

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

PROBLEM-SOLVING COURT TASK FORCE

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THE UNIVERSITY OF TEXAS SCHOOL OF LAW
EIDMAN COURTROOM

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INDEX

	<u>PAGE</u>
Introductions	3
 <u>WITNESSES</u>	
Judge Larry Gist, State Bar of Texas	5
David Gonzalez, Sumpter & Gonzalez	22
Clara Hernandez, El Paso Public Defender	
Jeanette Kinard, Travis County Mental-Health Public Defender	
Vicki Ashley, Assistant County Attorney, Travis County	69
Dee Hobbs, Chief County Attorney, Williamson County	
Jason Steans, Assistant County Attorney, Travis County	
Judge Joel Bennett, Travis County Drug Diversion Court	123
Judge John Creuzot, Dallas DIVERT Court	
Judge Tim Wright, Williamson County DWI/Drug Court	
Carl Reynolds, Texas Office of Court Administration	164
E. Anne Brockett, Texas Department of Criminal Justice	
Ana Yanez-Correa, Texas Criminal Justice Coalition	
Judge David Crain, Travis County Mental-Health Court	196
Judge Brent Carr, Tarrant County Mental-Health Diversion Court	
Judge Michael Mery, Bexar County Mental-Health Court	
Judge Kristin Wade, Dallas County Mental-Health Diversion Court	
Judge Elisabeth Earle, Travis County DWI Court	245
Bill Bennett	
Sarah Mayer	
Joe Hildebrand	
Leon Grizzard, Attorney at Law	
Mae C. Quinn, University of Tennessee College of Law	271
Reporter's Certificate	306

1

PROCEEDINGS

2

MR. JONES: Good morning. Welcome to the National Association of Criminal Defense Lawyers Special Task Force on Problem-Solving Courts. This is, I've been told, the fifth -- or is it sixth? It's the fifth of, I believe, six or the sixth of seventh -- I'm not sure, I've lost count -- of the hearings that we're doing around the country to learn and explore the efficacy and the workings of problem-solving courts. We are pleased and grateful to be in Texas in Austin and are looking forward to a full and interesting day of testimony.

11

Right off the top I'd like to thank The University of Texas Law School for the beautiful setting, all the accommodations that they have provided us this morning and a special thanks to our friend, colleague, and board member at NACDL, Gerry Morris, for setting all this up and being very instrumental in pulling all this off.

17

Our first speaker this morning -- Before I get to that let me just introduce myself. My name is Rick Jones. I'm a lawyer in New York and a board member at NACDL, one of the co-chairs of the task force. I'm joined here today by all of my colleagues on the task force. I'll allow them to introduce themselves before we invite our first guest speaker.

23

MS. YOUNG: My name is Vicki Young. I'm a private attorney in San Francisco and Palo Alto, California.

25

MS. SHIFMAN: My name is Gail Shifman. I, too,

1 am an attorney in San Francisco and a member of the board of
2 directors of NACDL.

3 MS. YOUNG: I'm a board member, too.

4 MR. CLARK: I'm Jay Clark. I'm a private
5 attorney from Cincinnati and I'm one of the co-chairs and a board
6 member, as well.

7 MS. KELLEY: Good morning. I'm Elizabeth Kelley.
8 I'm from Cleveland, Ohio, and I, too, am on the board of NACDL.

9 MR. SCHUMM: I'm Joel Schumm. I'm a clinical
10 professor of law at Indiana University School of Law in
11 Indianapolis and I'm the reporter for the task force.

12 MR. JONES: One other bit of housekeeping and
13 I'll say this throughout the day, as people come in, particularly
14 the students, you are, of course, welcome and we are glad to have
15 you here. If you have any questions at all about the nature of
16 the work that we've been doing or our interest in learning more
17 about the National Association of Criminal Defense Lawyers, the
18 Executive Director is here. He's sitting in the jury box. His
19 name is Norman Reimer. Please feel free at any time to accost
20 him, to approach him, to query him about both the work that we're
21 doing and the broad organization. I encourage you to do that,
22 and Norman will be excited and appreciate any questions or
23 inquiries that you might have of him.

24 Let me now bring up our first speaker,
25 Judge Larry Gist. Judge Gist is the chair of the Criminal

1 Justice Section of the State Bar of Texas. He is also the Senior
2 Criminal District Court Judge and runs the drug-impact court in
3 Beaumont, Texas. We will make his biography a part of the
4 permanent record. I won't read it now, but suffice it to say,
5 that we are pleased and honored and looking forward to Judge
6 Gist's remarks.

7 The way that we operate our panels is that we will
8 give Judge Gist an opportunity to give us the benefit of his
9 thoughts, and when that is done, I and I'm sure some of my
10 colleagues will have some questions for him. So, Judge Gist,
11 welcome and the floor is yours.

12 JUDGE GIST: Good morning. I want to be sure and
13 start this off by telling you how happy we are to have y'all in
14 Texas. I know our reputation across the country is maybe one of
15 being somewhat bloodthirsty and insensitive. In truth and fact,
16 we probably have as progressive a criminal-justice system as is
17 anywhere in the United States, and we're moving in the right
18 direction. Everybody is very proud of it. I think you will see
19 -- I've looked as who's going to come talk to y'all this morning.
20 I know most of those people and they're outstanding people and
21 will more accurately than me certainly put the specifics into
22 some detail for you about the success, as well as some of the
23 issues that they've confronted.

24 About, I guess, 20 or 30 years ago -- I lose track
25 of time -- a group from my county -- I'm from Jefferson County,

1 which is close to Houston, Southeast Texas. We heard about this
2 drug court in Miami, Judge Stanley Goldstein, who is kind of the
3 guru and founder of the concept, I think, is what we were told.
4 We went there to see -- we heard all these miraculous things were
5 supposed to be coming out of there and we went as real cynics,
6 but to take a look and see. We spent a week there meeting with
7 all the different components of their system.

8 We thought for sure there would be incredible
9 resistance to this liberal sort of way of dealing with drug
10 offenders that Judge Goldstein was doing from the police. We
11 thought that was the original Miami Vice at that time. We found
12 out the police really supported this program, as did the district
13 attorney's office. The one hardest obstacle they had to overcome
14 was the defense bar, because as you know -- and I know it's one
15 of the topics that y'all are dealing with, is the giving up of
16 rights or subservient -- making certain rights subservient in the
17 interest of rehabilitation.

18 It's a real positive and important thing that I'm
19 glad to see that y'all are dealing with, because I've struggled -
20 - I teach quite often on punishment alternatives here, seminars
21 and conferences around Texas, and it has always intrigued me
22 about the difficulty of a defense attorney, when given the
23 opportunity to give some kind of treatment as opposed to the
24 exercise of some rights in the legal vein, what do you do? Whose
25 allegiance do you owe to? What should you do? I know y'all are

1 looking at that and I'll be very interested to see what kind of
2 conclusions you come to.

3 We were so impressed with the Miami thing, we
4 started the first drug court in Texas back 20, 30 years ago. We
5 had no idea what we were doing, and I'm sure y'all understand,
6 being lawyers -- we're trained as lawyers. We're trained in
7 statutes and cases and research and all that kind of stuff. Most
8 of us don't have any kind of background in sociology or
9 criminology or psychology or any of the other stuff. And as
10 these things started evolving, these specialized courts, it was
11 obvious we were very inept as a profession to deal with a lot of
12 this stuff. We had to call in folks that knew about that that
13 have the same interest.

14 Well, from that meager beginning in Texas, we now
15 have specialized courts of all kinds and character spread
16 throughout Texas. We have 254 counties in Texas, and the way our
17 governmental structure is set up, to some degree each county is
18 autonomous. You can pretty much shape your
19 criminal-justice system locally in conformity with state law and
20 the constitutional law, but in terms of programming, pretty much
21 what you see is your itch needs scratching.

