver of Fourth Amendment, most drug courts
8 require a waiver of Fourth Amendment --
9 probation hearings, parole -- I mean not -- the
10 requirements that probationers and parolees have
11 to make, have to waive their Fourth Amendment
12 rights. Recently a bad decision in my opinion,
13 Samson V. California came out of the Supreme
14 Court saying a suspicionless search was valid.
15 My recommendation, however, is that drug courts,
16 good drug courts require some reasonable level
17 of suspicion before they enter the -- before
18 they search the person. Drug testing has to be
19 scientifically reliable confirmation of any
20 contested positive test. Confidentiality of
21 information, the bottom line is, there is just a
22 fundamental -- between open courtrooms and
23 federal confidentiality laws and there is no
24 getting around it. I believe that the
25 constitution trumps when, if there's a conflict

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2 with State law but I'm not sure, I don't want to
3 get into that, but there's a problem. They
4 don't, they don't mesh and so the only thing
5 that you can do is to -- the advice you give and
6 the agreement that is reached one that very
7 clearly includes notice to your client that
8 confidentially, protected information will
9 inevitably come out in a courtroom. Two more
10 things, termination hearings, I believe, again,
11 the law around probation termination hearings
12 kind of governs -- analogous. I believe that
13 any time the participant contests the factual
14 basis for the termination or indeed for -- there
15 should be a hearing that includes due process
16 protection, analogous to probationer's rights.
17 And the -- can you waive those in advance,
18 states differ. I say a good drug court does not
19 allow, does not require you waive that right in
20 advance. Finally, I think that in any case
21 where the participant is going to be terminated,
22 that the participant and the lawyer sign off on
23 that judge hearing, conducting that termination
24 hearing and -- sentence. Drug court, mental
25 health court judges learn a whole lot about

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2 people. It's personal, relationships develop
3 and I think the ability to be a neutral, you
4 know, arbitrator of the facts about termination
5 and about sentencing are seriously compromised
6 -- case has pretty much gone along with that and
7 other cases are suggesting that that should be
8 the case with regard to the sentencing. And's
9 really the whole thing. But that's kind of in a
10 nutshell of the suggestions that I'll make.

11 MR. FOX: Good morning. My name is
12 Carson Fox. I'm a director of operations for
13 the National Association of Drug Court
14 professionals. I have been involved in drug
15 court since 1995 when I first read about -- drug
16 court in South Carolina and I've been with
17 National Association of Drug Court Professionals
18 since 2000 and -- since 2001. What I really
19 want to talk to you about today is what training
20 is available for defense attorneys who work in
21 problem-solving courts and specifically drug
22 courts. I don't necessarily -- Valerie said and
23 I think one thing you should know is that what,
24 when we talk about best practices, we train on
25 best practices all around the country. We have,

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2 there's a series of training I'm going to talk
3 about what those trainings are. I actually
4 brought with me, this is an agenda for the next
5 defense counsel training, which is sponsored by
6 the National Drug Court which will take place in
7 -- Maryland this summer. We have been having
8 these trainings for about 10 years. We
9 typically have between 40 and 70 defense
10 attorneys from around the country come to the
11 trainings and they are four and a half days long
12 and they cover a whole range of issues. I'm
13 going to just quickly read different things that
14 are in the agenda. I will go ahead and tell
15 you, there's no way I'm gonna answer questions
16 about each individual topic area, I host the
17 training and MC it, but I'm not here to teach
18 you about drug testing or -- pharmacology. We
19 talk about, we start talking about the ten key
20 components of drug court which I think you
21 should be familiar with -- and specifically the
22 defense attorney's role. We talk about --
23 issues and one thing that we invite defense
24 attorneys to do at the beginning of the week is,
25 to bring with them all of what they consider to

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2 be the hottest topics in their problem-solving
3 courts, what are the questions that you want to
4 have answered and I'm certain they don't leave
5 that week without getting the answers. One
6 thing you should know is -- have on faculty two
7 or three defense attorneys who have years of
8 experience outside of drug courts but also
9 usually eight to ten years of experience working
10 in drug courts, in other problem-solving courts
11 who serve on faculty. They break the defense
12 attorneys into small groups and work through all
13 their individual issues so they can handle it
14 and that's in addition to all the -- I'm going
15 to talk about here. We also talk about
16 screening and eligibility. What are our best
17 practices in getting your client into drug
18 court, what should you know, what do the
19 prosecutors know, what role should the defense
20 attorney play in that process, what you need to
21 know about getting folks in, including what
22 models are, are -- specifically, what's the
23 defense attorney's role on the team. We also
24 teach the defense attorneys basic --
25 pharmacology, basically what drugs -- so that

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2 they can have an understanding of what drugs do
3 to the brain, drug testing and treatment and
4 within treatment we'll talk about what works in
5 treatment, we'll talk about relapse and what
6 does relapse mean and what does your drug court
7 need to understand about relapse. We will teach
8 about -- disorders, if there's an understanding
9 that whether or not you have a mental health
10 court, there is a huge percentage of individuals
11 who come into drug courts who have -- disorders
12 and that's a reality that you have to face and
13 there's services that need to be available. We
14 also talk about cultural proficiency and this is
15 for the defense attorney to take knowledge back
16 to their team that the team needs to be
17 culturally proficient and understand what issues
18 that clients who come into the drug court are
19 faced with so those issues can be addressed --
20 confidentiality. Val and I both teach on
21 federal confidentiality laws. I don't disagree
22 with anything she said, it -- law professor and
23 say, what do you think. But we do teach best
24 practices and we give people as much information
25 as we can and it's an open forum, there's a lot

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2 -- incentives and sanctions and a lot of that is
3 what Mike referred to in his opening comments
4 about what works in behavior modification and a
5 big sense of what it comes down to is fairness,
6 that the individuals in front of you have to
7 believe they are being treated fairly and they
8 need to have a knowledge of what's going on.

9 What's interesting is, the National Center For
10 State Courts back in 1980's when the court
11 system was being hit with basically bad
12 perception, did an actual study and out of the
13 national study, the thing that people said --
14 wasn't to win; what they wanted was, they wanted
15 to understand what was happening to them and to
16 be treated fairly and with respect. And that's
17 something that we always, we've always
18 approached in drug court as the best practice.

19 Finally, we talk about legal issues
20 and I'm not going to go into that in depth
21 because I know that Bill Meyer testified in
22 Tucson, Judge Bill Meyer, he talked about the
23 due process -- I know he gave you'll a copy of
24 what he's written and that is the basis for what
25 we talk about when we teach legal issues -- so

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2 the best practices that you've heard testified
3 to not only in this set of hearings but also
4 before are what we teach on a national level.
5 We also have a training for prosecutors, one for
6 judges, treatment providers, probation officers,
7 the valuator and drug court coordinators and
8 those best practices are taught to all of those
9 discipline centers -- so the prosecutor
10 understands what their best practices are too,
11 so does the judge, et cetera. And we have a
12 national conference every year. Our national
13 conference is at the end of May where there are,
14 this year, for example, we have 150 individual
15 sessions. There's 24 tracks. Those sessions
16 will cover issues like ethics, they'll cover,
17 basically -- in drug court in that conference,
18 it is hit upon. And finally, when drug court
19 teams start, when they first begin, the justice
20 department has offered NDCI, the National Drug
21 Court -- a set of trainings. Val's been faculty
22 on those trainings for years and so have I,
23 where best practices are taught even before you
24 open the doors to your drug court. Basically,
25 in the family of your drug court, those

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2 trainings are designed to build the policy and
3 procedures from which you work and everything
4 that we've talked about here and referred to are
5 built into those policies and procedures. So
6 hopefully the Smith County drug court in
7 Oklahoma opens its doors today and their entire
8 team transitions over, so five years from now
9 they are all new including the defense attorney,
10 they have the foundation of what our best
11 practice is in place. So they continue to use
12 those -- I just wanted to give you an overview
13 of what trainings are available.

14 MR. JONES: Thank you.

15 MS. LONG: Good morning. I'm Austine
16 Long. I think I met all of you at Tucson.
17 Thank you for having me here and welcoming me
18 back. The other part of training that I'd like
19 to talk about is -- I'm the project director --
20 for adults and family drug courts at the
21 national drug court institute. And after a team
22 goes through the DCPI national drug court
23 institute training for implementation, if
24 they're struggling with any type of issues or if
25 they have new team members that transition in,

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2 whether it be an attorney or anybody in
3 treatment, we provide technical assistance
4 through a grant at no cost to the drug court --
5 and they can get faculty and consultants such as
6 Valerie or Carson to come in for one or two-day
7 trainings and facilitate whatever they have
8 going on in their drug court, whether it's new
9 team members or drug testing, it could be roles
10 and responsibility, team building to get them
11 further along in the process for drug court.
12 The other thing I would like to add is that, in
13 addition to what Valerie said, in my experience
14 prior to coming to NADCP in January this year, I
15 was a defense attorney for adult and family drug
16 courts for the last six years from 2002 to 2008
17 of January. And I had the opportunity to sit on
18 both teams at the exact same time. And what I
19 also find critical is that, the drug court
20 sessions should actually be closed. This is my
21 recommendation, so that you don't actually have
22 to deal as much with the confidentiality issues
23 and anyone who comes in to observe the drug
24 court, whether it's a professional from the
25 Department of Social Services, they are required

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2 to sign a confidentiality agreement while they
3 are there. That's not something that the drug
4 court where I participated in Durham, North
5 Carolina that they did at first, but I found out
6 that was very critical for everyone that was in
7 there that was not a team member or was not a
8 participant, they needed to sign a
9 confidentiality agreement. Because as Valerie
10 said, there's some very sensitive personal
11 information that comes out that could be used in
12 other criminal settings, or with family drug
13 court, it could be used in their CPS case and we
14 don't want that information to get out. The
15 other recommendation that I have is that, at
16 every staffing and at every court session, there
17 should be an attorney there to represent that
18 client. And that's why I believe it's critical
19 that there be a particular attorney that's
20 assigned to that drug court team. I encouraged
21 when I was there for other people's attorneys to
22 attend if they wanted to, if their client needed
23 them to, if they wanted to attend. But one of
24 the critical issues is, sometimes the other team
25 members try to do things and make suggestions

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2 that do affect that client's due process rights,
3 and I'll give you an example of that, now this
4 is more so a family drug court as opposed to
5 adult drug court, but they wanted to incarcerate
6 the person for a lengthy period of time, 30
7 days, because they wanted, we had an inpatient
8 in jail treatment program and not having an
9 attorney there to make the rest of the team
10 understand the rights that the client has would
11 have been detrimental and I was able to say, you
12 can't do that. And so we put a procedure in
13 place where I told them they had to go through
14 the procedure of notice, if they wanted to do a
15 show cause, they had to do a show cause in order
16 to incarcerate someone for that period of time.
17 Now, in adult drug courts, it may not be as much
18 of an issue because they are on probation, but
19 even then there should be some procedure by
20 which proceeding, hearing by which that person,
21 if they are not agreeing to do that, then they
22 can, about which they can have a process if they
23 don't agree to go inpatient. So I think those
24 are very critical things, is making sure there
25 is an attorney always present at all staffings

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2 and all court sessions and also making sure that
3 the court session is closed and confidential.

4 MS. YOUNG: I don't know whether it
5 would be Valerie or Michael, but yesterday there
6 was a lot of discussion of Red Hook. And --
7 now, one thing and maybe I misheard, but I
8 thought I heard Judge Calabrese yesterday say
9 that the defense attorney was not or someone --

10 MR. SCHECHTER: Does not want to be a
11 member of the team.

12 MS. YOUNG: And I thought, I just
13 heard Valerie say it was very important that the
14 defense attorney be on the ground and helping
15 form best practices and be apart of the team.
16 So can you please speak to those two points of
17 view or is it the same point of view done
18 differently?

19 MS. RAINE: Judge -- I know Red Hook
20 very well and I know Judge Calabrese very well
21 and I will say that that is an unusual practice
22 or model. Judge Calabrese is much more, when I
23 say, oh, it's modified adversarialism in drug
24 courts, no, it isn't, you know. He believes
25 very much that that adversarial model should

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2 stay in place and that, therefore, I believe the
3 defense attorney does not participate at their
4 version of staffing. I think they call them
5 something else. And that he or she, you know,
6 stay outside of that to be able to advocate
7 appropriately for, you know, the person's
8 interest. At the same time, I know that the
9 defense attorney in Red Hook very much
10 subscribes to the model of linkage to services,
11 the kind of modified drug court model they have
12 there, rehabilitative model, so it's kind of a
13 different approach for the defense. I don't
14 agree with that. I think you're more at
15 jeopardy of, A, not achieving what the
16 problem-solving courts can achieve in these
17 situations and not representing your client as
18 well. That's just a disagreement about the
19 model. It's nothing personal or criticizing
20 Judge Calabrese. That's his opinion. I think a
21 defense attorney needs to be absolutely involved
22 in every stage of the proceedings particularly
23 in the beginning at admission to the program, to
24 be able to advise that client whether that
25 problem-solving court is something that they

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2 think they can do what they want to do. And I
3 think that that doesn't change throughout. I
4 think they need to be in staffing, I think they
5 need to be at every court appearance, because
6 they can frequently have information from the
7 client that the rest of the team may not have.
8 By the same token, I do not for one minute
9 believe that a defense attorney -- incriminating
10 evidence or information at a team meeting. I
11 think that obligation not to do that is clear
12 and it should be clear to the rest of the team.

13 MS. YOUNG: Here's where I have a
14 problem and maybe it's what drug court talks
15 about in terms of rehabilitation and best
16 practices and best practices with a court and a
17 lot of the literature, and I think what Mr.
18 Rempel was speaking about is that the clients,
19 the people that are going through drug-court
20 focus put a lot of emphasis on the fact that
21 they felt they were being treated fairly and
22 that judge in particular, more so the judge than
23 the other participants, even defense counsel,
24 they really, they want to hear from the judge
25 and they don't want to know that the judge is

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2 hearing them and you read how important that is
3 and how important follow through and
4 understanding relapses in helping someone go
5 through drug court. Now, isn't that the same
6 behavior that should be occurring in regular
7 criminal court, that a judge is paying attention
8 to the defendant and that when someone is being
9 on supervised probation, that the probation
10 department understands the process of relapse.
11 So I mean, we've got two competing models,
12 supposedly, and I'm really not sure why it's not
13 sort of a combined model.

14 MR. REMPEL: I don't know if this is
15 edifying it at all, first of all, your meeting
16 of research is exactly correct in the study of
17 fairness that we did at Red Hook -- that was the
18 finding that the way the judge in particular was
19 rated on a number of fairness measures was most
20 strongly associated with the overall ratings of
21 fairness than viewers of other any specific --
22 now, some of the implications that we drew from
23 our Red Hook fairness study were exactly where
24 you're going, that some of what appeared to be
25 working better in Red Hook than in the -- county

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2 court actually could be exported. And I think
3 where you're going is valid, that one of the
4 lessons coming out of these problem-solving
5 courts experiments particularly with respect to
6 fairness is that there are exportable practices
7 here by a judge communicating in clear non-legal
8 language by, you know, offering the defendant
9 or, you know, personally or through counsel to
10 at least come out of the courtroom with a sense
11 that their perspective was heard by, through all
12 the other things -- process, by looking, by
13 having eye contact from the defendant, lots of
14 very -- things like that all contribute to
15 fairness. I think that we did actually want to
16 draw out that lesson and it appears as though
17 the problem-solving courts are doing this well,
18 if contributing to their better outcomes for --
19 could be exploited.

20 MR. FOX: One thing I want too add to
21 that, you may not know, is that the National
22 Association of Drug Court Professionals, we've
23 work with National Judicial College for years
24 and most of our trainings for years were held
25 there. One thing you might not know is, a lot

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2 of people that teach at our trainings also now
3 teach at the National Judicial Colleges, they
4 are teaching judgment on -- national judicial
5 college about -- so they can have a fundamental
6 understanding of individuals who are in front of
7 them every day. There are other people that
8 teach at the National Judicial College about
9 psycho pharmacology and drug testing, that all
10 judges have a concept of what is going on. I
11 totally agree. I think that we need that sense
12 of fairness across the whole system. I mean,
13 the study I mentioned, the National -- we teach
14 in the drug courts because I teach about best
15 practices in drug courts. I think it needs to
16 be across the board. A wonderful thing that we
17 had seen is now that more and more drug courts
18 have been around long enough that there are a
19 lot of judges -- who served in drug courts and
20 even in their opinions -- that need to have that
21 -- and I've seen judges who either, who have
22 served in drug court before -- where a judge was
23 taking a plea and the person was going to go to
24 prison and it was a drug offense and the judge
25 stopped and said, this person is an addict, have

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2 we considered drug court, because drug court
3 would be more beneficial for this individual.
4 And had the defense attorney -- drug court as an
5 option -- a more fair option than just shipping
6 this person off to prison. In that person's
7 case, it had not been considered. This person
8 is not somebody that had been considered -- find
9 out the person did go into drug court and that's
10 just one example anecdotally of looking at
11 individuals as individuals and making it more
12 fair. And it's one of those things that I think
13 is very difficult -- a system that, as you know,
14 is resistant to change and even though you can
15 show them this has better outcomes for everyone
16 but especially for that person, this person in
17 the system, it's difficult. But in my 10 years,
18 12 years of working in drug court, I've seen an
19 amazing shift, I guess -- should always have
20 been.

21 MS. RAINE: I would like to quickly
22 add, I agree, and there's a lot of discussion in
23 the field about the principals in
24 problem-solving courts can realistically be
25 spread and exported to other courts, but there

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2 are certain practices in the courts that the
3 regular system simply does not have the time for
4 and one of the most critical ones is this coming
5 back before the judge all the time, which has
6 been shown to me maybe the single most important
7 factor in success.

8 MR. SCHECHTER: In a regular AP part
9 here in New York where you have a calendar of
10 130, the idea that the judge would look a
11 defendant in the eye would be astounding. The
12 judges don't even look me in the eye.

13 MS. RAINE: We understand that that.

14 MR. JONES: That's totally
15 understandable.

16 MS. BERNHARD: I'm going to be
17 showing my ignorance here again and not for the
18 first time, but I missed the afternoon yesterday
19 so I didn't hear from Judge Calabrese who I, I
20 wanted to hear from. But one of the differences
21 I think between the drug-court model and the Red
22 Hook model is that it's not, I mean, isn't the
23 community court in Red Hook dealing with a
24 variety of different kinds of issues? It's not
25 a strict -- I mean the drug courts --

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MS. RAINE: No, it's not. You're right.

MS. BERNHARD: The drug courts are, I mean, are very clear in their goals. These people are addicts, we need to get them off drugs. There's this real focus here on changing behavior, which makes the drug court very different from other courts of problem-solving courts. I mean, it's one problem. Even though everyone is a unique individual and everyone's family is different and everyone's drug addiction is different, we're dealing with drug addiction, we're putting a tremendous amount of energy and resources and thought and study into basically what it comes down to is rehabilitation. So in a certain way, it's easier, I suppose; we've had years of looking at it now to think about best practices, the same kinds of issues are going to come up and we're going to get ways of doing it better and ways of thinking about it and being able to think about people. These other sorts of courts I don't know exactly what they are, I mean, I don't know really what a community court means, there are

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2 all different communities and all different
3 locations so I'm not sure what lessons other
4 than this lesson of the judge being a very
5 important character in every one's life, what
6 other sorts of lessons we take from the
7 drug-court model and apply to these
8 problem-solving community court models and I
9 don't know what lessons we learn about the
10 training of the defense attorney and how that
11 applies and I could see why Judge Calabrese
12 would have a different kind of reaction in the
13 community court. And I don't know whether that
14 triggers any thoughts on your side but I see
15 them as very, very different situations.

16 MS. RAINE: Community courts do raise
17 -- I mean, they are different types of courts.
18 Community courts, although you're right, they're
19 very different by and large sprang out of this
20 frustration on the low-level offenses of the,
21 you know, spinning through the door --

22 MS. BERNHARD: Wants to spend time on
23 all these cases.

24 MS. RAINE: This can't be right,
25 let's try something else. So the two essential

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2 pieces of community courts are combining
3 punishment with help. There should be a
4 response to the fact that somebody peed in front
5 of somebody's house, or there should be a
6 response to the fact that they're throwing their
7 -- and their condoms around. So they should
8 have to do community service or they should have
9 to do something that is, you know, an
10 accountability thing. By the same token, they
11 should be linked to the services that they may
12 need, whether it be substance abuse, whether it
13 be homelessness, whether it be mental health
14 services, educational services, training;
15 midtown does. So it's the idea of trying to do
16 something that combines those two things rather
17 than do what the judicial system has
18 traditionally done, which is nothing, you know.
19 So I mean, is it right, is it wrong, does it
20 cause net widening, probably. Does it run the
21 risk that judges start meeting with community
22 leaders and, you know, things get too chummy,
23 yes, and that's why you need to have very
24 careful, strict procedures in place. You don't
25 have judges off meeting with community leaders

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2 on their own, you know what I mean. You have a
3 prosecutor there, you have a defense attorney
4 there, you build in safeguards, but I don't
5 think you throw out community courts because
6 they are risky, the whole criminal justice
7 system is risky.

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MS. BERNHARD: We're trying here to
9 kind of focus on the role of the defense
10 attorney. I could see why you could sacrifice
11 the role in the community court differently
12 because I mean, theoretically, you're handling
13 lots of different kinds of cases and lots of
14 different kinds of clients and there were less
15 of, I would expect although again I'm happy to
16 be educated about this, I would expect that
17 there's less of a sort of a one-size fits all
18 approach to these different situations because
19 there's a variety of different things happening
20 in the community. I mean, I guess again there's
21 a stern kind of behavioral modification. We
22 don't want you to throw your garbage around and
23 you will be punished for this, that's a
24 modification, follow the rules, you know, we're
25 all in the community together. But they are

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2 different rules and different responses to the
3 different rules that are being broken.

4 MR. REMPEL: Just to add to Valerie's
5 comments and your comments, what does certainly
6 distinguish community courts is that the impact
7 that -- is not exclusively about the defendant,
8 it's also about the community. And so, for
9 example, community courts -- extensive use of
10 community service. That particular sanction is
11 not done to rehabilitate the defendant. We
12 don't believe that that kind of effect will take
13 place viz a viz the defendant we think that, you
14 know, the effect of community service is
15 basically that it served as an alternative
16 sentence to maybe a short-term jail sanction and
17 then on the other end of the spectrum, to
18 nothing, like a conditional discharge with no
19 conditions attached. So that's the effect with
20 respect to the defendant. But the substantive
21 effect that's, I think, philosophical by the
22 community -- community restoration. So that's
23 part of what's going on. And then the reason,
24 and then following up, I think, on your initial
25 comments precisely because community courts --

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2 problem but -- effect on the community that
3 means that by definition, every community court
4 model is different than, it should be different
5 if it's --

6 MR. SCHECHTER: I just had a series
7 of very specific questions and some will -- some
8 discussions. Let me just get the specifics out
9 of the way. The Baltimore county study, can you
10 get that for us? Just tell us where we can get
11 it and Scott -- is our top guy on this? If you
12 can get that --

13 MR. REMPEL: Sure. I'll follow up.

14 MR. SCHECHTER: That would be great.
15 Second, everyone seems to agree that regular
16 stakeholder meetings are good. Is that correct?
17 Is that good on an ongoing basis? Once the drug
18 court is set up, once the mental health court is
19 set up, Legal Aid, the prosecutors, the judges,
20 the administrators should have quarterly
21 meetings, monthly meetings? That's a good idea.
22 So if the NACDL said -- at the end of all of
23 this, if you have a Legal Aid office, you're a
24 public defender, you're a member of the private
25 bar -- courts committee of your bar association,

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2 you should be, if you want to have a drug court,
3 you have to agree that stakeholder meetings are
4 necessary. Is that fair?

5 MR. FOX: Yes.

6 MR. SCHECHTER: Now,
7 confidentiality --

8 MR. JONES: Did you want to add
9 something to that?

10 MR. REMPEL: Well I actually want to
11 -- to the two answers, unlike, for example, some
12 of the other practices I talked about where
13 there's actually been, for example, controlled
14 experiments and testing impact of these
15 practices, there's no controlled experiments
16 that, you know, takes a site and, let's say, has
17 half the cases in the drug court and -- or even,
18 not necessarily something that vigorous but I
19 just want to point out there's a -- but both for
20 the drug courts and, for that matter, domestic
21 violence courts people who have done process --
22 that all the stakeholders and participants
23 themselves appear to have more positive
24 attitudes about what's going on.

25 MR. SCHECHTER: Aside from research,

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it's just a good business model to hear from everybody.

MR. REMPEL: Right. Right. Right.

MR. SCHECHTER: Let me ask you, Valerie, and you at this point because you're defense attorneys. This business of making a decision as a defense attorney should my client go into drug court or not, right, now in Brooklyn, for example, if you're charged with a felony drug crime, within 24 hours you're in the drug court felony part. That's astounding speed for the City of New York. There's only one problem, the defense attorney knows nothing about the case. Now, it's true that in regular cases the defense knows nothing about the case. We make decisions every day in this town where we have to decide should the client testify before the grand jury or not, which is pretty critical and we do it all the time without any information except what the client is telling us. On this issue of making a decision, would either of you favor a ten-day delay between the time that the person is arrested and the time that the defense attorney has to make the

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2 defense and -- to the drug court, a ten-day
3 delay for meaningful discovery to be given to
4 the defense attorney so he or she could advise
5 their client appropriately? Would that be a
6 good idea or a bad idea?

7 MS. RAINE: It's a medium idea.

8 MS. LONG: I think it's a good idea.
9 Based on my experiences and clients that have
10 come into drug court for various reasons, I need
11 that time to make sure that my client, first of
12 all, is competent. I need to time to make sure
13 they are not high, in addition to getting
14 discovery and information from the prosecutor
15 and also gathering information from their
16 family. I mean, there's, I find that I've got
17 so much information from so many different
18 people that you definitely need that time to not
19 help, just help yourself but to help the client
20 make a good decision about what their options
21 are.

22 MS. RAINE: I'm reluctant to put a
23 time on that, you know, you recommend, ten days
24 isn't enough, you know what I mean.

25 MR. SCHECHTER: I have an answer to

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2 that. In Philadelphia if you don't get the
3 discovery to the defense attorney within ten
4 days, then the defense attorney can opt in with
5 the client to the drug program and assume
6 thereafter as they get the discovery, they can
7 make a reevaluation and they can opt out.

8 MR. JONES: You mentioned opt out in
9 your remark. Just tell us what you meant --

10 MS. RAINE: What I meant by that was
11 claims, I mean reasonable ones that can be
12 created, cohesive atmosphere, you know, your
13 liberty, you've got to do this treatment and
14 people don't know what the hell they're thinking
15 about at that point. So even notwithstanding
16 the best advice of counsel and everybody trying
17 to do the right thing, you end up in drug court
18 and you go, oh, my God, I do not want to do
19 this, you know, that you have a sort of ten-day,
20 two-week, you know, you can't have six months
21 but, you know, some reasonable period to opt
22 out. But I do, would like to say as far as
23 Marvin's question, I mean, our recommendation
24 and our just completed, recommended practices is
25 that it is very important to get the person into

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2 treatment as soon as possible, as close to
3 crisis, I'm sure you heard that. So long as
4 defense attorney has whatever time he or she
5 needs to make, you know, to give sound advice
6 and make an appropriate decision. So in some
7 cases, that might be two days, in some case it
8 is might be a week, in some cases it might be
9 two weeks, you know. I think absolutely defense
10 attorneys should have time. I also think there
11 should be open file discovery which there is in
12 -- which is one of the conditions of doing that.
13 I mean, the DA literally, you know, goes, here,
14 you know, not that they have --

15 MS. BERNHARD: I was going to say
16 there's nothing in there.

17 MS. RAINE: What I'm saying, you
18 really need to have a model that reduces as much
19 as possible the gamesmanship, the traditional
20 gamesmanship. And you need to have sufficient
21 time and that's whatever time it takes. So, no,
22 I don't want to do ten days, I want --

23 MS. SHIFMAN: Just to follow up on
24 what you just said. How do you -- and I
25 appreciate everything that you said. But how do

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2 you as a defense lawyer get a knowing and
3 understanding of -- to waive all your rights and
4 go into drug treatment when your client is
5 potentially, completely under the influence,
6 can't think straight, maybe has some -- that
7 within five minutes of meeting him -- something
8 is wrong here, I don't know what it is --

9 MS. RAINE: The same way I did it for
10 14 years before I ever set foot in a drug court.
11 The people coming through arraignments are no
12 different today from what they were in 19, you
13 know, however many, hundreds of years ago I
14 practiced and you do the best you can. You try
15 to make sure that your client knows, you know,
16 is oriented three by three, you try to make sure
17 they are making a competent decision, you try to
18 make sure you have enough information. Can I
19 ever be sure or was I ever positive, no, you
20 know, but I think that that's what defense is
21 about. You know, you work with what you have
22 and you do the best you can to make sure that
23 the person is doing the best thing. I'm not
24 trying --

25 MS. SHIFMAN: I appreciate it.

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MR. SCHECHTER: I have one last question. It's in the area of ethics. It's pretty clear to me, and we've heard a lot of stuff all over the place, but there are certain baselines that are included, one is the -- of ethics from the APA, New York State, Arizona, there's no exception in there for a defense attorney to give up confidential information -- that's pretty clear. We had a Florida, the head of the Florida association criminal defense lawyers suggest to this panel that perhaps new guidelines or new ethics rules should be promulgated, even at the APA level to put in something like that, so that you reduce the -- the anxiety, the -- that many of the NACDL members across the country are having on this issue. So I'd like to hear, if that's ever been discussed, if that's ever come up, does anybody think that this panel should make that recommendation. That's number one, number two, it's clear no matter how you tip toe around it and your organization, the National Association of Drug Court Professionals, we have a lot of literature on this. One of the things that even

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2 influenced us to even take this study was the
3 more we read about this conflict, the more we
4 think people tip toe around, nobody wants to say
5 anything, everybody puts out the literature and
6 says, defense attorney has an -- defense
7 attorney shouldn't give it up -- we did this
8 with Calabrese yesterday. In open court not one
9 defense attorney I know would stand in a normal
10 case for a judge turning to the client and
11 saying, tell me what happened, you had an
12 argument last night and went out and you bought
13 cocaine and the client says yes and the defense
14 attorney is standing right there in open court
15 with the court reporter typing away. This goes
16 to the heart of what we do as defense counsel
17 and yet, it goes on. As you said, Valerie,
18 there's this huge conflict between federal law
19 and open discovery, open information. How do we
20 deal with that? I'd like to hear from the
21 National Association because you guys have the
22 most literature.

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MR. FOX: First of all, when Valerie
was mentioning -- there's a couple different
things and one thing we talk about federal

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2 confidentiality laws, she and I are actually
3 referring to those actual confidential laws that
4 govern treatment -- HIPPA and all that -- which
5 is a whole different ball game. I also teach a
6 little bit about -- with the drug court and when
7 I talk to the defense attorneys, first of all,
8 in what, if I'm the defense attorney and I was a
9 defense attorney for several months before I
10 started working for the judge and when on to
11 drug court, to my experience is like months, not
12 years, (laughter), this is what I, basically
13 when I teach all the time, is that when you come
14 into drug court and you're on the scene, you
15 wear the drug court hat but you cannot take off
16 your regular hat. If you are a judge, you can
17 not dismiss the model of judicial hands -- if
18 you're a defense attorney, you're a defense
19 attorney. And so you're going to have conflicts
20 when you go into treatment as well. In the
21 treatment laws, it's very clear -- I'm your
22 client, you're my defense and she is my
23 treatment provider, that consent says that she
24 may give information to the team and she knows
25 that ethically she can only give what's

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2 minimally necessary to comply, which means that
3 you are not going to know it's my defense
4 attorney, everything I tell her because she
5 can't give you everything, she is limited to
6 what she, the minimal requirements are. So she
7 has to be able, she'll get certain things. She
8 is going to run into an ethical dilemma -- in
9 staffing because I might talk to her this week
10 about how I was sexually abused as a child, is
11 that appropriate for staffing. Well, I think --
12 I can think of a lot more worse situations where
13 it's not. It's not an issue for defense
14 attorneys, for treatment it's an issue to -- for
15 example, I'm cheating the drug test, let's say
16 that I'm using some sort of additive or I tell
17 you that they're not, they're supposed to be
18 doing observed-drug testing and they are not
19 doing it and, I'm like, I need to get clean, I
20 need to do something here, but I'm able to now
21 figure out a way to get underneath the system
22 here and I can do that. I tell defense
23 attorneys, I tell people in California, the
24 other day, if I tell my defense attorney that,
25 my defense attorney has on obligation to keep

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2 information that I tell them confidential. And
3 so that person is not going to necessarily come
4 to your staffing the next time and say Carson is
5 lying and cheating the drug test. That defense
6 attorney may have all kinds of other issues we
7 discuss in the defense attorney training all the
8 time, what happens, you don't want to have your
9 client perpetrate a fraud on the court. But in
10 drug court, fortunately they are not. That
11 individual may come in front of the judge and
12 the judge -- you're doing a great job, do you
13 have anything to add, no, your Honor -- all I
14 said was, no, your Honor, I don't have anything
15 to add, because you know what, I don't.

16 (Laughter) And I tell people all the time, the
17 defense attorney, you need to understand what
18 their ethical obligations are and we teach this
19 to drug court teams all the time, because if you
20 don't have an understanding, when it comes out,
21 because it always comes out because eventually
22 I'm going to turn to her as my treatment
23 provider and I'm going to tell her and I'm going
24 to say I told Laura this three months ago and he
25 has been telling me to come clean with the team

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2 and be honest -- she can be angry with you
3 because she has to understand that that sheet
4 that I signed to let her give information away,
5 you don't have such a sheet. There's no form
6 that you can go to the back of the "regulations"
7 and pull out that gives away attorney/client
8 privilege that I can just sign off and give it
9 away. And so I can -- but there's a difference.
10 But what I also teach them is, the defense
11 attorneys have to decide just like a treatment
12 court has to decide what's minimally necessary.
13 I mean, we're lawyers. We can drive three 18
14 wheelers for that, what is minimally necessary
15 -- a defense attorney has to decide what
16 information and how to get it. I talked to some
17 attorneys who might say that, I talked to
18 somebody who have made up their own forms for
19 clients to waive attorney/client privilege and
20 get the information, I have talked to some who
21 won't go back or they'll say in staffing, I have
22 reason to believe that we need to up our
23 drug-testing procedures or -- I have some that
24 won't do that until after that person has
25 graduated or come clean with the information or

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2 being terminated from the program. And defense
3 attorneys are making their own decisions about
4 what they can do. But the idea that a defense
5 attorney will give up being a defense attorney
6 to be part of the drug court isn't realistic.
7 And I get pushed back from people in the field.
8 I think very, very recently an attorney in New
9 York where someone asked me, well, how can we
10 have the drug court if we don't have all the
11 information. If I don't know everything about
12 this person, how can they possibly be
13 successful, and my answer to that is, you are
14 never going to know everything. Until you can
15 cut the person's head open and spill the
16 information out on the table, all you're ever
17 going to know is what I tell my treatment
18 provider and what I tell you and let you share
19 and we'll share with that team. You never --
20 more than that plus what I'm willing to share.
21 There's all kinds of secrets we all have -- I
22 guarantee with your clients, there are secrets
23 that they are not telling us, but we do the best
24 we can and drug court is about doing the best
25 you can. It's not about a judge violating

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2 judicial hands or violating the law to do
3 certain things or, God forbid -- defense
4 attorney -- but it's about within those
5 parameters doing the best you can. And what I
6 see typically in drug courts is that, most drug
7 courts are doing a darn good job with that and
8 the information is there -- your comment will
9 probably be, Carson, you came into this program
10 to get clean and sober, if you keep doing this,
11 you are not going to get clean and sober. Right
12 now, you are, you could graduate this program,
13 and you could get arrested the next day because
14 you are not going to get where you need to be.
15 Is that where you want to be? Are you going to
16 be honest with the team or not honest with the
17 team? That's the kind of things that I see
18 defense attorneys doing when I enter -- look,
19 you are going to have to be honest, there's all
20 kinds of things like drug testing and stuff like
21 that, but you may not ever decide that she can
22 tell the team --

23 MR. JONES: We're running up against
24 the clock.

25 MS. KELLEY: We had testimony

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2 yesterday from a couple of gentlemen who were
3 very much of the mind that no matter how
4 successful our problem-solving courts are in
5 terms of projecting an image of fairness to the
6 community, they do absolutely nothing because of
7 their very nature about curing the problem of
8 police misconduct and indeed because of the
9 waiver of so many pretrial issues in order to be
10 admitted to a particular type of problem-solving
11 court. Those courts are indeed condoning that
12 behavior or at least putting a rug over it.
13 Could you react to that?

14 MS. RAINE: It is -- I would
15 absolutely agree that if the entire criminal
16 justice system became one, you know, industrial
17 straight waiver then, yes, you lose the check on
18 police conduct that is part of, you know, Fourth
19 Amendment protection. So, yes, I, I don't see
20 maybe my few -- but I don't see drug courts or
21 mental health courts anywhere near the scale
22 where it is realistically going to impact police
23 misconduct. Again, going back to cases, I
24 represented long before drug courts, that was
25 probably -- cases where I waived, I waived

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2 appeal, I waived speedy trial, I waived 180.80,
3 I waived everything you could think of in order
4 to get a plea and that was to prison. That
5 wasn't to go to treatment because I, you know,
6 thought the best of my experience and ability
7 that that was the best deal, you know. So
8 waiving rights is not an invention of drug
9 treatment, you know, it happens every single
10 day. So, you know, so I agree.

11 MR. JONES: Last question. Last
12 question goes to Adele.

13 MS. BERNHARD: Your training, defense
14 attorneys, when they come in to, before they
15 start in the drug courts, right?

16 MR. FOX: Both, when they come in and
17 while they're in sometimes.

18 MS. BERNHARD: We're going to be
19 focusing on what kinds of things we can say
20 about the defense counsel and to defense
21 counsel. What kinds of issues and problems are
22 you seeing defenders having? Because I'll tell
23 you one thing, I think from my work, training
24 people over a year is that defenders aren't
25 generally the best counselors in the world.

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2 Okay, they go to law school where they get
3 trained to be kind of confrontational and
4 analytical, and not really, they don't get a lot
5 of help with interpersonal skills, they are not
6 going to social-work school or getting a Ph.D.
7 in psychology and now we're putting them in an
8 environment where those kinds of skills actually
9 are the ones that will be useful and valued.
10 Some of them may adapt and do perfectly well
11 because that's the type of person they are, but
12 generally speaking, I don't see defenders doing
13 excellent counseling work. So I'm wondering,
14 you know, how are we kind of pushing people into
15 this pigeon hole, how are they doing, what
16 should we be talking to people about?

17 MS. LONG: One of the things that I'm
18 hearing from defenders is getting the rest of
19 the team. This is where training is crucial to
20 understand their role and what their job is.

21 MS. BERNHARD: So they feel on the
22 outside.

23 MS. LONG: They feel on the outside.
24 They feel they are not respected. And that's a
25 process, and I'm so glad Carson said everything

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2 he said because when I first started out in drug
3 courts, I would routinely stand up and say, you
4 don't have to answer that question if you don't
5 want to, you know, that's something I don't
6 think you should discuss with the judge. And,
7 you know, the team, they cringe and that was the
8 process. So then I started spending more time
9 with my clients individually before they started
10 in drug court to just educate them, if you don't
11 feel comfortable speaking about this, you don't
12 have to, and understand if you say this, this
13 could affect you in a number of ways. So I
14 think that's one of the number one things. The
15 number two thing is, they don't understand
16 treatment, they don't understand, attorneys
17 don't understand addiction. They don't
18 understand manipulative behavior from a
19 substance abuse perspective. They may from a
20 criminal justice perspective but not from an
21 addiction perspective. So I think that's the
22 two critical things that they are really
23 struggling with is that everybody else on the
24 team with the exception of maybe treatment
25 providers, they get treated a little differently

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2 too sometimes. Everybody else on the team sees
3 them as this, you know -- you're right --
4 outsider, that they don't, they're not being a
5 team player and I think there's a line where
6 they can do both, that the defense attorney can
7 be a team player and they can also represent
8 their client.

9 MR. JONES: Thank you all very much.
10 We should start. We're missing half of our --
11 but I'm assuming they will be joining in
12 shortly. Adele joined us. We're going to
13 start. Let me start.

14 MS. SHIFMAN: Yes. Go.

15 MR. JONES: As I did yesterday in the
16 interest of full disclosure, obviously you all
17 can see, Kristin and Analisa work with me at NDS
18 and part of the reason that the organization is
19 as great as it is as does Thomas Giovanni
20 (phonetic) who is one of our supervisors
21 attorney who is here. Let me also say that we
22 are in less auspicious digs today than we were
23 yesterday and that is because we were across the
24 hall in the big room, the fancy room. You guys
25 are here today because they tell us that there's

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2 going to be a party this afternoon so I now have
3 a vested interest to making sure that party is
4 successful. So I'm inviting all of you to that
5 party across the hall later on this afternoon.

6 You are all welcome to join us and you can

7 actually see what the room looks like. The way

8 that we work these hearings, and this is our

9 second day in New York, is that we give each of

10 you about five minutes to give us the benefit of

11 your thoughts, an opening statement after which

12 we have lots of questions that we want to ask

13 you and, particularly, you guys, we have lots of

14 questions that we want to ask you. And the way

15 we operate in terms of questioning is that, one

16 of us leads the questioning and starts you off

17 and in this case you guys are lucky and

18 fortunate that Gail Shifman is going to be the

19 one who does the questioning. So having said

20 all of that, the floor is yours. Decide amongst

21 yourselves who wants to start.

22 MS. HEAVEY: Well, I'll start and --

23 MR. JONES: The one thing I forgot,

24 this is all being recorded.

25 MS. HEAVEY: Analisa and I have

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2 obviously discussed sort of our thoughts and I
3 think we're going to try and break it up a
4 little bit so that we don't duplicate too much.
5 I will talk a little bit about how
6 problem-solving courts work in Manhattan, which
7 I'm sure you heard from other people but from
8 our perspective there are, there's IDV, which is
9 a new courtroom for misdemeanor domestic
10 violence and family court issues, that is --
11 that we are trying to wrap our heads around now
12 and then there are the -- MTC, which is
13 Manhattan Treatment Court, that is running out
14 of the Part-N -- prosecuted by the special
15 narcotics office of the DA's office and for
16 non-predicate defendants. And there's DTAP
17 programs which is not necessarily in a specified
18 courtroom. DTAP, there are some courtrooms that
19 are essentially focused on DTAP clients, drug
20 treatment, drug treatment alternatives to prison
21 and those are for predicate felons who have been
22 arrested by either or being prosecuted by either
23 the Manhattan DA's office or special narcotics.
24 There are two branches. But someone could get
25 in the DTAP program in really any of the supreme

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2 criminal court parts so it's not necessarily a
3 dedicated court part, but it is a dedicated
4 program that's run by the courthouse. I guess I
5 will start by talking about IDV. And my
6 experience, I've spoken with Mr. Bomba before
7 hand, I think my experience and Analisa's
8 experience is a little bit more negative with
9 IDV in Manhattan and it's possible because it's
10 a new courtroom and people aren't quite sure how
11 it's going to work.

12 MS. SHIFMAN: IDV.

13 MS. HEAVEY: Integrated domestic
14 violence. So essentially what happens is,
15 somebody gets arrested on a criminal complaint
16 and they either had a family-court issue or
17 subsequent to the criminal court can end up with
18 a criminal-court issue. So far, we have seen
19 essentially married couples or partners, parents
20 of children end up in IDV. I do think it's
21 possible, although I haven't actually seen
22 anybody to have, you know, perhaps if there were
23 two sisters who had one of or both of them had a
24 criminal-court complaint against the other and
25 then they had some kind of a visitation or

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2 housing issue, either some kind of a
3 family-court issue that they may end up in IDV.
4 But so far I have seen it be the parents of the
5 child who had a family court either divorce,
6 visitation or custody, child endangerment, issue
7 of family court. And you have a somewhat
8 related domestic violence criminal court issue,
9 they would get scheduled from Part-D, which is
10 where the domestic cases go; misdemeanor cases
11 go up to IDV and the family-court case would get
12 moved to IDV. One of our concerns as public
13 defenders is that, this is a courtroom where
14 everything comes out. Normally in criminal
15 court you get some of the information about the
16 complaint from the DA's office and you have your
17 client and you make your arguments, but the
18 judge there is ostensibly neutral, I'm not
19 saying necessarily that they don't have -- or
20 feelings either way, but in family court there's
21 a very different standard to prove and a very
22 different amount of information that comes out
23 in front of the judge. When we moved everything
24 together to IDV, you have to judge who is
25 supposed to be neutral in a criminal-court

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2 matter but who is also hearing all of the
3 family-court issues and that includes a lot of
4 very personal and what otherwise, information
5 that otherwise would not come out in criminal
6 court about both the defendant and the
7 complaining witness. And it is a somewhat messy
8 situation in that you have a judge hearing, you
9 know, that your client tested positive for
10 marijuana or for opiates or misbehaved at
11 supervised visitation and she is hearing that in
12 the context of family-court decision about what
13 to do with visitation of the child and those
14 types of thing and who is then the same judge
15 who is supposed to decide bail action who is
16 supposed to make, you know, either make an
17 offer, not an offer but a recommendation on if
18 your client wants to resolve the case with a
19 plea to the charge. And I find it hard to
20 believe that that judge can separate those two
21 goals. One of the other things that is a
22 concern for us is that, you get parties who are
23 opposing who end up in the same courtroom and
24 they have orders of protection against each
25 other, obviously these are generally very

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2 contentious relationships and they're literally
3 all sitting in the same courtroom. My client
4 normally would -- is the male partner although
5 that is not always -- it's not always the case.
6 I have female clients in there as well. I would
7 say most of the time it's a male client because
8 the other partner on the other side of the
9 courtroom is with their lawyer. You have the --
10 if there's a child involved and it's not a
11 divorce case, it's some kind of visitation case.
12 You have the children's lawyers there, you have,
13 often times, a program representative there
14 depending upon who is involved doing what and
15 you have the DA's office there and it's, it can
16 get to be a little bit of a disaster, you're
17 trying to keep your client over here, the
18 complaining witness is over there, they're
19 listening to what you're saying -- I'm standing
20 up there and telling the judge all the reasons
21 why I think bail shouldn't be set or the case
22 should be dismissed or the DA owes me certain
23 information that's favorable to my case because
24 the complaining witness has been, you know, has
25 problems in the background or the DA has some

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2 evidence that the complaint she made is not true
3 and then two seconds later that complainant gets
4 up there and is talking about family-court
5 information. And it's, it is one of those
6 things where it's kind of a contaminated
7 environment. I think the idea behind this court
8 was that, it would be more convenient for people
9 and they would have one courtroom they would go
10 to for family and criminal-court issues instead
11 of going to both parts. I don't know that that
12 has resulted again because it does bring a lot
13 of issues into one courtroom. It makes those --
14 very contentious. There are also a lot of
15 scheduling issues because of the amount of
16 attorneys involved so you will sit there and
17 literally pick five or six dates as to when you
18 could come back -- it doesn't work for me. I'm
19 in the court in the Bronx and cases sort of get
20 dragged out much longer than they would -- so
21 thus far, my experience in IDV has been somewhat
22 negative. It is a new system but I'm not sure
23 that it's reaching the goals that's set for it
24 or that those are really, that those benefits
25 would ever outweigh the negative --

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MR. JONES: I want to ask you one question for point of clarification. When -- does the prosecutor serve as both the prosecutor and corp. counsel or is there a separate corp. counsel?

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MS. HEAVEY: There is a separate corp. counsel.

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MR. JONES: There's a separate corp. counsel?

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MS. HEAVEY: Yes. And sometimes I would state the family-court information because I'll get more discovery that way that I would never get in criminal court. That would be a benefit --

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MR. SCHECHTER: Do you represent the defendant in the criminal case and also the same individual as a respondent to the family-court case?

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MS. HEAVEY: It depends. I'm not cross certified to do the family-court cases. There is an attorney obviously who does the work cases and so the last client that I had in IDV, I had a criminal-court case, she has the family court case, we can communicate but it's two

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2 separate people. There are attorneys from Legal
3 Aid or from the 18-B panel who have been cross
4 certified to be in family court and criminal
5 court. So if that's the case, then they would
6 represent the person on all issues.

7 MR. JONES: And sometimes they will
8 call the criminal-court aspect of it and then
9 you will leave and you will do the family-court
10 aspect later and your client will sit there --

11 MS. HEAVEY: Yes. Normally, they
12 call the criminal-court aspect first. If it's a
13 cross complaint, what I mean by cross complaint,
14 meaning my client has a complaint against that
15 partner, that partner has a complaint against my
16 client, they will just pick one, call that one
17 first, then call the second criminal-court
18 matter, then call the family-court matter where
19 everybody comes up. You do have to hangout for
20 a little bit because when picking that next
21 date, everybody has to be in agreement. So, you
22 know, there is a corrugation aspect, sometimes
23 there's a delay where the family-court matter
24 will get called or somebody is unavailable, in
25 that case sometimes they do have to leave.

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2 MS. SHIFMAN: Do you view and is it
3 described as a problem-solving courts at IDV?

4 MS. HEAVEY: Absolutely not. I don't
5 understand that what happens there or is any
6 different than what happens in Part-D is the
7 criminal-court part that deals with domestic
8 violence cases. It's the same programs that are
9 offered --

10 MS. SHIFMAN: It it's really just,
11 it's victim oriented. And it's for that
12 efficiency of the court so that a judge knows
13 what's happening on both parts.

14 MS. HEAVEY: Yeah, I think it's
15 supposed to be a scheduling benefit in that and,
16 again, I think one of the thoughts was that it
17 is very difficult for people to get to court,
18 they have to take days off from work, they have
19 to get child care and it would make sense for
20 them to come one day and deal with everything.

21 MS. SHIFMAN: Is it promoted through
22 the court system as some sort of a
23 problem-solving court because it doesn't sound
24 like one? It sounds like a docking court.

25 MS. HEAVEY: I think it's promoted as

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2 a problem-solving court -- in fact, I find
3 sometimes the penalties in IDV are, or the cases
4 that, in criminal court would otherwise run out
5 of time. In New York, it's called 30.30.
6 That's the statute. They would run out of time,
7 either because the complaining witness is not
8 cooperative or because the DA knows this is not
9 a strong case for them. They're usually
10 hesitant to dismiss the cases up front or
11 they'll let it run out of time. That's
12 something that doesn't happen in IDV because --
13 although it has happened where they said my
14 complaining witness is not available, that would
15 be three rows back in the courtroom. But for
16 the most part, cases that would otherwise run
17 out of time get dismissed, get dragged on and on
18 and on because the -- drop the case. They can't
19 not show up without dropping the companion
20 family-court matter and often that involves
21 child custody and --

22 MR. SCHECHTER: From just a -- as to
23 the detriment of the criminal-defense point,
24 because we would normally make the 30.30 motion
25 plain old criminal court.

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2 MS. HEAVEY: Yes.

3 MR. SCHECHTER: In the court's point
4 of view, this is a good thing because we don't
5 have to dismiss these kinds of cases.6 MS. HEAVEY: It depends. It sort of
7 depends on how you view family issues, how
8 paternalistic you want to be here. Sometimes
9 complaining witnesses -- they don't want to
10 proceed with the criminal-court case, they want
11 to resolve the family-court issue, they have no
12 choice in that matter anymore. It's all the
13 same form.14 MR. JONES: We should move on to Mr.
15 Bomba. Did you have any concluding things you
16 wanted to say?17 MS. HEAVEY: We can wrap up during
18 questions.19 MR. BOMBA: Well, I had experience
20 arguably in three special courts, the first
21 would be as a capital defender or defender of
22 capital cases in Chicago in the early eighties.
23 That was a diverse program that everyone is
24 pretty much against -- I was in IDV for about
25 five years, a job that nobody else wanted to do.

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2 Now, I work in the Bronx and people seem to
3 observe that we do things differently than we do
4 in Manhattan in the Bronx. A theory I heard
5 behind IDV in the Bronx is, one family, one
6 court. Now, in terms of the way perceived in
7 the Bronx, we do have the circus of attorneys,
8 very often you have five attorneys, you will
9 have -- the mother's civil attorney, the
10 father's civil attorney, the prosecutor and the
11 criminal defense attorney and scheduling can get
12 sloppy the way they deal with it in the Bronx.
13 I don't know if you're going to be speaking with
14 Judge Keeble (phonetic) but she sets discrete
15 time slots for people to appear and that, it is
16 not a cure, but it is a sign post that does
17 help. Now, I was the first person in the IDV in
18 the Bronx and I was counseling people who, when
19 they were about to start the IDV in Queens, I
20 used to work there, I have friends there and the
21 experience of both sets of people both in Queens
22 and in the Bronx were that most, many of the
23 concerns that have been stated that the client
24 is going to have a mixing the of the waters,
25 that there's going to be a spillover. There is,

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2 however, a very strong, practical, I felt a
3 strong, practical benefit to the IDV, the way it
4 was run in the Bronx and it has something to do
5 with the unbearable ambivalence of the
6 complaining witness. They show up and you
7 actually see them. I mean, in Illinois, we have
8 open file discovery which meant that any time
9 you did something, any time the prosecution did
10 something, you would know about it. As a
11 practical effect, every time you -- a witness,
12 the police might go out and talk to them. And
13 it was, it sounded very different and it sounds
14 much better than the New York traditional trial
15 by ambush, which I think in Brooklyn they're
16 getting away from the open file discovery, but
17 then the most important pieces of discovery I've
18 heard are very often not there. But going back
19 to the effect of the exposure of the complaining
20 witness/plaintiff in IDV case and exposing the
21 -- of the situation, I don't mean to sound
22 course but there's, there's something that
23 brought the couple together and there is a basic
24 attraction that obviously goes bad by the time
25 it reaches a criminal court or a family court or

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2 order of protection state, but there's also an
3 ad hoc sort of exposure to the complaining
4 witness that very often does not hurt the
5 defendant. And the overall equities of the case
6 are very often exposed, the way the mother
7 interacts with the children, the way the mother
8 interacts with anybody who does what she doesn't
9 want them to do. As I said, I don't think
10 there's any justification for, you know, for
11 domestic violence, but on the other hand, as
12 defense attorneys representing defendants in
13 these contacts, there is no organization to
14 protect people falsely accused of domestic
15 violence. There are many organizations for the
16 victims or the complaining witnesses and
17 plaintiffs, and I think the exposure does
18 actually help and counteract -- you do have an
19 idea and from the criminal defense point of
20 view, you know, very often you will, of the ten
21 bench trials I did -- jury trials which is a
22 common practice and -- I won six of the ten,
23 and, you know, a lot of the -- but we did fairly
24 well on criminal side. I don't know if I wanted
25 any family court possibly except visitation and

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2 things of that nature -- but overall, equities
3 are exposed. There is probably an individual
4 attention that I think is very important. I
5 notice that throughout my 25 years in criminal
6 defense but even if you take a case to trial and
7 you try your damndest for a client and you lose,
8 they've never had that level of attention and I
9 think -- IDV does provide. The client may not
10 like the way it plays out, but having someone
11 fight for them in a relatively fair playing
12 field and I was cross certified, so I mean, it
13 was a pretty good thing. It wasn't terrible.
14 It wasn't a completely awful thing. There are
15 certain -- usually, almost always, the criminal
16 case proceeds first and that, I think that has
17 Fifth Amendment implications and that's the way
18 it's normally done in the Bronx, which I think
19 does take into accounts some of the problems of
20 self incrimination in -- family-court context
21 leaking over into the criminal court context.
22 And I didn't think it was, you know, a terrible,
23 a terrible thing because it was, it's a much
24 smaller case load and IDV sort of works. But
25 the real reason I'm here, I think, is because I

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2 work for the Bronx Treatment Court. There's
3 another job nobody else wanted and now I'm doing
4 post convictions, post-plea preconviction for
5 the Bronx Treatment Court. And some people seem
6 upset because people are, I heard that there
7 were people upset because people were waiving
8 their rights taking a conditional plea to a more
9 -- alternative sentence. In the Bronx, the plea
10 that is taken, the jail alternative is almost
11 uniformly the same offer of, that the prosecutor
12 is making in the first place. So it will be 90
13 day's jail or treatment court with a 90-day jail
14 alternative. In terms of the felonies, I'd say
15 there is a slight markup, that instead of
16 offering either a probation or a year -- you
17 offer this almost uniformly, especially a B drug
18 sale, drug sale of a narcotic, a more serious
19 drug, crack/cocaine or PCP rather than methadone
20 or one of the lesser -- would be like a year or
21 probation. You offer it in Bronx Treatment
22 Court, if you fail the program it is two year's
23 jail and one year -- with the diversion programs
24 and jail, shock -- the practical effect is not
25 as awful as it might first sound and I believe

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2 the last time they measured Bronx Treatment
3 Court on felonies, had a 50 percent success
4 rate, which, and I'll just conclude, I think you
5 have to go a little bit outside the normal
6 parameters of criminal, indigent criminal
7 defense to appreciate Bronx Treatment Court
8 starting in Chicago with, you know, I think the
9 appellate division of the public defender and
10 going through the -- I've never had a criminal
11 defense case until I got to Bronx Treatment
12 Court that was anything less than a zero-sum
13 consequence. Either the person was exactly the
14 same as they were before they were accused of
15 the crime or they were in some way worse off.
16 Bronx Treatment Court is the first contact I've
17 had with the criminal justice system in two
18 states in four counties where people walk out
19 better off than when they walked in. And in a
20 country that has high percent of the population
21 of the world and 25 percent of the incarcerated
22 population of the world, I think it's something
23 that should be explored. I think you have to
24 look at the way that the tool of Bronx Treatment
25 Court is used or treatment court is used and I,

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2 well, I've -- Judge Remosa (phonetic) this
3 afternoon, she would be the person as to how it
4 works exactly. But I'd have to say, I'm very
5 much in favor the way the Bronx Treatment Court,
6 I've heard horror stories in both boroughs but
7 where I'm standing with -- Remosa running the
8 show -- prosecutors -- that's prosecution part
9 -- I think it does have a lot of good.
10 Especially the --

11 MR. JONES: Thank you.

12 MS. MIRON: I'll talk about Manhattan
13 treatment, drug treatment court. I'm about two
14 and a half years into public-defender practice
15 so most of my experience is in the misdemeanor
16 Manhattan Treatment Court. I've had a few
17 clients take DTAP pleas but none have finished
18 their cases yet. In misdemeanor and Manhattan
19 Treatment Court -- Bronx the jail alternative is
20 six months if you fail. This is way out of line
21 when most of the -- that people would get on,
22 say, a simple crack possession or petty larceny,
23 which is typically for a simple possession
24 between 10 and 20 days, petit larceny may run up
25 to 45, 60, sometimes 90 days depending on the

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2 wrap sheet. So we think the first conversation
3 -- are you really going to sit in jail for 20 to
4 30 days waiting for placement in a program, you
5 could plea and get out without the risk that if
6 you fail the program, you will be re sentenced
7 to six months. And I think about a year ago
8 there was some flexibility after someone fails
9 in that six month's jail alternative now the
10 judges that are in that part are really not
11 coming down from the six-month alternative, they
12 see it as a contract and they believe that
13 people in the audience would be -- from
14 completing the program if the client gets less
15 than the six months they are told they could
16 get. This jail alternative for people who are
17 on parole is one year. And for the person who
18 is not on parole but who gets re arrested, they
19 are offered a second chance to plead to a new
20 case -- which would be mandatory consecutive
21 time so it's a lot of time for a misdemeanor
22 case and that's my first problem with the
23 misdemeanor Manhattan Treatment Court. We've
24 had, for example, Kristin had a client who was
25 offered, I believe, 20 days at arraignments.

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2 She did, however want a program and did take the
3 misdemeanor Manhattan Treatment Court. She had
4 a lot of health issues, however, so it took
5 about six weeks to place her. She kept coming
6 back to court, not getting placed. Next time
7 she came back to court, the program wasn't there
8 so she was understandably frustrated with the
9 whole situation and kept saying, I should have
10 just taken my 20 days. At the end of the day,
11 she graduated and she is doing very well. We
12 think she is clean still. But that's a common
13 scenario where people stay in jail for a lot
14 longer, if they just take the original plea.
15 Obviously, we all want our clients to do better
16 in life and not be addicted to drugs, but the
17 reality of the situation is, few clients are
18 successful in these programs. Are we going to
19 set them up for failure -- than what they could
20 have gotten in the first place. We try to do in
21 our office non-court mandated drug treatment
22 programs without the stick of the jail
23 alternative. We do, you know, offer to our
24 clients the potential of coming to our office,
25 speak with our social workers, we'll hook you up

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2 to a residential program but you won't face that
3 time we think is too harsh. So in terms of the
4 -- programs, the pleas that I am familiar with,
5 the predicate, individuals who have one felony
6 conviction and are re arrested on another drug
7 conviction are offered one and a half years but,
8 for the plea -- let me start over. If you plead
9 guilty and are given DTAP, you waive your right
10 to presentation of the case to the grand jury.
11 If you plead up front after five days that the
12 case has been ongoing so literally no
13 investigation will have been done at that point
14 and you plead with the promise that if you're
15 rejected from DTAP through no fault of your own,
16 you will automatically get sentenced to that one
17 and a half years, you pled up front. If you do
18 get accepted to DTAP and you do the program and
19 you fail but come back to court voluntarily, you
20 will get three years, and if you fail and are
21 picked up, you will get four years. I think
22 that's out of line with the typical offers --
23 they don't ask for a program. So in my view,
24 you know, people are punished for attempting to
25 treat themselves and failing. And we shouldn't

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2 have these higher jail alternatives just because
3 you want treatment. It should be lower. It
4 should be more consistent with the regular jail
5 alternatives. If, for example, you've been
6 convicted of a violent felony with jail
7 alternatives, the jail all alternatives shoot
8 way up, you plea with the promise that you will
9 be accepted to DTAP, if you're rejected through
10 no fault of your own, for example, if medical
11 issues prevent you from going into certain
12 programs, you will get five years of
13 incarceration. We're with a client whose
14 appearance is on today who was told she would
15 plead up front, get five years -- if she does
16 get accepted to the program but fails to come
17 back on her own, seven years; if she fails and
18 does not come back on her own, that's nine
19 years. Outrageous for one drug sale. And that
20 is by one judge who is here -- Supreme Court
21 Judge Uvilla (phonetic) to say to, you know, the
22 DA's office, these jail alternatives are way out
23 of line, I'm not doing this anymore. I don't
24 know if she's really stopped allowing these
25 pleas but she is right. Nine years for one drug

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2 sale is --

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MS. SHIFMAN: So DTAP is sort of a program that's being offered through the DA's office or through waiver prosecuting office is really doing this? It's not really a drug court particularly.

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MS. MIRON: It's run by the DA's office. There is a drug court, while there's Manhattan Treatment Court, which is in the same part, you know, which would be considered the drug part, but it's more -- it's more of a program than, you know, a court. But I would say MTC, which is the drug court run by the court system, you know, the jail alternatives are similar, the difference being that MTC is for people who are not convicted felons so -- DTAP. Our view of these types of courts is that, you know, given the low success rate, I don't know if you guys have the numbers of people who graduate and don't recidivate, but my impression that they're very low and so these cases drag on and on and on. I mean, I spoke with Thomas who is the senior attorney in our office, how many since you have been in NDS

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2 since 2003, one. How many clients have you seen
3 graduate and have their cases finished? And I
4 think we came up with 20 percent, which is very
5 low. A lot of the times if they don't just get
6 re sentenced to the jail alternative, they will
7 be stuck in court, go back and forth or
8 technical things like, you know -- GED program,
9 the case drives on for six months and it's just
10 a longer time for you to be exposed to, you know
11 -- so we see clients who are understandably
12 frustrated, not only are they done with the
13 program, but because the Court requires things
14 like GED, things that are difficult for people
15 generally, they just get tired of it. And then
16 one other issue I wanted to bring up, the
17 conflict that we've experienced with some
18 clients whose doctors have told them, you
19 actually need to take methadone --

20 MR. BOMBA: We have experiences with
21 methadone.

22 MS. MIRON: On the one hand, it's a
23 condition of the plea that you get off methadone
24 completely, on the other hand your doctors are
25 literally ordering you to do it. You know

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2 sometimes the prosecutors will say, you need to
3 get re sentenced, you haven't finished the
4 program and you're in violation of the
5 conditions and we have doctor's notes, however,
6 that say the opposite. So they're put in this
7 position where they have to choose to go against
8 the doctor's orders or go to jail. We have one
9 case that's pending just like that right now and
10 we're making a motion to dismiss in the interest
11 of justice. We'll see what happens.

12 MR. SCHECHTER: Who is the judge in
13 Manhattan Treatment Court?

14 MS. MIRON: Right now, Judge Nunez.
15 Before it was Judge Ward.

16 MR. JONES: Thank you.

17 MS. SHIFMAN: Let me just ask before
18 I get into kind of more substantive questions,
19 the Manhattan Treatment Court as opposed to this
20 -- program, is the Manhattan Treatment Court one
21 of those courts we've heard testimony about
22 which I think is more like your court where --

23 MR. BOMBA: It doesn't sound that
24 much like our court.

25 MS. SHIFMAN: Actually -- some of the

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2 other borough's treatment court, but is
3 Manhattan Treatment Court the type of court
4 where it gets, it goes in there and you have to
5 make a decision like, I'm day one at arraignment
6 whether or not they're going to take treatment
7 and then your clients come back to, in front of
8 the judge sort of every two weeks at a very
9 regular basis, it's very intensive. But before
10 they have to decide it, they're interviewed to
11 determine whether or not they're eligible for
12 the treatment.

13 MS. HEAVEY: I'm not sure exactly how
14 the interview process goes, to tell you the
15 truth. You do have to make a decision very
16 early in the process. Normally, you're
17 arrested, generally these are cases where bail
18 would be set if it's a felony drug case. And
19 often times, you will get the offer from the
20 DA's office, not necessarily from any kind of a
21 program representative or anything like that.
22 I've had offers for MTC -- who do not have a
23 drug problem, you know, but unfortunately, you
24 know, one of the cases I had was a 17-year old
25 boy who was charged with selling drugs. He sold

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2 drugs, he did smoke marijuana, not constantly,
3 probably not somebody that was in a treatment
4 concept appropriate for full time residential
5 drug treatment, however, the deal was, he could
6 plea, he tested negative for drugs. He would
7 get what's called intern-probation supervision,
8 basically intensive probation and graduating on
9 to regular probation. If he tested positive for
10 drugs even marijuana, he was automatically
11 mandated to MTC treatment court, automatically
12 mandated to residential treatment and
13 unsurprisingly he failed because I tried to
14 advise him not to take it but at that point he
15 didn't want to risk being indicted, going to
16 felony court, asking that judge for probation
17 knowing that the DA's office was recommending
18 this treatment court. Treatment court was
19 essentially used and particularly the
20 residential treatment was used as a way to
21 remove him from his neighborhood, which is what
22 they thought he really needed. It wasn't used
23 for treatment purposes in this case.

24 MS. SHIFMAN: So for MTC, do you get
25 discovery? Do you get police reports?

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Anything?

MS. HEAVEY: Absolutely not.

MS. SHIFMAN: So you have to advise a client sort of in the dark.

MS. HEAVEY: Right, it's normally five days after.

MS. SHIFMAN: Within the arrest.

MS. HEAVEY: After the arrest and you're advising the client, you have no discovery, at that point, you know, you may be able to do what's called waive time, basically agree that the client can think and talk to you about the drug treatment court and the time count against the DA's office, they usually will stay incarcerated -- and can't come up with bail --

MS. SHIFMAN: For MTC, is there sort of this whole treatment team, you've got the providers, you've got the probation officer in the court, you've got a very interactive DA in the court, you've got a judge who is addressing your client --

MS. HEAVEY: You do have the same judge. It is normally the same team, the

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2 assistant district attorneys, although it is not
3 exactly the same district attorney. The
4 treatment providers rarely come to court. They
5 usually send a letter and those letters can be,
6 you know, I've had battles with judges where my
7 client was supposed to be going Tuesdays and
8 Thursdays to treatment, he was looking for a
9 job, he obviously had to reschedule, the
10 treatment letter will say he missed and they
11 would list the three Tuesdays but then later in
12 the letter in small print it explains it --

13 MS. BERNHARD: He was working?

14 MS. HEAVEY: No. No, that he
15 actually went two days a week, he just
16 rescheduled but he had to miss the -- the judge
17 would -- mark off, yes, he actually went two
18 days every day, he just had to reschedule.

19 MS. SHIFMAN: One other question
20 because I don't want to spend too much time on
21 the procedure, one other quick question about
22 MTC. Are you as their lawyers showing up in
23 court for all of their sort of status how
24 they're doing in the treatment program? Are
25 you?

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MS. HEAVEY: Yes. Often times though

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the case is conferenced in the morning -- you

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have the option of showing up, but they don't

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really wait for you and -- there is an

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indication exactly when to come. Like I've gone

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in the morning and checked on the case and

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they're like they're conferencing in the back,

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you can go join. Thanks. So I'll go join. But

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it's not something where you're, you know, it's

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going to happen at 9:30 a.m. or 10:00 a.m. or

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you know exactly what's going to happen. If you

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show up when the conference is happening, you

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get to join.

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MR. SCHECHTER: Is that true in the

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Bronx?

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MR. BOMBA: No -- Jesus saves, Moses

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-- (laughter) in the Bronx (laughter) we have a

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meeting and the -- allows the Legal Aid Society

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to have someone, me, attend that meeting for the

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every-day status.

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MR. SCHECHTER: For all the clients?

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MR. BOMBA: For all of the lay

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clients but there's something in -- that's

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happened, I will notate the reports on -- if

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2 their attorneys show up, I'll fill them in, this
3 is going to happen, good, bad, whatever, it is
4 much more proactive. With regard to probation
5 and parole, the judges establish the network of
6 communications where we even know how long it
7 takes to clear a parole warrant, we have people
8 with, you know, misdemeanor cases that we accept
9 and -- final hearing, we have a very
10 enthusiastic diligent staff that is, wants to
11 help the people with chemical dependency. They
12 usually can place them on 180.80 date, which is
13 this mystical date, six days afterwards where
14 the prosecution -- and there is a lot more
15 flexibility. I think, it's a matter of how the
16 tool is used. People aren't allowed failures in
17 the Bronx. We have a prosecutor, a judge and a
18 system that says, it is not a straight line from
19 \$50 a day crack habit to a productive life. We
20 do have the same problems with the methadone,
21 which is not deemed a therapeutic drug. But we
22 do have a procedure that we sometimes can get
23 around even that. I think it's called medical
24 necessity letter from a person's doctor saying
25 this person cannot function and needs methadone,

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2 once in a while we can even get around that but
3 that is a sticking point. But I think there is
4 a willingness. I mean, the purpose of treatment
5 court is to try to get people free from chemical
6 dependency. It sounds to me, and from what I've
7 heard today, that may not be the case in
8 Manhattan, it's just giving people an
9 opportunity to fail. I think there's a diligent
10 effort being made in the Bronx --

11 MS. SHIFMAN: Let me follow up here.
12 In the Bronx, would you say that your role as
13 defense lawyer is an adversarial role or are you
14 a team member on the therapeutic justice?

15 MR. BOMBA: Well, it depends. I
16 mean, so when you're negotiating a plea, are you
17 being adversarial or are you being part of the
18 system. If that is strictly the criteria, then
19 very often I am part of the team, just as there
20 are people who waive their rights when they take
21 probation. There is a lot of that. But there
22 is very often, you know, the sort of, I wasn't
23 there Tuesday because I was looking for a job
24 and then tracking down the people who could
25 verify, you know, following up on that. Is that

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2 part of the team or is that adversarial, when
3 you say that?

4 MS. SHIFMAN: Well, in the sense of
5 your clients being offered drug treatment court.

6 MR. BOMBA: I only do the post pleas.

7 MS. SHIFMAN: You only do the post
8 pleas?

9 MR. BOMBA: I do sometimes function
10 as a catcher. But one of the things you were
11 talking about earlier, the three of us is that
12 we are -- vertical representation, that means
13 that if, you know, you are going to advise the
14 client, don't take the plea, take it to trial,
15 you are the one who is going to try the case.
16 That's the policy of NDS and the Legal Aid
17 Society have fought for it and people are still
18 trying to undermine it. But in terms of that,
19 so the adversarial -- and the clinical person
20 says, he came in but he was high on heroin; so I
21 don't know, so you tell me am I being
22 adversarial or part of the team.

23 MS. SHIFMAN: Yes.

24 MR. BOMBA: I don't know. It's --

25 MS. SHIFMAN: How about, and it

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2 sounds to me that in all the Manhattan courts,
3 your role is much more the traditional --

4 MS. MIRON: I would agree with that
5 statement. I would also state, however, that
6 team approach really depends on the
7 personalities involved. So if after a year that
8 the case is pending in MTC the DA decides
9 they're tired of your client, isn't going to
10 accept the excuses your client provides --
11 looking for a job, whatever, then they will turn
12 and it's no longer a team, it is an -- for
13 example, Rhonda Ferdinand, she is the head DA of
14 DTAP and does the special narcotics division and
15 does stand on MTC cases had it out for one of
16 our clients who ultimately decided he could not
17 complete DTAP, asked to be re sentenced to the
18 jail alternative and said, I just can't do it, I
19 will never finish this program, I would like to
20 go to jail. And she got very personally
21 offended about that, threatened that she would
22 write the parole board against him, you know,
23 saying don't release him and she did. She wrote
24 a parole letter, you know, not in his favor
25 after he went to jail. So I think it really

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2 does depend on the personalities involved.

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4 MS. HEAVEY: This is somebody who had
5 been in the program and did quite a bit of work
6 for his treatment but was getting hung up on a
7 lot of these sort of other administrative
8 requirements of, get your GED, get a full-time
9 job, save a thousand dollars, all of those types
10 of things and the client is just like, I can't
11 do it, it's an impossible, you know,
12 requirement. And, you know, I had battles where
13 literally they're asking for remand because my
14 client had a block on his phone for unidentified
15 numbers and they're requesting remand. He
16 completed all of the treatment requirements, he
17 tested negative, he was in outpatient, he had a
18 job, lost a job, got a job again, literally
19 we're sitting there, this had been going back
20 and forth for three years, which is the phone
21 which is in his wife's name, the phone had a
22 block on, you know, sort of unidentified
23 numbers. And the DA's office, I guess their
24 phones are unidentified. You can get around
25 this because you dial in the number or get past
the block or call from a cell phone, which is

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2 what I did with no problem, but we're spending a
3 half an hour in court arguing about this what I
4 consider -- details and they're asking for
5 remand for a year and a half for a person who
6 had completed all of the treatment court.