22 So as you will see, I sent you -- I hope y'all
23 have -- if not, that you'll get this intermediate sanction
24 handbook section that we are publishing on specialized courts
25 because it contains in the back a listing by county of all the

1 different kinds of drug courts and mental-health courts and
2 family-law courts and DWI courts and re-entry courts -- that each
3 county has decided how they want to do it. Some counties want to
4 have these things operate only after conviction or after the
5 person is in the system. Others have the inception of this as
6 sort of a pre-trial diversion type of thing.

7 The results have been incredibly good. If the
8 yardstick you want to put up against it is recidivism, the
9 recidivism out of the people that graduate from these specialized
10 court programs is just phenomenal relative to the general
11 population.

12 So we're very proud of what we've done and we've
13 gotten into many counties re-entry courts. We have a thing here
14 in Texas called SAFFP. It's Substance Abuse Felony Punishment
15 Facility, is what the letters stand for. But it's a prison that
16 is available for judges for probationers to send their -- to get
17 serious drug treatment. That's all that happens there, and then
18 you leave when you're finished and come back to probation
19 supervision.

20 Some of these re-entry courts have found that
21 they've been very successful by putting a specialized judge and a
22 specialized program in place as these folks come out to help them
23 on the same principles that all the other type courts work from
24 and the concept, and they've been very, very successful, again,
25 in recidivism, public safety, giving people opportunities to

1 build their life back and not to be a drag on society and to have
2 some real positive influence in their life.

3 We can't, as I'm sure all of you recognize -- we
4 can't make anybody be good. What we can do is expose them to the
5 type of things that are available out there by the professionals
6 that will help them. I don't know. I've been in this a long,
7 long time and I swear I don't know. I have no idea why the
8 judges are -- or having a court is so important, but there is no
9 doubt in my mind that it is.

10 But the fact that these folks have to regularly
11 appear before a judge and confront their transgressions and face
12 what we call in Texas and maybe in other places -- what we call
13 the continual sanctions to where when you mess up once, you don't
14 get the atomic bomb thrown at you. You structure increasing
15 penalties for misbehavior. What we've started doing in Texas
16 that is really new and novel and been very good results so far is
17 the reward part of it. All we did was reduce sanctions in the
18 past and now we're starting to go positive things, to do good
19 things for people who do good in their reformatory efforts. That
20 being driven by judges seems to work very, very well.

21 I think you'll hear from the people throughout the
22 day today the individual success stories that they can talk to
23 you about, but I think that you will find our state very
24 progressive and we're very happy with the direction we're going.

25 We've got problems like everybody. We've got

1 things that don't work. We're looking towards -- the research
2 shows what techniques work and what don't. We're getting rid of
3 things that feel good but don't achieve success. Funding has
4 been and will continue to be a problem. The drug courts are
5 funded -- you'll see from others more in detail -- from a variety
6 of sources. None of them are stand-alone that I'm aware of --
7 stand-alone funded completely by the state, so we've got to cut
8 and paste to get a little grant here and a little bit of county
9 money here and a little state money here and some fees from the
10 probationers or the Defendants, and somehow or another these
11 counties -- and there is I don't know how many, but probably 40
12 or 50 have got some type of drug diversion or probation drug
13 court set up.

14 I look forward to hearing what you have to say and
15 what you're going to hear, and if there is anything I can answer
16 for you now, I'd be glad to do so.

17 MR. JONES: Thank you. I appreciate all of the
18 literature that you sent us. I feel I probably at this point
19 know as much or more about the Texas criminal-justice system as I
20 do what goes on in New York. You've addressed a little bit some
21 of the questions that I had for you. A couple of them are
22 technical and a couple of them are sort of more broad-brushed.

23 One of the things that was mentioned in the
24 literature that you sent us that I've never seen before was this
25 piece of legislation HB 1287, which mandated --

1 JUDGE GIST: Drug courts --

2 MR. JONES: -- counties over 500,000 folks had to
3 have a drug court. I'd like you to talk a little bit about sort
4 of the legislative history of that, how that came to be; and,
5 also, Part B of this question, which you addressed a little bit,
6 is whether or not -- and it sounds like not -- there is, was, or
7 has been adequate funding for these mandated courts.

8 JUDGE GIST: One of the things that our state has
9 faced in the past and I'm sure everybody else has to some degree
10 or another is prison overcrowding and continual use of prison
11 resources as a way to deal with criminal sanctions. It's very
12 expensive, as you know, and the legislature was looking at -- I
13 would like to compliment some of them for doing it for the right
14 reason. But there was a financial apple in all of this for them.
15 If they could find a cheaper way to deal with some of these
16 folks, they certainly wanted to pursue it.

17 So about, I don't remember exactly -- I think it
18 was four years ago, they passed a law that mandated drug courts
19 in counties of 200,000 and above. Those were the major counties,
20 the big ones in Texas, and the majority of our offenders come
21 from the big cities, from Dallas, Fort Worth, Houston, San
22 Antonio, and El Paso. That's where, I don't know, a percentage -
23 - probably 75 percent or so of the people coming into the
24 criminal-justice system come from those counties, so this was an
25 effort by the legislature to say we're going to mandate that you

1 have these things in those big, large counties.

2 The funding was -- it didn't go hand-in-glove
3 necessarily, but there was an effort made to find some funding
4 for those courts. They all did it and they were all very
5 successful, and so the legislature then, I think it was, two
6 years ago reduced that number of mandatory requirements to 50,000
7 -- 500,000. No. It was --

8 MR. JONES: I think it was --

9 JUDGE GIST: It was 500,000 and it went down to
10 200,000, I believe is what it was.

11 MR. JONES: Right, that's right.

12 JUDGE GIST: But that includes now -- the drug
13 courts are mandatory in almost every major city in Texas and
14 major geographical area. There is an opt-out that says that the
15 Governor's Office is going to give money to fund these courts and
16 there is an opt-out if the governor doesn't have enough money to
17 fund it, you don't have to -- you're not required to have one if
18 you can't get adequate resources to do it, but that's still been
19 a struggle.

20 We're in a budget crunch like everybody else and
21 there is other needs on the treasury, and so the funding of these
22 things has really been a task that everybody is struggling with.
23 But the concept is good and the concept is sound and I don't --
24 the law mandates this at 500,000 -- it's 200,000, I believe is
25 what it is now.

1 Isn't that right? I believe it's 200,000 or above
2 now?

3 MR. JONES: The literature we that we have only
4 talks about the 500,000 obviously. It may have been less --

5 JUDGE GIST: Yeah. It went down to 200,000 two
6 years ago, I believe.

7 MR. JONES: Okay.

8 JUDGE GIST: But it also allows -- it doesn't
9 limit -- In other words, my county doesn't have that population,
10 but we can have one and we can also go to funding sources to try
11 and get ways to finance the operation of it.

12 What was the other part?

13 MR. JONES: You addressed them all.

14 JUDGE GIST: I did? Okay.

15 MR. JONES: It sounds like what you're saying,
16 part of it at least, the legislative motivation to enact
17 HB 1287 was to cut criminal-justice costs because of overcrowding
18 and prison costs mostly.

19 JUDGE GIST: That was certainly one of the
20 motivations. I would like to believe that most of them that were
21 supportive of this wanted it for the greater good.

22 MR. JONES: Right.

23 JUDGE GIST: And certainly virtually everybody in
24 Texas is elected. Okay? At all levels, judiciary and
25 everything. To be tough on crime is certainly a very positive

1 thing to have in your campaign literature, so nobody wanted to be
2 seen as soft on crime. And the statistics of these things have
3 been so good that a lot of republican or conservative legislators
4 and judges, prosecutors and others are now buying into this
5 because they concede it enhances public safety.

6 That's the thing -- our communities are basically
7 stable. What I mean by that is, in my community if somebody is a
8 criminal, they're probably not going to go somewhere else.
9 They're going to criminalize my people, people from my area. So
10 it's almost a self-defense thing that communities are starting to
11 realize now. If we can have something to make our community
12 safer and better, then the combined effect of all that across
13 Texas would mean we'll have a lot better state.