7 MR. SCHECHTER: And the judge's
8 position on that?

9 MS. HEAVEY: The judge mercifully
10 gave him a fair amount of time to get this
11 settled and was not -- I have found that the
12 judges are a little more willing to give push
13 back to the DA's office in that -- but the
14 position of the Manhattan DA's office, the
15 Manhattan branch at the special narcotics office
16 is often very --

17 MS. SHIFMAN: What training, if any,
18 would be helpful to representing clients in drug
19 treatment courts and mental health courts, if
20 you guys have any experience in mental health
21 court? And the second question is -- well, I
22 think that's it. Then we can pass it on.

23 MR. BOMBA: I don't know. I just
24 think a basic level of empathy and ability to,
25 you know, you know, a criminal, defendant to you

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2 is not the same as the criminal -- people cannot
3 see that there's not a -- very often and I think
4 it's at least with regard to Bronx Treatment
5 Court or treatment court, I don't know, I mean a
6 vigorous apathetic personality, I think it is.
7 With regard to IDV, you're going have to cross
8 train. If you're in family court, you've got to
9 go to criminal court, you have to get some
10 criminal court experience.

11 MS. MIRON: Maybe just some technical
12 training on how relapse works, you know, medical
13 progress of clients and kind of explain when
14 someone gets re arrested how they can explain
15 that better.

16 MS. HEAVEY: And I think also a
17 little bit of training on how programs work, how
18 you progress in the programs, what the
19 requirements are. A lot of times I will get
20 letters saying, you know, the client, you know,
21 whatever it is, they violated this particular
22 rule of the program, you know, spoke with, you
23 know, another program participant in the
24 stairwell. A little bit of an idea of how
25 programs are run, what sanctions and what

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2 permissions people are allowed into what stages
3 of the programs, they can have an idea of how
4 people are progressing and what, if anything,
5 they need to be doing that violates or doesn't
6 violate the sanctions. You just getting letters
7 saying the person was caught kissing another
8 person of the program, is that illegal -- are
9 you not allowed to have physical contact, what's
10 the violation there. And we don't necessarily
11 know that because sometimes you're trying to
12 track -- in Manhattan. I'd say it's very
13 different in the Bronx. In Manhattan -- the
14 jail alternatives up front. This client I have
15 today, she is in her mid-forties, she is HIV
16 positive, everybody agrees she should have a --
17 she is a violent predicate by about six months,
18 her last violent -- was 12 years ago and at this
19 point she is going to plead or they're
20 recommending that she plead up front and if she
21 is rejected from the program because of her
22 prior violent, because of her HIV status,
23 because she doesn't have sufficient community
24 ties which -- not surprised that a 20-year old
25 crack addict -- she automatically gets five

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2 years, that's done. It's absurd and I cannot in
3 good consciousness advise her to take that, but
4 I do believe she needs --

5 MS. SHIFMAN: It's clear that the
6 Manhattan court system is not really interested
7 in rehabilitation.

8 MS. HEAVEY: And I was informed, I
9 called the office in this case and explained to
10 them her medical issues, asked if there's any
11 legal -- on these 579 numbers, absolutely not.

12 MR. JONES: We have time for one last
13 question.

14 MR. SCHECHTER: You indicated that
15 you offer people who have drug problems, your
16 social services, you offer that to all your drug
17 clients of Neighborhood Defender Services.

18 MS. MIRON: Sure.

19 MR. SCHECHTER: Of the 100 percent
20 population that you offer that to, how many take
21 that offer up and plea, the programs you see
22 in --

23 MS. MIRON: Very low numbers. I
24 mean, I would say every -- actually do come in
25 and meet with social workers initially.

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2 MR. SCHECHTER: But no follow up.

3 MS. MIRON: Not too many, to be quite
4 honest.

5 MS. BERNHARD: Can I have one follow
6 up on the training thing, because we were just
7 hearing in the panel before you -- who were all
8 talking about their fabulous training programs
9 where they train everybody and train everybody
10 and train everybody, it doesn't sound as though
11 you've had any formal training with any of these
12 drug court professionals? Have you ever gone to
13 Virginia or whatever for training or anything
14 like that? So, basically, you're training on
15 how to handle these various situations as a kind
16 of on the job skills training and sharing
17 information among yourselves at the office and
18 thinking about it together or not together, but
19 you haven't sat down as part of the team and had
20 the whole Manhattan Treatment Court go someplace
21 together or even the Bronx Treatment Court kind
22 of go someplace and work on some of these issues
23 as a joint thing.

24 MR. BOMBA: Well, in the Bronx, I am
25 the Bronx treatment court staff. But I did, you

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know, there were people who did my job before.

MS. BERNHARD: Right, they talked to you.

MR. BOMBA: Yes -- we have a place called Part-C for predicate felons and people who are, that's a, it's run a little bit less with less give for the defendants and it's more serious consequences.

MR. JONES: This should be an indication of how much we value your testimony. We are going to get one more question.

MS. SHIFMAN: Just one quick question. If each of you can be brief, one recommendation that you think NACDL should make to improve drug treatment courts and/or specialty courts.

MS. MIRON: I know she is going to say jail alternatives. I've heard that they allow you to do drug treatment before you plead guilty, and if you fail the program, you can just have the case restored and go from there. I think that would be a better way to deal with the situation.

MS. BERNHARD: Waive 180.80 or waive

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2 30.30?

3 MS. MIRON: Sure. Yeah.

4 MS. HEAVEY: I would say jail

5 alternatives -- there needs to be some

6 recognition of the progress of the fact that you

7 want treatment, you shouldn't be punished for --

8 unfortunately, that's what it ends up being.

9 MR. BOMBA: I think it should be

10 pushed for more accountability by the judiciary

11 and the prosecution for their commitment to the

12 success of the rehabilitative -- the people that

13 are trying to rehabilitate. Like I said, I

14 think it works fairly well in the Bronx, but I

15 heard somebody was making \$100,000 a year and

16 had completed the program in every respect. But

17 there was a 52-year old man who they insisted

18 gets a GED. This is in another borough I won't

19 name. And it's like, if you're going to do it,

20 do it right. I think the Bronx is making

21 numbers, but in the overall thing, it has to be

22 a commitment to rehabilitation. If you don't

23 believe in it, get the hell out. That's --

24 MR. JONES: Listen, thank you all.

25 This has really been useful as -- or anywhere

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2 across the country so we appreciate you guys
3 doing this. Like I said, you are all invited to
4 that fabulous party across the hall at the end
5 of the day. Thank you.

6 (Recess taken.)

7 MR. JONES: Let's start. Thank you
8 guys all for being here. I should just say in
9 the interest of full disclosure that all three
10 of these folks are friends, colleagues, and
11 associates of mine; in fact, Joe and Tim I've
12 known all of my professional life. They were
13 with me back at Legal Aid 400 years ago, in
14 fact, Jim and I started together and so I with
15 strong mind -- Kevin and I have been through the
16 wars. We had a case together before that was an
17 integrated DV case before there was an
18 integrated DV part. We bounced back and forth
19 together on a fairly notorious homicide, it took
20 us to family court and criminal court and every
21 where else and so those were the days. Welcome.
22 Thank you guys for being here. I'm going to say
23 it again, this will be my last time, the reason
24 we're not across the hall, we ought be, is
25 because NACDL is having some big shindig later

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2 on this afternoon and so what I've said is that,
3 because we're here, I have a vested interest,
4 and it's that party as well. You guys are all
5 invited.

6 MR. ROUNTREE: What about 3:35?

7 MR. JONES: I don't know when.

8 MS. SHIFMAN: As soon as we get the
9 booze, we start.

10 MR. JONES: And I hope to see you all
11 there. If you have any problems getting in,
12 just ask for Scott. He will get you in. The
13 way that we work is that, we give each of you
14 sort of five minutes or so to give us the
15 benefit of your thoughts and opening statement
16 and then we have a number of questions that we
17 want to ask each of you and one of us generally
18 takes the lead in asking the questions. And for
19 this session, it will be Adele Bernhard. So as
20 I've said, you guys can pick whoever wants to
21 start.

22 MR. O'CONNELL: I'm the non-Queens
23 person here. When Scott contacted me or
24 contacted our office, I was the one who picked
25 up the phone, that's why I'm here. My first

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2 reaction was sort of like the, I felt like the
3 title character in the Robert -- novel from the
4 old days, Stranger in a Strange Land. As you've
5 figured out, Manhattan does things very
6 differently. Problem-solving courts essentially
7 don't exist in Manhattan. We have specialized
8 courts, we have specialized parts that cases go
9 to, there's a DV part where domestic violence
10 cases go to in criminal court. The
11 misdemeanors, they are not handled in any
12 particularly sensitive or unusual way. We do
13 have treatment courts. We have Manhattan
14 Treatment Court. It is the one lesson that
15 comes from Manhattan, which you can take to any
16 other jurisdiction is very simple. If the DA's
17 office is not on board, it's not going to
18 happen. Robert Morgenthau's office is not
19 committed to problem-solving courts, to
20 rehabilitative courts in any real way. With
21 respect to the drug courts, it's not, it's not a
22 surprise that one part in which there are drug
23 treatment, there's drug treatment court in which
24 the vast majority of the DTAP cases which are
25 drug programs and alternatives to incarceration,

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2 the one part where that happens is not staffed
3 by Robert Morgenthal's office. It's staffed by
4 the central narcotics unit which has a much more
5 -- towards problem-solving courts. The IDV
6 court is, as has been I think correctly
7 characterized basically just the scheduling
8 convenience for the court system. It's not a
9 problem-solving court. It really doesn't
10 approach cases like problem-solving courts do in
11 other jurisdictions. The district attorney's
12 office is not only not committed
13 philosophically, structurally it's not committed
14 to, it makes it difficult for a treatment model
15 to work because the district attorney's office
16 in Manhattan is compartmentized into five
17 separate trial bureaus. Each trial bureau is a
18 -- it has a bureau chief most of whom have been
19 there since the year gimme (phonetic), long
20 before Marvin and I started or about the same
21 time which is depressing. Marvin and I started
22 in the same training class.

23

MS. SHIFMAN: Do they teach you the
24 word "gimme?"

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MR. O'CONNELL: Although the name is

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2 O'Connell, I grew up in New York, but I know
3 those words anyway. But Marvin and I did start
4 in the same training class, Legal Aid, many,
5 many years ago. But the point is that, each
6 trial bureau has its own policies about
7 diversion, each trial bureau approaches
8 diversion and in its own way -- the head of the
9 trial bureau has to interview personally each
10 defendant who wants to go into drug treatment to
11 decide if he thinks they're appropriate. This
12 is the same trial bureau head who in my view
13 believes that when Nelson Rockefeller eliminated
14 the lock down mental hospitals 30 years ago that
15 he believes, first of all, he was there -- but
16 he also believes, I think, that it was then the
17 Department of Corrections job to take up that
18 role of locking up people with mental disease.
19 I have a mental disease client with him now and
20 I cannot get him to agree to any form of
21 treatment other than incarceration. And he is
22 in charge of that case because it came in to his
23 bureau under his, that particular scheduling
24 arrangement. There are other bureau chiefs who
25 have different attitudes and the Manhattan DA's

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2 office has fostered this fuel -- in their
3 bureaus that doesn't allow for a single unified
4 approach to treatment courts. So all the horror
5 stories you heard about, from the panel before
6 about treatment court in Manhattan are
7 absolutely true. They happen all the time.
8 People go to jail, go to prison Upstate for
9 kissing somebody in a hallway, people go to
10 jail, go to prison Upstate for failing the GED
11 exam. It happens all the time. So you
12 indicated that you don't think the court system
13 is committed to rehabilitation, I think that's
14 real, only partially accurate. I think the
15 primary problem in Manhattan and the lesson it
16 teaches is that, nothing is going to work unless
17 the prosecutor's office is going to go along
18 with it to some degree as committed, in
19 Manhattan they're not, in Brooklyn they are and
20 it's an entirely different world. So that's,
21 that's the gist of my remarks to you,
22 problem-solving courts, I don't know what they
23 are, because I don't see it.

24 MR. JONES: Thank you.

25 Thank you.

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MR. ROUNTREE: My experience has been a little bit different than Kevin's. My practice is primarily limited to Queens now. I've been there about -- years.

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COURT REPORTER: Can you speak into the microphone, please.

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MR. ROUNTREE: Prior to that, I was staff attorney and supervising attorney in Manhattan where I experienced everything that Kevin has just laid out. But to my surprise, in Queens County, things are vastly different. We have several problem-solving specialty courts in Queens County. The primary court is the Queens treatment court which channels felonies, we have a misdemeanor treatment court, we have an IDV court and our newest court is the mental health court. For the most part, it has been my experience and experience of the lawyers in my office that these courts work for our clients. Some courts work better than others. But primarily, I believe they work because our attorneys are in those courts every day. We have lawyers, specific lawyers assigned to those courts and their primary functions are being in

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2 those courts every day. I think these courts
3 work because these lawyers contribute and
4 participate actively in what goes on in those
5 courts every day. Also, there is support and
6 encouragement from the DA's office. The DA
7 Richard Brown's office is, you know, he really
8 advocates for these courts and his DA's, for the
9 most part, unlike in Manhattan are on board.
10 They are really bought in and buy into the
11 concept of problem-solving courts. Also, the
12 judges that are assigned to these courts tend to
13 be judges with experience, have stewardship and
14 leadership to lead those courts and have the
15 right philosophy to really guide what goes on.
16 Now, there are some problems. I think that the
17 problems really are identified by the courts are
18 the newest courts, for example, like -- courts
19 where it's still working out the kinks. But the
20 ones, like I said, the Queens Treatment Court,
21 that is the most successful. They are several
22 years old now, before I got there two and a half
23 years ago and they graduate, many, many people
24 and it's very successful and it's something that
25 -- it's a surprise to me actually -- I have gone

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2 to many, many graduations since I've been there
3 and I am still in awe about how all stakeholders
4 and all the court personnel involved really have
5 a stake in what goes on. That being said, you
6 know, managing lawyers, we also have to be
7 mindful that we're advocates and we cannot allow
8 some -- the case to be taken from us and somehow
9 to be guided in a way that the DA and the judge
10 wants to go. That problem is not really there
11 so much in the treatment courts. Once again, I
12 see the problem more with IDV where you have
13 cases, matrimonial cases and they are
14 complicated. I can deal with the permanent
15 issue and the emotional issues and somehow
16 there's a tendency to obviously focus on the
17 defendant who nine times out of ten is a male
18 and the perceptions are that that person can't
19 get a fair shot in IDV. It may not be a real
20 perception, but truth to it, but the perception
21 is, because nine times out of ten, you are
22 dealing with all these issues, you are dealing
23 with the family, the lawyers for the mother or
24 the child and the judge; the female and the male
25 thinks that coming here exposing all these

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2 issues with my kids including my criminal case,
3 I can't get a fair shot. So over, trying to
4 fight that perception is difficult for the
5 lawyer of my office -- who is there every day.
6 She volunteered coming to the court, she had a
7 little family court background but she's done a
8 terrific job, but she does it by herself so it's
9 very hard for her to do. Mental health court is
10 our newest court and I think the issues there is
11 that there are many of us professional lawyers
12 who don't have the experience of training
13 background to deal with health issues. So it's
14 very hard to get people to understand what these
15 cases are about because of the nature of the
16 mental-health illness. People tend to be a
17 little more afraid to deal with them head on.

18 But I have to say that the Court and
19 the DA really rely on our lawyers in that part.
20 We have a MICA (phonetic) attorney from our
21 office, we have a mental-health attorney in our
22 office who dedicates all their time to being in
23 the mental health courts and the judges will
24 call and say, hey, we have this case here, what
25 do you think about it and -- for this part. So

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2 once again, I think the success or failure of
3 these courts do in large part to the involvement
4 of the defense team because we are the experts
5 in those cases and the court. There is a
6 collaborative effort involved, but, also, I
7 don't think we really give up our advocacy role.
8 Now, there are some problems that I see that are
9 prominent for certain defendants, for example,
10 non-citizen defendants really have a tough time
11 in these parts because people rely on them, but
12 even if a plea in a case, after the person
13 successfully completes the program, is
14 dismissed, that person still may face
15 deportation; because the very fact that they
16 pled guilty or admitted guilt in a case exposes
17 them to that. That's a big problem,
18 particularly, in Queens, which is the most
19 ethnic, diverse county in the country really.
20 We can't, meaning our lawyers, we can't advocate
21 on -- plea by itself. We've suggested to the DA
22 somehow that we cannot enter a plea at all, can
23 we put that aside , can we hear some kind of
24 written contract where that person agrees to be
25 apart of these -- courts without actually

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2 entering into a plea and they refuse. And they
3 refuse, one, because I think it's difficult for
4 them to come up with another solution, but, two,
5 I think when they do plea, and hope they're
6 never found or INS never finds them, these
7 people have been reported by probation officers,
8 sometimes by the DA's office and sometimes they
9 are arrested and they are sent to immigration
10 proceedings. Another problem I think is an
11 issue is referrals. I think a defense lawyer
12 has to make it clear that we guide that case
13 along. Sometimes a DA will call and say, oh,
14 this is the department case for mental health
15 court. No. No. No, that person may have
16 issues but the case, facts drive the case. So
17 we have to make sure that we are clear in
18 telling and explaining to the DA in the court
19 that, no, this is not the right case because we
20 want to fight this case in court despite any
21 perceived or actual mental health issues.
22 Sanctions are also a problem. How do we
23 accommodate students, people who work, have
24 jobs, they want you there at a certain time in
25 the morning, sometimes it's not feasible, people

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2 have work from 9:00 to 5:00 or people go to
3 school and you're late, you're sanctioned. So
4 we have to focus on sanctions. Also, the
5 education, the training and expertise of certain
6 shareholders or stakeholders, you know, some of
7 the probation officers don't have expertise in
8 mental health. So if they are supervising a
9 person with mental-health issues and that
10 person, you know, doesn't take their medication
11 or is late for some reason all due to their
12 mental-health conditions, that person shouldn't
13 be punished. So those are some of the things
14 that I identified in my experience with being in
15 Queens County.

16 MR. JONES: Thank you.

17 MR. VACCARINO: I just want to say, I
18 agree with a lot of what Tim says about the
19 courts. I just want to make some general
20 observations rather than going into a lot of
21 detail. First of all, those of you that don't
22 know Queens Law Associates, we have been in
23 existence for 12 years with the alternate
24 indigent criminal defense provider and we handle
25 about 18,000 cases a year. We have been around

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2 -- it's at the trial-court level, not appellate
3 -- we have been around since before the
4 inception of the first Queens problem-solving
5 court, which I believe was in 1998, Queens
6 Treatment Court for the first-time felony drug
7 offenders. Tim mentioned that court, that court
8 also has a DWI track, which has been in
9 existence for about two years. Now, the Queens
10 Treatment Court, to date, I believe has
11 graduated about 1,039. They give that figure,
12 graduates who had their felony cases dismissed
13 and sealed after successfully completing the
14 program and I understand that they have about an
15 80 percent retention rate, which is pretty good.
16 I think the treatment courts, problem-solving
17 courts are different in their operation. They
18 all have basically ethic goals to rehabilitation
19 of the offender for the good of the offender and
20 for the good of the community. In Queens,
21 everybody who participates in the court was
22 involved in the planning and formation of the
23 court. The Queens Treatment Court had, as
24 defense represented, Seymour James who is now
25 the head of the -- of the Legal Aid Society

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2 along with representatives of the district
3 attorney's office, judges. They all went for
4 training for days at a time before they set this
5 up. The court personnel, the court officers who
6 participate in the courtroom also receive
7 training on the philosophy of treatment court
8 and its operation and so they're pretty much
9 committed to, the same court personnel have been
10 there for years and they, they express their
11 delight when somebody graduates. They are
12 really into the procedures. We and the defense
13 bar, I mean by "we" and the prosecution continue
14 to participate in the court in the sense that
15 there are weekly meetings. We have a lawyer
16 assigned to that full time, Tim does also. They
17 meet with the judge and the project director and
18 the personnel involved on a weekly basis with
19 the Queens Treatment Court. I believe they meet
20 with regard to problem cases and issues that
21 arise before the -- meet once a week and the
22 mental health court, which has very serious
23 cases because of the mental illnesses of the
24 people, they meet once a week on all of the
25 cases that are going to be on the calendar. The

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2 integrated domestic-violence court, I tend to
3 agree with Kevin, it's a court of convenience
4 for the parties so that they don't have to take
5 two days off from work and go to two different
6 courtrooms. Family court and criminal court,
7 they go to one court where everything is handled
8 -- parties what they like and what the equities
9 are and possibly relates to a better and a quick
10 solution of the resolution of the conflicts
11 between the parties that handles criminal
12 misdemeanors and -- I believe it really hasn't
13 come within the purview of problem-solving
14 courts, as we understand it.

15 Queens Treatment Court, I just want
16 to say, parenthetically, that I think it owes a
17 lot of its success to the ability and the
18 commitment of Judge Leslie Lee (phonetic) who
19 sat there for a long time and really established
20 a rapport with the clients that motivated them.
21 The present judge now is doing a fine job also,
22 so I think that's one of the things that
23 contributes to the success of the court. The
24 DWI track, the treatment court, I suggested that
25 since they changed the name of the drug court

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2 from drug court Queens Drug Court to Queens
3 Treatment Court, that they chang the name of the
4 DWI court to perception challenged drivers court
5 (laughter) but they didn't do that. (Laughter)
6 the DWI track in existence for two years has
7 successfully graduated 22 participants and only
8 one person was bench warranted, which is
9 probably considered failure. We've had one
10 graduate, we have six in the program and two
11 about to graduate. Problems arise with the
12 establishment of problem-solving courts when
13 it's instituted without adequate resources.
14 Even though everybody involved has the best
15 intentions, if they don't have the resources,
16 the court is not going to do a good job. For
17 example, mental health Queens was established as
18 part of the Queens Treatment Court. They had
19 funding for appropriate service providers, they
20 didn't have -- they doubled. They had the
21 Queens Treatment Court project director, doubled
22 as the project director of the DWI court and she
23 still does. She didn't have funding for
24 forensic coordinators or resource coordinators,
25 psychologists the way the Brooklyn mental health

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2 court, because the Brooklyn mental health did.
3 It was the model, it started there. So they
4 gave it all the funding it needed, all the
5 resources it needed -- from one jurisdiction to
6 another. But they forgot to move the funding to
7 the other jurisdictions. Despite initial
8 preservations I think of the defense bar, the
9 programs in these courts are often proven to be
10 great benefits of our clients in terms of
11 changing their lifestyle and in terms of their
12 avoiding a felony conviction and any conviction
13 at all in Queens Treatment Court or in terms of
14 avoiding a jail or prison sentence. But I think
15 it's necessary to keep a constant -- on these
16 courts, because we have to make sure they
17 function appropriately and to the benefit of our
18 clients with our clients' full knowledge and
19 understanding and we are not -- which I believe
20 is part of the focus of this task. It's also
21 necessary that when they institute a court, they
22 adequately fund it with all the necessary
23 resources. I think the court administration
24 that institutes these courts has a moral and an
25 ethical obligation to see that that's done.

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2 I've brought along documents from the Queens
3 Treatment Court from the DWI track and from the
4 Queens Mental Health Court that explains a --
5 functioning at the courts. The materials
6 include a copy actually of the agreements that
7 clients sign upon entering the programs and I
8 also brought a copy of the brochure for the DWI
9 training that we went through before the court,
10 the DWI court was instituted.

11 MR. JONES: You should make sure
12 Scott gets all of those documents.

13 MR. VACCARINO: I'll be happy to
14 answer all the questions, if I can; if I can't
15 now, I'll get the answers for you.

16 MS. BERNHARD: Thank you so much.
17 We've heard a lot of information about a lot of
18 different kinds of courts and we're going to
19 hear more information about a lot of kinds of
20 different courts. We're trying to focus, I
21 think, a little bit on the role of defense
22 counsel in those courts and since each one of
23 you really is in a position of being a
24 supervisor to many defense counsel and thinking
25 about how to supervise, how to train, how to

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2 support your staff and help them to do a good
3 job, I guess I want to ask you a little bit, I
4 guess I want to ask you to address a couple of
5 different things. We heard yesterday from, I
6 guess, some supervisors in the Bronx and maybe
7 in Brooklyn that they made a conscious decision,
8 for example, not to have a permanent-staff
9 person in the treatment court, and you've made a
10 decision, to the contrary, to have a permanent
11 person. So I want to know a little bit about
12 the pros and cons and why you made the decision
13 you made and how you review that or decide it
14 still is the right decision. I'm interested in
15 how you decide what kinds of training and
16 supervision to give your staff who are in those
17 parts and how you get information from your
18 staff about how they're doing. So I guess if
19 you can address those kinds of questions that
20 would be a help for me.

21 MR. VACCARINO: Since I have the mic,
22 I'll start. The reason we have a person full
23 time in Queens Treatment Court and also in
24 integrated domestic-violence court, with IDV
25 nobody else will do it but Curlane (phonetic)

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2 Joseph. She does a terrific job. She is there
3 every night until about 7:00, 7:30 working on
4 her file and she comes back asking for battle
5 pay.

6 MS. SHIFMAN: Do you give it to her?

7 MR. VACCARINO: Yes.

8 MS. SHIFMAN: That's good.

9 MR. VACCARINO: The person in the
10 Queens Treatment Court is a -- Bob is a very
11 meticulous person. He is very committed to
12 people who have substance abuse problems. He
13 will pick something apart, he'll come back to
14 the office at 6:00 and I'll be at my desk and I
15 kind of try to not look up because I don't want
16 Bob to be there and talk -- then it will take
17 about a half an hour to get through one case.
18 But he will pick something apart, that annoys --
19 the reason he is there, because it gives him a
20 continuity to the clients and to his
21 understanding. If we took him out of the part
22 with somebody new, I understand that there's a
23 danger in having the same person there all the
24 time, that they'll become too cozy with the
25 court and may forget their role as defense

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2 counsel. I don't think that's going to happen
3 with Bob. You know, I've talked to him about
4 this. On the other hand, a new attorney might
5 be more vulnerable in the sense that they are
6 not comfortable, they're a new person on the
7 block, they may be more vulnerable to being
8 influenced by what the other people say.

9 Whereas Bob knows he can stand up and say, no, I
10 don't think this is good, you know. That's one
11 of the reasons we have, those are the reasons we
12 have Bob in that part permanently. I'm sorry.
13 The other part of the question.

14 MS. BERNHARD: I guess the other
15 question was sort of related, maybe it doesn't
16 apply so much because you have so much
17 confidence in this particular person's ability
18 to withstand, you know, through the co-oping
19 sort of family team approach in there. The
20 other question really has to do with along the
21 same lines, training and support and getting
22 information from him. So if you, you know, want
23 to have a sense of how things are going, you
24 just sort of talk to Bob? Has Bob gone to any
25 specialized training in how to handle this

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stuff?

MR. VACCARINO: Bob has gone to specialized training for the treatment court. Any occasion that involves any kind of substance abuse or training, specialized, problem-solving courts, Bob will attend.

MR. SCHECHTER: Does he go to national training?

MR. VACCARINO: I believe when they started they had, I believe he went to one of the first ones that they had. I don't know that he's gone to any since then. Certainly, when we notified them and given them an opportunity to go, I see that he does go.

MR. SCHECHTER: Do you think it would be a good recommendation for the NACDL to make it that all public defenders and Legal Aid offices that are committed to staffing these courts that the individual or the, or some of the attorneys attend yearly training conferences?

MR. VACCARINO: I think that's a good idea if they have the resources to do so. I think it's certainly, they will have to go to

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2 initial training programs. They'll understand
3 what's going on, the concept of the court with
4 the other people in the court -- as far as
5 annual, it's good if you can do it. I would
6 recommend it if you could do it, you know.
7 Certainly every two years I think you should
8 have to do something like that. As far as
9 getting information about the cases and stuff,
10 well, they have annual meetings and Bob comes in
11 and talks to me in the evenings and that's where
12 I get the information and I ask him questions
13 about certain cases.

14 MR. ROUNTREE: As a practical matter
15 as far as having a single person in these parts,
16 because they're so time consuming, the cases are
17 so time consuming, I think it works out better
18 that way. To a large degree, you're dealing
19 with the more difficult "client" because of the
20 substance abuse --

21 MS. BERNHARD: Is the part a
22 post-plea part or is that person who is in the
23 part going to be negotiating the pleas or just
24 handling it post plea?

25 MR. ROUNTREE: Well, the Queens

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2 Treatment Court is slightly different than the
3 mental health court in IDV. When a lawyer picks
4 up a case say, for example, in arraignments and
5 there's a hint that perhaps treatment may be
6 available, that lawyer will discuss the case or
7 hand the case over to one of the two lawyers who
8 handled those cases. Once that's determined,
9 the plea is taken actually in the treatment
10 court part. Now --

11 MR. SCHECHTER: By who?

12 MR. ROUNTREE: It's taken by the
13 lawyer who is in that part. Now, I try to
14 encourage, because we believe in continuity and
15 representation, I try to encourage that before
16 you actually hand off to the special-court
17 lawyer there be some coordinated effort to talk
18 to that lawyer and explain to the client what's
19 happening, is this the route you're going to
20 take, you're going to be meeting a woman, both
21 of these -- are women who will be doing the
22 compliance portion of your case. But sometimes
23 given the nature of the practice, the lawyer
24 will either hand off the file, which I don't
25 encourage, say this person wants treatment --

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MR. SCHECHTER: Once the file is handed off, let's say, to you, you really take over the case?

MR. ROUNTREE: I take over the case.

MR. SCHECHTER: You're there for the next 18 to 24 months? You're the one who attends the status conferences?

MR. ROUNTREE: Right.

MR. SCHECHTER: If something goes wrong, there's a contesting of a drug test?

MR. ROUNTREE: Right.

MR. SCHECHTER: Or there's a determination or sanction, you're --

MR. ROUNTREE: I'm the person.

MR. SCHECHTER: So continuity doesn't exist from arraignment on, it really is broken up?

MR. ROUNTREE: It is broken. Like I said, I try to encourage the lawyers to be apart of that. Given case loads, it's difficult to make that --

MR. SCHECHTER: Short of arraignments though, right, you're really the continuity for representation all the way through?

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MR. ROUNTREE: After the police take it. After the police take it. With other parts I think it's even more so because we have lawyers in the office, mental health lawyer and the MICA lawyer who have the expertise, Mary Beth Anderson in our office was a mental health lawyer, she has MSW and she has JD. She knows the issues and there's a tendency, if a lawyer identifies a client with these issues, they may not feel comfortable in addressing all of it; so, once again, they consult with Mary Beth Anderson because Mary Beth Anderson, who she is, she'll take the case on. But the lawyer may sometimes go with Mary Beth to the Court, she'll do the 730 exam. It's not this fragment, but the continuity is still there to some extent but because Mary Beth is, has the expertise, people rely on her pretty much. We have a MICA lawyer --

MR. JONES: What is -- two things, tell people what 730 exams are and what MICA law is.

MR. ROUNTREE: 730 exam is our lawyer believes our client is not competent to proceed

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2 with the case. We can order a 730, it's called
3 a 730 examination where that individual is
4 examined for mental competency, whether --
5 understands the nature of the charges.

6 MR. SCHECHTER: You can order it at
7 any time?

8 MR. ROUNTREE: You can order it at
9 any time. Typically, that issue is identified,
10 once again, in arraignments, not always, but
11 typically it is, and two psychologists will
12 examine this person and produce a report that
13 will go to court and either that person is found
14 fit or unfit.

15 MS. KELLEY: Two separate reports or
16 they collaborate on one report?

17 MS. BERNHARD: They do two separate
18 reports.

19 MR. ROUNTREE: Two reports.

20 MS. KELLEY: If there's conflict
21 between the two?

22 MR. O'CONNELL: They go to a
23 tie-breaker theoretically.

24 MR. ROUNTREE: Normally, it doesn't
25 happen. We have our people there, I insist that

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2 the lawyer goes to these examinations. I think
3 it's an excellent training tool for the lawyer
4 to be there in that room to listen to the
5 questions and perhaps filling in any gaps that
6 may exist to help the psychologist understand --
7 once again, not always can the lawyer be there
8 but certainly Mary Beth who tries to go to all
9 of them is there and she is a master of
10 understanding clients, client behavior and she
11 knows these doctors so well that it's helpful,
12 it's helpful for the client. So --

13 MR. JONES: MICA.

14 MR. ROUNTREE: Mentally ill --

15 MR. JONES: Chemically --

16 MR. ROUNTREE: Chemically addicted.

17 Here we have these individual dual diagnosis
18 where you're having an access one, perhaps,
19 diagnosis and also addicted chemically to either
20 drugs or alcohol. It's important because a vast
21 majority of our clients in the system with
22 mental illness also have a codependency of some
23 kind of addiction. So that's a whole another
24 animal and we have a MICA lawyer and a MICA
25 social worker to address those clients. So

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2 because of the expertise, I think it's helpful.
3 Now, the down side or con is that that's all the
4 cases they see. They're integrated about those
5 cases, but I think the benefit outweighs any
6 down side to it and practically and frankly, you
7 know, there's no one else who wants to do this
8 stuff. These lawyers want to have the
9 expertise. They're interested in these fields
10 and enjoy it. My only worry is, if something
11 happens to the lawyer, I have to recruit and
12 find people to fill their space. And that would
13 be hard and when they're out on vacation or ill,
14 it's difficult to have people step in for them
15 but we make it work. As far as training, the
16 support group quickly, I make sure that whatever
17 outside training that they want to go to, they
18 can go to and if they're being paid for it, we
19 pay for it. Sometimes, you know, cost is a
20 factor, but certainly, there's a conference with
21 treatment court called the gains conference they
22 have every year. I don't know what that gain
23 stands for, but it's a treatment provider and I
24 know the two individuals in my office who are in
25 treatment court, they always ask to go, I

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2 always, you know, call downtown, e-mail, say,
3 can you provide the money for these people to go
4 to the gains conference. We're always invited
5 to go to various training programs. When they
6 began to initiate the DWI training, they had a
7 big training thing at Pace.

8 MS. BERNHARD: Right.

9 MR. ROUNTREE: Where I was invited,
10 the treatment providers, both prosecutors and
11 defense, Barbara, were invited. We went, we
12 were part of that training. I try to make all
13 the stakeholders' meetings, if I can. The
14 lawyers come to me, if they are problem cases or
15 they feel they're being leaned on to take a case
16 that they don't think should go, we have a
17 person in the DA's office who is not a lawyer,
18 Doug Knight, he really gets these issues. He is
19 barred into concept. He will go to DA's and
20 kind of say, look, this is the case, we want to
21 bring it into treatment court, mental health
22 court and there's constant communication and
23 consultation.

24 MR. O'CONNELL: We have a mixed
25 approach in that, first of all, our office tends

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2 to be far, our people are a little bit more
3 experienced that we don't have the range of
4 experience that some of the other offices have
5 or -- 13 years in practice. So for the mental
6 health court and -- for the mental health court
7 there's nobody, because we don't have a mental
8 health court in Manhattan. It doesn't exist.

9 For the IDV, we did get an attorney who was
10 certified in both areas. She does those cases,
11 she gets them after they've been referred to
12 IDV. So it's a point of which a case had been
13 identified, there's an IDV case and we get
14 notified of those adjourn dates. Essentially
15 what happens is, the case will be adjourned for
16 two months into an AP part in Manhattan then
17 we'll get a notice from the court, you know,
18 it's not going to the AP part, it's going to IDV
19 on a different date and that's our first
20 indication that it's an IDV case. The case was
21 transferred to the attorney who is handling
22 those cases. She is in there. It's about
23 70 percent of her cases at this point. She does
24 have regular criminal court and felony cases.
25 In terms of the drug courts, which are, once

1
2 again, not real problem-solving courts, we don't
3 have the -- one of the questions asked earlier
4 about Manhattan Treatment Court of the other
5 attorneys, whether it functioned the same way
6 the problem-solving courts do; it doesn't.
7 There's, I've got a Manhattan Treatment Court
8 case. The adjournments are four to six weeks
9 every time. There's no interim hand holding or
10 any of the meetings or any of that stuff. You
11 go to the program, how are you doing at the
12 program, fine, next day.

13 MS. BERNHARD: No particular
14 involvement with the judge?

15 MR. O'CONNELL: Well, the judge gets
16 a little bit involved. The judge in Manhattan
17 who is doing treatment court for a long time was
18 Judge Ward, Laura Ward. She made an effort to
19 do some of, with all due with respect, I call it
20 touchy-feely stuff.

21 MS. BERNHARD: It doesn't sound like
22 with due respect.

23 MR. O'CONNELL: But she did try, she
24 talked to clients. There was one of the things
25 that Marvin talked about that gets defense

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2 attorneys crazy, she would have the defendant
3 come up and speak to her alone, which makes
4 everybody nuts but that was part of the process.
5 But I think she was reasonably successful in
6 conveying a real concern for the clients. I'd
7 say reasonably successful. I don't think it
8 struck, it was -- the current judge working in
9 that part, Judge Nunez is an entirely different
10 approach. I happen to like her and she is more
11 of the stern mother figure, you know, how is it
12 going, how are you doing, but she does engage
13 them to some degree, but nothing like the models
14 suggest be done. Those cases are all handled by
15 the individual attorneys who pick up the cases
16 at arraignments. They make the appearances
17 during the course of the treatment, they are
18 there for whatever issues there are, that raise
19 in terms of compliance or anything of that
20 nature. And as Marvin talked about the decision
21 to go into the treatment was made with virtually
22 no information at all, it's made within, usually
23 the 180.80 day, five to six days after
24 arraignment where you have nothing but anecdotal
25 information maybe from the assistant DA about

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2 what their alleged case is and it's a problem.
3 There's also the phenomenon of what the other
4 attorney referred to is what I call the sucker
5 bet is the idea of taking it, pleading guilty,
6 saying, okay, if you get the program, you're
7 going to the program; if you don't get the
8 program for whatever reason, absolutely no
9 reason whatsoever, you go to jail, period. It's
10 what's called, that's the sucker bet, because,
11 probably I think about 60 percent of the people
12 don't get the program because they don't have a
13 phone or their mother doesn't want them to come
14 back and live with them because they have been
15 stealing from her for the last 20 years or
16 whatever reason that "treatment" or enforcement
17 team can't recommend that they go to a program,
18 they go to jail. I had a case a few years ago
19 where, about a year ago where everything worked
20 fine except for the parole violation judge,
21 parole officer was on board, the DA was on
22 board, the judge over at parole would not okay
23 the program. And the guy got four and a half
24 years because the parole judge wouldn't agree
25 to --

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2 MR. JONES: We've got time for just
3 one last question that will come from Vicki.

4 MS. YOUNG: Since your supervisors in
5 another set of hearings that we had, the
6 supervising or the public defender indicated
7 some frustration in having staffing for the
8 problem-solving court because they are not
9 really being a lawyer. That was -- and I just
10 like your response because it sounds like at
11 least the Queens courts are very committed to
12 staffing the problem-solving court. I mean,
13 obviously you have to be there, but I guess
14 it's, you have to be there and like it and
15 support it or you just sort of -- or what. Are
16 they being lawyers in your opinion?

17 MR. ROUNTREE: I disagree. I think
18 they are lawyers. Certainly, we were there
19 because we want to be there and because we think
20 it helps not being there. These courts don't
21 look like they are not going away so if they are
22 not going away, we should be apart of it. I
23 tell lawyers all the time, it's all about
24 advocacy. If you advocate for a client, some
25 people you advocate on trial, in front of a

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2 jury, this is advocating another sentence,
3 because, you know, when, you know, the idea is
4 that not all these people are successful, they
5 have bumps and hiccups, there has to be someone
6 there to say, hey, look, you shouldn't give this
7 person this sanction or this penalty or this
8 sentence because of this. Look at this way, you
9 have to be more objective about it; we are here
10 because you're trying to understand this person
11 to help this person. So I think lawyers know
12 that role. It's an important role for all
13 lawyers to know because I think it kind of
14 broadens our advocacy skills, and I'm grateful
15 for the lawyers who are there. I wish we had
16 more resources to get more lawyers to be in
17 those courts; unfortunately, we don't.

18 MR. SCHECHTER: If a national bar
19 association or state bar association offered
20 scholarships, say a thousand dollars to have an
21 attorney travel to Washington D.C. or Baltimore,
22 Maryland for four days in the summer to attend a
23 national association of drug professionals
24 training program, you'd apply for that, right?

25 MR. ROUNTREE: Sure.

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MR. SCHECHTER: You wouldn't think twice about it?

MR. ROUNTREE: Sure. Absolutely.

MR. VACCARINO: I think the role of a defense lawyer is with regard to somebody accused of a crime is, number one, to try to avoid them going to jail and, number two, to try to avoid them getting a conviction. Now, drug treatment court does both, if they're successful. I think we have to monitor what goes on in that court, make sure the defendant understands the implications of the contract they entered because in fact Queens Treatment Court for the drug felony offenders differs from the mental health court, which has the same judge in that with Queens Treatment Court, there's a first time felony drug offender. So if they take a plea in the criminal court by a waiver of -- they will probably get probation. Now, the probation department may then insist that they go to a drug program and they'll have a conviction as well as having to go to a drug program. So that's one of the things that has to be explained to them. On the other hand,

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2 there is an alternative sentence, if they fail
3 the program, they are going to go to jail. Now,
4 the defense counsel has a role in determining or
5 trying to advocate as to what that alternative
6 sentence would be, hopefully as little as
7 possible. And so there is a role to play as a
8 lawyer, not as a social worker, in negotiating
9 all that and keeping a watch that the person is
10 treated fairly within the system. With the
11 mental health court, they take a plea up front
12 the same way they do in treatment court, and
13 there is an alternative sentence if they fail.
14 However, the district attorney's office has
15 agreed that if this person fails mental health
16 court, they will get the same plea that they
17 were offered in the criminal court prior to
18 going into mental health court, and that, by the
19 way, they don't get their cases dismissed.
20 Usually, if they succeed in mental health court,
21 it's reduced to a misdemeanor and they're
22 allowed to be put on probation for like three
23 years. But Bob has assured me in the cases he's
24 seen where the person has failed the mental
25 health court and he's checked with the lawyers

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2 as to what the offer was, that they've gone
3 along with that and they've given them the same
4 alternative sentence that they were promised
5 prior. So I think, you know, there's plenty of
6 work to do as a lawyer in these problem-solving
7 courts. I just want to get back to the issue of
8 resources because especially with mental health
9 court, you know, Bob has estimated from his
10 observations that about 70 percent of the people
11 who come into mental health court also have
12 substance abuse problems. As Tim said, there's
13 also a mix of diagnosis, about 40 percent Bob
14 says have homelessness problems. The court
15 can't function in isolation, without the other
16 components of the government providing some sort
17 of resources for those people. Homelessness
18 being a problem, there should be some sort of
19 facility for people to be housed. Right now I
20 understand there's a place called Bellevue
21 Assessment Center, which is next to Bellevue
22 Hospital, which serves or has served as a
23 shelter for people with mental problems, that's
24 being closed down and condos are being
25 substituted there. Now, to me, that's going in

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2 the wrong direction. So I think we really have
3 to make sure that while we look at these
4 problem-solving courts, we let people know that
5 they are not the solution by themselves, that
6 there's a much wider social problem involved
7 here that they have to deal with.

8 MR. JONES: Thank you. A great note
9 to end on. Thank you all for your testimony.
10 It's good to see you guys. We're going to break
11 for lunch and reconvene at 1:15.

12 (Lunch recess taken.)

13 MR. JONES: Let's start our afternoon
14 session. Judge Ferdinand, it's good to see you
15 and have you back. And, Monica, we're
16 particularly pleased this afternoon to have you
17 here and to have an opportunity to speak with
18 you. I'll just tell you a little bit about what
19 we are and then you can tell us about your
20 experiences. We are a special task force of an
21 organization called the National Association of
22 Criminal Defense Lawyers so we are criminal
23 defense lawyers from all over the country, some
24 from California, some from Ohio, others from New
25 York and we have been going around the country

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2 listening to folks like Judge Ferdinand, like
3 yourself, prosecutors, other defense attorneys,
4 people who provide social services and do social
5 work and other treatment providers trying to get
6 a better understanding of how courts like the
7 drug treatment court or the mental health court
8 or community court, how those courts really work
9 and how effective they are in the communities,
10 where they serve in terms of helping the people
11 to come through. And we have been taking
12 testimony and listening to a bunch of people
13 from all over the country talk about their
14 experiences and the roles that they play in
15 these various courts. And when we are all done,
16 we've been two days, is our second day listening
17 to folks from New York. When we leave New York,
18 we're going to go to Milwaukee, then we're going
19 to go to Texas, when we're all done, we're going
20 to write a big report on what we've heard,
21 learned, found and think. So your participation
22 is going to, A, contribute to that report and
23 help us get a better understanding of how these
24 courts work and with your experience, what your
25 experience was and then also is important

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2 because it gives us an opportunity to hear
3 voices that we don't always hear. I think you
4 are the second person in all of our travels who
5 actually experienced these courts from the
6 perspective of a participant and from the
7 perspective of a graduate. So your testimony is
8 very important to us and very meaningful. And
9 so having said that, again, we're glad to have
10 you, welcome you and I'll turn the floor over to
11 you and Judge Ferdinand.

12 MS. FERDINAND: I just wanted to say
13 a few words to put in perspective so when you
14 hear Monica speak and you see her now, you
15 appreciate that when I first saw her, it was a
16 whole different person we're talking about. I
17 met Monica in September of 2004; it was her 47th
18 arrest. I was going to show you her arrest
19 photo, but she just told me that -- I asked her
20 permission to show it to you, she told me she
21 actually carries it with her. But I'll show you
22 two photographs: The first is her arrest photo.
23 We accepted her as part of drug treatment court
24 and she did remarkably well. She completed the
25 court mandate two years ago in March of 2006 and

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2 the second photo was her graduation photo. And
3 it actually speaks to one of the issues you
4 asked me the other day, because in the photo in
5 addition to myself and Monica is her case
6 manager and her lawyer. And in the two years
7 since Ms. Holmes has continued to stay in touch
8 with me, come visit and recently we've started
9 e-mailing each other, so I knew when you asked
10 to speak to somebody and you wanted them
11 quickly, she was someone I could reach quickly.
12 I don't know how astounding that is to you, but
13 to me, I can reach her by e-mail is really
14 astounding.

15 MS. HOLMES: Well with that said, my
16 name is Monica Holmes. When I first came to
17 treatment court, I was a 53-year old broken
18 person. When I came to the court, as Judge
19 Ferdinand said, I had 40-something arrests, I
20 had been in four other long-term treatment terms
21 and for some reason, I remember Judge Ferdinand
22 telling me exactly that, if she paid attention
23 to the papers that she was -- but for some
24 reason, she felt in her gut that this would be
25 the time. And it was. It wasn't so much the

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2 arrests, but by the time I got there, I was just
3 so tired of living like an animal and so I
4 welcomed the opportunity to get in the program,
5 which was program number five. And though I was
6 angry for the first 30 days, oh, my God, I'm in
7 the program, blah blah blah, I went to an
8 excellent program. And I don't know if you're
9 familiar with it, but the name is Reno Services
10 for Women (phonetic). It's in East Harlem, all
11 female, small and intimate, because I'm
12 aggressive, or should I say, assertive and
13 bossy. And so usually when I did long-term
14 treatment facilities I would become the expert,
15 either the coordinator or the department head
16 and I would run the program rather than get the
17 treatment that I was there for. So I constantly
18 relapsed, besides the reservations and thinking
19 I had the master plan, you know, that sort of
20 attitude. And so when I went to -- there was no
21 such thing as expert of the department and the
22 coordinator so I got the treatment that I
23 needed. Wow. My experience with Brooklyn
24 Treatment Court was astounding. And I have to
25 stay that it wasn't the first time I had been in

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2 a treatment court. I had done a year with Judge
3 Rubay (phonetic), misdemeanor treatment court
4 with Judge Rubay and he is a great guy, but I'm
5 not going to take anything from him, but my
6 experience with him -- I don't know if it is she
7 is a female and has a little more compassion
8 than others, you know, but her demeanor and her
9 ability to speak straightforward to the clients
10 that she serves plays a very large part. Take
11 in mind that when you come from a place that I
12 came from, we were busy being shifted from one
13 person to another telling you what to do, not
14 here are your options, let's talk about, you
15 know, how you think this is going to work for
16 you. This is what I expected, what do you
17 expect from me. We don't come from a place
18 where they do that. But Judge Ferdinand does
19 that, Brooklyn Treatment Court does that, the
20 case managers, the lawyers, everyone that deals
21 with that court, I'm talking even down to the
22 court officers are open, communicating kind of
23 people and that 's what we as people from the
24 street or from the drug-abuse history because
25 that's a long, very long history. I am now

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2 58 years old. I started out as an IV user
3 many, many years and went to crack, and in
4 between that was criminal history, contracted
5 the virus, all of that. So when I went into
6 treatment court, I was dealing with a multitude
7 of issues. But the court worked with me. The
8 court, my case manager as well as Judge
9 Ferdinand. We had some issues, I was able to
10 communicate with her, we were able to get
11 through those issues and I continued on my path.
12 I graduated from both treatment court and Reno
13 Services exactly March 9th, believe it or not,
14 March 9, 2006 where I did approximately a year
15 in residence and then I did six months
16 afterwards on aftercare because my commitment to
17 the court was 18 months and it just so happened
18 that the treatment time, the facility ran neck
19 and neck and I graduated on the same day from
20 both. Since that time, I went back to school
21 and I got my encouragement again from the
22 courts. I've managed to stay in touch with not
23 only Judge Ferdinand but quite a few of the case
24 managers, you know, that I developed a rapport
25 with. So they have always been supportive and

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2 encouraging even after graduation and this is
3 why I like Brooklyn Treatment Court, is they
4 encourage you to stay connected. So if you need
5 support and you need some guidance or just
6 someone to talk to, someone is there. You know,
7 it's really hard for you to change years of a
8 behavior and attitude, that doesn't work, happen
9 overnight. It takes people who have some
10 patience, you know, a little expertise.
11 Sometimes we need a kick in the pants, sometimes
12 we need our arms sprung, you know, a little push
13 here, a little shove there, but they do that
14 with care and concern and it comes through in
15 the way that they interact with us. Believe it
16 or not, today I work for Reno Services For Women
17 as an HIV counselor because -- funding, we have
18 a young population, our population in terms of
19 the jail system is changing, it's 18 to 25. And
20 so when I was there, we had a lot of older
21 people, but now we have a lot of young people
22 and so they have what they call a consortium
23 here for the HIV population and this is someone
24 who is considered a long-term survivor, actually
25 I was diagnosed in 1989 and -- they also knew

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2 that I had worked in the HIV field, which is the
3 job that while I was in treatment court as a
4 peer -- Interfaith Medical Center -- so when
5 they decided to write for more money -- I love
6 Dr. Elliot, who was the overall director of that
7 program -- whenever she writes for money, she
8 puts in the proposal that she'll hire her
9 graduates if they can fit that position. And
10 she does it, it's something like -- in a few
11 capacities so she says, you're working, I said,
12 no, I -- Interfaith and blah blah blah and she
13 says, send me your resume and I've been working
14 for them exactly a month, believe it or not.
15 And so this morning before I came here that's
16 why -- I was at a workshop dealing with HIV and
17 Aids in the New York City jail system, because
18 that's what I do. I go into the jail system, I
19 take referrals, you know, I interview the women
20 in terms of assessment and I give them an option
21 when you come to Green Hope for residential and
22 they leave which is very -- as an extension of
23 jail and as an opportunity to make some changes,
24 that you know in the back of your mind you know
25 you're not going to make by yourself. That's

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2 where the push comes. I think that's the part
3 that Brooklyn Treatment Court plays, that push.
4 Even if they're not using or they're selling,
5 they don't realize that that is an addiction as
6 well, as if they were actually using the drugs
7 that they are selling, the addiction to the
8 money, the lifestyle, the attitude and all of
9 that. So, listen, I don't know what else to
10 say. I am blessed. Really, I am blessed. I
11 tell the clients in the program, I say, you
12 know, God is not coming down to do the hands-on
13 thing and splitting water and stuff like that
14 anymore, but he is working with people, places
15 and things and so rather than to look at the
16 program as an extension of jail, the same
17 mentality, the same habit and all of that, we
18 need to look at it as an opportunity, you know,
19 to do, again, some things that you know if you
20 go back to the environment that you left, you
21 will not do. And so that's all I have to say.

22 Is there any questions or did I cover it all?

23 MR. JONES: No, you did not. Do you
24 mind if I ask her a question?

25 MS. KELLEY: That's fine.

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MR. JONES: I just wanted to ask you a question, a couple of questions. If any of what I ask you, you think is too personal, you just don't answer it. I'm interested in knowing are you a native -- were you born here?

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MS. HOLMES: Yes, I was born and raised in Crown Heights, Brooklyn.

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MR. JONES: How far did you go in school?

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MS. HOLMES: Believe it or not, when I came to Judge Ferdinand, I had some college. Only because actually when I was doing a lot of Riker's Island, long time on Riker's Island, they still had programs. I went to Mercy College and I got some credits, and when I was on Riker's Island in the early seventies, I did John Jay, you know. I'm not a story watcher. So the only other thing for me to do was to go to school, to keep my mind kind of busy.

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MR. JONES: When did you first start to have run-ins with the criminal justice system?

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MS. HOLMES: My criminal history, believe it or not, as far as 1967.

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2 MR. JONES: How old were you then?

3 MS. HOLMES: 18.

4 MR. JONES: What do you think it was

5 that got you first involved with the criminal

6 justice system?

7 MS. HOLMES: Environment, a little

8 curiosity. I have to say I'm still a thrill

9 seeker, you know; I just have learned to make

10 some better choices, you know, the adventure,

11 the drama, that kind of thing. Believe it or

12 not, I came from a very good family, but you

13 know you have a family that's kind of split, you

14 always have that one person who hustles and

15 drinks.

16 MR. JONES: That was you?

17 MS. HOLMES: That was my father. And

18 so, believe it or not, I am a mixture of my

19 mother who was the outgoing, education, work,

20 I'm a mixture of those two people. And so,

21 believe it or not, my father was the first one

22 to take -- it kind of opened up Pandora's Box.

23 He didn't know. I'm a daddy's girl. All he

24 knew is, he is taking his daughter to enjoy

25 something that he likes, you know.

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2 MR. JONES: As you were growing up,
3 mom and dad were at home?

4 MS. HOLMES: Oh, yes. That's another
5 thing that I failed to mention. A lot of people
6 assume you have to come from a broken family,
7 you have to be a rape victim or abuse of some
8 kind; I did not come from that. I'm the baby.

9 MR. JONES: Brothers and sisters.

10 MS. HOLMES: Yes, I'm the baby, only
11 girl. I have a brother who retired from
12 teaching for 35 years, I have an older brother
13 who is in his sixties who is an Air Force career
14 man. He is so regimented, he will never quit
15 the Air Force; and education, you know, and
16 morals has always been something that was
17 instilled as a child. But for me, that was
18 boring.

19 MR. JONES: Did you graduate high
20 school?

21 MS. HOLMES: I did do a GED. No, I
22 left school because I didn't want to go to
23 school anymore and I was spoiled. I'm still
24 spoiled, you know what I'm saying. So I found
25 some ways not to go back to school, but I went

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2 to private schools all my life, you know. And
3 so everybody in my family is like, she's got to
4 be crazy, what's wrong with her, go see a
5 psychiatrist. They had no idea it's boredom,
6 but when an exceptionally gifted person in your
7 family, you don't know what to do with them, I
8 think I'm one of those.

9 MR. JONES: Without getting into
10 detail, give us sort of the flavor of the kind
11 of arrests, the kind of wrap sheet --

12 MS. HOLMES: In 1967 the first one
13 was the drug association. Actually, they were
14 trying to use me as a -- they knew I was kind of
15 young and naive. They thought I was going to
16 tell -- that didn't work so they ended up
17 dismissing that charge. But ever since then,
18 it's been shoplifting, my felonies are for
19 burglaries, which is another thrill-seeking
20 adventure. Believe it or not, it was a
21 boyfriend who was doing it. It was like, okay,
22 I'll take it her with me, two of us is better
23 than one. My felonies were burglaries.

24 MR. JONES: What was the longest
25 stretch you did at Bedford Hills?

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MS. HOLMES: Two to four.

MR. JONES: Did you do the full four?

MS. HOLMES: No, I did two, came home, violated and went back in, maxxed out and believe it or not, after I maxxed out, I don't know if you've been around long enough but Stefon Chinlit (phonetic), who at that time was the commissioner of special programs happened to be the director of Rockefeller program when I was in Rockefeller program in the early seventies and he hired me and I worked for him --

MS. KELLEY: What's Rockefeller program?

MS. HOLMES: What is it, the narcotics commission control at that time, you know, when they had the building on 41st Street and Tenth Avenue and it was one of the first alternatives to incarceration kind of situations, but it was really, really intense and that was the first program I ever went to. They had a such thing as a civil commitment and a court commitment, because my mother found out that I was using, she didn't know what else to

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2 do with me, she called some people and they told
3 her about Rockefeller program so she signed me
4 into Rockefeller.

5 MR. JONES: Could you just tell us
6 sort of what your gateway drug was and when and
7 then what you sort of graduated up to?

8 MS. HOLMES: My gateway drug was
9 marijuana through the pool room, I have to say,
10 pool room. I met some people and they were
11 selling large quantities of marijuana and I was
12 young, I was cute and so I fell right on in, you
13 know. And so I was selling it for a while and I
14 ended up using it, smoking it and then I
15 graduated to heroin then it went from snorting
16 heroin to shooting heroin, then it when to
17 heroin and cocaine then it went to straight
18 cocaine and then I went to crack.

19 MR. JONES: Over what period of years
20 are we talking about?

21 MS. HOLMES: We're talking about from
22 1968 until approximately four years ago.

23 MR. JONES: Until four years ago?

24 MS. HOLMES: With a little clean time
25 in between where I tried, you know what I'm

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2 saying, and got frustrated because people were
3 not responding the way I thought they were
4 supposed to respond or as fast as I thought they
5 were supposed to respond and I ended up going
6 back to what I knew as crazy as I knew that was,
7 you know. We kind of get comfortable with the
8 insanity.

9 MR. JONES: I just have one more
10 question for you. I appreciate your frankness
11 and your honesty and you may have already
12 answered this, when did you realize that you
13 were positive. When did you realize you had the
14 virus?

15 MS. HOLMES: A lot of my friends were
16 coming up with it and my thinking was still
17 crazy because what happened, remember when they
18 first came up with it, everybody was getting --
19 extra this and that so I said I want some of
20 that and I ended up going to get tested, I
21 wasn't eligible but I went anyway, you know and
22 I really wasn't into, I need to know my status.
23 That had nothing to do with it, but I'm glad I
24 did find out.

25 MR. JONES: What year was that?

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2 MS. HOLMES: '89. So I probably had
3 it for a little while longer than that. I'll
4 probably say I got infected around the early
5 eighties, you know.

6 MR. JONES: Thank you.

7 MS. KELLEY: You talked about how by
8 the time you got in front of Judge Ferdinand you
9 were sick and tired of being sick and tired, but
10 you also mentioned you said you had gone through
11 four prior treatment programs?

12 MS. HOLMES: Yes.

13 MS. KELLEY: What was it in
14 particular other than your emotional state at
15 this point in history that enabled you to
16 succeed in this program whereas you did not in
17 the others?

18 MS. HOLMES: I think it was the
19 program. Actually, I think it was the program.
20 I don't know if you're familiar with Green Hope,
21 but Green Hope is smaller, more intimate. It's
22 not a big, crazy kind of place. Like I said,
23 there are no expeditors and department heads.
24 You're there to get treatment, the staff are
25 like, we can run the program, we don't need you

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2 to run the program, we need you to come and get
3 what you need to get. They're young, they're
4 women. At that time they had a male director,
5 but actually it was a male director who had
6 actually gotten high in the streets of Brooklyn
7 with me, you know what I'm saying. And so it
8 was an opportunity to interact with a man in
9 another capacity, you know what I'm saying, who
10 wasn't looking at what I could do, you know, but
11 taught me what it meant to have a male friend,
12 you know what I'm saying. So it opened up some
13 doors and I think that's what I really needed,
14 you know. What kind of saved me also is that, I
15 had a reference point, believe it or not. Like
16 I said, I came from a good family, I came from
17 education, you know, I had some role models. My
18 father was crazy, but that was another thing.
19 My mother came from the era where the mother
20 took care of the girls and the father took care
21 of the boys, you know what I'm saying. So I had
22 a role model. I had a reference point that I
23 could kind of go back to. Yeah. I remember my
24 grandmother saying -- I didn't know what she
25 meant at the time, in a moment of clarity, I may

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2 actually remember those things. You know, and
3 then I had some staff who reinforced that, you
4 know what I'm saying. There was some women
5 working there who had been through some of what
6 I had been through and had come out, you know, a
7 few war scars, yes, but had come out of it and
8 were now doing some things and they instilled in
9 me that I could do the same thing. That's why I
10 go to NA. I don't know if you notice the NA
11 chain, I was talking about it to someone else
12 about it. They said well -- I said yes, because
13 luckily where I work at it's a -- I worked on
14 Wall Street so I hid it because it wasn't
15 everybody's business, you know, not in that
16 setting, you know. But I worked in the setting
17 where self help is encouraged, you know, and
18 that's the kind of place where Green Hope is,
19 besides how closely they work and interact with
20 the treatment court. Like Judge Ferdinand says,
21 I miss it, as a staff member now I go to court,
22 when I know that the girls are in court, I pop
23 up at any time. (Laughter)

24 MS. KELLEY: Is Green Hope the
25 primary facility with which your court uses for

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2 inpatient care?

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4 MS. FERDINAND: No. We use probably

5 20 residential programs and more outpatient.

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7 MS. HOLMES: Let me explain how --

8 Green Hope, when I worked for what was the

9 network program, which was a collaboration

10 between the Department of Correction and Reality

11 House under the direction of Stefon Chinlit, I

12 used to go in Green Hope to my groups, so I knew

13 what the setting was, you know what I'm saying.

14 I mean, there was a program that was started

15 originally with nuns who were dealing primarily

16 with women coming out of the state correctional

17 facilities that didn't have an address, needed

18 to, you know, kind of get their bearing before

19 they went right back into the community. But

20 after a while, the nuns could no longer do it

21 and it was taken over by Dr. Elliot, who is now

22 licensed by Oasis -- you know how the money

23 comes -- you know. So I knew about where I was

24 going. And being the person I am and having

25 been to Riker's Island quite a few times, knew

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2 going to another program, I need to go -- I got
3 on my job, you know what I mean, because I knew
4 by then the bigger programs did not work for me.
5 You know --

6 MS. FERDINAND: I have a slightly
7 different answer too, because I asked that
8 question of people all the time and there is no
9 magic answer. So to me, the answer is always,
10 you have to be willing to give the people
11 another chance because you never know when it's
12 going to work; and for Monica, it was Green
13 Hope. I sent plenty of women to Green Hope and
14 it doesn't work for them. It's not really the
15 program, it's the moment in time that someone is
16 ready and that you're ready with the services.

17 MS. KELLEY: Now, if you were a
18 member and this is to the judge again -- I'm
19 sorry -- do you remember what it was in your
20 gut, to use Monica's phrase, that told you she
21 was worth a second chance or a 47th chance, I
22 guess?

23 MS. FERDINAND: I hear that history
24 as it's just a matter of time. She did four
25 programs, so now I know she knows what it is to

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2 be clean. I know she knows what it is to
3 complete a program, she had education; I knew
4 all of that. So what does it matter whether
5 it's the first time or the -- I mean, it would
6 be better, it would be better on the first time
7 somebody intervened and it worked. But what
8 does it matter whether it's the first or the
9 45th? What's unusual about my court is, she had
10 completed the misdemeanor treatment court and
11 was nevertheless eligible to come to my court
12 and that's because otherwise we should close the
13 misdemeanor court. If somebody graduated from
14 the misdemeanor court and you said, now you have
15 a felony and you're not eligible, then nobody
16 should go to the misdemeanor court, they should
17 wait until they get arrested for a felony. So I
18 heard that as a positive. She knows what's
19 required, she knows what she needs to do, she is
20 capable of doing it, give her the opportunity to
21 take advantage of it and maybe this will be the
22 time.

23 MS. KELLEY: Just one quick. Do you
24 remember if it was your attorney who encouraged
25 you to go through drug court or did you tell her

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2 that you wanted to do this and she thought you
3 were crazy or what --

4 MS. HOLMES: No. When they offered
5 me drug court actually at arraignment, you know,
6 they were like -- because it was a drug-related
7 arrest, you know, so that's kind of standard
8 where they kind of say, well, you know, they
9 don't even really know whether you've been to a
10 program or not. They said it's a drug-related
11 arrest and it's obviously she was a user and I
12 was tore up, they said -- treatment court. It
13 wasn't really the judge. I mean, the lawyer by
14 that time, they were like, look, what do you
15 want to do, they're sending you to treatment
16 court, you know, that's when the questions
17 start, have you ever done treatment before, blah
18 blah blah blah and that's where it kind of went.
19 But, again, I agree with Judge Ferdinand, it's a
20 willingness. You have to be willing. By that
21 time, I had ran out of plans and ideas, you
22 know, I had finally realized that none of stuff
23 worked, and so I was willing to take some
24 suggestions. And I think that's what you really
25 need.

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2 MR. JONES: We are over on time. But
3 I know Adele --

4 MS. BERNHARD: Actually, it was a
5 very similar question to Elizabeth, I guess,
6 because we are here thinking about what can we
7 tell defense attorneys. I sort of had the same
8 idea. I was sort of interested, was a lawyer
9 ever, was a defense attorney ever a help in any
10 of this voyage?

11 MS. HOLMES: Oh, sure. Sure. The
12 attorney who is in that picture, very nice,
13 young lady, you know. I was able to communicate
14 with her, you know, without saying, well, that's
15 a lawyer, you know, because that's what you kind
16 of get sometimes, you feel like, I can't talk to
17 that person, they don't understand me, they're
18 just here to do a job, you know what I mean. So
19 I think what you could say to attorneys is that,
20 to lend an ear. Lend an ear. Lend an ear. You
21 know, if it is just a job, don't let the
22 defendant know it, please. (Laughter) For real.
23 Because it kind of shuts, it creates a gap, you
24 know. And remember, in Judge Ferdinand's court
25 it's a little different, she'll address you

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2 directly, but in a lot of court situations, the
3 judge don't want to hear from you, they want to
4 hear directly from your lawyer. So if you don't
5 have a lawyer that has lent you an ear, you know
6 what I mean, it kind of gets, what needs to be
7 done kind of gets lost in the source.

8 MS. BERNHARD: So this attorney in
9 the picture was a help in negotiating your way
10 into drug court?

11 MS. HOLMES: Oh, yes. Oh, yes. Oh,
12 yes. Oh, yes. Definitely. Because of that,
13 she was on the same page with the judge. And
14 even, you know, in treatment court, like I said,
15 the staff is a little different. I don't know
16 what it is. I don't know whether, you know,
17 that's their kind of makeup or whatever, but
18 they're different. Even the person who comes
19 from the district attorney's office, you know,
20 it's different. They handle the situation
21 differently than arraignment or pretrial, you
22 know, been there too, you know. So I know
23 there's a difference, you know. And so I think
24 what's important is, to allow a person , because
25 a lot of times at that moment we don't know what

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2 we need, we don't even know what we want, okay.

3 And so just to even if we babble, hear us. We

4 need somebody to listen, you know. As experts,

5 you know, I'm quite sure you're able to kind of

6 read between the lines, pick out, you know,

7 because we do say something that makes some

8 sense sometimes, you know what I'm saying, but

9 if we're not heard, you might miss it.

10 MR. JONES: It's a great way to end.

11 Thank you.

12 MS. YOUNG: We need to give you your

13 photos back. I'm just wondering if we can get

14 copies just of the photo, not of your

15 identifying information, I think that would be

16 really great for your report.

17 MS. HOLMES: Sure. Is there a way

18 for you to make copies.

19 MS. FERDINAND: If you want to keep

20 those, that's fine.

21 MR. SCHECHTER: We're going to redact

22 the name.

23 MS. HOLMES: Sure. I don't have a

24 problem with that.

25 MS. SHIFMAN: Congratulations.

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Really, thank you for sharing your story with us.

MS. HOLMES: Thank you. Thank you for having me.

(Recess taken.)

MR. JONES: Welcome. We're happy to have you here this afternoon so you got a certificate of readiness --

MR. BURNIM: That was very interesting.

MR. JONES: Let me just say that, you know, because we are running a little behind, we want to have an opportunity to explore the issue with you. If you can give us 5, 10 minutes, the most, of opening thoughts and allow us to question you, this time Elizabeth Kelley, and she really is going to start the questioning. I'm not going to impose myself.

MS. KELLEY: That's fine.

MR. JONES: So thank you for being here and the floor is yours.

MR. BURNIM: My name is Ira Burnim. I'm the -- mental health law public -- we're a -- leader in the mental health and disability --

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2 community often represent the interests of --
3 leadership conferences -- you may be familiar
4 with the counsel state government as -- report,
5 criminal justice and mental health -- two of
6 them are mental health --

7 COURT REPORTER: Your voice keeps
8 going down.

9 MR. BURNIM: I'll be louder. This is
10 part of the problem for me, but so we were
11 involved in the counsel state governments
12 consensus report which you may be familiar with
13 on mental health and -- there are members of the
14 -- community, two mental health, we were one
15 along the trade association. Statement health
16 directors, just to give you sort of a sense
17 where we fit in the mental health policy world.
18 And I commend that report to you. I don't know
19 if you're familiar with that report, I think
20 your organization or some representative must
21 have been involved because it was all the -- and
22 criminal justice and several stakeholders
23 organization in -- period. One of the things to
24 know about their report is that, mental health
25 courts were not central to the -- in any way. I

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2 think mental health courts presents a kind of
3 interesting and difficult problem for both you
4 and for our communities. I would imagine from
5 the, from the perspective of lawyers who
6 represent individuals, it's always good to have
7 an alternative, particularly if the alternative
8 in practice with a client in front of you is
9 more attractive than what the routine system is
10 going to offer. This is all what we want for
11 our clients as a better deal. So in some
12 jurisdictions, often in mental health court or
13 drug court is going to be a better deal than
14 routine processing through the criminal justice
15 system, it's hard to say no to that. It's also
16 true as the previous speaker indicated, people
17 do get better. It's not obvious and actually
18 the evidence from studies of mental health
19 courts and other similar inventions where court
20 coercion is used as a means of securing
21 treatment or good treatment -- it's not at all
22 obvious that it's the court as opposed to the
23 treatment. And I think that was something of
24 what was said by the last speaker. If you have
25 a judge who is very forward looking, whose

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2 position that everyone is worth another chance.
3 Let's not just punish people for their addiction
4 or for their mental illness or their other
5 difficulties in their lives, but you can't build
6 an entire societal intervention particularly
7 when using state coercion around the hope that
8 you will have a few judges like that. So I
9 think you have to step back and ask whether
10 mental health courts make sense. It's kind of a
11 big picture and I just want to speak about that
12 very briefly and kind of the questions and
13 answers. I think if you're sort of looking at a
14 systemic perspective and asking yourselves, what
15 would it take to fix this mess with people with
16 serious mental illness who currently are
17 involved in the criminal justice system pretty
18 much unnecessarily and their inability to get
19 effective treatment or other social supports
20 from our human services systems. Sort of what
21 would the solution be with this problem that we
22 call the mental health community unnecessary
23 criminalization. I think mental health courts
24 from a systemic perspective is sort of the wrong
25 solution to a very little problem, let me tell

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2 you why. It's no secret that our mental health
3 court system is, we can do the Republican --
4 this is a quote, is in shambles. So you have a
5 system that is not a very effective with the
6 most challenging clients and, frankly, prefers
7 to avoid the most challenging -- I don't think
8 it's any mistake that folks who have very
9 serious mental illness who also have co
10 occurring -- who are homeless, show up at the
11 criminal justice system, it's not just because
12 that's a tough way to live and you're likely to
13 commit crimes of survival or if you're
14 psychotic, crimes of violence or aggression
15 sometimes. It's because treatment providers
16 prefer not to deal with you. I mean, they did
17 get other clients who are a lot easier, it's a
18 lot more fun, more success, they come to the
19 office, you sit in your office, you generate the
20 bills and everyone's happy. And we know from
21 all kinds of studies and experience that this
22 particular group that you're focused on and
23 should be the appropriate subject of mental
24 health courts is a group that's pretty much
25 neglected and -- by the mental health system

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2 along with a range of other systems. So the
3 problem with mental health court is threefold
4 from my perspective, one, is that they don't
5 increase the capacity of the human -- system, so
6 you may have this wonderful treatment program,
7 you may have a mental health court that connects
8 people with that treatment program, that
9 probably means that some other people aren't
10 getting the treatment program. The mental
11 health courts in one way -- services and
12 essentially jumps on people to the front of the
13 line. That may be an appropriate thing to do,
14 it may be because of the neglect of the mental
15 health system and it's avoidance of these
16 clients that mental health courts make sense
17 from a perspective of -- but if you sit back, it
18 does not make sense to you in criminal courts to
19 ration health care resources. Identify here are
20 the most needy individuals -- or even a drug
21 addiction -- this is a managed care health care
22 kind of enterprise of who are the high-party
23 clients and how do we ensure that we deliver
24 services to them. We have some extremely
25 effective models in New York in particular.

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2 They go into the whole background of this mental
3 health world, but very kind of mobile outreach
4 which usually goes by the name of -- and
5 approach and support housing, which is giving
6 people their own apartments and through an act
7 in other means providing the support they need.