14 So I think one of the beauties of our system is
15 that the independence of each jurisdiction is left to pretty much
16 fashion what will work best for you. The money is -- always will
17 be -- but there was a plan the last legislative session or
18 suggestion to build three new prisons, and that was put on hold
19 because of the success that we're having with diverting people
20 through other alternative programs. So it's going in the right
21 direction. We're not where we want to be but we're close.

22 MR. JONES: I just have one last question and
23 then I'll turn it over. You said in your remarks that the drug
24 court wasn't a perfect system, that there were problems. I'd ask
25 you to expand on what you think are the weaknesses, the

1 shortcomings, the limitations of the problem-solving courts.

2 JUDGE GIST: It is localized, in my view. There
3 are prosecutors that find this abhorrent and judges who think
4 this is the worst thing that ever happened, that sending people
5 to prison is the right way to do and to deal with the criminal
6 conduct. That's a battle that a lot of us have had to face and
7 struggle with and to try and get our colleagues to see that we
8 really can enhance public safety.

9 One of our strongest law-and-order counties from
10 time gone by is Dallas County. You're going to hear from
11 Judge Creuzot, who almost single-handedly turned that around in
12 Dallas by showing how safer people are by putting these
13 nonviolent offenders in treatment programs as opposed to prison.
14 It feels good for the average citizen when you say, well, you
15 sent everybody to prison. That's good; we're safer. But in
16 truth and fact we were safe only while they were in prison. We
17 weren't safe when they came out because the recidivism rate was
18 and is still very, very high. But these diversion programs have
19 a much higher success rate of not -- lack of return to criminal
20 conduct, and that's what's selling it.

21 That's the biggest problem. Financing is, of
22 course -- always has been, always will be a problem because we
23 have to have a strong prison system and it's very, very expensive
24 and it takes -- just the necessities is going to take the lion's
25 share of legislative appropriation. But they have been very

1 sensitive of people of both political persuasions, both parties
2 to see the potential and the results.

3 We've started reducing revocations of probation.
4 Used to be if you violated probation and you'd go to prison,
5 boom. That's just what happened. Well, now, we're building in
6 and so many of these communities, this continuing with sanctions
7 to try and figure out and the legislature has given us new
8 resources: halfway houses, intermediate-sanction facilities,
9 something short of just going to prison and throwing away the
10 key, because, unfortunately, most of the folks when you were sent
11 there don't come out any better than they went in. Many of them
12 worse.

13 But these remedial programs -- My roots are in
14 prosecution and strong law and order and I never thought I'd be
15 saying and thinking the way I'm saying, but I look at the other
16 judges and prosecutors around Texas that are starting to see the
17 same way. Our job is to protect the public. If we can do that
18 without using prison resources that are so expensive, we can do
19 it less expensively, and we produce people that have turned their
20 lives around and have some real success. It's a wonderful thing.

21 I was in Brooklyn. There was a DA up there that
22 has a thing called DCAP diversion. Are you familiar with what
23 I'm talking about?

24 MR. JONES: Sure, sure.

25 JUDGE GIST: We started that and trying to get

1 that sprinkled around Texas. For those of you that don't know,
2 it's a system of taking people who are basically habitual
3 offenders and offering them a chance to go to a remedial program
4 instead of a penitentiary with the hickey at the end that if they
5 flunk the program they don't get the treatment -- they've got a
6 real big number prison sentence coming. My personal experience
7 with that has been very successful. There are some people that
8 just burn out from using drugs. They've ruined their life,
9 they've spent their whole life in prison, and they don't want to
10 spend the rest of it there.

11 I personally am a real believer in -- for the
12 right kind of person. That's always the hard choice. I mean, is
13 this guy selling me a bill of goods or is it serious? I've been
14 sold bill of goods a bunch of times, but when you find the ones
15 that are serious, it's such a rewarding thing.

16 I got a letter from a guy just last week, a
17 picture of him and his family. This guy had been to prison four
18 or five times. We put him in a program. It looked like he had
19 some success. Two-year residential substance-abuse program.
20 He's got a job, he's a supervisor now, got a car and apartment
21 and got his kids back and has been out of the system for six
22 years. I wish I could tell you those things come every day.
23 They don't. But it's sure a rewarding experience when they do.

24 MR. JONES: We don't have a lot of time, but I'd
25 like to get some other folks in. Vicki first.

1 MS. YOUNG: Thank you, Judge Gist. In looking at
2 the literature, I couldn't tell in the drug court in Jefferson
3 County -- is it for felonies, misdemeanors and is it pre -- is it
4 a diversion so if you complete it it's dismissed, or is it
5 something that is part of the sentence? I was having a hard time
6 parsing that out.

7 JUDGE GIST: Most of these things are fickle.
8 it is hard because there is such variety. Ours is both. We have
9 a pre-trial part of it for felons and a few misdemeanors. Not a
10 lot. It's not exclusively felonies but mostly. Where if you can
11 convince the district attorney -- it's kind of like probation to
12 the district attorney if you want to -- how we do it. If a
13 lawyer can go to the prosecutor and say my guy wants help and is
14 willing to go into the drug-court program, the diversion part of
15 it all and the prosecutor agrees, then that's what happens. At
16 the end of it if he's successful the case is dismissed, so there
17 is never -- for that offender there is never a conviction or a
18 prosecution.

19 Others, and the part that I do, is the prosecution
20 part of it all, where ours -- once people are given probation, so
21 many of them we put in the program as a condition of supervision,
22 exactly the same program, they go see the drug-diversion judge.
23 The difference with them is that if they mess up, they can be
24 revoked to the penitentiary, so we have it both ways. You'll see
25 a lot of counties have a blend.

1 MS. YOUNG: All right. So that the cases that
2 you're hearing, these are people that are pending probation -- so
3 they've already been convicted of an offense --

4 JUDGE GIST: No.

5 MS. YOUNG: -- and they're on probation?

6 JUDGE GIST: No. These are people who are coming
7 in and pleading guilty to an offense, as well as people who are
8 on probation who have committed a violation of some type. That's
9 the kind I get. And so many of those are referred rather than to
10 prison to the diversion-court judge who runs the remedial program
11 that we've been talking about. Got to see them once a week and
12 that type of thing.

13 MS. YOUNG: So at some point after the charge is
14 filed, the Defendant has to make a decision, do I want to go
15 towards drug court or do I want to continue in the criminal trial
16 track?

17 JUDGE GIST: That's right. The lawyers -- The
18 way it works in my county is the lawyers generally counsel with
19 them and then the lawyer goes to the district attorney and says,
20 would you consider my guy for diversion? And if the prosecutor
21 agrees, then -- our prosecutor has been very progressive in that
22 way -- then that person goes in the program extra or outside the
23 legal system, as such, and the remedy for the state if he
24 violates ultimately is to prosecute him for the crime that he was
25 charged with originally. But if he's successful in the program,

1 then no prosecution ever occurs.

2 But that's driven mainly by the defense attorneys
3 who go to the -- it's sort of a plea bargain, if you will, prior
4 to prosecution.

5 MS. YOUNG: And in those cases is it primarily --
6 is there a public-defender office or is it private counsel?

7 JUDGE GIST: We don't have a public-defender, as
8 such. We've got a court-appointed legal system. You can have a
9 lawyer through that or retain a lawyer. Both do it. It's sort
10 of driven by the Defendants themselves.

11 These things are hard. These programs are hard on
12 the individuals. So many of them say, Screw this. Send me to
13 prison. It's easier. I don't want to -- just get me out of
14 here. Because they're in your face all the time, these
15 counselors in these programs. It's a very intensive process that
16 they go through, and some folks just don't want to put up with
17 it.

18 "I don't want that."

19 "Okay. Well, then we'll prosecute you the normal
20 way."

21 MS. YOUNG: In your court -- excuse me. In your
22 court, in terms of the drug-court process, is there one attorney
23 assigned to your court that handles the cases that are pending in
24 the program --

25 JUDGE GIST: No.

1 MS. YOUNG: -- or can individual attorneys come
2 in?

3 JUDGE GIST: No. It's individual representation,
4 either retained or appointed. In my community we've only got
5 probably 30 lawyers that do 95 percent of the criminal work, both
6 paid and appointed. It's a relatively small group. Everybody
7 kind of knows the rules in the system. I think that's pretty
8 much true in most counties in Texas. They would have bigger
9 pools in the bigger pools.

10 MR. JONES: Elizabeth?

11 MS. KELLEY: Good morning.

12 JUDGE GIST: Good morning.

13 MS. KELLEY: I would imagine that like many
14 border states, your communities are very sensitive to the
15 possibility of deportation for certain criminal convictions.
16 Does that somehow influence whether your counties fashion a
17 system which is pre-trial diversion or a post plea?

18 JUDGE GIST: We don't -- My county -- the people
19 we've got that cross the border are from Louisiana.

20 (Laughter)

21 MR. CLARK: And you want to send them back.

22 JUDGE GIST: We get them back at whatever cost.
23 That's right.

24 But your question is good for the border states
25 that border Mexico. They do have a problem with that and you're

1 going to have some folks that can explain that better than me.
2 I'm really not familiar enough to say how they do it. I do know
3 that there is an effort, if you will, to not use up our limited
4 criminal-justice resources by somebody who is ultimately going to
5 go back to another country.

6 There was some -- I don't know the state of it.
7 There was an agreement at one time about how we would even take
8 people out of prison and had some kind of deal with Mexico that
9 they would serve their time in a Mexican prison or something like
10 that.

11 But I don't know. It's a very good question and
12 some people will be around today you can ask it to better than
13 me.

14 MS. KELLEY: Thank you.

15 MR. JONES: Our time is always too short.

16 JUDGE GIST: Thank you.

17 MR. JONES: Our time is up here, but we
18 appreciate it. Thank you. Thank you very much.

19 JUDGE GIST: It's a pleasure having y'all here in
20 Texas.

21 (Brief recess)

22 MR. JONES: Our next panel is David Gonzalez,
23 Clara Hernandez, and Jeanette Kinard. Apologies if I said
24 anyone's name incorrectly.

25 Good morning. I'm going to ask each of you to

1 just identify yourselves for the record. Before you do that, let
2 me just say that the way that we operate is that we give each of
3 you five minutes or so to give us the benefit of your opening
4 thoughts and then the questioning is led by one of our members.
5 Questioning for this section will be led by Gail Shifman. So if
6 you'd just introduce yourselves for the record, the floor is
7 yours. I'll leave it to you to decide the order of how you're
8 going to give us your opening remarks.

9 MS. HERNANDEZ: Good morning. I'm Clara
10 Hernandez. I'm the Chief Public Defender for El Paso County. In
11 Texas we have 254 counties. We don't have a state-wide public-
12 defender system. We have approximately 16 counties that have
13 some version of a public-defender office, and El Paso is one of
14 the counties that has one. In El Paso our office handles
15 approximately 50 percent of the criminal and juvenile cases.

16 MS. KINARD: I'm Jeanette Kinard. I'm the
17 Director of Travis County Mental-Health Public Defender office.
18 We're a fairly new office. We've been in operation about 18
19 months. We're funded partly from the Texas Task Force on
20 Indigent Defense and partial local funds. I'll tell you more in
21 a minute.

22 MR. GONZALEZ: My name is David Gonzalez. I'm in
23 private practice and our model is a little different. We have a
24 private practice that is a public interest for profit, so we are
25 a team of lawyers and social workers and doctoral psychology

1 students that attempt to be able to assess clients' needs at the
2 outset and work outside the system to be able to solve problems.

3 MS. HERNANDEZ: In El Paso County we have
4 approximately six problem-solving courts. We have the
5 traditional drug court, which is out of the 243rd District Court,
6 and in that court it's not a diversionary program. An individual
7 must have pled guilty before he or she is eligible to participate
8 in that program.

9 Out of the 388th District Court we have a quasi
10 re-entry court. What it is, it's for people that as part of the
11 conditions of probation have been sentenced to what we call the
12 SAFP program, which is the Substance Abuse Facility Program.
13 Once they're out of that specialized treatment program, if they
14 come back to El Paso, they can participate in that re-entry type
15 drug program, drug court.

16 We have sort of a mental-health court, which is
17 for misdemeanors only. And I say "sort of" because it doesn't
18 really get funding from anybody and a judge decided to try it on
19 his own and it's very recent.

20 We have a juvenile court that is a special-needs
21 court, which is for minors who are in danger of being taken out
22 of the home. That one is a diversionary program.

23 We have a family-child-protective-services type of
24 family court for families that have drug problems.

25 We have a DWI misdemeanor court, and one of the

1 district courts is in the process of trying to initiate a family-
2 violence court.

3 Our office is involved in most of those courts,
4 except for the family-child-protective-services court.

5 The longest in existence is the traditional drug
6 court, which was established around 2002. The way it functions
7 is we have a public defender who is part of the drug team. He's
8 not the lawyer who represents a client up to that point. When a
9 lawyer, either an attorney in private practice or our office,
10 thinks their client might be a good candidate, they might talk to
11 the client or the prosecutor might offer the suggestion. They
12 explain the pros and cons and it's up to the client to accept.

13 All of these courts function on a voluntary basis.
14 All of these courts have provisions whereby nothing that happens
15 during the treatment portion -- no admissions can be used against
16 them if they don't complete the program successfully. If they
17 don't complete the program successfully, generally they continue
18 with the prosecution, but they're not -- they don't have any
19 other consequences to the -- as a result of the fact that they
20 didn't complete the program.

21 MS. KINARD: There are eight people on our staff
22 at the Mental-Health Public Defender's Office. There are two
23 lawyers, two masters-level social workers, two case workers, and
24 two support staff. We handle misdemeanors only in Travis County.
25 Our clients must be indigent and they must have an axis-one or

1 priority-population diagnosis. That means they are
2 schizophrenic, bipolar, major depression, or schizoaffective
3 disorder.

4 We're funded for 500 cases a year, which after 18
5 months I will tell you is too many. I suspect in the future
6 we'll go back to our funding sources and readjust that.

7 I think of our office as a kind of social-work law
8 or a kind of holistic view of practicing law. We represent a lot
9 of what we call frequent fliers: those people that are in and
10 out of our jails as a revolving door. They have serious mental
11 problems; many of them are homeless; they get off their med; they
12 go back and camp out at the Seven-Eleven; the owner calls the
13 police; they're back in jail on a criminal trespass.

14 I think in the past the system allowed them to
15 just plead for back time and get out and come back and get out
16 and come back and get out. We want to stop that. If we can find
17 housing for a lot of our clients, if we can get them SSI
18 benefits, if we can hook them up with other resources and get
19 them into MHMR, get them stable on med, they can stay out of our
20 jails and out of the criminal-justice system.

21 I haven't been here long enough to tell you any
22 hard data. I guess to put a face on it, I often tell the story
23 of Mr. Brown, one of our clients. Mr. Brown grew up here in
24 Austin. He's in his early sixties. He has early dementia and
25 schizophrenia. He has a long, long rap sheet. The main thing he

1 does is go back to the old family home, which has been sold two
2 or three times and other people live there now -- go back to the
3 old family home because he thinks mom and daddy are going to come
4 out and welcome him on the porch. Well, they don't live there
5 anymore. These people will call the police, the police will
6 come, he'll be arrested for criminal trespass, and he's back in
7 jail. It's a revolving door.

8 When we got his case, we got his SSI benefits
9 reinstated. We found him a group home, kind of a board-and-care
10 facility which is far away from the old family home, and he
11 hasn't been arrested in -- I think we're at 14 months now. It's
12 been quite some time.