8 There are people who have gone in and out of the
9 criminal justice system in New York who are
10 served excellently in that model -- in New York
11 City, it has been replicated else where, very
12 high success rates, which I think shows that if
13 you treat people with respect, if you give them
14 what they think they want and need, which is
15 often a house, something meaningful to do during
16 the day, things that they like to do and provide
17 various drug treatment -- relapses particularly
18 in the addiction world of folks relapsing time
19 and time again. It's not going to change. That
20 is the nature of addiction and it's also the
21 nature of serious mental illness and people
22 become psychotic from time to time even when
23 they are medicated -- you need a crisis response
24 capacity. It's not obvious that the police or
25 the criminal justice system should be that

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2 capacity. The second problem with mental health
3 courts from our perspective is that I think it,
4 there are some dangers and in having arrest in
5 criminal -- be it the means by which you enter a
6 treatment center. So it's fine, although I
7 think difficult, to implement, conceptualize,
8 these are folks that would otherwise be involved
9 in the criminal justice system, they would
10 otherwise be going to prison and getting serious
11 sanctions. So we're going to give them -- we
12 can conceptualize it that way -- I suspect from
13 what I know by the systems work in practice, you
14 will create incentives to arrest people in order
15 to get people into treatment -- parole violation
16 system and MICA programs -- but we know from a
17 certainty in the parole system that parole
18 officers very, well meaning parole officers,
19 often violate people with mental illness as a
20 way of getting services. They're out there
21 floundering, they're homeless, they have no
22 services, these are minor things that they've
23 done. If you interview parole officers, they're
24 violating people in order to get them into a
25 service system. We know, for example, in

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2 Broward County from experience there, people are
3 getting arrested for the pettiest crimes in
4 order to get into the mental health program.

5 When we sat in the court, someone was literally
6 arrested, their crime was like drinking coffee
7 in front of a bank, it was that kind of crime.

8 Interestingly, there has been recent stories of
9 outcomes of the Broward County Court -- it's the
10 journal of the American Psychiatric Association
11 which -- it's because of the deficits in the
12 treatment system in Broward County, you can't
13 improve the treatment system with having a
14 mental health court and you're sort of dependent
15 upon what's out there and Broward County is --
16 third problem from our perspective is we just, I
17 guess as advocates for people with mental health
18 illness, we rarely get into the criminal justice
19 system, just because you're mentally ill, you
20 usually have an addiction problem as well. We
21 reject that, it will surely be a small number of
22 courts and a small number of criminal defendants
23 who get processed through the criminal justice
24 system in such a way that their disability is
25 taken into account seriously in terms of the way

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2 they are treated and the dispositions. Strikes
3 us that all the criminal justice system
4 particularly after the -- accommodate people
5 with mental illness and with addiction disorders
6 which is obviously a disability under the ADA so
7 they operate as effectively for people with
8 disabilities -- government programs subject to
9 the ADA -- I think it's terrific to have the
10 judge who we just will say what she said, but
11 that isn't a role for a judge in mental health
12 court, that's a role for all judges in all
13 courts. I don't know why that would interfere
14 suggesting that that particular approach --
15 they've got a big problem in your routine
16 justice system, it's reflecting a different
17 approach. And so I think that under, I think
18 some of the concern is, we have those night
19 courts over there but in these, the real courts,
20 we do something different. We sort of don't
21 understand why you want to build a system in
22 which you have that kind of dichotomy. We have
23 a, we've written papers about mental health
24 courts after a long study. I think the study
25 was in 2001 we studied -- there's like a variety

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2 -- we had a set of recommendations, if you're
3 going to have a mental health court, this is our
4 recommendation -- but I'll let you read the
5 paper which we've sent to you. I'll just stop
6 there.

7 MS. KELLEY: I'd like to start with
8 your third point about I think you could call it
9 the marginalization of people with mental
10 illnesses by virtue of the fact that you
11 segregate them into a separate court, and I'm
12 wondering do you have, is there a way in which,
13 in your center view people with mental illness
14 who are charged with serious crimes could best
15 be served.

16 MR. BURNIM: I mean, the first, the
17 factual premise, we don't actually know how many
18 people with mental illness were involved in the
19 criminal justice system end up in mental health
20 courts; I suspect it's a small percentage. But,
21 so one of the questions here is, how do people
22 get -- mental health court, not mental health
23 court. And it's different. A lot of
24 jurisdictions you can't get into mental health
25 court if you are up for a felony or you've done

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2 something violent, which, excuse me, is
3 completely reverse of what it should be, it
4 should be people who are on their way to prison,
5 you can actually benefit from a different
6 approach. It's a -- you're likely to get out of
7 probation anyway -- I think that there are sort
8 of two separate issues, one is a criminal
9 justice issue, given what we know about this
10 person, what do we need to do for public safety.
11 And so that's, you know, if the person needs to
12 be in prison, that's the judgment of the
13 criminal justice system, that's a criminal
14 justice -- it's obviously influenced because
15 that's somewhat based on the prediction of what
16 will happen when they get out. If you're asking
17 me what should we do for people with serious
18 mental illness or addiction, we know what works.
19 It doesn't work uniformly, but there's a lot of
20 experience, you don't even have to take it just
21 from me, surgeon general, commissioner of mental
22 health, people who work in the mental health
23 association. New York State has done studies
24 and it's pretty clear what New York State's
25 vision of -- it's supported housing, this may

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2 not be obvious but these folks should be given
3 their own apartments and pretty much, could we
4 help you improve your lives. And then, you
5 know, there's definitions about addiction and
6 there's a whole body of knowledge about the
7 whole body of practice about what we do with
8 addictions. So some of this is the level of
9 tolerance you have for -- behavior, some of this
10 is the willingness, willing to give people
11 apartments. The pathways program that does this
12 for folks of the criminal justice system. It's
13 a MICA program. It's considered MICA program.
14 You get sent to it by the courts. It's less
15 than 30,000 a day, apartment supports, tag team,
16 the whole bit, which is about what it costs
17 according to actually a New York City study, the
18 public just to have someone be homeless, I don't
19 know if you did a cost of what it took to
20 process -- unfortunately, because we've
21 litigated this issue, jail is a little less
22 costly than -- but there are, you know, the
23 basic dynamic is, don't wait for people to come
24 to you, go to them. Treat them with respect,
25 find out what they're trying to accomplish in

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2 their lives. It's a recovery motto. Imagine,
3 imagine the judges -- the people we call case
4 managers, just trying to help somebody, imagine
5 the program without the mental health court. I
6 mean, it's, the mental health court doesn't
7 change the treatment approach. And we also know
8 that folks fail in these programs when the
9 programs aren't good and they're punitive, they
10 are regimented and particular people with mental
11 illness fail, because the -- don't do well is
12 like, follow the rules of the schedule. So you
13 need kind of a different approach because of
14 that and there are some very successful ones.

15 MS. KELLEY: Well, it seems to me
16 that your remarks are the logical extension of
17 Mr. O'Connell's when he alluded to the fact that
18 30 years ago we closed the institutions so now
19 we have a whole population, which is no longer
20 institutionalized, thank God. But nonetheless,
21 they don't have the structure, they don't have
22 the follow through for a controlled lifestyle, a
23 lifestyle where they take their medications and
24 obey social norms, so unfortunately the only
25 time that the community really listens to the

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2 fact that these people need help is when they
3 land --

4 MR. BURNIM: It is as if people
5 aren't involved in the mental health system and
6 there's a small percentage of people who land on
7 the Court's doorstep and they do tend to be not
8 well served by the mental health system, but
9 it's not the only time. I mean, there are, God
10 knows how many crisis teams and crisis beds
11 there are in New York. There is a whole human
12 survey system out there maybe not always taking
13 the right approach, it may be too small, it may
14 be complacent. I mean, there's a variety of
15 problems that exist with the human services
16 system -- but it's not as if the only time
17 anyone worries about these folks or serves them
18 is when they're shoved in the courthouse. It is
19 not true. And a good mental health system would
20 be showing up at the courthouse. You have case
21 managers, this happened in some places, at the
22 courthouse, there's some jurisdictions where
23 they print the list of daily arrests that gets
24 sent over the mental health system, the mental
25 health system says these are our folks, let's go

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2 find out what we can do to get them out and
3 correct this problem. The mental health system
4 will see an arrest and an incarceration as their
5 failure and we try to figure out what went wrong
6 and how to correct it. And it's not, this is
7 not, this is like what mental health systems do
8 -- there isn't like this therapy -- these are
9 very active generally teams of people with
10 different kinds of skills often with peers and
11 we've heard the prior story -- makes a
12 difference. Sort of answer the question, what
13 can we do to help this person succeed in the
14 community. It isn't a program. It's an array
15 of support services, maybe a bundle --

16 MS. KELLEY: Are there some major
17 mental health -- that have a good mental health
18 delivery system?

19 MR. BURNIM: No. There are, I would
20 say every major metropolitan area, New York
21 included, has an exemplary program. And if you
22 look at, you know, mental health planning but it
23 would say we want, this is, this is our approach
24 for the future, this is, we think this is the
25 way to go, tag teams and supportive housing in

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2 New York and in New York City, everyone would
3 agree with that. Part of the difficulty about
4 in human service systems, I'm saying the school
5 systems, I imagine the criminal justice system,
6 it's nurture, you have to transfer resources
7 from ineffective programs to effective ones and
8 that's not always so easy to do. So there's a
9 whole set of politics, which I'm sure which is
10 in the criminal justice system as well about how
11 it's difficult to make change. But I'm not
12 telling you anything that the mainstream mental
13 health community wouldn't be telling you in
14 terms of what we know how to do, what we know is
15 effective and the gap between reality and what
16 we know. I mean, this is not like other fields
17 in medicine, the consequences are slightly
18 different to mental health, because people show
19 up in our downtown areas where we --

20 MR. JONES: We have time for two
21 quick questions, one from Adele and the last
22 from Marvin.

23 MS. BERNHARD: One of the things I'm
24 finding difficult about this taking this drug
25 court model and transposing it into this sort of

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2 mental health court model is that it presupposes
3 that people need coercion in order to do what's
4 good for them and maybe that's more true in the
5 drug court context, I don't know, I'm not a
6 mental health professional. But I don't see how
7 it's true at all in the mental health. I mean,
8 it seems to say that if we can bring them in
9 here and say if you don't take your meds or
10 become better, we're going to put you in jail.
11 That seems to be something that could work in
12 drugs, take, you know, go into rehab, get better
13 or there will be an alternative, but I don't see
14 how it works at all for mental health. Am I
15 wrong or am I off the mark?

16 MR. BURNIM: I think it's not so
17 clear, let me take the last story that it's,
18 it's coercion per se that makes the difference
19 of addiction. I mean, people -- I think you can
20 have a system that is more inviting and gives
21 people more opportunities so that they can feel
22 -- if the person we just heard couldn't have
23 just shown up at the doorstep of this program
24 and checked her self in if she wanted to, that's
25 the problem, the only way she gets access is if

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2 she gets arrested and the judge gets access
3 which is true increasingly for a lot of how a
4 lot of programs work. Mental health, I think,
5 would be fair to say there's some controversy
6 over the effectiveness of coercion. There are a
7 lot of people who go to psychiatrists and family
8 members who are great proponents of coercion, in
9 terms of the literature and the studies, there's
10 no evidence that coercion works. And so you
11 have -- in New York, which has just been studied
12 by people in New York -- it was, the enhanced
13 services you got, you were under an outpatient
14 or Kendra (phonetic) order as opposed to the
15 order itself -- which makes a certain amount of
16 sense. If you pause it, this person who is
17 supposed to be subject to Kendra order, I don't
18 think these people exist, but they're totally
19 out of their mind, have no contact with reality,
20 they don't understand they're mentally ill, then
21 they go through some proceeding which a normal
22 person would have a hard time understanding, get
23 a court order and go all of a sudden, okay, I'll
24 take my meds. It just doesn't make any sense.
25 To enforce that, what New Yorkers had to do was

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2 have support housing. They actually invested a
3 lot of money in these services which, and the
4 folks who Kendra jumped to the front of the line
5 for, the services which solved a problem in New
6 York that the -- so connecting those challenging
7 clients with the right services I think is what
8 made a difference for those folks in New York,
9 the coercion.

10 MR. JONES: Last question, Marvin.

11 MR. SCHECHTER: I'm not sure I
12 understand precisely what it is that your
13 argument to us here today is, should we, the
14 NACDL, write a public policy report that
15 recommends illumination of mental health courts
16 because it's a waste of resources and that if we
17 had a correct, workable public mental health
18 system that would be much preferred to this
19 system of mental health courts. Is that the
20 argument?

21 MR. BURNIM: If you had -- yeah,
22 that's what I would do. It's not obvious to me
23 from your perspective I would do that, because,
24 as I said, there's an alternative that I think
25 benefits some clients -- so I've represented

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2 individuals in court, I've done most of my life
3 class action litigation policy work and it looks
4 different in a different prospectus. If you're
5 going to invest dollars in helping people deal
6 with their behavior that runs them into the
7 criminal justice system, I would not be
8 investing in the courts and lawyers, I would be
9 investing in them in a more effective treatment
10 system and the courts and lawyers don't even
11 work unless they have that more effective
12 treatment system, for me go to the source.

13 MR. SCHECHTER: How do we handle the
14 problem that, X, burns down a building and three
15 people are seriously injured and they're
16 arrested and we find out they have very bad
17 mental health problems? Is your solution to
18 that --

19 MS. BERNHARD: They should be
20 institutionalized.

21 MR. SCHECHTER: -- who has this
22 responsibility to the community to provide
23 safety and to prosecute those who commit crimes?
24 Do we say to the district attorney and to the
25 criminal justice system as defense attorneys,

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2 this person doesn't belong here in the criminal
3 justice system, they belong in the mental health
4 system.

5 MR. BURNIM: I think they do or what
6 everyone did in the mental health or should have
7 been doing, I understand you're all defense
8 lawyers but -- and other places, you would make
9 an argument for non-incarceration and some
10 other, you know, another disposition and you'd
11 be looking at resources in the community. But
12 most folks who get into treatment programs don't
13 get in through the criminal justice system, I
14 would bet a fair amount of money, don't get in
15 through mental health courts, they get in
16 through -- normally happens when defense lawyers
17 encounter a client with mental illness is, I
18 mean, because we get those calls and, you know,
19 we, they're sort of looking for an alternative.
20 If you create those alternatives, you create
21 systems of criminal defense lawyers know they're
22 there. I mean, that's what the mental health
23 courts do. It's not that I think that's a bad
24 model. I think it's the model that should apply
25 to all criminal prosecution and all criminal

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2 defense lawyers. One of the difficulties,
3 frankly, we've had in the mental health
4 community is, we've tried a lot to reach out to
5 criminal defense lawyers to try to say, could we
6 work together here because these are folks that
7 haven't really, you know -- it's not your
8 primary priority. Particularly in public
9 defenders -- you can barely produce counsel for
10 capital cases, so I understand if you're talking
11 about help us build treatment capacity, it just
12 doesn't go high in the list of folks in the
13 public defender community. But we've been
14 reaching out to them for years. Now I show up
15 in NA -- almost any litigation you know -- the
16 mental health side -- additionally, those
17 advocates advocate for more resources, for the
18 treatment, the treatment providers and they tend
19 like the mental health system to sort of neglect
20 or ignore folks in the criminal justice system.
21 So you have this group of folks, it isn't really
22 a huge number or -- both the criminal justice
23 system and the other systems that are in the
24 community where, you know, we know some things
25 that work and there's actually no one --

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2 responsibility or is taking any responsibility
3 or doing anything about it. So I think it's not
4 an obvious -- to the criminal defense lawyers
5 joining with us on the mental health side and
6 see if we can, you know, if we can get some
7 societal solutions here, which was what that
8 criminal justice mental health consensus was
9 about, most of it focused on improvements in the
10 mental health -- where to go if you can't do pre
11 arrest diversion, you know, I mean, you want to
12 do pre booking conversion or does that exist,
13 post-booking diversion. And mental health to
14 me, if you had it at all, would be from a client
15 perspective. It would be folks -- you couldn't
16 divert before they got to, couldn't diver the
17 pre and post booking and they would also likely
18 be felonies because they were people who
19 otherwise would be on their way to prison. So
20 you would be getting -- because they're petty
21 criminals.

22 MR. JONES: We've got to stop.

23 MR. BURNIM: If you do that for
24 those, I'm not arguing not to do that, I'm --
25 you're supposed to do that throughout the

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2 criminal justice system. Make the arguments as
3 a criminal defense lawyer, this person has a
4 disability, let's deal with them differently and
5 here are some resources that are disposition
6 alternatives. That's all.

7 MR. JONES: Thank you very much.

8 (Recess taken.)

9 MR. JONES: Welcome. We are pleased
10 to have you. The way that we have been
11 operating is that we like to give each of you
12 five, no more than ten minutes to give us the
13 benefits of your thoughts by way of an opening
14 statement and then we have lots of questions
15 that we want to ask you. And the way that we do
16 that is, we begin the questioning, one of us
17 takes the lead for questioning. The particular
18 panel in this particular instance, Marvin
19 Schechter is going to lead the questioning of
20 this panel. So I just give you that
21 forewarning. Be leery of this guy.

22 MR. PRESENZA: Is he a met fan?
23 Yankees I will accept.

24 MR. SCHECHTER: Because I'm the
25 quietest and most reserved on the panel.

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MR. JONES: Welcome. And the floor is yours. I leave it to you to decide who starts.

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MR. PRESENZA: Well, the ladies ordered I have to go first. What I thought I would do is just take a few minutes, hopefully a lot less than ten, to kind of give you an overview from a historical perspective of why we did what we did, how we did and take you through the current structure of what we're doing. Basically, in December of 1995 we received a grant, grant from -- to look into starting a drug court. Quite frankly, I didn't know what it was. And Ms. Defusco was one of the team members who was with us when we went down to Miami, Florida. When we came back, we thought this was something we might like to do, myself, Ms. Defusco from the defenders' office -- we started working as the legal people to try and put this thing together. When we decided the principal way we wanted to do we then brought in the police and prisons to get them on board to do the things they needed to do. We also got the private defense board involved, keep them

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2 informed of what we're trying to do -- the case
3 managers, to a certain extent, probation, they
4 all came together. I think providing with our
5 -- you can see how long -- that's how we
6 started. During that process, there were many,
7 many meetings. It took us 16 months, 15 months
8 of planning. We started in April '97. We're
9 the first in Pennsylvania, about 150 throughout
10 the United States. Now, there's over 2,000.
11 The structure was that in terms of the defense
12 and the common wealth, there were two tier, the
13 attorneys operating in the courtroom and there
14 were more the supervisory ahead that deal with,
15 I guess, some procedural issues, strategic
16 plannings, things of that sort, the court
17 attorneys deal with corporate issues, the
18 supervisors deal -- oversight committee -- all
19 the same people with all the disciplines it
20 represented. The oversight committee was
21 generally ongoing procedural issues, courtroom
22 issues, treatment issue s, et cetera, once a
23 year we held what was called a retreat outside
24 of Philadelphia. It was a relaxed atmosphere,
25 we sit down -- we want to do. Two, three, four,

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2 five years from now -- we still do that. The
3 other piece is ongoing education training. So
4 we all have been to NACDP conferences --
5 administrative office of Pennsylvania courses
6 had one recently, we have our own in house
7 training because people transition in and out.
8 As a matter of fact, I've been doing this for 11
9 plus years. I'll transition out by the end of
10 this year so we have a new judge coming along.
11 That judge has gone to all the trainings. We
12 train in house. Every discipline gets trained.
13 We also have once a year what is called a case
14 manager provider seminar --

15 MR. JONES: Your transitioning out is
16 your decision or it's more of an organization --

17 MR. PRESENZA: It's my decision. So
18 once a year we bring in the case managers and
19 all the treatment providers and we have multiple
20 providers in Philadelphia. We probably utilize
21 anywhere from 25 to 30 different providers so we
22 bring them all in, it's a one-day workshop. My
23 dear friend here does all the planning and
24 everything and it's a whole training session for
25 all of this, we do that. Also, we have taken

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2 this on the road. So we have lectured or
3 presented before the Pennsylvania conference
4 state trial judges, Pennsylvania probation of --
5 association, criminal defense bar in
6 Philadelphia. There are others. Just off the
7 top of my head, we have taken this on the road
8 -- a COE two months ago, five hours for criminal
9 defense lawyers. One whole idea was devoted to
10 problem-solving courts, primarily the drug
11 court. So the educational component is
12 significant, and it's crucial to us. We keep on
13 top of it. What we try to do from beginning to
14 end is have everybody involved, everybody is at
15 the table, everybody represents the disciplines,
16 their concerns; as a team we address it. The
17 only thing I'll mention, I'm sure we'll get into
18 it, before the status hearings, there's always a
19 staffing where we discuss what we call, usually
20 we see at least 100 people on a Wednesday and
21 maybe 20 percent or less -- we try and resolve
22 issues before we go to the -- court. Likewise,
23 at the bar of the court either side is able to
24 say whatever they want in terms of the attorneys
25 -- the court participants, not defendants they

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2 can't say what they want to say. Again, we
3 tried to keep everybody informed. Everybody has
4 their say, everybody represents their discipline
5 and respective jobs that they have to do.

6 MR. JONES: Thank you.

7 MS. DEFUSCO: Well, as the judge told
8 you, I'm lucky enough to have been at the
9 starting point of this court. I'm going to tell
10 you what he didn't tell you about Miami. It's
11 true we went down there knowing absolutely
12 nothing and we walked into this courtroom, and
13 I'm a public defender so I was suspicious, you
14 know, but I was willing to keep an open mind.
15 What I saw when I went into the room was a bunch
16 of people coming in on bench warrants who were
17 getting locked up and the judge would ask them
18 why they had failed to appear. They each had
19 different excuses, some good, some bad, nobody
20 said a word on their behalf and they all went to
21 jail for two weeks two days before Christmas,
22 three days before Christmas. And I'm sitting
23 there thinking, are you kidding me, where the
24 hell is the public defender, you know, and the
25 judge later could feel my temperature rising

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2 from sitting next to him. Just as I'm about to
3 decide there's no way in hell they are ever
4 bringing this abomination into Philadelphia, a
5 woman gets up to graduate and she had a present
6 for the judge and her present was a song. She
7 had a beautiful voice. She began to sing this
8 song, You Can't Hurry God. Now all the men who
9 had just gotten locked up were in the jury box
10 in shackles and they began to keep time with the
11 song and to sing harmony to her song. You can
12 hear the shackles moving as they did this. So
13 I'm watching this, I can't believe it, so
14 finally she is finishing her song and she turns
15 to us, she turns no the audience but not to the
16 dignitaries, to the people in the courts and she
17 says, "Listen, I was where you are not long
18 ago," but she says, "Now I have an apartment, I
19 have my kids back." She said, "I have
20 furniture. I'm a real person now thanks to this
21 program and if I can do it, you can do it too."
22 And I thought, boy, if I could get that in
23 Philadelphia. But at the same time, I saw the
24 other -- so we decided we were going to start
25 out with some really important non-negotiable

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2 parameters and I just want to talk about two of
3 them right now and one that developed later.

4 The first thing that we said was, under no
5 circumstances would anyone enter this court
6 without full discovery, the same discovery that
7 they would get at trial and that meant that
8 would delay things because these reports are
9 slow incoming, but nonetheless, they would not
10 enter without them. In addition to that, the
11 disclosure to the client is extensive. We
12 created our own colloquy form so that the
13 written guilty or -- is six pages long. Eric
14 and I later decided that that wasn't enough,
15 that what we wanted was for our clients before
16 they can even enter the court to go and observe
17 a day of status hearings in the court so they
18 would see exactly what kind of court this was
19 and how it operated to give them a better idea
20 of what they were getting into to make sure
21 that's what they wanted to do. So that was the
22 first and foremost rule that no one can enter
23 without knowing everything there is to know
24 about the program and also to know everything
25 there is to know about their case. Secondly,

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2 the most important rule after that was that
3 everything that these people said since there
4 was no counsel kind of speaking for them and
5 they were speaking directly to the judge,
6 everything they said could not be used at all
7 outside of treatment court, not on probation or
8 parole or anything else. It could not be used
9 whether they said -- if they said it in a
10 treatment program, it couldn't be used even if
11 they tried for an evaluation and didn't make it
12 into treatment court. It was not enough for us
13 that the district attorney, as the judge said,
14 signed the plan. We wanted that written into
15 every colloquy and signed by the district
16 attorney in the room at the time and that
17 happens in treatment court, so that they know
18 that whatever this person says, cannot be used
19 against them outside that courtroom. And
20 finally, the last thing that we sort of, I don't
21 want to say we designed it because it's not true
22 is what we're kind of laughing, referring to the
23 Philadelphia protocol. It was a kind of a
24 two-tier system that developed and that is that
25 I serve on the oversight committee as does Erica

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2 -- at all times. So if an issue arises about a
3 particular client and it has arisen in the past
4 that goes to oversight, Erica will -- and
5 without my contradicting her position, I will
6 represent the institutional interest of the
7 defender association in the treatment court. So
8 far, that has touched -- been able to resolve
9 all of our problems in an ethical manner without
10 having a problem --

11 MS. BARTLETT: I am the attorney who
12 is assigned on a day-to-day basis -- I am a
13 senior trial attorney with the defender
14 association. I have been with the treatment
15 court about ten years. I have been a public
16 defender for over 20. We were insistent that
17 the defender assigned to treatment court be a
18 senior trial attorney because it's important
19 effective advocacy in the treatment court
20 requires an attorney who is not only familiar
21 with drug court and the requirements of drug
22 court but is also familiar with the workings of
23 the criminal justice system traditional
24 adversary system so that is a requirement of our
25 drug court. Prior to clients entering the

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2 program, what I am involved in is assisting them
3 in making the decision to enter the program. So
4 what I will do is, what a typical defense
5 attorney does, I review and discuss discovery,
6 discuss the merits of their case, I discuss
7 suppression issues. Essentially, I review all
8 of their options with them including possible
9 outcomes if they proceed to trial, what their
10 sentencing issues are, what they're facing in
11 terms of sentencing and also I explain what the
12 treatment court requirements would be,
13 requirements for treatment completion, the
14 nature of what their treatment is. All the
15 clients who enter the program are told
16 specifically, exactly what their level of care
17 will be in the treatment court, sanctions and
18 incentives in the drug courts, confidentiality
19 issues, I discuss circumstances that might lead
20 to termination, I discuss essentially what the
21 drug court will look like for them as they chose
22 to enter. Upon entry, I become an advocate for
23 their treatment making sure that they are being
24 treated fairly and that they're given full
25 opportunity for all the treatment options that

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2 are available. Consequently over the last ten
3 years, I have become an expert in substance
4 abuse treatment and funding so that I know
5 exactly what's available for my clients and
6 exactly what should be accorded them in terms of
7 access to treatment. I am president of all
8 staffings and I am president and had an
9 opportunity to be heard at all court hearings.
10 I am, as Mary and the judge said, a member of
11 the oversight committee. I know all the
12 treatment providers. I have a relationship with
13 all of them and the case managers so I am
14 involved in a very detailed way in my client's
15 treatment progress. I am, as I said, I've been
16 a lawyer assigned to the Philadelphia treatment
17 court for the past ten years and this has been
18 the most worded part of my career as a public
19 defender and I am very, very proud of what I do.

20 MR. JONES: Thank you very much.

21 Before we get to Marvin, I just want to note
22 that the president of our organization is here
23 with us and so we're going to give her the
24 privilege of asking you guys the first question.

25 PRESIDENT: Thank you. Thanks for

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2 coming. It sounds like you've got a wonderful
3 program. I'm sitting here thinking, how can we
4 replicate it everywhere in the world or at least
5 in the United States. I wanted to ask Mary a
6 question about the statement you said that
7 nothing that the defendant says can be used
8 against him and I wanted to know, including
9 information relative, say, to a violent crime
10 and have you ever had a situation where the
11 government, where the state attempts to undo
12 that or and can they use the information to
13 investigate, for example.

14 MS. DEFUSCO: Well, the rule that we
15 came up with is that, it cannot be used anywhere
16 outside of the treatment court and at one point
17 about a month before we were about to go --
18 stands up and said, judge, last night I got high
19 and killed my wife, what are you going to do;
20 I'll say, you can't use it, well, he says, I'm a
21 prosecutor, you have to use it, I said tough --
22 I don't care -- this is the first thing I told
23 you 17 months ago that you can't use it. So
24 what we came up with was that the prosecutor may
25 investigate, but outside that court, he can't

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2 use it to get a warrant. He can't use it, you
3 know. If he eventually arrests this guy and
4 charges him with murder, he can't use that
5 statement and that was the reason that we
6 insisted that it be written into the colloquy
7 because our feeling, maybe district attorneys
8 come and go because one district attorney reads
9 in this plan, the Pennsylvania Supreme Court in
10 the past has said well, succeeding district
11 attorneys are not bound by it even though --
12 it's a bind each prosecutor in each case they
13 must sign on the colloquy that they agree that
14 it's confidential.

15 MR. JONES: Marvin.

16 MR. SCHECHTER: Let me just continue
17 on that same thing about the confidentiality. I
18 take it that the confidentiality concept is in
19 part to deal with information that could get out
20 in open court, could be used by the government
21 so that eliminates that problem. Is it also
22 your view that the confidentiality agreement
23 takes care of the ethics problem that a criminal
24 defense attorney has in keeping the confidences
25 of the client completely confidential?

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MS. DEFUSCO: Well, we felt we had no warrant even if we wanted to somehow supercede the ethical rules so that if a client said to me, you know, I got high last night; I might say, well, you should probably tell the judge, you're going to have a urine test, whatever. But if he says to me, there's no way in hell I'm going to tell that to the judge, then I'm not saying anything either because I'm bound by it.

MR. SCHECHTER: Let's take that just a step further, because a number of us on the panel attended some of these staffing sessions in courts, a client tells you, I got high last night, in fact, I went out and bought a kilo of coke I'm going to keep that around the house for a while. (Laughter) I'm not a person who uses drugs. And now we're in the staffing session and the mental health provider or the drug provider or the counselor says, look, I think that this guy got high last night, he probably has some extra drugs and stuff, you say absolutely nothing, and now the judge says, well, geez, if that's the case, I may have to sanction this guy, I'm going to have to violate

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him. What do you do at that point?

MS. DEFUSCO: I'm going to throw this question to Erica because I want to talk about the client that had the gun. Do you recall that case?

MS. BARTLETT: Does the judge know about this?

MS. DEFUSCO: But we're safe.

MR. JONES: He's transitioned.

MR. SCHECHTER: He had the gun so what happens then?

MS. BARTLETT: Well, we had a situation where a client was not only relapsing but experiencing a lot of distress about an issue that happened in his life and told his case manager that he brought a gun to his case manager's office, but he decided not to bring it in because there was a metal detector when he walks into the building so we decided to stash it somewhere near the building, so we were all discussing this, and now the client hadn't told me so this is not exactly the answer to your question, but I certainly will answer it. Yeah, he told somebody else we were discussing it out

1
2 at staffing. The remarkable thing about the
3 drug court the ways we're involved in
4 Philadelphia is, everybody's response was, how
5 do we help the client. What does he need, does
6 he need to be 302 -- does he have, you know, can
7 we send him right to a crisis center. And it's
8 always tangentially that we said perhaps somebody
9 better go find the gun or notify authorities.
10 But there was never any issue, even from the
11 prosecutor about, let's connect him to the gun,
12 let's arrest him, let's do all of that because
13 the way in which the philosophy of everybody in
14 the drug court now is, it's treatment oriented,
15 it's client oriented, and it's not about
16 prosecuting clients for things that they say.

17 MR. SCHECHTER: Got it. Let me ask
18 you this: I've read all the literature that,
19 how committee is put in front of us. I could
20 not find anywhere in the country a program that
21 has a ten-day delay between the time of arrest
22 and the time that's given for discovery. How
23 does that actually work? I was shocked when I
24 read it and I'm trying to find out is it
25 working, has it worked, do you get meaningful

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2 discovery, does it help you make the decision to
3 keep the guy in drug court or take him out, how
4 many clients opt out when you do get to
5 discovery, does that happen, et cetera.

6 MR. PRESENZA: If I could answer one
7 thing about the discovery, one of the reasons
8 for bringing the police department along was --
9 none of their officers ever come to court. Once
10 the defendant is arrested, that's the last time
11 you see the officer. So the officer is back on
12 the street doing his or her job. Big problem is
13 overtime, they come to court, it's overtime. We
14 don't see them. The deal was, you've got to
15 give us expedited discovery. That's what we
16 want from you is expedited discovery -- but
17 there are exceptions. We have over 500 people
18 right now in this program and it keeps growing,
19 but that was the deal with the police
20 department. We're going to help you this way,
21 we want the discovery, that's why the
22 commissioner signs off on the document.

23 MR. SCHECHTER: So you have it.

24 MS. BARTLETT: We'd like to get it in
25 ten days. Generally, we get it within 30 days

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2 or six weeks. The way it works in our court is,
3 a client comes to the first listing in court in
4 ten days and on that day he is asked to at least
5 consider the program, think about it and a
6 clinical assessment is scheduled to determine
7 the client's level of care and then the client
8 is brought back in 30 days. At that time, once
9 the clinical assessment is completed, the common
10 wealth gives full discovery and I would say
11 90 percent of the cases we get full discovery
12 within 90 days.

13 MR. SCHECHTER: Like --

14 MS. BARTLETT: I get to keep it when
15 the client doesn't decide, not to take the
16 program.

17 MR. SCHECHTER: Which helps you with
18 the actual case itself?

19 MS. DEFUSCO: It is a lot faster.

20 MR. PRESENZA: Nobody else in the
21 City of Philadelphia gets discovery that quick.

22 MR. SCHECHTER: Let me ask you this,
23 you also have in your statement, expungement of
24 the arrest after the whole thing is over. Now
25 my first question is, in the state of

1

2 Pennsylvania, do you have an expungement state
3 generally too for crimes?

4 MS. DEFUSCO: Well, if you, in
5 Pennsylvania if you have -- convictions you have
6 to petition the court for expungement, if you
7 get ARD -- rehabilitative disposition, it will
8 be done automatically. We have kind of a
9 halfway baby that we created, that is if you
10 don't get arrested and convicted of a crime
11 within a year from your graduation and the
12 common wealth produces no evidence that you have
13 used drugs, and I don't believe they ever tried
14 to do that in all the years you have done that
15 then you will get an expungement. It's not
16 automatic. Erica files it. The judge will sign
17 it and you will get an expungement.

18 MR. SCHECHTER: You talked to the
19 judge about a lot of training that is done both
20 externally and in house. My first question is,
21 on the in house training that you do including
22 this five-hour program, who pays for that.

23 MR. PRESENZA: Well --

24 MR. SCHECHTER: Whose budget?

25 MR. PRESENZA: The COE was a little

1
2 bit different because that was done for the
3 Pennsylvania bar institute so you have to pay
4 your own way. Whatever the fee is, include
5 lunch and everything, but what we do in house is
6 we bring people in and --

7 MS. DEFUSCO: We pay for breakfast.

8 MR. PRESENZA: And the health
9 department pays for lunch and we'll do in house,
10 we have the ability to bring in outside speakers
11 on their own dime so it doesn't cost us
12 anything.

13 MR. SCHECHTER: In addition to all of
14 that training, how you work that out different
15 budget lines? Do you send your line attorneys
16 like Bartlett to national programs?

17 MR. PRESENZA: Absolutely.

18 MR. SCHECHTER: How often do you go
19 to a national program?

20 MS. BARTLETT: I'm not going -- year,
21 but I've probably gone every year for the past
22 ten years.

23 MR. SCHECHTER: I take it if the
24 NACDL wrote a public policy statement that it's
25 recommended that public defender offices or any

1
2 offices, private bar associations get involved
3 in drug courts or any of these problem-solving
4 courts that this kind of training is not, not an
5 option, it should be mandatory.

6 MS. DEFUSCO: It is mandatory.

7 MR. SCHECHTER: Is that correct?

8 MS. DEFUSCO: Absolutely.

9 MR. SCHECHTER: You would say that
10 the idea of on-the-job training without going to
11 this stuff for somebody in Ms. Bartlett's
12 position would not be the way to go?

13 MR. PRESENZA: You've all heard the
14 expression bad facts made bad law and the worse
15 thing you could do is establish a drug court or
16 problem-solving courts that's not done the right
17 way. It's doomed to fail. It's not helping the
18 participants and it's used as the benchmark that
19 gets all over drug courts. We have always
20 decided in addition to the team concept
21 everybody at the table said you have to have
22 ongoing education and training. It's just an
23 automatic must. Things change all the time and
24 you have to do that. She would go this year,
25 but you get back the budgetary issues, we can

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2 only send so many people each year -- the
3 Pennsylvania -- will have their annual
4 conference so you have to kind of pick and
5 choose where you go. But every year people go
6 to national or state training in addition to
7 what we do in house every year.