13 So to put a face on what I consider a success
14 story, that would be it. He's safe where he is, he has three
15 meals a day, and he's not been arrested frequently as he was.

16 Our office also is funded to be a resource to
17 other lawyers in the courthouse. If David has a client -- I
18 know he has his own social workers. But if he had a client and
19 wanted some kind of assessment from the masters-level social
20 worker or wanted us to help on housing or some other resources,
21 we're available to help them on the criminal cases.

22 We also do a lot of training, and once a month
23 we'll have some sort of free CLE event at the courthouse to train
24 lawyers on basic diagnoses, the meds, collateral consequences of
25 criminal convictions, all those sorts of things. They're very

1 problem-solving courts that I want to address is actually a
2 question of the motivational model. You've heard it already in
3 terms of the notions of confronting their transgressions and you
4 have a fear-based model versus a love-base model -- which I think
5 in a lot of the courts for the good parts of it, there is still
6 no difference between how the court systems themselves work,
7 which is if you do something wrong, you will be punished. I'm
8 the authority and you are subservient. It is judge controlled.
9 There is right and there is wrong. There is jail as a sanction.
10 You can be expelled from the program if you fail. There are
11 failures. There is a continuum, but at some point there is a
12 selection process. You must comply, you must attend, you must
13 trust. I think in Texas we have some troubles with the rewards
14 part of that. The reward is you're not going to go to prison.

15 I think in terms of Jeanette's model, which is
16 beautiful and I think the Bronx Defenders and the Chicago Public
17 Defenders and Seattle and models where the defense team with
18 social workers creates a system of support and love and I don't
19 care what you did; I will support you and I will protect you and
20 you can confide in me that you had a relapse. It's not going to
21 be told to a probation officer and we can deal with that. We can
22 deal with your mistakes.

23 I think when you look at this model, it's a
24 problem, I think, that's not going to go away, no matter which
25 way we can really use that because of the high price of admission

1 to those courts -- and if you can expand the model and if there
2 are resource services like the mental-health public defender
3 where you have basically the protections of attorney-client
4 privilege where clients are more likely to admit their relapses
5 and get treatment through a defense-based initiative, it may be a
6 better complement to just shifting things to problem-solving
7 courts.

8 That being said, the second area that I wanted to
9 briefly address and our experience with them, is kind of the
10 business model of problem-solving courts, because there is a
11 significant amount of cherry picking and you're going to get a
12 sliver of folks that can go to that, but in reality I don't want
13 the good candidates. I want the bad candidates, because the bad
14 candidates are taking up my prison beds and the bad candidates
15 are causing the revolving door. I don't need the white-collar
16 kid who picks up their first drug offense in a felony and will
17 get their diversion program. I want the folks that don't want to
18 go and the folks that say I'd rather go to prison because these
19 are the ones that if we don't fix, we're going to see the
20 problems more and more in the future.

21 And so one of the things that I would propose is
22 looking at that model as a client type and not an offense type.
23 A lot of the courts talk about a domestic-violence model or a DWI
24 model, but if you had a model that was related to veterans that
25 were returning home from Iraq, you treat them according to their

1 conditions or homeless populations or indigent populations or
2 undocumented workers. I mean, those problems that are endemic to
3 the population are very different than the types of crimes they
4 may commit and it may be better to focus on diversion programs
5 related to people.

6 I think in this legislative session the Texas
7 criminal defense lawyers are looking for at least one bill
8 regarding veteran diversion programs rather than a court model.

9 Second, I think there are issues about being able
10 to look at the hard cases where the societal impact is much
11 greater. Sex offender diversion courts, the hopeless drug
12 addicts or the drug dealers. I mean, these are the folks that,
13 unless you have an intervention, a lot of these courts are not
14 well suited for that because of compliance issues. I don't know
15 the answer either. I just know that this where we're spending a
16 lot of money on our prison beds.

17 But, you know, I kind of want to go to the heart
18 of the problem when Judge Gist said, you know, there is some
19 folks that say screw this, it's too hard. I think that should be
20 one of the target populations that we may be missing.

21 The third is the way out. I think Texas is coming
22 to this, but I think other states have been far more progressive
23 in using a defense-based problem-solving method. There is
24 defense-based victim outreach, there is defense-based mitigation.
25 We're beautiful in capital cases at doing mitigation work when

1 it's life or death on the line, but if you can post -- if you can
2 be able to do the mitigation prior to life instead of the death
3 and do the assessments up front and instead of having courts and
4 prosecutors be the recipient of large amounts of federal, state,
5 and local grants, if you could create defense pods, where in
6 Texas you don't have this statewide system of public defenders.
7 But if you create resource centers like the mental-health
8 resource center, if you can be able to at that point have the
9 acknowledgment that the criminal system is kind of like the
10 emergency room but you now have got a wealth of doctors and
11 resources to treat those problems -- I think there are some
12 abilities to be able to solve the treatment issues without giving
13 up the rights because you can be able to do those things.

14 Related to Representative Madden's work on 1287,
15 this was the fundamental issue, is that for many folks in the
16 legislature that the carrot was the treatment, not the dismissal
17 or not the reward, and without being crass or rude to a lot of
18 folks I've worked with, unfortunately, they're not in a place to
19 see the treatment as the reward and there needs to be additional
20 carrots. So that was one of the big fights we had, was whether
21 it should be an incentive diversion program or a post-plea
22 program. So there are resources there. I just think that we
23 still have a long ways to go to be able to getting folks in
24 there, but I think expanding the defense team is probably the
25 best way to acknowledge that, that the defense bar is the future

1 for crime reduction.

2 MR. JONES: Thank you.

3 MR. GONZALEZ: You're welcome.

4 MS. SHIFMAN: Thank you, everybody. Your
5 comments are really helpful and I'd like to focus a bit -- Is
6 this working? I'm not sure. But I'd like to focus a bit on some
7 of your thoughts. First, if I may, Mr. Gonzalez, your office is
8 here in Travis County?

9 MR. GONZALEZ: Yes.

10 MS. SHIFMAN: Okay. And are you all privately
11 funded or do you get some public resources?

12 MR. GONZALEZ: No. We're privately funded.
13 We're kind of like a Robin Hood. The clients that can afford to
14 pay us, we charge a regular rate, and then we have what's called
15 an open-door initiative, which is a sliding scale for clients
16 that can't.

17 MS. SHIFMAN: And then do you also do appointed
18 work, as well?

19 MR. GONZALEZ: And then we do, yes.

20 MS. SHIFMAN: Okay. Thank you for that
21 clarification. I wanted to at least in my questioning -- and
22 then other people will follow up after I question -- particularly
23 focus on some of the ethical dilemmas that defense lawyers have
24 to face in the variety of courts. I recognize that some are --
25 sounds to me like in Ms. Hernandez' county everything is post

1 plea and there is not -- or the vast majority is post plea and
2 not pre-plea diversionary programs. But I want to talk about the
3 ethical dilemmas. I want to pick up also on Ms. Kinard's
4 comments about the real problems that face on a case-by-case
5 basis in personally dealing with what is my ethical obligation as
6 a lawyer and then how do I best help this individual who is
7 seated across the table right next to me. And training, because
8 I think as defense lawyers training to do this kind of work may
9 be missing. Maybe not in Texas, but we've heard testimony that
10 it is missing in a lot of other places.

11 So if I can, let me start with you, Ms. Kinard,
12 since you raised this issue first. Talk to me about the ethical
13 problems that you see on a day-by-day basis that you -- and I
14 guess there is another lawyer in your office doing this work, as
15 well -- face.

16 MS. KINARD: Well, I think in all of these kinds
17 of courts, they're more therapeutic justice or what I've read
18 about restorative justice or here in Texas when we talk about
19 family law, there is collaborative law. It's a different model
20 or system from the traditional adversarial system, and I don't
21 think anybody is saying let's do away with the adversary system.
22 It's just that theses courts and dockets seem to operate more in
23 a collaborative kumbaya kind of atmosphere.

24 I think the classic ethical problem that I've
25 heard or issue for drug courts is you have a client that you know

1 is a serious drug addict, he could be helped by going into this
2 court, but you've read the file and read the search warrant and
3 it's a slam-dunk winner if he wants to go through traditional
4 court. What do you do in that situation? And I think most
5 lawyers would say let the client make the decision, but that's
6 the classic, to me, hard one to make a decision with.

7 MS. SHIFMAN: So, in other words, there is no
8 allowance for any litigation of any of the issues before someone
9 gets drug treatment?

10 MS. KINARD: That's true. That would be true in
11 Travis County. If you went into drug court, you would either go
12 in the drug court or you go litigate your case; you don't do
13 both.

14 In the mental-health area I find ethical issues
15 such as who makes the decision on a case? Now, the bar rules are
16 very clear, that as long as someone is competent, they make the
17 decision. Well, some of my clients -- you know, they're in and
18 out of mental hospitals for years, they have totally unrealistic
19 expectations, and I often find myself nudging toward making
20 decisions for them, because they may be making a decision that's
21 real bad for them. They may want a trial when the evidence is
22 just going to pound them and six people sitting in a jury box are
23 going to think they're really not only goofy, but really evil.
24 So who makes the decision is one issue that the bar rules are
25 pretty clear on it, but I don't in my heart always feel that

1 that's the right thing to do.

2 I think another issue that I've heard from other
3 lawyers comes about in our mental-health docket. I hesitate to
4 call it a court because it's really not a dedicated court. Twice
5 a week we have a mental-health docket that meets in Judge Crain's
6 jury room. He's scheduled this afternoon. Within this table
7 here will be someone from my office, a social worker from my
8 office, MHMR employee who has a wireless laptop and he can access
9 medical records, there will be a social worker from the jail, the
10 judge, and the prosecutor, Jason Steans, who you will meet later.
11 And we just all talk about the cases and we will often say my
12 client's version of it is blah, blah, blah, blah; the MHMR guy
13 may access his MHMR records and say, well, he hasn't been here in
14 six months or his diagnosis is also axis two, borderline
15 personality disorder, or something about the case; so we're all
16 just talking about this.

17 It doesn't bother me at all because there is a lot
18 of trust in this room and we know each other very, very well and
19 we know that our goal is to do right by this person, this
20 Defendant, and to keep him out of jail. But I think the
21 classically trained lawyer would look at this scenario and say
22 you're violating attorney-client privilege, you're violating
23 HIPAA by just blathering out what someone's diagnosis is, there
24 are ethical problems with the judge listening in on these cases
25 when no decision has been made. There are a whole host of

1 ethical issues that come from traditional ABA and Texas Bar
2 rules.

3 MS. SHIFMAN: If I could follow up on your
4 comments with Ms. Hernandez in your office. So understanding
5 that probably these issues are facing your lawyers, as well, what
6 kind of ethical training and other kinds of training are your
7 lawyers getting in order to deal with these kinds of issues?

8 MS. HERNANDEZ: They're not. When they created
9 the first drug court -- and I said 2002, but it was actually 2001
10 -- there was this -- the national program, the Department of
11 Justice had specialized training for the teams that were going to
12 start up these courts, so at the time they all went as a team and
13 got specialized training, which included training for the defense
14 lawyer. But soon after that that lawyer left the drug court and
15 we had another lawyer who didn't receive the same amount of
16 training. The funding that comes for that drug court is very
17 limited, so they use that for the treatment professionals, for
18 the probation officers. They rely on my office and on the DA's
19 office to supply a lawyer with an existing caseload to help staff
20 it.

21 They don't have money for specialized treatment,
22 specialized training. We could send our lawyer to specialized
23 training, but I'm not aware of any in the state for this kind of
24 thing. What we do is within the office -- what we try to -- even
25 though our office represents clients at all stages and our office

1 staffs that court, we make sure that the same lawyer that's
2 staffing that court is now representing the clients that are
3 going to be participating in that court.

4 MS. SHIFMAN: Is that to allow for litigation? I
5 mean, because yours is a post-plea court by and large?

6 MS. HERNANDEZ: Yes. What we do -- there is
7 nothing in the guidelines for that court that requires that a
8 person decide to participate in the drug court before they
9 litigate the case, so they don't take them after a trial, but
10 there is nothing that precludes them from litigating any
11 search-and-seizure issues, any other legal issues they might
12 have. But, again, it's up to the DA's office and the judge to
13 accept somebody into a court.

14 MS. SHIFMAN: And what steps are taken to protect
15 attorney-client privilege statements, if any?

16 MS. HERNANDEZ: Well, see, one of the good things
17 is that the guidelines that were issued as a result pursuant to
18 that statute of Chapter 469 of the Health and Safety Code, which
19 I only had one copy that I sent up there. They specifically
20 provide that nothing that is said as part of the drug-court
21 treatment will be used against that client. If he makes any --
22 obviously, part of the treatment is recognizing that you have a
23 problem and being up front with the treatment team about what
24 you're doing, whether you're doing drugs or whether you're not.
25 There is also urinalyses; there is drug tests to make sure you're

1 staying clean.

2 But let's say you don't comply with the program.
3 You just want to get out. Then the case that you've pled guilty
4 and the sentence is still pending, but they cannot take into
5 account what happened during the drug treatment and they can't
6 use the fact that you didn't complete it successfully as an issue
7 in the sentencing. What often happens is the mere fact that you
8 attempted to participate in the program is many times a plus when
9 you're being sentenced. Also, because you've pled guilty, you're
10 basically giving up a lot of the rights that you would ordinarily
11 give up if you were on regular probation because you'd be subject
12 to urinalyses, you'd be referred to certain treatment programs.

13 In that other treatment court that we have, which
14 is the post-safety court --

15 MS. SHIFMAN: This is sort of a re-entry program?

16 MS. HERNANDEZ: Yeah, it's sort of re-entry.
17 Because you're on probation already at the time you enter, let's
18 say you cannot complete the program successfully and you're still
19 -- what happens is you're placed on regular probation. They
20 cannot revoke your probation based on your failure to complete
21 the program. If they're going to revoke your probation, they're
22 going to have to find some other reason to and not the fact that
23 you didn't complete the program, so there are certain safeguards
24 in place.

25 You know, I think the programs -- there is a lot

1 of well-intentioned individuals staffing the programs from all
2 sides. One of the big problems is the lack of funding. Another
3 problem is that while it's a good thing, too many people are
4 ready to jump on the problem-solving-court bandwagon and they
5 want to carve out their niche without the resources for it and
6 without having it well planned. As a result, you're not getting
7 a well thought out program, you're not -- you don't have the
8 funding to do hardly anything, you're having to utilize people
9 that you can't train.

10 I think one problem that we have with the courts
11 is I don't believe that the same judge that hears the regular
12 criminal cases should be the drug-court judge. I think that
13 having to wear two hats is not a good thing ultimately for the
14 client. It's very hard to go from one to the other. I think the
15 same goes for the prosecutor and the defense lawyer, especially -
16 - you know, if you've been a prosecutor for 20 years and then
17 you're staffing this program, it's very hard to see it in terms
18 of trying to save this person versus having your eye on the
19 prosecution of this case afterwards.

20 So I think that's one basic problem with the
21 models that we see. I think these courts should be handled by a
22 special court master or referee who is properly trained in the
23 substance-abuse, mental-health, and treatment issues. Similarly,
24 the prosecutor and the defense lawyer. I even have a problem
25 with the fact that it's staffed by a prosecutor and a defense

1 lawyer.