8 MR. SCHECHTER: If the national bar
9 association offered a scholarship for one or two
10 persons in your office to attend the national
11 training program, would that be a good idea or
12 bad idea? It would be good, right? (Laughter)

13 MS. DEFUSCO: Absolutely.

14 PRESIDENT: I heard it was a bad
15 idea. (Laughter)

16 MR. PRESENZA: The other point is,
17 you have to have the right people in the job.
18 If you have the judge who doesn't want to do
19 this or doesn't believe in it, you are doomed to
20 fail. Likewise, the first district attorney we
21 had was excellent, that was Mary's -- another
22 one came in was excellent and then a third one
23 came in and I knew it was a disaster because I
24 knew her as a trial attorney. I said, a zebra
25 doesn't change its stripes; unless you had an

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2 epiphany, it's not going to work -- another DA
3 came in ever since Erica has been there for ten
4 years because you have to have the right people.
5 Even if you put someone there that's not going
6 to work, unless they actually believe in what
7 they're doing --

8 MR. SCHECHTER: One last question and
9 more clarification. I didn't understand this
10 oversight system between you, Ms. Defusco and
11 Ms. Bartlett. Why do we need that? What
12 causes --

13 MS. DEFUSCO: Well, most of the time,
14 most of the time either Erica or I could sit in
15 the oversight committee. It's not a huge issue.
16 As an example, we discovered by accident that we
17 had a client in our program who had a homicide
18 conviction, and you can't have a conviction for
19 violent crime when you come in; we agreed to
20 that from the get go. So we decided that, Erica
21 took the position that this client was not, he
22 did not say he had no violent convictions, he
23 was not asked if he had any violent convictions,
24 it was out of state.

25 MR. SCHECHTER: But you knew it?

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MS. BARTLETT: The common wealth
missed it. I knew it.

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MS. BARTLETT: I think it did.

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MR. SCHECHTER: That was the ethical
question.

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MS. BARTLETT: That was the ethical
question. But the further ethical question is,
what we do with the client because he had
already tenured his plea, he was already in the
program and, you know, we all had agreed that a
person with a violent conviction cannot come in.
So my position is, he wants to be in the program
and we should keep in him. In fact, there was
another example, another policy we had was a
client cannot get a treatment -- twice and again
it was a client who came -- he tenured his plead
and we discovered it later and --

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MR. JONES: What's the rationale for
that policy?

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MS. BARTLETT: I think it's a
resource issue.

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MR. PRESENZA: It's two issues, one
is, resources are always, you get a big borrow
and steal, quite frankly. And if it wasn't the

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2 help of the feds, the state and the city, we
3 couldn't do this. So you've had your chance and
4 you completed the program, you don't get another
5 one because you're taking a slot of someone else
6 who never had the opportunity -- how many bites
7 at the apple, you got a big bite just getting
8 into this program, so you don't get another one,
9 not to say you may still not need a treatment.

10 MR. JONES: Isn't that sort of
11 contradictory to your philosophy that relapse is
12 inherent --

13 MR. PRESENZA: Except I'll say this
14 to you, it's either a year or 18 months. I
15 can't say exactly sure. 92 percent of the
16 people that graduate -- we have 1,496 graduates
17 actually -- strike that. We have -- I'm not
18 very good at math. Over 1,500, of the 1,500
19 minus last year, 92 percent have remained
20 conviction free and drug free for a year to 18
21 months. Okay. So do they relapse, I'm sure
22 they probably do. But it's like how many times
23 are you going to get a chance at this because it
24 is expensive, it does cost money. It does save
25 money in the long run obviously but we've had

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2 maybe 2,500 people go through this program in
3 11 years.

4 MR. SCHECHTER: I take it you would
5 recommend that if a public defender office was
6 going to set up a system and it had, you know,
7 presence in the drug court, drug treatment court
8 or mental health court, that this oversight
9 system would be a good thing to set up.

10 MS. DEFUSCO: I think so, because
11 what you were able to do in this case -- the
12 district attorney's -- I want this guy thrown
13 out right now and nobody gets in here twice. So
14 I was able to say, all right, I understand the
15 judge's point, the prosecutor's point, the
16 limitation of resources. I know that people go
17 through this program, it takes them months,
18 years, fine, I will agree that no one gets in
19 here twice. But Erica is addressing -- her
20 position is, we never asked this guy had he come
21 in before, we never said to him when you come in
22 here, you can't come in here twice. He didn't
23 lie about coming in here. So this guy is
24 grandfathered in, whatever our policy may be
25 overall. So she is representing the individual

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2 client, I'm representing the institutional
3 interest for lack of a better word and that kind
4 of -- to your system has actually worked for us
5 in a lot of different ways because it would be
6 difficult for her, I think, to do both or know
7 more to do both.

8 MR. PRESENZA: The colloquy was
9 amended -- certainly orally the question was
10 asked, have you ever been in treatment court
11 before. So we avoid that confusion.

12 MR. SCHECHTER: There will be
13 another --

14 MS. DEFUSCO: I'm sure there will be.

15 MR. JONES: Go ahead Vicki and Gail.

16 MS. YOUNG: This says this is in the
17 municipal court of Philadelphia. Does that mean
18 it only addresses misdemeanors or is felonies at
19 the municipal court level?

20 MR. PRESENZA: It's a combination of
21 the following, I'm a municipal court judge --
22 which a judge with general jurisdiction, the
23 cases come in from municipal court, they're
24 either misdemeanors which are very rare, only
25 like less than one percent of the people in our

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2 court have misdemeanors. Most of them are there
3 for sale or intent to sell drugs and there may
4 be some theft offenses, perhaps a burglary where
5 the victim approves of the person coming in the
6 program. Some of those have not had their
7 hearings, some had their hearing but before they
8 go to trial -- they come back to us and we
9 address them, but primarily they are felony
10 offenders, 99 percent are felony offenders.

11 MS. YOUNG: And they have to opt in
12 as soon as they got the discovery, that is once
13 you get the discovery, then the defender
14 evaluates whether there may be a meritorious
15 search motion and if they think there may be,
16 then you opt to stay in the criminal system
17 versus the treatment system.

18 MS. BARTLETT: Well, if the client
19 makes that decision, there are many clients who
20 choose the program even if they have a
21 meritorious defense or suppression issue because
22 they want the treatment. Likewise, there are
23 clients who, in my view, have no defense of the
24 case and don't choose the treatment because they
25 want their day in court so it's going to bear

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2 from client to client whether they choose the
3 program or don't choose the program.

4 MS. YOUNG: How do you think or would
5 it add to the program if everyone could litigate
6 the motion, whatever motion they would want to
7 litigate or maybe even trial, but if they were
8 convicted, could they still go into treatment
9 mode or you think, no, you have to opt in for
10 treatment sooner than that?

11 MS. BARTLETT: That's the way our
12 program works. One of the things that drug
13 courts identify is that it's important to get
14 clients who are addicted to drugs into treatment
15 early. So our process in providing complete
16 discovery and then having the client decide or
17 not decide at that point serves getting the
18 client into treatment quickly.

19 MS. DEFUSCO: I'd like to address
20 that as well. I'm actually very much opposed to
21 a post-conviction court because one of the basic
22 tenets was that the client is free to reject
23 that there is no penalty for him, his bail
24 cannot be increased, he cannot be harmed in any
25 way for saying no thanks, I don't want your

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2 court. And if it's, you know, post conviction,
3 is this in lieu of sentence, then he really is
4 not going to get that option, you're getting
5 this program or you're getting jail and that's
6 it. So because we wanted them to have the
7 freedom to be able to say, yes, I want the
8 treatment or, yes, I want the program and also
9 the, no, I don't want it, that was a very
10 important tenet for us and that's why we kept it
11 where it is.

12 MS. SHIFMAN: I believe I heard
13 yesterday that you guys were going to travel to
14 one other one of the drug courts today. Did you
15 do that here?

16 MR. PRESENZA: No.

17 MS. DEFUSCO: No.

18 MS. SHIFMAN: Maybe it was another
19 group from Philadelphia.

20 MS. YOUNG: Somebody said yesterday
21 some people from Philly were going to see their
22 court.

23 MR. SCHECHTER: Competent figures.

24 MS. SHIFMAN: Then I don't have any
25 follow-up questions.

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2 MR. JONES: I have just --

3 MS. BERNHARD: Elizabeth has

4 something.

5 MS. KELLEY: We had a judge earlier

6 today along with a graduate of this judge's

7 court and this particular graduate when she

8 appeared before this judge was in her mid

9 fifties and she had already successfully

10 completed four prior inpatient programs. And

11 this judge's particular philosophy was, look, we

12 can never predict when is the right time for a

13 person to succeed and every person is worthy of

14 a second, a third, a fifth chance. Do you ever

15 foresee the time when your court would be, would

16 expand to the point where it would accept

17 someone like that?

18 MR. PRESENZA: Well, again, I think

19 if you're talking about someone who already went

20 through the court, in other words, our court is

21 a one-year minimum based upon a study by the

22 treatment research institute, the University of

23 Pennsylvania, the average graduate is there for

24 14 and a half months, which in my opinion very

25 good -- while they are in the program, you have

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2 to wait for the case to be disposed, et cetera.
3 With all of that being said, there are 14, there
4 were 1,500 graduates and -- that's over 1,900
5 people that have completed this program one way
6 or the other, a plus or a minus, they have all
7 gone through it, they have all been given ample
8 opportunity. I don't say this egotistically,
9 but for people to say how patient I am and how
10 good I am and when I go home, my wife says to
11 me, where's all your patience, I said I use them
12 in the courtroom, I don't have any, it's all
13 gone. We try very hard, most judges, if not all
14 in this program, want to see people succeed, but
15 you're still the judge and at some point it's
16 like, you know what, the totality of
17 circumstances indicate you're not making it and
18 you've got to be terminated so you're given the
19 opportunity and the rubber band stretched as far
20 as it can go -- I don't know how you let me stay
21 in here this long -- when I say all of us, you
22 didn't give up and dah dah dah dah dah dah dah,
23 it's true but my point is, other people deserve
24 a chance. If I take someone back, well, he is
25 not going to get it or she is not going to get

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2 it --

3 MS. KELLEY: So you sort of have a
4 quota within your court.

5 MR. PRESENZA: Yeah, because it's a
6 resource issue -- we went from 300 to 400, now
7 we're 500. If I can do 800, I would do it.
8 It's a money issue.

9 MS. BARTLETT: We have a participant
10 now in a drug court who left two residential
11 treatment programs, went awol, left. And when
12 he came back the third time, judge gave him
13 another opportunity in the program and now he is
14 doing really, really well. So our program does
15 give people just like that woman opportunities
16 to succeed.

17 MS. DEFUSCO: Yeah, I think maybe
18 we're confusing things a little bit. There's a
19 difference between someone who completed the
20 treatment court program and someone who's -- you
21 could have had many drug programs in the past,
22 that won't bar you from entering the treatment
23 court program. We have a target population, we
24 can have no more than two prior convictions,
25 they can't be violent but -- so let's say

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2 someone came in who was a prostitute, you know,
3 there's really very little limit for how many
4 prior convictions, how many prior drug programs
5 that person could have gone through before
6 because the prosecutor will then look at, well,
7 it's only a prostitution case so it's a much
8 wider base than the target population, the
9 population we're trying to get into.

10 MR. JONES: This woman we're talking
11 about today had 47 prior convictions --

12 MS. SHIFMAN: 47 arrests.

13 MS. YOUNG: We don't exactly know how
14 many convictions.

15 MS. SHIFMAN: She was very
16 knowledgeable --

17 MR. JONES: She had spent at least a
18 couple of stretches in State prison on
19 convictions for more than a year, two, three
20 four years. And had started out with marijuana,
21 you know, at a very young age and graduated all
22 the way up the chain and a host of other things.
23 Is that someone who would be ineligible? Would
24 she be ineligible because of her criminal
25 history?

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2 MS. DEFUSCO: Only if those prior
3 convictions were violent and she was --

4 MR. JONES: In New York, a burglary
5 of a home is a violent crime and so for that,
6 she would have been a violent --

7 MS. DEFUSCO: Well, let me just say
8 we had a woman in there who was, I guess, in her
9 forties, early forties, she did a lot of retail
10 theft to support her -- retail theft is a
11 felony. So she had felony convictions, she was
12 in on a retail theft -- which nobody can dispute
13 -- nonetheless the district attorney let her in
14 because she was desperate to come in, she was
15 crying she wanted the treatment so badly and
16 because he looked into the background of that
17 aggravated assault, saw that it was on her
18 boyfriend that she may have been close to self
19 defense, in perfect self defense --

20 MR. JONES: As a rule though, the
21 woman who came to you today as a success story
22 would probably not go over the bar of admission?

23 MS. BARTLETT: If she has more than
24 two prior convictions on her record, not
25 arrests.

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MS. YOUNG: She had way more than

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two.

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MR. JONES: She had two burglary

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convictions which are violent crimes. She

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couldn't do it?

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MS. BARTLETT: Unless she is --

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that's probably right. But, again, the district

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attorney's office with respect to treatment

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court, they have the ability to use their

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discretion, as Mary described it, for the ten

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years I have been involved in treatment court,

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they have used their discretion to be inclusive

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rather than exclusive.

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MS. DEFUSCO: Don't let anybody know.

16

(Laughter)

17

MR. JONES: I have one last question,

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how does -- how does the private bar back -- do

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they sort of bring their clients to the

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courthouse door and leave them for you guys or

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do they participate --

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MR. PRESENZA: It varies. You have

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private bar who are retained, you have private

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-- I can't give you a distinction between the

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two in terms of their participation, but there's

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2 three categories, there's category one of
3 lawyers that show up all the time so -- enter
4 the program, they're there for the status
5 listings which could be anywhere from once every
6 three weeks to once every seven or eight weeks,
7 depends on how well the person is doing. They
8 may show up for the graduation, certainly if
9 there's a show of cause hearing determining.
10 They're there certainly for a conviction and
11 sentencing, they're there. Then you have the
12 second group which is, they come in
13 periodically. Then you have the third group who
14 doesn't show after the end of program. What I
15 do as a judge though especially with the
16 latitude, if someone is doing fine, I don't see
17 the need to have them come back and Erica could
18 stand up and as far as I'm concerned, you know,
19 represent them to the extent that she is not
20 violating any ethical issues on her side. But
21 if there's an issue with the client becoming
22 problematic, I had one yesterday about 27, 28
23 and he came in to us in February so he has been
24 to court four times, he is not doing all that
25 well, before he really starts to slip and slide

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2 -- you contact the attorney X and tell him that
3 he must be in court at the next listing of this
4 case -- what he wants to do, how he is going to
5 try -- because this guy continues this way he is
6 going to fail and, you know, we don't want that
7 to happen. That's basically how it happens, you
8 have these three categories of defense
9 attorneys, I can't tell you it's 50 percent --
10 to do this or 50 percent court appointed.

11 MS. DEFUSCO: The one thing I do want
12 to emphasize is, when we were developing this
13 court and made it very clear and could not speak
14 for the private bar, so the judge arranged for
15 myself, the district attorney and himself to go
16 to the criminal justice section of the
17 Philadelphia Bar Association and basically give
18 them the parameters of what we had developed so
19 they could have input before it went live and
20 see if they were fine with it, whatever, they
21 didn't have any problems that I recall, the
22 group had no complaints in the 11 years.

23 MR. JONES: Thank you very much.

24 (Applause)

25 (Recess taken.)

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MR. JONES: Good afternoon. Welcome

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and thank you for being here. As you know, we

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are in the second day of taking testimony from

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stakeholders in problem-solving courts

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throughout New York and actually in Pennsylvania

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as well, we just had a panel from Pennsylvania

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and we are excited to listen to you and engage

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with you about the work that you're doing. The

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way that we run these panels is that we give

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each of you a five no more than ten minutes to

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give us the benefit of your thoughts and opening

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statement and then we have lots of questions

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that we'd like to ask you. The way that we do

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our questioning is that one of us generally

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leads the questioning of each panel and for this

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panel that would be Marvin Schechter who will

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lead the questioning. So having said all of

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that, the floor is yours and you guys can decide

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amongst yourself who starts.

21

MR. ROCKMAN: Well, everyone is

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pointing at me so I guess I'll start off. I'll

23

start by introducing myself. My name is Steve

24

Rockman. I work with Samaritan Village.

25

Samaritan is a not for profit drug treatment

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2 program primarily long-term residential services
3 -- community, been established for about
4 45 years now. We treat on a residential basis
5 upwards of 800 people on any given day and close
6 to 300, 350 -- I guess I'll start by saying that
7 in terms of working with law enforcement,
8 community supervision, treatment alternatives
9 due to incarceration, certainly the
10 problem-solving courts, my experience and our
11 experience has been a positive one -- it wasn't
12 an easy one all the time because a lot of the
13 changes in working -- a collaborative way with
14 the criminal justice system whether it be with
15 the court system or working with community
16 supervision, there has been some very
17 significant changes in the way business has
18 gotten done within the last 15 years starting
19 with the way the felony cases have been
20 addressed, leading up to certainly the way the
21 problem-solving courts have evolved. We have
22 drug courts and felony drug courts, misdemeanor
23 courts and so forth. There's been some hurdles
24 for us but our experience overall has been good.
25 It's our opinion, certainly mine, the

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2 collaboration has come a long way. Early on we
3 struggled with things that were simple as what
4 the -- person that was involved in our mutual
5 systems and had to really negotiate social
6 control and social change and I think each
7 system ultimately has been willing to understand
8 what the other systems' mission is and has
9 bought into that to some degree. I think it's
10 fairly fundamental in any relationship, just
11 understanding what your partner's needs are.
12 We've gone from probably a different reporting
13 mechanism basically in every court in the city
14 to something that's fairly close to being
15 unified at least in the drug court system and
16 right now there's interactive web-based
17 reporting that can provide the provider and
18 court realtime information, which is really
19 significantly different than where we started.
20 Our philosophy has pretty much been that these
21 are folks that had, will end up in our system at
22 some point or another that addiction unless
23 intervened is a downward spiral. And that the
24 court has become a place for intervention and,
25 again, speaking from our philosophy is that I

1
2 think it's fairly agreed upon, at least with us,
3 that most diseases present with a more positive
4 prognosis when early diagnosis and intervention
5 happens and we sort of agreed with that
6 approach. So we've been there, we, Samaritan
7 and myself, are involved in assisting in staff,
8 the Midtown Community Court, which I think was
9 the first boutique court, if you will, in New
10 York City and some of the social services that
11 were provided there, we were one of the first to
12 work with a, alternative sentencing program for
13 non-violent felonies in Brooklyn, started by DA
14 Heinz's office and that was, that's pretty much
15 representative of or indicative of really a huge
16 radical departure. Because, I mean, I'm sure
17 you're familiar with it, but when that program
18 was introduced, pretty much every -- said, let's
19 see how it goes, and I think drug court to some
20 degree had to work through some of those areas
21 too. It was a totally different relationship
22 that the court and the defendant had with the
23 treatment participant. But the experience has
24 been good up to now. We enjoy the relationship.
25 It still has some way to go. Some of the things

1
2 that we've, my personal experience in working
3 with a local county misdemeanor court was, we
4 were partners in a federal -- and one of the
5 things that the defense bar sort of took issue,
6 and as best as a non-attorney can understand,
7 some of the dilemmas of the defense attorney in
8 court was, they were, sort of the jail time
9 alternatives really didn't represent the best
10 deal for their clients. And we understood that.
11 And I'll tell you how we overcame some of that
12 stuff. We had an advisory report -- it's real
13 simple -- we discussed it, the advisory board
14 are people from, the chief clerk was there, the
15 administrative judge was there, the prosecutor's
16 office, the different providers, all the
17 stakeholders were there and what we did was, we
18 actually got together and reduced for some
19 profile defendants and misdemeanor court, the
20 lowest possible jail-time alternative to
21 actually make that more appealing recommendation
22 on the defense attorney's part and it worked.
23 Now, did the, the number of referrals spike
24 dramatically, no. But it definitely trended in
25 the right direction. And we saw more success in

1
2 that particular court when it first opened as a
3 result of that committee's work. So I guess
4 just to sort of -- I know we're pressed for
5 time, we have about five or ten minutes -- but
6 our experience has been a good one. I think
7 it's still work that we need to do. One of the
8 things I can tell you is, from the not for
9 profit world is, working with the criminal
10 justice system represents additional mostly
11 unfunded, at best, unfunded labor that in a
12 not-for profit world becomes the responsibility
13 of our single State agency. And I would say,
14 and Gary will speak to that in the proprietary
15 world, some of the services required to do
16 quality services or provide quality services are
17 not billable services, so revenue remains an
18 extremely pertinent issue, it very rarely gets
19 addressed other than our single State agency
20 that hasn't really experienced any significant
21 budget increases in the last ten years. And,
22 you know, since I have the opportunity, if there
23 were one of the things I'd like to see change or
24 at least be addressed is some of the revenue
25 starting to come from agencies like the Division

1
2 of Criminal Justice Services in the State of New
3 York and funneled through some of the other
4 agencies that regulate, monitor and fund the
5 social service programs in the city and the
6 State of New York. Now, I speak strictly for
7 these, the counties that we work in, I'm pretty
8 convinced that there are issues in all counties
9 and the jurisdiction, cross-jurisdiction issues
10 are different as you go from county to county,
11 so anything I'm talking about is here, right
12 here in New York City. But, so that's a brief
13 summary of my experience with drug court and
14 I'll turn it over to Gary.

15 MR. BUTCHEN: Good afternoon. My
16 name is Gary Butchen. I'm the president and CEO
17 of Bridge Back to Life Center. It is a network
18 of chemical dependency programs throughout the
19 metropolitan area and Long Island. We've been
20 around for a little bit more than 20 years and
21 it's interesting, you know, piggy-backing on
22 what Steven said, you know, we've been working
23 with the drug courts for at least 15 years,
24 going back to I guess '93 or '94 when BTC got
25 started and put the advisory panel together so

1
2 it's been an interesting genesis to how it began
3 and then where we are today. So with that being
4 said, I did write some notes. It's interesting
5 because we have six programs located throughout,
6 we're able to work with multiple courts and see
7 the differences from the small court, like
8 Staten Island Drug Court to a much larger court
9 such as Bronx or Brooklyn Treatment Court, which
10 has multiple parts and runs every single day as
11 opposed to Staten Island with -- every Friday, I
12 believe, for a few hours. So it's interesting
13 just to see how each court is dealing with its
14 own internal politics. But with that being
15 said, one of the things that struck me and maybe
16 this was intentional is that next week marks the
17 35th anniversary of the Rockefeller Drug Laws
18 and comparing what the drug court initiative has
19 been able to accomplish as opposed to the
20 Rockefeller Drug Laws have not is an interesting
21 exercise in comparison. Clearly, from my point
22 of view as a treatment provider, the drug courts
23 are a more humanitarian way of dealing with a
24 disease, you know, if we're going to treat
25 addiction as a disease and the criminality as a

1
2 symptom of that disease and give people an
3 opportunity to enter treatment and resolve, cope
4 with their addiction and disease and ultimately
5 resolve the criminality, it's akin to, you know,
6 when someone walks into, if they have diabetes
7 or and they need insulin, they were not robbing
8 the local bodega for their insulin or the money
9 for their insulin typically but with substance
10 abuse disorders there's certainly enough
11 evidence to show; I think in New York State I
12 recently read 70 to 80 percent of those
13 incarcerated have some alcohol or substance
14 abuse issue that was prevalent during the
15 arrest. So I think those are the issues we're
16 dealing with, just dealing with the lexicon, we
17 call them patients because when you enter a drug
18 treatment center, if we're treating a disease,
19 they are a patient, I think if we're ever going
20 to get on par with medical diseases, that first
21 and foremost is how we have to look at the
22 people we service. So we treat a disease, we
23 treat patients and we try to move them through
24 the system to the best of our ability. One of
25 the interesting things in terms of just the

1
2 overall change in the culture, when this all
3 started, as Steve had mentioned, there was a lot
4 of agencies, treatment programs, criminal
5 justice programs. It didn't matter if you were
6 Oasis or OCS, people standing on the side lines
7 to see -- to see the culture change, you know,
8 I've had the pleasure of sitting in on multiple
9 graduations and if you ask me, all those years
10 ago, what that would be like, I never would have
11 envisioned somebody walking up and hugging a
12 judge, you know, you typically have a very
13 defensive position in court, you're there
14 because of some offense and you're hoping to get
15 out of there as quickly as possible and defense
16 attorneys you guys want to get out of the court
17 as quickly as possible with the best possible
18 outcome. But I was at the tenth anniversary at
19 the Brooklyn Treatment Court a year or two ago.
20 I believe, they actually had their graduates
21 from the first class and that was probably the
22 most inspiring moment for us as treatment
23 providers to see those graduates ten years later
24 employed, back with their families, paying
25 taxes, and giving back to the community. Some

1
2 of them have come into the field as counselors,
3 some of them have gone on to do other things,
4 but the reality is, none of them had been re
5 arrested and none of them were back in the court
6 system. And I think that was the biggest
7 epiphany for the people in the room is that this
8 change, this culture change has had a positive
9 impact and that's ten years out. We're not
10 really looking at three month, six-month --
11 we're looking at real hard core, you know, human
12 beings ten years out showing that this process
13 has worked. As like Steve, I'm not an attorney
14 so I don't fully understand the intricacies but
15 from clearly, you know, from the provider
16 standpoint, it's easy to understand how the
17 defense bar, that position has to be to get the
18 best possible outcome for their client and, you
19 know in reading an admission statement being
20 concerned with the plea or in some cases where,
21 I don't think it's 100 percent of the time, but
22 they have to plead guilty in order to get into
23 drug court; for us as a provider, we find that
24 to be a very strong external motivator. You
25 know, again, since addiction seems to be the

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2 only disease that people need to be dragged into
3 treatment for, you know, we have very few drug
4 addicts that come skipping into my office and
5 say today's the day. So the external motivator
6 -- or in this particular case, we're talking
7 about the court system, it's our job as
8 clinicians to make the external motivator and
9 turn it into an internal motivator so we can
10 begin to deal with the recidivism issues, the --
11 issues and begin to help the person deal with
12 their issue. I found, in my experience, that
13 those clients come to me through drug court make
14 that conversion much quicker than clients that
15 come to me through other areas of the criminal
16 justice system, you know, people who have been
17 discharged from Riker's or probation or parole
18 or, you know, DDP and the DWI cases, you know,
19 you talk about just looking at people out of the
20 criminal justice system for us as clinicians, we
21 have the greatest success rate with those who
22 have been referred through drug court as opposed
23 to other areas of the criminal justice system
24 again. So do the ends justify the means in
25 terms of things that you're struggling with,

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2 from where I sit, absolutely, as the provider
3 seeing the change in human beings, having those
4 cases disposed of, absolutely. So if it takes a
5 guilty plea to get them in, does that help you
6 in what you're trying to accomplish here, I
7 don't know. But we feel well, certainly I feel
8 that it is of critical importance to have that
9 hanging over their head as opposed to people
10 who, you know, I can't tell you how many cases
11 we've lost just because they violate parole and
12 he had go back to parole and they end up back in
13 Riker's and you have that same revolving door in
14 and out of Riker's that you do in and out of
15 detox. So, you know, if one of the things that
16 I have found to be of interest and as Steven
17 said if I can improve on certain things with the
18 relationship with drug court, it will be several
19 things, there were a few courts who because of
20 the public safety issue that looms, have a
21 tendency to air on the side of caution, meaning
22 they use a much higher level of care than is
23 required that particular offender meaning that
24 they have a tendency to use residential
25 treatment programs when someone would be more

1
2 appropriate in an -- setting or getting more
3 involved in a vocational program. But it's easy
4 to understand from the Court's point of view why
5 the public safety issue that is to come into
6 play, so that's a balancing act that we have to
7 do with some of the courts. Recently, one of
8 the issues that came up is when, if we have a
9 disagreement with the court system, meaning that
10 someone is progressing and doing well, and as
11 defense you probably don't want to hear this if
12 someone is doing well and we want to drop
13 somebody down in frequency and in duration, if
14 that is counter intuitive to the band that they
15 might be in, the length of time that they have
16 in the drug court, we can't drop them down, that
17 they have to maintain at the level of care
18 established by that band until that band
19 expires. It's become such a problem that New
20 York State Oasis, our single state authority had
21 to issue a local service bulletin to every
22 provider in New York State that basically said,
23 as a provider we have the responsibility to
24 drive care. However, if a court mandates a
25 certain level of care that couldn't coincide

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2 with what we're suggesting, we need to abide by
3 the Court's suggestion and then notify the State
4 authority that there's been an issue, we have
5 need to put it in our medical record that
6 there's been a slight disagreement that we've
7 attempted to compromise, that we have tried to
8 notify the Court of how we would like to proceed
9 but because of the legal mandate, the person
10 needs to be at a certain level of care. Now, as
11 long as there's no harm to the patient, then
12 obviously the State and single State authority
13 is saying, do what the Court says and fulfill
14 that obligation so the legal mandate can be
15 fulfilled so that's been a little bit of a tug
16 of war -- enough that the single State
17 authorities had issued a position statement on
18 it. The last thing and then I'll turn over the
19 microphone so I'm not -- too long is that I
20 would like to see a greater acceptance of
21 addiction medications into the courts. It's
22 also easy to understand why it's taking so long
23 because for the last 25, 30 years we've had very
24 few medications -- methadone. But over the last
25 five there's been a number of medications

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2 approved for the treatment of addiction and I
3 think it's just a matter of education. I don't
4 think judges or court officers or treatment, BTC
5 or MTC or any of the TC's are against
6 medication. I don't think they have enough
7 medication either from the pharmaceutical
8 companies or from the providers, but we've had
9 plenty of patients -- the patient themselves
10 were afraid because they knew they were going to
11 be drug tested in court and they don't want to
12 get a violation on the treatment band. So,
13 again, I go back to, are we treating a disease
14 or are we not. As professionals -- that's going
15 to help somebody, then how am I helping that
16 particular patient. That would be an issue that
17 I would like to see addressed a little bit more
18 aggressively throughout the entire State of New
19 York. With that, I'll turnover the mic.

20 MR. JONES: Thank you. Thank you
21 very much.

22 MS. SHAPIRO: Good afternoon. I'm
23 Carol Shapiro. I'm founder and director of
24 family justice. You have some testimony, and
25 I'm not going to repeat what you have in

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2 writing, I think we're going to shift gears just
3 a little bit. I started with an organization
4 called, that I still run -- borrowed heavily in
5 1995 with the, I think, benefits at the time of
6 drug courts allowing people in our field to see
7 this more as a public health issue than a
8 justice issue. I've spent most of my life in
9 alternatives to incarceration, I have worked in
10 Riker's Island. The reason I started this
11 organization was because the impact of addiction
12 is not just on the individual user but on the
13 whole family, thus the name of family justice.
14 A number of years ago we got support from the
15 bureau of justice assistance and you have a copy
16 of the curriculum. We developed curriculum and,
17 in fact, our presenter was involved in our
18 advisory group, I know he just testified, where
19 we developed curriculum where the family became
20 more of the unit of analysis. One of the things
21 I would like to put on the table is and you've
22 really -- mentioned this, that if substitutes is
23 a public health and a health issue, it does not
24 just affect an individual, the work that we've
25 done and not only -- doing work around the

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2 country suggests multi-generational issues not
3 because of substance use but because this is not
4 a democracy. The people involved in our justice
5 system -- law enforcement is a big part of their
6 life and so what I want to suggest to you, we
7 developed this curriculum, we tested it, but as
8 an organization, Family Justice decided that
9 this was not where we were going to put our
10 efforts and the reason we didn't want to put our
11 efforts into problem-solving courts, no
12 disrespect, of course, is that we don't, we
13 didn't see courts and still don't in a general
14 way as really looking to create sustainable
15 change in, and by tapping natural resources.
16 And so one of the things our organization is
17 really focused on including how we deal with
18 drug treatment, which is very cohesive and
19 punitive is, how do you leverage natural
20 resources, natural cohesions. You did mention
21 family can be, but how do we shift the power for
22 long term sustainable change because if it is an
23 addiction, we're talking long term. We're
24 talking mental health which we also -- mental
25 health courts, these are often generational and

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2 they are often more than one person. So I
3 believe a challenge for, you know, our, for both
4 defense and for really rethinking this justice
5 piece is, how do you shift to the family as a
6 unit of analysis. If we care about prevention
7 it's just not prevention for the person in front
8 of you, it's the whole system. If we care also
9 about power and I understand the -- and
10 appreciate the charismatics, but ultimately,
11 it's mom's, it's aunty's, it's God parents, it's
12 others who are there long term to provide that
13 kind of support. And so how do we shift that.
14 And so the suggestions are, the things I would
15 think about is, how do you ask and engage in
16 your own work families, broadly defined, asking
17 different questions, well, who is going to help
18 you stay in treatment, who is going to help you
19 take your medication. And I think that's one of
20 the things we learned when we started -- is that
21 the, for the people that were under drug court
22 supervision -- maybe there was no latitude to
23 change their conditions. But we have people who
24 had to stay under supervision even though they
25 would never get their GED, they were not

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2 committing a crime, they were drug free, but
3 still because it said they had to get their GED,
4 they were under the surveillance forever, we're
5 talking 60 year olds. It made no sense to us.
6 So part of it is what is the relationship of
7 these conditions, what's the impact on the whole
8 family and community, you know, and how do we
9 really think about that. The other thing that I
10 again don't mean any disrespect, but drug
11 treatment in my humble opinion is now a business
12 that is tied to our criminal justice system.
13 And I don't fault the drug treatment industry,
14 but right now, you have a lot, they can hand
15 pick who they work with. They often, it's
16 become an absolute part of our larger criminal
17 justice system that's cohesive and punitive.
18 And the reason I mentioned this is, the social
19 capital in certain neighborhoods is really being
20 depleted and having people knock on doors in
21 front of their relatives and ask them for a
22 urine test, what does that do to a relationship
23 between, you know, a grown up and their mother,
24 for example. All things that you will see under
25 supervision in particularly community-based

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2 supervision. How are we thinking about really
3 these impacts and do we want, you know, mandated
4 treatment for only a small segment of our
5 population, the poor people who need drug
6 treatment. I happen to have a relative who is
7 now 60 who is a drug addict, my brother-in-law,
8 his son is 23 who is a heroin addict, neither
9 have been incarcerated, neither have been
10 involved in the drug courts, why, they're white,
11 they're middle class, they're from Philadelphia
12 -- but I think we had different standards of
13 treatment depending on your income. And I don't
14 know to what extent courts can manage that. I
15 see two people from San Francisco, I'm going to
16 end with this, we're doing San Francisco, has
17 engaged us to see families as the unit of
18 analysis, imagine one family case plan, not
19 five, if you're talking about a poor family,
20 you're talking about child welfare -- welfare,
21 each of those governmental systems have a
22 different case manager and a different case
23 plan. How do we fit treatment within that so
24 that it doesn't harm further the family unit,
25 however, that's designed to actually help them.

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2 So I'll end on that. Thank you very much.

3 MR. JONES: Thank you very much.

4 MR. DRUCKER: I'm Ernest Drucker and
5 I'm here because I worked in drug treatment for
6 over 20 years. I started a large drug treatment
7 program in the Bronx 1970, a thousand patient
8 methadone program, Montefiore hospital, I ran it
9 through 1990 and watched in that period of time
10 drug problems turn into AIDS problems, turn into
11 prison problems and so my own interest and
12 career to follow that as a researcher, I'm an
13 epidemiologist, second interest, tried to get at
14 not just the individual problem, clinical case,
15 which, you know, addiction as a disease, as a
16 recurrent relapse and condition, it's pretty
17 well understood, hasn't changed that much, drugs
18 come and go but you have similar features. In
19 fact, the prognosis for the disease of drug
20 addiction is better -- if treated properly. But
21 that's a big if. Because competent treatment
22 resources are scarce, individuals who are
23 capable of doing this and supported to doing
24 this adequately are rare, actually, takes
25 considerable training and supervision; I'll tell

1
2 you a story about that later. To accomplish
3 that it's not something, it's cookie-cutter kind
4 of thing, chronically unfunded, as the gentleman
5 mentioned before, not for profit. I work for
6 big hospitals so there's always money in the
7 bank but we were often a one, two -- we were
8 often a million dollars in the hole for the
9 State agency -- a billion dollar organization
10 like Montefiore can carry that, small
11 organizations can't. So I didn't have that
12 aspect to deal with, but I was very impressed
13 with the fact that there were plenty of patients
14 around, individuals with drug problems who early
15 on in the course of their drug problems sought
16 help but weren't able to get it, doors were not
17 necessarily open, the treatment programs grew
18 and over 20 years that I was involved, but not
19 nearly enough. I know methadone best. We have
20 enough methadone treatment to treat 15 to
21 20 percent of heroin addicts in the country and
22 methadone has its critics, but I think they're
23 mostly looking at the failures of the way
24 methadone is administered rather than treatment
25 itself. Obviously, I'm type two diabetic. If I

1
2 take my medication, I do much better if I --
3 with alternative opiate substitutes be it
4 methadone or morphine. I've worked all over the
5 world that way. It almost doesn't matter, you
6 take the different hypertensive drug, if you're
7 this kind or that kind, the same for opiates,
8 don't know why one person reacts -- in Canada
9 and Europe, we've worked in morphine programs in
10 England, the treatment isn't the problem. It's
11 the access to the treatment and it's the context
12 of trying to do drug treatment in a system that
13 by criminalizing this disease and absolutely
14 assuring that the person that is an addict that
15 is a criminal to get the thing they need to deal
16 with their, whatever needs they have by being
17 addicted, creates an environment that I think is
18 epithetical to effective treatment and the drug
19 courts have tried to kind of go through that eye
20 of the needle, you know, they continue the
21 biblical analysis that's a tough place to be and
22 I don't think that it moves in the right
23 direction. My friend and colleague thought they
24 were totally incompatible by moving more and
25 more drug treatment under the auspices of

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2 criminal justice system going exactly the wrong
3 direction as opposed to reducing the
4 criminalization of drugs and drug users.
5 Someone mentioned Rockefeller Drug Laws before,
6 which I spent 20 years fighting, very
7 unsuccessful, we continued on. The hearings
8 from the State assembly next week here in New
9 York on this, nothing could be more important
10 but you understand that what -- it's not an
11 analysis of the drug problem, but the
12 institutionalization of an -- that is very
13 powerful, New York State prosecutor's
14 association -- the legislature in Albany, it's
15 almost an untouchable thing. And although New
16 York State has reduced the incarcerative
17 population by 15 percent or so in the last five
18 years, seven years, it's upped the number of
19 arrests. And what we're beginning to learn,
20 that the arrests and brief incarcerations for
21 minor drug offenses, marijuana -- those are
22 significant hits on individuals and their
23 families. And like Carol, I absolutely agree
24 that you have to look at this in the context of
25 the social ecology of the family. So I'm a --

1
2 justice fellow also wound up on the justice side
3 of this. I'm working on a book about the
4 effects of mass incarceration as a public health
5 -- and the concept there is that, it's best
6 understood by the simple statistic. If you were
7 a child in Harlem or Bedstuy school aged child
8 before Rockefeller Drug Laws, you had a two or
9 three percent chance of having a parent go to
10 prison while you were a child. Now, you have a
11 30 percent chance or 35 percent chance of having
12 a parent go to prison while you're a child. In
13 Washington, in a black community of Washington,
14 95 percent of all the men have been in prison,
15 intimately related to drugs, drug using, alcohol
16 -- drug selling. Obviously, if you've used,
17 drugs; you buy drugs, you sell drugs. Those are
18 very, very poorest boundaries and you eventually
19 are involved in guns, eventually involved in
20 violence, the recidivism rate assures that you
21 continue to escalate up the scale of sentences
22 and -- you know this very well. As I work ed in
23 AIDS research, I still do for many years and
24 began to look at this as an infectious disease
25 problem, not addiction. But the criminalization

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2 and incarceration, once you have something that
3 perpetuates itself, you begin to think -- that's
4 what the criminal justice system does. And I
5 think at this point, you could see the drug
6 courts as an element of that perpetuation. So
7 the question is, well, if my son who is older
8 now when he was younger was in this situation,
9 would I rather him go to a drug court with a
10 compassionate judge, as most of them are that
11 I've met, highly motivate to try to save this
12 kid's life rather than damm them to prison,
13 absolutely. But the ethics of the individual
14 case -- someone gets in and someone doesn't
15 because most don't get in. Now, I don't have a
16 lot of time and I want to cut to one experience
17 in particular because I've been working in
18 Canada for the last seven years, up in British
19 Columbia, which has one of the most progressive
20 criminal justice system relative to drugs that I
21 know. The judges there will not put a mentally
22 disturbed drug user with HIV, they don't think
23 prison is the right place for them. They
24 actually lowered incarceration in Canada over
25 the last 30 years -- terribly distinguishable.