2 I think once a decision is made to put someone in
3 this treatment program, it should be a different court with a
4 different view, that you don't have a prosecutor and a defense
5 lawyer; you have a team that includes lawyers that have the same
6 kind of training that the judge and the other professionals have
7 that are there to see that the goals are met and that the client
8 should be allowed to have access to his regular defense lawyers
9 to deal with the issues that come up, which is a problem when you
10 talk about indigent defense because you'd have to convince the
11 judge to allow the appointment of counsel -- the appointment of
12 an attorney throughout this process at the same time that there
13 is another lawyer staffing the drug court.

14 MS. SHIFMAN: And right now in your county that's
15 not allowed?

16 MS. HERNANDEZ: That's not allowed. And we have
17 lawyers that have a regular caseload that are doing this, you
18 know, along with their other duties. Same for the prosecutor.

19 MS. SHIFMAN: Right. Mr. Gonzalez, if you could
20 follow up on both comments from both women and also talk, if you
21 have any experience, about whether you as a defense lawyer or
22 offices that are sort of like public-defender offices -- have any
23 input with whether it's court staff, legislators, prosecutors,
24 administrators, judges on how these courts are implemented, how
25 they function, what rights are given up, what rules apply to

1 participants.

2 MR. GONZALEZ: Yeah. As private counsel, our
3 involvement in some of the diversion courts is much less. Like,
4 for example, like SHORT drug diversions program, is what it's
5 called. There is basically a private attorney that's on staff
6 that essentially works for very little money to kind of be the
7 lawyer for all the people there.

8 But, fundamentally, I think -- his name is David
9 Grassbaugh -- one of David's critical complaints is that
10 everybody else gets to keep their role. The judge is still the
11 judge and the prosecutor is still the prosecutor and probation is
12 there, but the defense lawyer kind of has to say, well, you need
13 to sacrifice your role because this is now going from an attorney
14 to a guardian.

15 One of the concerns is that in situations where
16 you don't have an attorney develop that relationship, what we
17 have seen is that a lot of the work doesn't necessarily happen or
18 the success of the problem solving happen in court or in some of
19 the brainstorming sessions. It's back home or in the office when
20 there is a problem, and when you divorce that role of the
21 attorney or at least don't have that relationship extend, there
22 is no person for them to be able to go to so that role either
23 shifts to them confiding in the probation officer, which then
24 gives them conflicting messages, or the court, who then has
25 different views about viewing these programs as gifts instead of

1 responsibilities and the notion that this is a benefit you're
2 getting and prison is what you deserve. But this is a gift and
3 if you don't take your responsibility, then we're forced to give
4 you the alternative.

5 As far as our input, you know, I'll be pretty
6 blunt. The private bar has not been the best about being able to
7 give input on anything that hurts their financial
8 self-interest. One of the downsides to not having a
9 public-defender model is that you have basically in Austin 160
10 small businesses that all compete with one another. First of
11 all, in terms of time, it's difficult for any individual office
12 to be able to dedicate the time to consult with legislators or
13 judges or court staff to be able to do some of the work. Those
14 that do are the same folks that do it over and over again and
15 they end up becoming the head of the public-defender office
16 because of their interest. So, unfortunately, we have a problem
17 with almost no institutional defense voice at the table.

18 I mean, it's from small nonprofits. You'll hear
19 from Ana Yanez-Correa later this afternoon. The Texas Defender
20 Service. I mean, there are some small nonprofits, but we don't
21 have the benefit of the institutional voice of a public defender
22 or someone that can come to the table on policy decisions. It's
23 very ad hoc. There are a few of us that lobby on behalf of the
24 Texas legislature, but, by and large, it is -- I would say 90
25 percent of the decision making is the judge and the prosecutor

1 because those are the -- they have the budgets. Kind of frankly,
2 we're just left to be thankful that the programs exist but not
3 necessarily the implications of them. But I could be wrong if
4 there are other things that you've had.

5 You've probably had a lot more interactions than I
6 have, but as private counsel, my interaction is I have my client
7 apply, they get accepted, and I'm kind of out of the picture
8 unless you have a different model.

9 MS. YOUNG: Well, if your client was accepted,
10 then even though they had retained counsel, then they're -- there
11 case is handled by the public defender there or if there is
12 nobody there, that's where I'm getting lost.

13 MR. GONZALEZ: Okay. So we have a
14 drug-diversion court called SHORT. It's for first-time not only
15 nonviolent, but also you can't have a delivery or a -- you've got
16 to have a problem such as abuse. And if you get accepted into
17 SHORT, you're encouraged to take the program because your felony
18 will be dismissed. There is one defense lawyer that trades off
19 for, I think, the 20 people that meet once a week. Typically
20 those folks don't then end up retaining counsel because they're
21 kind of told, look, why would you hire a lawyer. Your case is
22 going to get dismissed. Be in the SHORT program for a year and
23 everything is fine.

24 We often try to at least stay on -- and our office
25 is a little different. We represent people until the last day of

1 probation. If the client is on probation for ten years, we stay
2 on the case for ten years, partly as kind of a service to make
3 sure people can be compliant.

4 But the problem is when they don't -- if they
5 don't keep a lawyer, they have one person at the front of the
6 courtroom that's kind of with them there when they're in front of
7 the judge going through compliance issues. But, no. Typically
8 there is not a lawyer in the drug-diversion court.

9 Now, in other types of issues, be it -- there is a
10 DWI court, there is a re-entry court, there is different things
11 we've got in Travis County. A lot of these, because they're post
12 adjudication, they wouldn't necessarily have lawyers anyway, and
13 so the lawyer kind of takes them to the door and then it's left
14 for probation and for the court system to take care of their
15 rehabilitation thereafter.

16 MS. SHIFMAN: If I may, I just have one last
17 question and then I think Rick will send more questions down the
18 line. For each of you, if you could make one recommendation that
19 you think the National Association of Criminal Defense Lawyers
20 should include in our report, what would that one most important
21 recommendation be that you'd like to see included? We'll just go
22 down the row.

23 MR. GONZALEZ: Okay. It would be to be able to
24 start working in both legislative circles, as well as just making
25 our message clear, that I think the defense has been largely

1 removed from the problem-solving court process. Except for the
2 screening or except for having our clients partake, our role is
3 basically considered finished once the client is accepted into
4 that diversion program.

5 I think there is a lot more that we can be able to
6 do and should be doing, because for a number of reasons, just in
7 terms of our clients that have been unsuccessful in these courts
8 because they've had some problems, unless you have someone else
9 that you know is going to be in your corner and is not going to
10 kind of take the role of being the guardian or you have some
11 confidentiality, I think you still need to have that role.

12 I think some of the problems of the problem-
13 solving courts that happen post adjudication is, is that it's
14 kind of -- I think we're not fulfilling our duty as defense
15 lawyers by basically saying, you know, we've pled the client and
16 they're getting sentenced or they're getting this great diversion
17 court, but that our role and our duty must extend further. If
18 we're really going to go to the table -- because the judge is
19 going to work after hours and probation is going to spend extra
20 time and the district attorney is, sometimes I think that we
21 forget that our role needs to extend a little bit further to make
22 sure that we're bringing what we need to do to the table, as
23 well.

24 So I think that also requires a shifting of
25 resources. Instead of necessarily giving more social workers to

1 the court system, that we should be able to have -- you know, how
2 we used to have resource centers across the United States, that
3 there should be something that we can move toward that again
4 because it certainly would be a great model that I think is
5 already working for a lot of problems about recidivism and those
6 issues that I think we're in a unique situation to solve.

7 MS. KINARD: I guess if I could wave a magic
8 wand, I'd want a lot more money spent on social services and
9 housing rather than prisons, but as far as what a national group
10 can do, I think training for lawyers. I feel that when we were
11 in law school, there were issues that we'd be passionate about.
12 You know, you'd take your discussion from the classroom and spill
13 over to the coffee shop and you really had fire in your belly
14 about legal issues. Fast forward ten, fifteen, twenty years and
15 you're checking boxes on a government form and that's the way you
16 practice law every day.