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2 Vancouver, where I work, has a downtown east
3 side, which is like Skid Row, which has very
4 severe problems and we operate a safe -- that
5 has 200,000 visits a year, we have a heroin --
6 program. We have low threshold access to drug
7 treatment. So a drug treatment court was
8 started there about 40 years ago, two wonderful
9 women, judges running them, putting their heart
10 into it. I've worked on the evaluation for this
11 list in general, and about 15 percent of the --
12 rate, that was the main success criteria that
13 they spend the nine months in the program, about
14 15 percent and that's not very encouraging. In
15 a system that did not want, did not want to
16 incarcerate them so you have repeat arrests,
17 violations of the parole and probation
18 agreements that are put on and the alternative
19 that's developing there which I think we could
20 look at if we could convert our community, our
21 community correction service or probation or
22 parole workers, highly professionalized, well
23 trained, well supervised. In British Columbia,
24 over 500 mostly Master's level -- who regarding
25 recidivism failure, they ended the system with

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2 about a similar recidivism rate of ours which is
3 about two-thirds in three years. We've got it
4 down to one-third now and they keep working.
5 They're held accountable around the recidivism
6 outcomes relative to their skills, the training
7 and accountability as essentially a community
8 mental health providers. And I've been very,
9 very impressed by the possibility in the
10 criminal justice system, but the thrust of that
11 system is to keep people out of prison because
12 the judges won't let you use the prison that
13 way. If that were to happen here, then
14 Rockefeller is clearly a major instrument for
15 mandating those systems. There's hope because
16 there are plenty of people around that wish to
17 help, if they get paid, somebody gets trained.
18 The supervisors say, we'll do it.
19 Unfortunately, with my experience with reentry
20 problems here in New York -- the attitude is,
21 their job is to get these, pardon the
22 expression, scum bags back into the jail as
23 quickly as possible because that's where they
24 belong. The drug courts were a counter force
25 for that attitude, and God bless people who

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2 think that way, but there are really little blip
3 if you look at the numbers on the system. As
4 far as the follow up and the outcomes, yes,
5 there's a graduation ceremony of the people who
6 succeed, there are ten-year parties for the
7 people who have been out. But those -- we
8 follow everybody. It's no accident that we
9 don't have systems that enable us -- you do, you
10 have the wrap sheet, the wrap sheet tells the
11 story. If you look at the people who have
12 entered in year one, two-thirds, three-quarters
13 of the year and 310 with elevated charges and
14 everybody can, you know -- maybe you don't know.
15 In the study of epidemiology of drug use,
16 there's a huge body of literature showing that
17 most people bring their drug -- without
18 treatment. The people that Carol are speaking
19 about, they don't come to the attention of the
20 system, but we all know people who have stopped
21 smoking without smoking intervention,
22 superintendents of the Board of Education of New
23 York City 15, 20 years ago revealed that when he
24 was a young man he was a heroin addict here in
25 New York for four or five years, he went into

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2 the army, cleaned up, came out to be a --
3 chancellor. The world is full of that, but by
4 choosing to ignore that reality always focusing
5 on what we call in epidemiology, the numerator
6 -- very few control trials, you can't say, well,
7 we won't put this person in treatment because
8 treatment is characterized as the ethical
9 responsibility, the right thing to do. Let me
10 stop by saying, we have a study that just begun
11 up in Columbia where I am also on, following
12 families of people who were arrested, 500, 250
13 women, 250 men who were arraigned in the Bronx
14 criminal court. This is a partnership with --
15 we had Robert Steinberg here yesterday -- with
16 the psychiatry and public health school at
17 Columbia to follow 500 of these families for
18 five years and we'll follow them longer doing a
19 very, very intensive look at the children of
20 these families. It's a group that studied the
21 effects of 9/11, the firemen, the cops who were
22 killed in that. So they work with civil wars
23 and earthquake survivors so it's using that post
24 traumatic stress model to look at these children
25 whose parents have been through the system, not

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2 just someone knocking on the door asking for a
3 urine test. I remember I interviewed one guy,
4 the kid rather, and the cop shot the dog when
5 they came in because the dog was growling at
6 them. Because the exposure of this, only two
7 percent in 1970, 30 percent now, I gave a talk
8 to a group of kids in the Bronx a couple of
9 years ago who were honor students -- Albert
10 Einstein College of medicine because they wanted
11 to be doctors someday -- known someone who has
12 been in prison, they all raised their hands, and
13 these are honor students. So I think we've
14 created a monster at this point and we have to
15 be frank about -- treatment providers struggling
16 with an addict -- inadequate support are going
17 to take their business where they can get it.
18 That's inevitable. But if the whole thing is at
19 the service of the sustaining the place of these
20 individuals and criminal justice, which was
21 never intended to be, Rockefeller Drug Laws, the
22 ones like that, have a life of their own that we
23 have to find a way to turn off. And I worry
24 that drug courts, although the individual, they
25 have more humane alternative than the opposite

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that they have access.

MR. JONES: Thank you.

MR. SCHECHTER: Well, we have ten minutes to ask you questions. So --

MR. DRUCKER: You made the schedule.

MR. SCHECHTER: We predicated it on a five-minute statement. I'm going to ask you some questions, but I'm going to ask respectfully that the answers be kept extremely short.

MR. DRUCKER: Yes.

MR. SCHECHTER: I take it that looking at this panel that we have the following, criminalization coercion, outrageous coercion by the Courts, outrageous but family natural coercion, okay.

MS. SHAPIRO: Well, it's proven.

MR. SCHECHTER: I'm just trying to get it straight. So all the way over to Mr. Butchen to Mr. Rockman, cohercion is great, those are, that's where our greatest success rate is. Did I read that correctly? Anybody disagree with what I just said?

MS. SHAPIRO: I would just say --

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MR. SCHECHTER: You can either say
yes or no.

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MR. ROCKMAN: I'm not sure anything
is great. I don't think any of it that was
discussed today, I don't think anyone said what
they were representing is working as a -- I
think we've experienced positive results and
in --

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MR. SCHECHTER: Revenue. Revenue. I
mean, the reality, revenue is a function of the
state legislature, isn't that correct?

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MR. ROCKMAN: Yes.

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MR. SCHECHTER: So if the NACDL --
drug courts and mental health courts, would it
be your position, Mr. Rockman when you say that
the efficacy of drug courts, mental health
courts, et cetera, depends upon the
sustainability and efficacy of the provider and
that those providers must have enough funds to
do their job properly? Would that be a fair
statement?

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MR. ROCKMAN: Fair.

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MR. SCHECHTER: Do any of you, not
you, Professor Drucker, Ms. Shapiro, Mr. -- do

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any of you have criminal defense lawyers on your boards or advisory boards?

MR. ROCKMAN: No.

MS. SHAPIRO: We do work nationally and many of our projects we engage the defense.

MR. SCHECHTER: You do.

MS. SHAPIRO: As well as prosecutors, San Francisco would be one example.

MR. SCHECHTER: Working with the criminal defense bar?

MS. SHAPIRO: We're working with the public defender's office as well as the State's attorney.

MR. ROCKMAN: Not in terms of a specific program's advisory board or something that's related to maybe federal funding. But in terms of Samaritan, the organization there, their board, the directors has always had attorneys on it, still does.

MR. SCHECHTER: Criminal defense attorneys?

MR. ROCKMAN: Yes.

MR. BUTCHEN: No.

MR. SCHECHTER: Why not?

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MR. BUTCHEN: People are
proprietary --

MR. SCHECHTER: Would you work with
criminal defense attorneys?

MR. BUTCHEN: Yes.

MR. SCHECHTER: Anybody outstanding
that we depend upon for knowledge in order to
help you for legal issues?

MR. BUTCHEN: Only through the law
firms that I employ, that I have on a retainer,
so no one in particular.

MR. SCHECHTER: Let me ask you about
this lack of flexibility with drugs, there's
some reference to that. Is the problem there an
educational one?

MR. BUTCHEN: I believe so.

MR. SCHECHTER: Who is it that needs
to be educated? Is it the lawyers that
represent the clients or is it the judges or is
it the mental or drug-counseling staffs that are
part of the drug courts?

MR. BUTCHEN: I believe a portion of
all those. There are certain staff members and
certain courts that are a little more savvy than

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2 others. The BTC staff is a little bit more
3 savvy. Judge Ferdinand has a better grasp on
4 new medications, but I've come up against other
5 courts where they were not so amenable only
6 because they didn't understand what the
7 medication did and how we test on a drug panel
8 if someone would test positive and at a
9 toxicology screening at court. So I do believe
10 that more education is warranted.

11 MS. SHIFMAN: Can I just ask in New
12 York, if the judge won't approve of a particular
13 medication that doesn't happen if they're
14 through the drug court --

15 MR. BUTCHEN: The defender is afraid.
16 Well, because it's a matter of public record and
17 I do business with all of the courts. So it,
18 it's a problem in certain courts that certain
19 staff, certain judges will be a little bit more
20 resistant than others.

21 MR. SCHECHTER: This question is
22 about the drugs.

23 MR. BUTCHEN: I thought you asked me
24 which courts.

25 MR. DRUCKER: No.

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MR. SCHECHTER: We know the answer to
that.

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MR. JONES: Which drugs?

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MR. BUTCHEN: Bupamorphine and
Vivitrol. Vivitrol has been on the market, I'd
say, about a year, bupamorphine has been
around --

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MR. SCHECHTER: I don't do drug cases
of this nature as a rule, but I know about those
two drugs. I know it as a criminal defense solo
practitioner. I think many of my colleagues
know about it, so I'm trying to figure out
what's the problem. Do you think it's in the
courts?

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MR. BUTCHEN: I think it's in the
courts it's just unknown. As two colleagues
said -- it's an injectable form of maltraxel
(phonetic). But it's different. It a once a
month injectable.

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MR. DRUCKER: It's always different.

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MR. SCHECHTER: This is like a good
voir dire.

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MR. ROCKMAN: I think, our experience
has been actually specifically, I'll say, Atkins

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2 therapy is just not a disposition and I don't
3 know that it's the judges or maybe the
4 prosecutor's office that they're willing to
5 take, that someone who is going to, the end
6 result which is a positive outcome, someone is
7 still on a drug. It's just not something that's
8 embraced. We did stereo type as embraced.

9 MR. DRUCKER: Methadone -- despite
10 its record of the evidence, of the efficacy of
11 this treatment, the treatment of heroin, it was
12 not permitted to be used by any drug court in
13 the country -- it was not permitted to be used,
14 there's no methadone in prisons in the United
15 States although it's widespread around the rest
16 of the world and a lot of that came out of the
17 early years of self help and treatment with
18 former addicts were helping other addicts
19 because the medical profession didn't step up to
20 the plate. And it was just another drug, it was
21 a drug, it was a drug, and I can well understand
22 that feeling. But as that group of initial drug
23 users became the executives and the directors of
24 this program, to term the philosophy, sat on the
25 boards of the State panels advising the governor

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2 about drugs, the antagonism towards their drugs
3 which threatened their own so bright in many
4 cases they felt --

5 MR. SCHECHTER: They should fire
6 them. Let me just ask you one last question
7 before my colleagues take over. I'm not quite
8 sure what it is that your argument is on this
9 family unit. I have to just tell you that, you
10 know, everybody in this panel with criminal
11 defense attorneys, the first place we had we
12 taken a plea is to the families. That's the
13 first, those are the letters we want. We want
14 to meet the families. We always want to call
15 them. We -- I know I use a mitigation
16 specialist. Now almost every felony, the first
17 thing she does is takes a group picture of the
18 family, puts it in the sentencing report that
19 I'm going to put in. We try to get more than
20 just the letter. We try to show how the mother
21 will interact with the client if he is out on
22 probation. What is it that we're failing to do
23 --

24 MS. SHAPIRO: I'm --

25 MR. SCHECHTER: -- in the drug

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context.

MS. SHAPIRO: Well, the judiciary doesn't tend to take into consideration how serious -- of the whole family. It's also family broadened defined. We're not just asking blood relatives -- instead of making the assumption that mom will be able to do this for the son, you will ask the kid, the son, whoever, who can help you, and it may be a big brother, it may be, you know, a friend, who knows. What I'm really suggesting is, asking and engaging people respectfully as experts in their own lives and I think that a lot of -- did demonizing of drug users, people that suffer from mental illness has a rippled effect in that they don't feel respected, they don't feel they're even part of an equation, you know. I think that shifting the unit began recognizing this group of people's lives in a context. If child welfare is in, you have, you come up with this wonderful idea of drug treatment, it requires they are not going to be able to see their kids, how are they going to get their kid's custody back. It's more complicated than

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2 just the drug use. Drug use is one of many
3 parts of a person and I think that we're not the
4 best at that yet.

5 MR. SCHECHTER: If a criminal defense
6 attorney working in a drug treatment court or in
7 any court takes a plea, what is it that you
8 could do or we could do to tell our -- that they
9 should ask these questions different. I mean,
10 listening to you, I'd almost ask you as a favor
11 maybe to the panel is, give us the questions.
12 Maybe we're asking the wrong ones.

13 MS. SHAPIRO: You are lucky in that
14 we have our curriculum that we developed with a
15 variety of people, drug court judges, from all
16 over the country, people who are providing the
17 social -- drug treatment providers. You have
18 the voices of many and I believe there are those
19 questions. I personally have done training with
20 the drug court institute in the early years
21 after we produced this, I just wasn't sure that
22 I could maintain that and how to do that, but I
23 think you will have the questions you might
24 want.

25 MR. SCHECHTER: Thank you.

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MS. YOUNG: So Mr. Butchen, so as

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we've been doing these hearings, I've been

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trying to see, in my mind sense there's first a

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traditional criminal court model and there's a

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drug court model that in my mind really seems,

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you know, sentencing based obviously it's not,

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you know, litigating the crime itself. And I

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was thinking, well, maybe you could mold the

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two, you know, you do one first and then the

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other. But from what I'm hearing from you and

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your experience in your program is, if you tack

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it on like probation or parole, the treatment

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end of it, you're not seeing the same either

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commitment or success rate from the

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participants.

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MR. BUTCHEN: Correct.

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MS. YOUNG: And do you have any

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incite as to why that's, just because there's a

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bigger hammer?

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MR. BUTCHEN: Well, I think there's a

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bigger hammer, but I think, more importantly,

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and the professor said it earlier, probation

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officers, parole officers they're overwhelmed on

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their --

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2 MS. YOUNG: Resources.

3 MR. BUTCHEN: I think it's resources.

4 If a parole officer has 100 people on their
5 roster, ten drop off, it takes months, could in
6 some scenarios take months for them to find out
7 even when we're dialoguing. I've had multiple
8 conversations with supervisors when my staff
9 come to me and say this person tested positive,
10 we faxed over the positive, they haven't been in
11 treatment two weeks. I can't get the PO on the
12 phone. What do I do? And then we go to the
13 supervisor, what do we do. Ultimately, that
14 case is has lost a contact, someone gets re
15 arrested or they show up, they happen to show up
16 at their offices, they get arrested on the spot.
17 And Steven said earlier, just the web-based
18 technology -- communication between the provider
19 and the courts, is it more of a hammer, I don't
20 know if it's more of a hammer or more of holding
21 hands better, but there's a number of factors
22 that make it a much better outcome for my
23 patient.

24 MR. ROCKMAN: Sometimes there is more
25 of a hammer in felony courts, particularly,

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2 they're still looking at -- as no conviction.

3 If they're successful wherein some of the first
4 time felon cases that are disposed of with no
5 jail time and five year's probation, the case is
6 done. There is a disposition in the case. And
7 probation with first-time felons, non-violent
8 drug felonies aren't that quick to incarcerate.
9 It's pretty well known in the community --

10 MS. YOUNG: There's no way you can
11 find a comparable community of regular criminal
12 cases with sufficient funding for the
13 supervision to compare against because it just
14 doesn't exist. Drug court is its own funding
15 mechanism. There's an industry -- grants go
16 there but they don't go to the criminal court
17 and the probation department.

18 MR. ROCKMAN: Strangely enough, one
19 of the things we complained about as provider is
20 the frequency of visits to the court. It's
21 cumbersome. They're bringing me here all the
22 times. I should send letters, but as time has
23 gone on, I think that it's actually worked to
24 the benefit of everyone, that having to see this
25 judge on a regular basis and has encouraged

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2 people to greater -- it's the same treatment, a
3 little bit longer, maybe not always complete,
4 but certain to say because they know that that
5 court date is coming up and they are a lot
6 closer than probation dates. And I just think a
7 bench is just a whole lot more intimidating than
8 a probation officer. Parole is a different
9 story. It's a totally different level of --
10 people have felony jail time. It's a totally
11 different defendant, different profile. These
12 are people that have been Upstate, have been
13 incarcerated. The level of pathology is --
14 first-time felony probation.

15 MR. SCHECHTER: Not to mention
16 reentry problems.

17 MR. JONES: Adele.

18 MS. BERNHARD: I wanted to turn back
19 to Professor Drucker who I think has a different
20 point of view on a lot of this. Would you be
21 basically telling us that we should advocate for
22 decriminalization? Is that where you're coming
23 from?

24 MR. DRUCKER: Absolutely.

25 MS. BERNHARD: And anything less than

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2 that is detrimental to our long-term goals,
3 because sometimes things that are Band Aids can
4 also be doors into things and we can see better.

5 MR. DRUCKER: Well, I think there are
6 different goals when you look at the individual
7 case, which you're required to do as clinicians
8 or defense attorneys or as prosecutors for that
9 matter. It's a case-based model. I'm a public
10 health guy and that says, you know, if AIDS, if
11 you do the right things in the community and
12 educate people about sex and drugs and provide
13 services around those things, you bring the AIDS
14 rate down. That's different than treating a
15 case of AIDS, which involves an -- that
16 difference also exists around the problem of
17 drug use and drug addiction. What I'm saying
18 basically is, the current system which revolves
19 around criminalization undermines prevention and
20 undermines ultimately the prognosis for the
21 individual because the default system, someone
22 said it before, they wind up in the criminal
23 justice system 95 percent of the time unless,
24 unless they're white and privileged and have
25 good access to good defense attorneys -- when I

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2 started my methadone -- we had a clinic in the
3 South Bronx. We had one in the North Bronx
4 which was white ethnic basically and they were
5 the same people, young heroin addicts and I
6 noticed right away -- that the white patients
7 and the North Bronx clinic basically hadn't
8 spent a lot of time in jail whereas the black
9 Hispanic patients had already by, before
10 Rockefeller, had spent time in jail. They had
11 families, they had family support and they had
12 access to attorneys and that kept them out of
13 jail and this is a critical period early in drug
14 use where you go this way or that way. And
15 Fernandez, who is a school chancellor, been
16 popped early in the system, he wouldn't have
17 become school chancellor, he would have had a
18 felony record. It didn't happen like that.
19 That makes all the difference. Multiply that by
20 four million, six million serious drug users in
21 the country then all the marijuana, there's a
22 fascinating stream of literature -- marijuana
23 arrests and the movement away, you know, the
24 rate of heroin use. Cocaine just went way up
25 and then it came down. It's stabilized now.

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2 Stimulants come in, but that's not the mark.
3 It's mostly marijuana, so the whole criminal
4 justice enterprise has moved over to marijuana
5 -- around marijuana that's filling drug courts
6 and that's for their drug treatments now, which
7 specialize in mandated treatment for marijuana.
8 There's not a study in the literature shown in
9 any efficacy treatment for any marijuana use
10 because for some people it's their major way of
11 coping with life and they cope with life very
12 fine, they have no lawyers.

13 MS. BERNHARD: True enough.

14 MR. DRUCKER: But the poor souls in
15 the Bronx in the Bronx parks who get picked up
16 with a joint, once they're in that system then
17 it's infection, they stay in that system, every
18 one around them stays in that system. In that
19 way, from a public health point of view, there's
20 no question in my mind that the criminalization
21 drug use, the harsh penalties, the mandatory
22 penalties that have promulgated, political
23 reasons, they have nothing to do with trying to
24 deal with the drug problem. They have to deal
25 with the political problem of drugs -- crime

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2 went down, you know, the crime, the drug people
3 were doing drugs, that was mainly their crime.
4 Anyway, so you've got to make that distinction,
5 it's not a simplistic.

6 MS. BERNHARD: Thanks.

7 MR. JONES: Gail.

8 MS. SHIFMAN: Quick question. The
9 program you're establishing for San Francisco,
10 is that a probationary-based program?

11 MS. SHAPIRO: I think -- we are a
12 program in New York, which are learning centers,
13 but what we do is, we teach GO's and NGO's how
14 to engage -- perspective family and social
15 networks so that's really what we're doing in
16 San Francisco. So we will have the opportunity
17 to work with defense, prosecutors, but mostly
18 we're working with child welfare, probation for
19 juvenile and adult, public housing, all things
20 that are toxic if you were involved in the
21 justice system.

22 MS. SHIFMAN: So the family based --
23 I joke that my family, the broad-based family, I
24 think, can be incredibly cohesive.

25 MS. SHAPIRO: And they are also

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2 there 24 hours a day. I want to be clear when
3 we think about drug treatment, the best of them,
4 we all have great programs, the reality is,
5 you're really not thinking of who do you call,
6 who knows first when someone is hanging out with
7 the wrong kids or is in trouble; it is
8 definitely not, I'm sorry to say, a judge. It's
9 not going to be the best parole or probation
10 officer or the best treatment provider, if you
11 can engage a natural whip of support. One, it's
12 incredibly cost effective, two what we'd learned
13 from our -- other members at the household may
14 themselves, may end up getting support or
15 treatment that they may need.

16 MS. SHIFMAN: The question I have,
17 and I agree with you, everybody who said it,
18 that basing all of this into the criminal
19 justice system, the decriminalizing it is a huge
20 problem socially, politically -- for now for us
21 dealing with what kind of recommendations do we
22 make here, from your perspective, understanding
23 that this is the system that we're --

24 MS. SHAPIRO: I always work with what
25 we have today.

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2 MS. SHIFMAN: So how, what would you
3 recommend to sort of tap into that family based,
4 broadly based family based --

5 MS. SHAPIRO: Again, I would ask
6 different questions. There's a lot of
7 assumptions made about what treatment means for
8 everyone. One thing I did not tell you -- was
9 formally evaluated on the reduction of drug use,
10 that was the dynamic we worked at, a third of
11 the participants and this is a -- experimental
12 design, a third of the participants reduced
13 their drug use significantly without any
14 conventional drug treatment. Why is that
15 important? Because the only thing they did was,
16 have family. So for some people, it doesn't
17 work. What I'm suggesting is, you ask people,
18 it's like if you had a family member who was a
19 drug addict, what would you do. Would you go to
20 Hazelton if you have the money, ask them what
21 would work. And I think Ernie and others have
22 talked about it. We're not very good in the --
23 of matching treatment intervention within the
24 context of how people live, and I think when you
25 ask, when you ask a mother who really knows her

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2 son, she knows when her son, you know, uses
3 heroin. She herself may have used heroin. I
4 don't want to pretend, these are Pollyanna
5 things, you get a different sense of
6 information, you get different ownership and one
7 of the experiences we've had, I know it's not so
8 -- I worry that it's so intuitive, asking people
9 what works for them, who can help them, those,
10 just those two things can change the outcome.

11 MR. JONES: Great.

12 MS. SHAPIRO: Thank you.

13 MS. JOHNSON: My name is Nadine
14 Johnson. I'm a court attorney in Kings County
15 Criminal Court and I just want to say thank you.
16 I'm glad for the opportunity to be here. I wish
17 more of my colleagues could be here -- professor
18 at John Jay College -- criminal justice. What
19 I'm also hearing here with this panel and some
20 of the other panels is that there appears to be
21 within your recommendations for the NACDL is
22 greater public information, more public
23 information, more information to the public.
24 And to the clients and the patients who end up
25 in drug court, because I heard a story earlier

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2 about a woman who was aggressive and
3 communicating that she needed to be in treatment
4 court and some people get through and others
5 don't. And I think the ones who are more aware
6 of the alternatives and the possibilities for
7 treatment are the ones who tend to get through.
8 So in addition to educating the attorneys,
9 because, quite frankly, there are a number of
10 attorneys who don't even know all of the
11 treatment, all of the alternatives that are
12 available for their clients. I think the
13 education needs to get to the families and to
14 individuals who are going to be effected by this
15 in terms of preventing, you know, eventually the
16 behavior and sort of moving towards
17 decriminalization of all of the ills of --

18 MR. JONES: Thank you very much.

19 MS. SHAPIRO: Thank you very much.

20 (Recess taken.)

21 MR. JONES: Let's begin. Welcome.

22 Thank you for being here. You have the
23 distinction of being our last panel of the day,
24 our last panel of the two days that we've been
25 here, our last panel in New York and so we have

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2 absolutely, definitely, positively saved the
3 best for last. The way that we work is, we give
4 each of you five or ten minutes to give us the
5 benefit of your thoughts in an opening statement
6 and then we have lots of questions that we want
7 to ask you. So having said all of that, the
8 floor is yours. You can decide who is going to
9 go first.

10 MS. ESPINOZA: I saw the e-mail which
11 said about ten minutes so this will take
12 approximately that. And I'll like to go through
13 that as quickly as I can. I figure that after
14 about two days of the hearings, you have been
15 bombarded with every statistic and argument for
16 an against so although I am very proud of our
17 statistics and I can provide them for anyone who
18 would like at the end or by e-mail for the last,
19 the last presentation of the last day --

20 MR. JONES: Can I interrupt you? Can
21 we have --

22 MS. ESPINOZA: I thought that the
23 kindest and most constructive thing that I could
24 do would be to make some brief observations on
25 the role played by defense counsel in our

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2 problem-solving courts -- are the most important
3 lessons I've learned about that role from our
4 experiences in Bronx Treatment Court. First of
5 all, since I know that I personally resent
6 nothing more than having my own perceptions of
7 reality denied, I'll start by acknowledging what
8 I think are basic truths for defense attorneys
9 and the judges equally. Due to restrictive drug
10 sentencing laws and enforcement patterns that
11 we're all familiar with, the form that any
12 treatment court can take is primarily dependent
13 on the policies of individual district attorneys
14 and the Bronx is no exception to that rule. So,
15 therefore, neither the judiciary nor the
16 representations of the defense bar are as
17 powerful as we'd like in that setting. In my
18 own case especially concerning the limitations
19 that are placed on who is legally eligible to
20 come in to the treatment court option as a pet
21 peeve and something that I have not been able to
22 overcome. Beyond this for the defense to
23 contend with is the standard judicial rule
24 coupled with the expectation that counsel will
25 now become part of the team approach to

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2 rehabilitating their client. Obviously, that
3 involves a broader than usual definition of what
4 is in those individuals' best interests. I
5 would like to tell you, parenthetically, that I
6 have never considered the expanding judicial
7 role to include eliciting potentially
8 incriminating information in open court as I've
9 read in some of the critical literature. In
10 spite of the fact that we do have an agreement
11 with the prosecutor not to use such information
12 against the clients, nor do I expect defense
13 counsel to divulge confidential information that
14 they gain in conversations with their clients,
15 but I am assuming that when you choose as
16 defense counsel to participate in treatment
17 court, it's because you perceived zealous
18 advocacy in the best interest of certain clients
19 encompassing a long rather than a short-term
20 definition of those interests. I think it's
21 undeniable statistically, and certainly I felt
22 it anecdotally that dispositions that lead to
23 the less restriction on liberty in the short run
24 often, very often become part of the revolving
25 door that leads people to increasingly more

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2 severe sentences. That being said, I strongly
3 believe that without active participation of
4 defense counsel at every stage from planning to
5 the daily administration of the court and
6 efforts to adapt and change protocols as things
7 evolve, our problem-solving courts are doomed to
8 be much less effective than they could be. Our
9 own treatment court both the felony and the
10 misdemeanor components were products of many
11 months of planning. Defense input resulted in
12 many modifications that were beneficial to
13 clients including the fact that felonies are
14 actually dismissed at the end of someone's
15 successful time in treatment court, a position
16 that the district attorney initially was not
17 willing to take. They also achieved the target
18 population in our misdemeanor court is basically
19 parolees and probationers who are facing
20 incarceration with new arrests. They are our
21 primary target as they stand the most to lose
22 and the most to gain, that again was not the
23 initial prosecution concept. With the help of
24 defense bar representatives at the table, we did
25 make a strong commitment that the Court's

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2 decision to starting people in treatment who be
3 critically driven and that includes the deep
4 understanding that relapse is part of recovery.
5 And as we evolve, what that model meant was
6 that, clients provided that they hadn't been re
7 arrested for charges that now made them
8 ineligible to continue would have many, many
9 opportunities to succeed in various treatment
10 modalities, and we were continually adjusting
11 treatment to meet their needs. It is important
12 to point out that our screening and reporting
13 back is done by case managing and independent
14 programs, not by employees of the prosecutor's
15 office. As a result of our commitment to the
16 clinical approach of more -- I said I wasn't
17 going to get into statistics but I have to give
18 this -- one of more than 1,300 participants with
19 felony charges, less than 240 individuals have
20 been sentenced to the jail alternative simply
21 because the Court decided that no further
22 treatment opportunities could be provided in the
23 face of their continued relapse. People,
24 obviously other people have failed for other
25 reasons such as rearrest or warranting, but on

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2 strictly treatment and failure it has been a
3 small percentage. With defense input, the Court
4 was also able to achieve extensions of how long
5 people could be gone on warrants and still be
6 afforded another treatment opportunity. In
7 another sensitive area, re arrests for most
8 misdemeanors in our court now result in
9 replacement in treatment following short-jail
10 sentences. All of this doesn't mean that I
11 believe that individuals whose cases find their
12 way to treatment court on a legal screening are
13 best served by attorneys who uncritically
14 encourage their client's participate without
15 evaluating their particular situation. I'm very
16 aware of criticisms that have been raised in
17 some of the literature about pressure to plead
18 guilty before a proper evaluation of the case
19 can be made. Originally in our court, there was
20 considerable emphasis on early disposition
21 because we all felt that people's moment of
22 crisis at arrest was a good time for them to get
23 into treatment and they might have arrived at a
24 moment of readiness based on that; and in many
25 cases, that is true and that option is always

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2 open to people. Resistance to that approach by
3 the defense bar have been successful, however,
4 and in felony matters the prosecution now
5 accepts as a regular course of fact that the
6 many clients are going to await grand-jury
7 action before pleading guilty and that is
8 something that the defense bar achieved just by
9 their observance and they moved the guideline
10 farther than the DA was -- happen. Misdemeanor
11 clients regularly obtain adjournments to
12 consider their options as well. And one thing
13 that I undertook, because it seemed that the
14 defense bar have a lot of trouble getting this
15 done for obvious reasons, I set up meetings with
16 the supervisors with parole and probation and we
17 established a communication mechanism whereby I
18 could get approval for client participation; so
19 that when a plea was taken, I could guarantee
20 the client entering the program, that if they
21 did well, there would be no further probation or
22 parole consequences. Now, in the day-to-day
23 administration of the court, I feel that the
24 defense world can be very important, and I say
25 can because it's clearly true that most defense

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2 counsel choose not to remain involved with these
3 clients once they've taken a disposition and
4 enter treatment. The model that we follow every
5 day is certainly an open invitation for
6 participation. The Court, a representative of
7 the DA's office and whatever defense counsel,
8 somebody present, which is usually only the
9 Legal Aid public defender, representative that
10 assigned to my court receive reports which are
11 the subject of a morning conference regarding
12 every client whose case is on that calendar of
13 that day. There's ample time to question the
14 report. Our case managers serve as liaisons for
15 the program. They're very used to calling to
16 verify, seek clarification of information that
17 we may have doubts about. I also raised
18 numerous doubts about the report, but defense
19 counsel when they're in that meeting can do so
20 as well. The defense counsel who do appear have
21 an opportunity to review that information with
22 their client before the case is called. They
23 can go out in the hallway, they can take time.
24 I never rushed the calling of the calendar if
25 doubts are raised at that point. Counsel can

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2 also verify information with the case manager
3 and they can make their clients version of the
4 facts known to the Court. In my opinion, no
5 treatment court judge should ever take
6 everything said by a program in their reports as
7 gospel truth. We are still fact-finders with
8 the alternative responsibility for making
9 decisions, just as defense counsel are still
10 advocates, it's our responsibility to be
11 informed about the varying levels of credibility
12 and quality in the programs that we use and to
13 understand that counselors are very fallible
14 human beings. In our morning meetings, we have
15 discussions about the advisability of clinical
16 interventions, about sanctions and rewards,
17 there as well inform participation by both
18 parties is very useful to my decision-making
19 process. The preliminary decisions that are
20 made there can be modified and often are
21 modified by information that is -- to the Court
22 by defense counsel or the case manager during
23 the course of the day. Involved counsel who
24 maintain communication with his or her clients
25 can be an invaluable conduit for their client 's

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2 circumstances, communicating those circumstances
3 to the Court who is better suited to communicate
4 extenuating circumstances that may have happened
5 relating to family, employment and other issues
6 that may occur during the course of their time
7 with our court. Even when clients do ultimately
8 fail in that they can't complete treatments
9 successfully, we've had numerous cases where
10 active defense counsel have been -- to hit gate
11 the original jail alternatives. In order to
12 graduate from our court, you have to either be
13 working full time on the books, be it in a
14 training program or full time in school. These
15 are the felony clients, but we do recognize that
16 there are mental and physical disabilities that
17 prevent a certain percentage of our participants
18 from doing that. And originally, the office of
19 the district attorney did not want to honor the
20 full bargain of the promised sentence to those
21 people. They weren't proposing incarceration
22 but neither were they imposing dismissal. So
23 with the help of defense counsel, we have been
24 able to gather documentation that in most cases
25 has justified honoring the original promised

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2 sentence. So I think that there are many areas
3 where defense participation, unlike some of what
4 I've seen in the literature, is extremely
5 important. And just from my final remark, I'd
6 like to say that while defense counsel similar
7 to myself may not have the legal power to change
8 guidelines -- they certainly have a force and a
9 voice and they also have moral force. There are
10 many, many issues concerning eligibility,
11 guidelines, jail alternatives, protocols for
12 clients with mental health issues. And those,
13 as I heard at the end of the last panel, people
14 who use federally approved opiate treatments and
15 cannot get those treatments approved by the
16 office of the district attorney. I went all the
17 way to Rob Johnson; I went up the chain, brought
18 all the studies, sat down tried to get, give in
19 that policy, but, you know, I asked defense
20 counsel to come with and it was a no buy in, and
21 I think that that's really a big mistake. I'm
22 sure that you have additional items of concern
23 and there were original planning committees of
24 every one of those courts, they can be
25 reconvened but, and things, policies can be

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2 revisited, but I guarantee you that is never
3 going to happen without strong input from the
4 defense bar.

5 MR. JONES: Thank you very much.

6 MR. WEINBERG: I was appointed as the
7 presiding judge of the Midtown Community Court
8 in January of 2006. And when I came to the
9 court, first thing I did was I started reading
10 the literature about problem-solving courts and
11 community courts, and frankly, I sat up in
12 midtown a couple of times over the course of the
13 years on the bench before I was appointed. But
14 to me, it was just another part, another place
15 to play the role of a judge and dispose of
16 cases; I started reading the literature and made
17 myself educated, and the values of the court,
18 the criticisms and concerns of problem-solving
19 courts and community courts. The Midtown
20 Community Court was the first community court in
21 the problem world, the first problem -- of the
22 courts, whether it's Bronx community solutions
23 or special domestic violence parts. It's an
24 awesome responsibility to sit and judge fellow
25 human beings and I've always taken

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2 responsibility as a judge very, very seriously.
3 I'm a -- I'm not on the left, I'm not on the
4 right, I don't get paid -- it makes no
5 difference to me whether a defendant takes the
6 disposition or not. No one is ever forced to
7 take a disposition, no one has ever leaned on to
8 take a disposition. In fact, what we really are
9 is a social laboratory and a social services
10 agency as much as a court. And people come in
11 to work with our program counselors and our
12 support staff and our outside providers on a
13 voluntary basis -- I get approximately a
14 thousand, a thousand people a year come in the
15 front door sign as a volunteer, go upstairs meet
16 with our staff so they can work and get help
17 regardless of whether you have a case. So
18 never, never forced a disposition. It makes no
19 difference to me at all. In fact, if you spent
20 the day in court with me, you are all court --
21 that's up to you. In some of the literature and
22 some of the comments made in the papers that I
23 received from the organization, there's some
24 concern about waivers or rights or admissions.
25 No one has a right to waive until they're taking

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2 a disposition. So, for example, in the resource
3 -- talks to someone who may need alcohol abuse
4 or drug abuse program, or there's a problem with
5 English to the second language or getting a GED
6 program, there are no admissions made about the
7 particular facts and circumstances of the case.
8 Any representations about facts are made by the
9 defense lawyer. We work very closely with the
10 defense bar whether they're the Legal Aid
11 Society or has a -- in my court or the 18-B
12 panel where private orders are -- or whether
13 there were private defense lawyers obtained by
14 the individual defendants and we work very
15 closely with them in following through the case
16 and doing the alternatives to incarceration
17 programs. We have monthly meetings to follow
18 the progress of the folks that are in cases with
19 us. Let me just tell you a little bit about the
20 Midtown Community Court. The goal is threefold
21 is. There's a lot of literature on this. If
22 you do research on Midtown Community Court, I
23 have finally narrow ed -- one is to preserve,
24 protect and defend the community. It's based on
25 the premise that the midtown area, which is from

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2 14th Street to 59th Street as far west, as far
3 east as Lexington Avenue. Really, midtown was a
4 neighborhood in peril. This was a theater
5 district. It was an entertainment capital of
6 the city and perhaps the country and these were
7 very, very bad times when -- in 1993 and the
8 view was this could help save that community.

9 So long it was -- a second goal is to provide
10 meaningful rehabilitation opportunities for the
11 folks who come before us so they can turn their
12 lives around and be productive citizens and not
13 recidivists. Jeremy Dravers (phonetic), who is
14 the president of John Jay now who is a deputy
15 commissioner of legal affairs and he is the also
16 former -- wrote a book saying they all come back
17 and in fact that's exactly the point. Unless
18 you die -- what we're trying to do is, we're
19 trying to establish culture and values and a
20 support system so when you come back into the
21 community, it will be law-abiding citizens
22 living productive lives make a contribution to
23 themselves and to their families and to the
24 community. That's what the goal is about. The
25 fair component is to create effective, realistic

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2 partnerships between the court and the
3 community. It's not for the court to -- it's
4 not for the community to tell us as a judge what
5 we should do on a particular -- what we do is,
6 we try to understand the nature of the problems
7 out there in the community and to create
8 meaningful solutions and programs particularly
9 focused on individuals so those individuals can
10 have a shot at rehabilitation. And so,
11 therefore, in the two plus years I have been
12 presiding judge, we've created over 20 new
13 programs. We have programs for -- education, we
14 have programs for -- we have programs for petty
15 -- education, we have programs for safe
16 programs, we have drug rehab programs, we have
17 alcohol abuse programs, we have programs to
18 support women, we have programs to have better
19 parenting skills for fathers, we have programs
20 for GED's, we have English language programs, we
21 have programs to help people get jobs, we have
22 law firms who work with us to do interviews, we
23 have a dress for success program where we get
24 contributions of clothes and we get the folks
25 dressed up and we take them to law firms and

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2 they get interviewed. I have -- I have tours of
3 the Museum of Modern Art, the Manhattan Theater
4 Club, my district or as the -- is about to
5 expand. We're going to go farther north. We're
6 going to go all the way up to 86th Street as far
7 as the Hudson. Why did I want that district,
8 because that way I capture Lincoln center --
9 more experiences to broaden the horizons of the
10 people coming before us. Our views, we broaden
11 the horizons and show there's more to life than
12 parochial limited world that they find
13 themselves trapped in, perhaps their eyes will
14 open and the conduct will change. We never
15 force a disposition, we do care about the people
16 who come before us. We work very, very hard. I
17 say I have the easiest job in the courthouse.
18 As the presiding judge, I put on my black
19 polyester uniform and I do what I have to do and
20 I go upstairs where I go up to the sixth floor,
21 the social workers, the counselors, the people
22 -- and to help them -- they get assistance, if
23 they fail, as many do, couple of instances, we
24 give them other opportunities to work with us.
25 We try not to be punitive, but we hold people

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2 accountable for their reference. We expect best
3 efforts on their part and we work with them on
4 that -- panels as well as the alternative to
5 incarceration panels, the defense -- sits with
6 us, we get -- we get ideas for programs, we get
7 a sense of what's going on in the world outside
8 -- issues about mental health issues. We've
9 created new programs, new outside providers,
10 because a large number -- are folks who are
11 cursed with mental health issues and we try to
12 get them into our programs. So what I do is, I
13 sit up there; as a judge I see what's going on,
14 I see what's going on with the -- population, I
15 try to create a program. I direct the staff to
16 focus on the individuals. Nobody is rushed
17 through. It's individual attention. There's
18 individual focus and there's real care --
19 because I really believe that these community
20 courts, these problem-solving courts are an idea
21 as times come. I really believe that the old
22 system has failed and that if you don't address
23 it in a meaningful way what's going to happen is
24 you're going to have a -- recidivists, society
25 is not going to be any safer and the social and

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2 economic and personal -- will continue to
3 prevail. The allies' effort or the defense bar,
4 the district attorney's office, the outside
5 providers and the members of the community, all
6 of us work together. The term of art, a team; I
7 don't know if that's really quite correct. I
8 would not call it a team. I think we're all
9 contributors, actors to this process. There's
10 no pressure on the defense lawyer or the DA's
11 office or an outside provider to do anything
12 other than to do their best efforts to try to
13 address the real problems of the individuals who
14 come before us.

15 MR. JONES: I'm going to start with
16 you. I'm going to lead to my colleagues, the
17 sort of nuts and bolts questions of the
18 administration of your court and the defense
19 function and all those things, I'd like to sort
20 of address with you the threshold question of,
21 should there even be the drug court and are we
22 moving in the wrong direction by having drug
23 courts increasing their use. I think you heard
24 some of the, first, of some of the panel before
25 you talked about some of those issues and we've

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2 now had a day and a half of folks who have
3 talked to us about the fact that we're misusing
4 the criminal justice system, that we're over
5 criminalizing, that this is a public health
6 issue and that it should be treated as a public
7 health issue, that the kind of judging you do
8 should not be limited to a drug court, but that
9 all judges should be interested in the
10 individual, all judges should be interested in
11 rehabilitation in a way they are not. And that
12 there's one other aspect of it that I was going
13 to raise with you, but generally speaking,
14 what's your sense of the notion that what we're
15 really doing is bringing society's problems to
16 the doorstep of the criminal justice system
17 where they're not best met and that this really
18 is sort of a life boat, some get it, some don't.
19 What we really ought to be doing is focusing
20 these resources, focusing our efforts toward
21 helping people, you know, with these public
22 health medical issues in a -- I know what I was
23 going to say, outside of the criminal court
24 system. Another thing I was going to say, one
25 of the other panelists before you talked about

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2 the fact that the vast majority of people beat
3 addiction without, and this notion of the hammer
4 sort of offends me a little bit in this, in that
5 her point was that, you know, people who are
6 more well off solve their addiction problems
7 without the criminal justice system, people who
8 are white largely solve their problems without
9 this hammer notion and that the people who need
10 a hammer are poor, the people who need a hammer
11 are black and brown and that we're really sort
12 of going off in the wrong direction. How do you
13 sort of --

14 MS. ESPINOZA: Huge question. I'll
15 answer it in two parts. I believe today
16 personally the same way I believe when I was
17 15 years old, which is if we ever had the
18 political will in this country to use our
19 resources in housing, health care, job
20 development and primarily that our schools be a
21 place of beauty and primary focus in our
22 communities, then I do not believe that we could
23 see an incredible influx of people that we see
24 in, into the criminal justice system. Does the
25 political will exist in this country? Well, I'm

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2 -- I may be retiring in a couple of years so why
3 not just put it out there, I don't think it
4 does. I've seen things go from bad to worse
5 during my lifetime. And the reason I said 15
6 was because at that age I was convinced that a
7 huge transforming change was about to happen in
8 this country. Guess what, you know, it didn't
9 happen. And now we may see, we've seen farther
10 and farther because perhaps on the bench when
11 you're the right, left or center, but let's face
12 it, we all are something in our previous and our
13 outside lives. And I see this country shifting
14 further and further away from the kind of
15 priorities that would, that would be able to
16 bring about what you're talking about, a public
17 health approach. Would I prefer it, absolutely.
18 Would I prefer the Rockefeller Laws to be a
19 thing of yester year, absolutely. Would I
20 prefer that young men and women have economic
21 opportunities in their neighborhoods so that
22 they didn't see the drug trade as the ladder for
23 success, absolutely. And just, parenthetically,
24 I know that one of my colleagues on the previous
25 panel mentioned, you know, marijuana and how bad

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2 it is to put these people into drug court
3 because, after all, it's not really a big
4 addiction problem. I had to confront that very
5 early on because the DA said, well, what are you
6 doing, you're taking these people, they don't
7 really, they have felonies, they're just drug
8 dealers, they just smoke marijuana and I had to
9 decide very early on was I going to take those
10 people who could then perhaps have the
11 opportunity to talk about whatever it was, you
12 know, that was bothering them in their lives,
13 have clean toxicologies, get federal money to go
14 to school, you know, and a lot of them were
15 extremely bright and did end up in two-year
16 colleges and community colleges and they get
17 their felonies dismissed or was going to have
18 to, well, because they don't have a needle
19 hanging out of their arm, they come in here, I
20 said bring them, let's open the door as wide as
21 we can. Because right now, right now I think
22 what you're talking about is a political
23 solution and when I get off the bench, I'll go
24 back to working for that. Right now, treatment
25 court is the best game in town and I got on the

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2 bench in 1990. They sent me to criminal court,
3 in about five minutes I got sick, you know, your
4 Honor, you're talking about seven, I mean three
5 people with seven years of higher education
6 between them that this court goes, your Honor,
7 the last time she got 60 ays, we're asking for
8 four months, the Legal Aid clerk said, Judge, it
9 was just a stem, how about time served and
10 you're supposed to be, you know, like Solomon
11 answering, well, 45 days, that's the best use of
12 our mental capacity. I got sick. And so I
13 started trying to send people to programs,
14 calling them myself and I got on the front page
15 of the New York Post for it, you know. Now I do
16 the same thing. They can't throw enough money
17 at me because we do well with it. I don't
18 believe, I don't believe that if you stop
19 treatment courts and close the door to treatment
20 courts to all these people who are getting
21 felonies off their record, getting free
22 education, getting mental health care for the
23 first time in their lives that that will somehow
24 create this huge pressure on our national
25 government to open, you know, all kinds of

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2 educational and health care and housing
3 resources for them. I don't buy it. I think we
4 should work on both levels and that's what I
5 intend to do in my personal life.

6 MR. JONES: What about the argument
7 that the existence of the drug courts mask the
8 larger problem, so people think politicians and
9 other people that don't have the -- but could
10 have the power, it sort of masks, it's the
11 Band-Aid -- it's the Band-Aid. It's a mask that
12 sort of makes people think that, you know, if we
13 just, if we just put a little money here, we
14 don't have to worry about these larger public
15 health -- also, it informs policing in that, in
16 that, you know, providers from Samaritan Village
17 or where ever or police officers on the street
18 who dare say, you know, you know, I don't really
19 want this person to go to jail, but I'm going to
20 arrest them anyway because then I know they'll
21 get into the system then I'll know they'll get
22 treatment so it informs arrests. It informs
23 policing so it's actually counter productive --

24 MS. ESPINOZA: I really -- I can't
25 believe that we haven't noticed that the powers

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2 that be haven't noticed that we have two million
3 people in prison in this country and a huge
4 overwhelming percentage of them for these
5 non-violent offenses. If we stop the few
6 thousand people who are helped by treatment
7 court, I don't think that that's going to create
8 the kind of pressure necessary to advocate for
9 change. And I think it's so ironic that the one
10 thing that is this as hoped for so many people
11 is possibly seen as a negative in that way. You
12 take it away tomorrow, there will just be that
13 many more people with felony convictions. I
14 don't think, I've seen drug sweep after drug
15 sweep after drug sweep. I mean, I was a court
16 attorney before I was a judge, and let me tell
17 you, the Bronx gets swept. Drug court, without
18 drug court, the arrests are massive. That's a
19 national political issue and I think we should
20 speak out about it. But I don't think taking
21 away -- and I don't think that there's so many
22 cops out there saying, I'm sorry. It's just my,
23 my experience to see that there are so many cop
24 s out there saying I'll just arrest these
25 people, I'll take them to treatment court. I'm

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2 thinking that they're making not quotas but
3 they're making, they're following specific
4 policies that they're given about what to do in
5 certain neighborhoods, and to say that it's
6 treatment court driven, I think, is just
7 backwards. That's my personal perception.

8 MR. JONES: Thank you. Judge
9 Weinberg, community courts, I had the privilege
10 back in the early mid, I guess, was '93, '94,
11 '95 to be in on the early aspects of Midtown
12 Community Court and actually got to sit in and
13 watch it run and had a case or two there but
14 it's been a decade since I've last been there.

15 MR. WEINBERG: It's better today.

16 MR. JONES: I take your word for it.
17 A couple of questions that I have are one, sort
18 of another threshold question. What's your
19 definition of a problem-solving court and
20 whatever that definition is, do community courts
21 generally and does Midtown Community Court fit
22 under the umbrella of a problem-solving court?

23 MR. WEINBERG: Problem-solving courts
24 is a -- my colleague indicates they are
25 sociological. Economic problems out there that

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2 are not being addressed by the largest society,
3 before I was a judge I was a -- in the New York
4 City counsel, counsel speaker, we helped fund
5 the Midtown Community Court -- I helped create a
6 program called Safe Streets, Safe City in 1991,
7 which we partnered up with the Dinkins
8 administration, to put more cops on the street,
9 more social workers, more 18-B lawyers, more
10 Legal Aid staff, more court officers, more
11 clinical staff, because the problems are so
12 complex that they have to be dealt with somehow.
13 And Laura is absolutely right to focus on how
14 that the community courts and problem-solving
15 courts are the problem is respectfully to miss
16 the point. What's the problem? The problem is
17 that you have a deviant population that breaks
18 laws, causes harm to -- and destroys themselves
19 in the process. That's your problem. And it
20 has particular manifestations. Is it a problem
21 because they are, they engage in domestic abuse
22 and they physically and emotionally violate
23 their partners or their children or their
24 parents, that's one species. Do they have drug
25 problems, that's another species. Are they

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2 victims of sexual -- so we have a large number
3 of prostitutes; that's another problem --
4 problem-solving courts, we're trying to address
5 it in the best possible way we know to create
6 programs and services to try to get these people
7 before us a new lease on life, a new
8 opportunity, an opportunity to turn their lives
9 around. So is Midtown Community Court a
10 problem-solving court, you bet. I'm known in
11 Manhattan as the king of prostitution, I get --
12 I get 80 percent of the prostitution cases in
13 Manhattan that's the -- and that's the
14 prostitution cases and that's the patronizing
15 prostitution cases and we have programs to these
16 folks, we have outside providers for agencies,
17 we have our own psychologists and sociologists
18 and social workers who work with them --
19 14 percent which by the way is -- 75 to
20 80 percent of the folks who come before me
21 whether their case is dismissed or ACD'd,
22 adjournment in contemplation of dismissal or
23 there's a plea, 80 percent of the cases come
24 before me are disposed of. About 80 percent,
25 75, 80 percent of those folks who get a

1
2 conditional discharge fulfill their obligations
3 to the court and do their programs and get the
4 help. The arrest time in my courts is six to
5 eight hours quicker than downtown at 100 Centre
6 Street. Of course it costs money to put people
7 in jail. I don't think it's a public policy.
8 If you spend money, you should build fewer
9 prisons and more services to help people. The
10 theme I have to keep coming back to is, they all
11 come back, none of us, not the defense bar, not
12 the prosecutors, not the judges, not the
13 legislators, not the executive branch. No one
14 is doing anyone a favor when you kid yourself
15 about the nature of the problem. There's a
16 counter -- culture in the prison in certain
17 community systems where the values are not those
18 of the larger society where the culture
19 glorifies violence, drug abuse or pimping,
20 glorifies these things and they go into a prison
21 that's a school for scoundrels, it teaches them
22 how to become better criminals and have better
23 networks and criminal networks and what we're
24 trying to do is, we're trying very, very hard to
25 break that cycle. Believe it or not, when I

1

2 tell you, the problem-solving courts and the
3 community courts are not the problem. We're the
4 best solutions.

5 MS. ESPINOZA: -- has set given the
6 circumstances of the politics and sociology. At
7 times if you think, and I know a little bit
8 about this, I spent 13 years at City Hall and a
9 whole bunch of years in Washington in Capitol
10 Hill, if you think there's any will for large
11 global change in the way government allocates
12 resources, you're kidding yourself. If you
13 really want to help your clients, you should be
14 partnering with us to come up with more
15 programs, more services to try to reach people,
16 not to force them to plea or to waive rights
17 because that -- to try to help them. So I
18 brought in some literature which I'll leave,
19 I'll leave for you but, you know, we take
20 enormous pride in the successes we have. And
21 one of the successes I have is, I have a born
22 again Muslim from Harlem who was a drug dealer
23 and a drug user who turned his life around who
24 sent me a Christmas card a Jewish judge --
25 trying to accomplish. Now he is a volunteer

1

2 with our court trying to help other people in
3 the community turn their lives around.

4 I just wanted to say P.S. on all of
5 this, we all, we do take a lot of pride in our
6 successes, our success rates are good.

7 Retention versus, with all due respect to the
8 voluntary re referrals versus the retention
9 rates of people who have court supervision
10 cannot be disputed in the studies and, yes, it
11 may be true, I forgot to address your initial
12 point about most people, you know, solving their
13 own addiction by themselves, that may be very
14 true for, but they are not the people who end up
15 in front of us. They are not --

16 MR. JONES: But there's a reason for
17 that, right?

18 MS. ESPINOZA: Yes, there's a huge
19 reason for that. Are you talking about the
20 disproportionate, the horrible disproportion of
21 drug use arrest in the white population versus
22 who gets arrested in the -- no argument there
23 whatsoever. Well, let's, you know, let's do
24 what we can to fix that and those solutions are
25 political. I don't know that we'll see the

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2 solution in my lifetime or yours. But I wanted
3 to say, P.S., I do not mind going on the record
4 to say that I think it's outrageous, that the
5 best place to obtain these services is the
6 criminal justice system for a large part of this
7 population. That's an outrage. But as my
8 colleague points out, do you see the outrage, do
9 you see a shift in policy coming and I would
10 just say, you know, the judges are not
11 political, but the results of the next election,
12 we may see a lot worse to come if people aren't
13 active. So that's --

14 MR. WEINBERG: I have a team of folks
15 go out twice a week to Grand Central Station to
16 the Port Authority and to Penn Station to do
17 homeless outreach. Based on the premise
18 underlying in question, I shouldn't be sending
19 people out there to do outreach to find help
20 them get homes, which we try to do to get them
21 food and medical care, get them social services.
22 I shouldn't be doing that because that should be
23 somebody else's, because we're putting a
24 Band-Aid on the problem because that should be
25 the mayor and the city council's responsibility;

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2 well the answer is, we're doing it. I can tell
3 you that we're successful. We do outreach and
4 we get people homes and apartments and mental
5 health counseling. We get them out. If they
6 have a drug problem, we hook them into drug
7 programs. If they have alcohol abuse, we do
8 that and if they need food stamps, we help get
9 them that. If they need job training, we help
10 get them that -- we shouldn't be doing that
11 because if Laura and I and all the other
12 problem-solving judges --

13

MR. JONES: I've got a wrath of
14 questions that I'd love to pose, but I know that
15 my colleagues want to jump in so I'm going to
16 let them do that.

17

MS. YOUNG: I just have a question,
18 quick question for Judge Weinberg because
19 Midtown obviously is in Manhattan and earlier
20 today we had, you know, a pretty horrific
21 description of how the DA's office in Manhattan
22 was not supporting the drug court, you know,
23 because they were, you know, ratcheting up the
24 sentences or however, if they failed or
25 whatever. But is Midtown Community Court

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handled by the same DA's office and so they view the problems addressed by your court differently than the drug problems --

MR. WEINBERG: I can't speak, I can't speak for what the Manhattan DA's office does in the drug --

MS. YOUNG: But they have been supportive?

MS. ESPINOZA: Are all your charges misdemeanor?

MR. SCHECHTER: Your charges are -- you don't get DTAP programs?

MR. WEINBERG: Violations and misdemeanors.

MR. WEINBERG: Your lawyer sat on my bench with me.

MS. YOUNG: You're talking about Gavin. Actually, there was an article in the paper, he is interested in community court.

MR. WEINBERG: He is trying to create one and I'm going out to Victoria British Columbia in June at a conference on this because Victoria British Columbia is trying to create such a court and I've had the deputy prime

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2 minister -- on the bench, and I have judges from
3 all around the world, I had -- on the bench with
4 me and the attorney general of Canada on the
5 bench with me, that's so -- and criminal defense
6 lawyer -- there's a reason they keep coming to
7 us because -- if I had my -- I had my -- soon to
8 be governor, not only -- I do legal research and
9 I said to him, I said, Elliot, what you should
10 be doing, if you -- initiative you should have
11 problem-solving courts, community courts all
12 over the state because this is something that
13 really works and the old system doesn't and some
14 DA's are more supportive and some DA's are not
15 so supportive. In Brooklyn, for example, and
16 you saw Alex Calabrese was here.

17 MR. SCHECHTER: Judge Ferdinand.

18 MR. WEINBERG: He held a race -- he
19 runs a court comparable to mine -- that operates
20 in his court so there's a woman who is the
21 bureau chief and she has a staff of two or three
22 other assistants and they are in day in and day
23 out and they have -- but the programs , the
24 services of what we're trying to do are --
25 talented folks every week on a rotating basis.

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2 And on the prostitution cases I've insisted and
3 they've deferred to my judgment that I have a
4 regular assistant DA, the sex crimes unit who
5 polices all the prostitution cases that come
6 before me so my experience -- at Midtown is very
7 supportive and they work with us. On the
8 prostitution cases for a long time, they weren't
9 giving disorderly conduct dispositions so people
10 weren't pleading, they weren't pleading because
11 they had to plead to loitering and prostitution
12 as a violation. That has moral turpitude. If
13 you know your immigration law with moral
14 turpitude, you're subject to deportation and
15 your residency here in the states. So we
16 weren't getting dispositions. I said to them,
17 look, let's try giving first offenders 240.20's
18 to get them into programs, to get them into
19 services to try to break this cycle. What we do
20 literally is, some of my staff will take some of
21 these victims of trafficking, and it's just like
22 the movies we'll tell you, they pick them up at
23 the Port Authority, they buy them a cheap dress,
24 a few meals, they take them to some night clubs,
25 they shoot them up with drugs and then they rape

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2 them and turn them out onto the street. That's
3 what happens, just like in the movies. So we
4 have somebody at the Port Authority working to
5 grab these -- kids when they're coming off the
6 buses from Ohio -- no disrespect -- from Ohio
7 and get to them, get to them before the pimps
8 can get to them.

9 MR. SCHECHTER: I guess that's a form
10 of outreach.

11 MR. WEINBERG: I believe in that and
12 I believe it works. We've been able to partner
13 up with the Port Authority police and the Grand
14 Central folks -- and it works.

15 MS. SHIFMAN: I just have a question,
16 Judge. And we heard a lot about your court from
17 a lot of participants all the way around and
18 we've heard a little, we've heard a little less
19 about your court --

20 MR. WEINBERG: You have to be from --
21 you go to Central Park West, 12, 14 blocks from
22 my court, it says -- so why do they come from --

23 MR. SCHECHTER: I live in Central
24 Park west.

25 MS. SHIFMAN: Since the creation of

1
2 the Midtown Community Court, do you see an
3 increase in the number of arrests and minor
4 offenses that have been coming into the court
5 system now that this court --

6 MR. WEINBERG: I honestly can't tell
7 you. I'm told the numbers are fewer today than
8 the heart of the Giuliani Administration. It's
9 -- of so-called quality of life arrests. I
10 wouldn't tell you I process 18,000 cases a year.
11 That I can tell you, that's the number that I --
12 I can do 18,000 cases a year. Okay. I think
13 there's a lot to be said -- quality of life
14 policing in Brooklyn. I think that's good for
15 everybody. You have no idea the number of
16 people who come in on fare-beat cases and they
17 are out on, they're warranting out on rapes and
18 murders. I'm always flabbergasted; they have a
19 murder warrant against them, an indicted murder,
20 they're not paying their fares.

21 MS. ESPINOZA: Zero tolerance existed
22 when I got on the bench and there were no big
23 alternatives at that time and --

24 MS. SHIFMAN: This is in the Bronx?

25 MS. ESPINOZA: No, I'm a Manhattan

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2 refugee. I went up there on a three-month
3 loaner and I looked at some of the policies
4 versus and although geographically the Bronx is
5 somewhere else, really in my mind they lie
6 between Manhattan and Brooklyn somewhere, you
7 know, because in terms of the politics and what
8 is able to be done for people to put them in
9 programs -- very hostile to it, and the zero
10 tolerance. And that did not depend on the
11 existence of programs, it was the cart before
12 the horse.

13 MR. SCHECHTER: First, let me just,
14 I'd hate for you to leave here thinking that my
15 colleagues view is that of the NACDL or if he
16 has a view, I don't know that he does, a lot of
17 our questions are very provocative --

18 MS. ESPINOZA: We're tough.

19 MR. WEINBERG: We're tough.

20 MR. SCHECHTER: -- I'm pretty much
21 there, I think as a huge society ills and there
22 are many ways to treat them and we now have
23 today this extra way to treat them and that's
24 the court system. Maybe we shouldn't be in the
25 courts. I have to think we shouldn't be --

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2 MR. WEINBERG: Should not be?

3 MR. SCHECHTER: No, it's crazy that
4 the criminal justice system is the place where
5 we solve these things. It's insane. That's not
6 where we went to law school. You can't go to
7 law school and think about that, neither did I
8 and neither did my parents who worked very hard
9 to get me to go to law school. But the fact is,
10 that that is the reality and you guys are on the
11 front lines in the courts as is the defense bar.
12 I happen to think exactly the way both of you --

13 MR. JONES: Which can also say is not
14 the view of the NA --

15 MS. ESPINOZA: There's always
16 somewhere between, we're used to that.

17 MR. SCHECHTER: Norman will handle
18 it. With that being said, I am concerned about
19 the role of the defense bar, which you've you
20 addressed, Judge Espinoza. Are you seeing in
21 your court real participation by the defense
22 bar? I mean, we've heard different scenarios.
23 These are the ones we've heard, one, the private
24 defense bar rarely goes into these courts
25 because they are not paid in courts, they're

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2 mostly poor people; two, there is a Legal Aid
3 attorney assigned or an 18-B assigned but they
4 break their own rules, at least as I see it.

5 For Legal Aid where I came out of for vertical
6 representation because in fact it's not vertical
7 representation, it breaks. I'm the attorney at
8 -- I get the case in the Bronx, it's a drug
9 court case, I hand it off to Rick because he is
10 the drug court Legal Aid guy. To the extent
11 that Legal Aid has somebody in there, is that
12 person actively participating? Is the 18-B
13 actively participating or is this a charade?

14 MS. ESPINOZA: What actually happened
15 with Legal Aid is that one attorney, the
16 attorney from arraignments keeps the case until
17 disposition. And then post, only post
18 disposition it's handed off to a person who is
19 assigned to me forever or as long as they can
20 take it and then they do stay for years. But
21 that person, I've had different experiences,
22 some of them are really incredibly committed
23 and, you know, get to know the clients and
24 really read the reports and educate, really read
25 the literature about addiction and get to know

1

2 which programs are better and worse, what
3 challenges to -- I'm very open to their
4 participation. I've had really good Legal Aid
5 lawyers who challenge a lot of things on behalf
6 of their clients and I've had mediocre people
7 who are just, you know, passing the time. As
8 far as the private, 18-B bar is concerned, there
9 is a handful of regulars who, you know, have
10 more of the heart of, I guess, the social
11 worker, but they do follow their clients, they
12 come on every court update, they read the
13 reports, they discuss it with me and their input
14 is genuinely valuable. The vast majority just
15 don't come, of the defense bar. If you're an
16 18-B, the vast majority just give it up --

17 MR. SCHECHTER: They let you handle
18 the status conferences.

19 MS. ESPINOZA: You know, that's, they
20 say, oh, judge, you know, you will do better by
21 them than we ever would. But you know what,
22 certain things a client will tell their defense
23 attorney, they're not necessarily going to tell
24 -- first of all, I'm a little different than
25 maybe many of the treatment court judges. I had

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2 to decide early on how down in whatever I was
3 going to get into their psychological trauma I
4 was going to get and I saw the tapes, I saw the
5 training tapes. Frankly, I wasn't that
6 comfortable with all of that. It's still an
7 open courtroom. Everything is still being taken
8 down. And they have enough to go through the
9 programs; they're discussing, you know, sexual
10 abuse and domestic violence and trauma and their
11 family situations. And I wasn't going to say,
12 you know, you relapsed, what's happening, were
13 you abused again. I just don't engage in those
14 kinds of -- what corner did you buy drugs on?
15 I'm reserved too, you know, I'm warm, I let them
16 know that I really read their report, I've seen
17 what they're doing objectively, not
18 subjectively, toxicology, did you go to school,
19 you're involved in this, you're involved in
20 that, oh, you had a baby, that's great, that
21 kind of stuff. But I keep it at that level and
22 because I feel that there's many people watching
23 and why should that person have to go through an
24 additional, you know, reliving of their traumas
25 just to titillate what's going on in the

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2 audience and they may say certain things to
3 defense counsel that they wouldn't say to me.

4 MR. SCHECHTER: If we wrote a report
5 at the end of all these hearings, is it
6 recommended that it is crucial that defense
7 counsel, Legal Aid private bar take each of the
8 status conferences, post plea as seriously as if
9 it was pre plea that that is their obligations
10 as zealous advocacy, we'd be right on the mark.

11 MS. ESPINOZA: I agree with that and
12 plus they can come at 9:30, which I tell them
13 all --

14 MS. SHIFMAN: At the beginning of the
15 day?

16 MS. ESPINOZA: Of course. In
17 courthouse. I was about to bring that up, but
18 they can come by, they can even charge for
19 coming by in the morning conference, status
20 conference, you know. I'm there every morning
21 from like 9:30 to about 10:15 and some of them
22 do stop by --

23 MR. SCHECHTER: That's a voucher you
24 sign, by the way?

25 MS. ESPINOZA: That is a voucher I

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2 sign and I sign them.

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MR. SCHECHTER: I want to go back to something that Gail brought up a few minutes ago about the problem-solving court definition.

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Clearly, in the treatment court, it's a very

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clear, it's a system for handling the person,

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these follow-up conferences, there's your

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conversations, et cetera. And in the Midtown

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Community Court, and correct me if I'm wrong, I

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come in there, I work out a disposition with the

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district attorney on a particular case, the

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court approves it or doesn't approve it, usually

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my experience in your court is it's approved and

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what really I get at is my client agrees to go

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to the program; is that correct? And then they

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go to that program and there's some follow up

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because there is an adjourn date, they have to

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come back.

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MR. WEINBERG: For update.

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MR. SCHECHTER: What is the basic

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length of time that a case lasts, a misdemeanor

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in your courtroom, from the beginning of the

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plea to the time they have completed their

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program, whatever it is?

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2 MR. WEINBERG: Fundamental answer to
3 all questions in life is, it depends.

4 MR. SCHECHTER: Give me a
5 parameter --

6 MR. WEINBERG: On prostitution,
7 mostly a class B misdemeanor is 90 days under the
8 current law, okay. So sometimes in that 90-day
9 period that they could be sentenced, this could
10 be back before me a number of times. I take a
11 disposition and I sentence them to ten days
12 counseling and two days of community service and
13 depending on what the wrap sheet looks like and
14 what their attitude is, the record of
15 compliance, failure to comply with previous
16 conditional discharges, I'll have a jail term --
17 so over a period of time it could last a number,
18 as much as that three months.

19 MR. SCHECHTER: Would it be fair to
20 say your problem-solving court is a court of
21 accountability and monitoring?

22 MR. WEINBERG: That's correct.

23 MR. SCHECHTER: Do you see what you
24 do as also a form of treatment?

25 MR. WEINBERG: Absolutely.

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MR. SCHECHTER: You clearly see what
you do as a form of treatment?

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MS. ESPINOZA: I do. And I think
that we also addressed what are life issues, you
know. There's a million war stories and we
can't tell them here and there's no time, but I
would like to bring one of my early eras out and
maybe in closing is that, I had a kid who just
was impossible in treatment, he was just in the
face of everybody in the program, getting
violated all the time, being brought back to
court and they all liked him in the program but
they couldn't figure out why he was, you know,
so impossible. And I finally, he never made eye
contact, all the six times I saw him then
finally I said, they brought him, you know, Mr.
-- I don't get it, everybody likes you at the
program, they're trying this, they're trying
that and you're constantly violating all the
rules. You're going to end up doing the jail
alternative, and why don't you tell me what is
it. He look ed up for the first time and he
turned completely red and he said, well, you
know, judge, they have me in these classes, they

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2 call it pre GED, and you know what, I can't read
3 and I can't write and I am so embarrassed. And
4 I was mortified and then I went back, you know,
5 to the case managers in the programs and I said,
6 you have to do literacy testing on all these
7 people and you have to find programs that are
8 basic-adult literacy. My oldest son has
9 learning disabilities. If he didn't have
10 tutors, if he didn't have me slugging it out
11 with the homework every night, I raised my kids
12 in Manhattan Valley, the career path was right
13 there, you know, and I don't ever say, I always
14 say, they're there for the grace of God, all of
15 us, he could have found affirmation in a
16 different way. So it's a little broader than
17 just treatment because of what your pointing to
18 that society is doing such a terrible job with
19 seeing what really needs to be done in our
20 communities. Can I make one last pitch on the
21 defense?

22 MR. JONES: Absolutely. Please do.

23 MS. ESPINOZA: Many times during the
24 course of a case things happen where the clients
25 fall down, don't fit within the guidelines, you

1
2 know, fall within a crack but still deserve,
3 from my point of view, another chance, another
4 modality, something I'm sure Nestor gave you an
5 earful about that yesterday. And his battle --
6 you're always wining, you know, you're always
7 asking for one more chance. But it is hard for
8 the judge to always be "the one picking up the
9 phone" like that and you lose your impact. And
10 I know this sounds ridiculous and elementary,
11 but defense counsel who remains involved and
12 gets on that phone and then I make the call
13 behind it, it's so useful and even something so
14 basic. As we came to our first graduate and the
15 protocol was a straight conditional discharge
16 reduced to a misdemeanor, straight conditional
17 discharge, the defense counsel says to me,
18 judge, this guy couldn't have a criminal record,
19 I said oh, my God they have been through an
20 18-month program, they've done this and done
21 that and I'm going to give them a criminal
22 record. That's terrible. So you know we got on
23 the phone and we took it all, I had to go all
24 the way up through Nestor. He said, that's
25 terrible, but I don't have the authority to

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change it. And I went up to Johnson, he said, that's fine, we'll change the protocol. But the judge can't always be the one behind those modifications, the defense bar really needs to be involved for obvious reasons.

MR. JONES: Well, listen. Thank you for your time and your candor and your frankness. We appreciate it.

MR. WEINBERG: Thank you very much.

MS. ESPINOZA: Thank you.

(Time noted: 5:46 p.m.)

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C E R T I F I C A T I O N

I, SHANASIA ILGNER, a Shorthand Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

SHANASIA ILGNER

1 May 1, 2008

2 E R R A T A

3 I wish to make the following changes, for the
4 following reasons:

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