17 But there really are bigger issues to discuss, to
18 think about. You know, where does mental illness end and
19 personal responsibility begin? What's the role of government?
20 Become a kind of Big Brother in people's lives because they have
21 an axis-one diagnosis? Does the government have power to make
22 someone take mental-health meds that have a lot of bad side
23 effects? There are a whole lot of issues. I'm not saying these
24 -- I'm not asking these questions to say that I know the answer;
25 I'm asking these questions to say that we don't talk about them

1 enough. We don't think about them anymore, and I think some of
2 these CLE events are done so you can meet the requirements of the
3 bar and it's at a good hotel where you know you're going to have
4 a great dinner that night and we don't open it up to think
5 outside the box or to think of those larger issues.

6 MS. HERNANDEZ: I think first on my wish list is
7 to have these problem-solving courts really reconfigure so that
8 it's not the prosecutor who makes the decision as to whether
9 someone is going to be allowed into the drug court or not, that
10 the application is considered by a drug court that is presided
11 over by a court master or referee who has special training, who
12 has sole responsibility for that court, doesn't have a separate
13 criminal docket or separate civil docket, who has been trained in
14 the substance abuse, the mental health, and the treatment issues,
15 that is not staffed by a prosecutor and defense lawyer, but that
16 has a team of health professionals and of lawyers that are
17 specially trained and that the client always maintains
18 representation by his or her defense lawyer.

19 MR. JONES: Thank you. Jay?

20 MR. CLARK: I want to ask Ms. Hernandez first,
21 you talked about funding issues that we've heard about in some of
22 our other locations and I don't know if you even realized it,
23 when you said that you're expected to provide an attorney who has
24 their own docket to go to -- to help with the mental-health
25 court. One of the concerns that we've heard is that might be

1 doing an injustice to those other clients on the regular docket
2 because now they don't get the time and attention that they need.
3 What are your thoughts on that?

4 MS. HERNANDEZ: Well, it is a juggling act and
5 right now it's a very pertinent issue because the whole issue of
6 caseloads has been on the national register. And so like public
7 defenders' offices are struggling with the issue of caseloads,
8 and this is just one more factor to add to that. And it does
9 require juggling because on the one hand, we have to justify our
10 existence. Since it's not a state system, we have to justify our
11 existence to our funders, which is the county commissioners
12 court. We have to show them that we're cost effective, because
13 that's what they want to see and they're constantly comparing a
14 public defender's office to the private bar to see who is more
15 cost effective.

16 So there are these concerns that shouldn't be
17 there because our concern should be are we providing effective
18 assistance of counsel. By having to have somebody in the drug
19 court, it is an individual that has to juggle that in addition to
20 his caseload.

21 Fortunately, our caseloads are such in our office
22 that we're able to shift cases around if we need to to make sure
23 that the lawyer never feels like he can't properly prepare for
24 trial on a case because he has the drug-court clients or that he
25 can't give the proper attention to the drug-court clients because

1 of his other caseload. So I think that's a real issue. I don't
2 think in my office that that is a problem to a great extent.

3 I think the problem has more to do with people
4 wearing two hats and having to be one thing at one point and
5 another thing at another and that the drug courts don't clarify
6 what that role of the lawyer should be. They say you're part of
7 treatment team, you're not this client's lawyer, but then -- they
8 have you sign documents as a defense lawyer, right? So even the
9 courts haven't defined in their mind what the role should be.

10 MR. CLARK: Mr. Gonzalez, I want to take this
11 concern and talk to you for a second about your comments on the
12 target population and how you think that a lot of time we're more
13 or less missing the correct population. If I understand what
14 you're saying right and using the example, I think, veterans who
15 are returning -- you said there is some pending legislation to
16 try and get them some special, I guess, programming or funds or
17 what?

18 MR. GONZALEZ: Diversion. Diversion courts
19 saying that if you were coming back from one of the wars, that --
20 just like there are first-time drug offenders that are eligible
21 for diversion.

22 MR. CLARK: Okay. With the unique nature of
23 mental-health issues, people coming back from a war zone and so
24 on, do you think we might be better off instead of having a
25 special provision for veterans who are returning or

1 mental-health court, not having the court, but taking the same
2 amount of financial resources and put it somewhere else such as
3 social services to help people with mental-health treatment and
4 housing, case managers to maintain compliance on medicine before
5 they ever get into the court?

6 MR. GONZALEZ: Yes, absolutely. I mean, the
7 fundamental issues of screening tools -- and I know in Travis
8 County that was the notion that falls upon the jail and can you
9 get social workers in the jail quicker to be able to start
10 diverting them to the appropriate places and if you treat it like
11 an ER model, how do you start triage any better. And if you
12 could be able to do that and have the same kind of trust in
13 people going at the table, if you have the police departments,
14 your sheriffs, your jail, or your service providers able to start
15 diverting quickly and having some sort of an agreement saying,
16 look, this person is going to be eligible for this mental-health
17 court or unit if we had one.

18 But instead of going through that whole
19 ramification of having judges being charged with social services?
20 I mean, I just think that the defense bar is far more able or at
21 least -- you know, mitigation and other types of social service
22 providers to be the quarterback for that instead of waiting to
23 take it to the court because of the time delays, et cetera.

24 But, yes. Even if we even take ourselves out of
25 it, we can have diversion programs that happen pre-arrest or at

1 that point, it would be far, far more efficiently spent.

2 MR. CLARK: Because I'm going to ask the three of
3 you -- because what I'm getting from the three of you
4 collectively -- and if I'm wrong, somebody tell me -- that, more
5 or less, not putting resources in the proper place for the target
6 population of people who need services: mental health, veterans
7 who are returning, DUI, alcoholics, whatever it might be -- the
8 role of the defense attorney pretty much evaporates once the
9 person enters the court. I think Ms. Hernandez said you wanted
10 to remove the prosecutor from making the screening decisions.

11 So, taken collectively, are you in some way in a
12 roundabout way saying we'd be better off without these specialty
13 courts, putting the money towards providing what really is the
14 problem, the mental-health treatment, the medication, getting
15 them the programming up front without a judge, a prosecutor, or a
16 defense attorney?

17 MR. GONZALEZ: I would say --

18 MR. CLARK: I guess I want all three of you to
19 kind of address that. I'm not advocating abolishing the courts,
20 but collectively, you know, we have the ethical problems that the
21 defense attorney has. I think the prosecutors struggle with the
22 opposite-side corresponding ethical -- doing justice or putting
23 somebody in jail, which is justice, and then supervising the
24 allocation of resources. So I'd kind of like to hear from all
25 three of you on that.

1 MR. GONZALEZ: Yeah. I mean, I would like to
2 bite off more than I can chew, the premise being that we're in
3 Texas and so I'm happy that there is not executing, you know,
4 most of my clients at that point, so to even be able to get to
5 the diversion courts is a great step in that direction. I just
6 think we have further to go and I think that's where we need to
7 lead, is to that model.

8 Because, quite honestly -- again, I'm going to get
9 hated by the private defense bar -- there is way too many lawyers
10 being paid \$125 to sign a piece of paper and plead someone to
11 back time for five minutes. The county is wasting tens of
12 thousands of dollars every single day, but then not investing
13 that money on cases where there is -- a person has got
14 representation less than nine months and has a ton of social
15 issues. I mean, don't give the money to us. I mean, give it to
16 social workers or give it to folks that at the beginning of that
17 problem can solve it.

18 The court system is inefficient. We can make
19 things last longer and harder than it needs to take, and I think
20 that you've got a great population of a profession called social
21 work which could do this. It's just there is no mechanism. I
22 mean, there is different pods but there is really no -- there is
23 no, I guess, center hub to do so, and if you can create the jail
24 as being that center hub, I think that's far more progressive
25 than -- and, you know, I'm just saying things that I think the

1 Bronx Defender Service and other models and PDS have already
2 done.

3 It's just, I think, incrementally in Texas -- I'm
4 not going to dare say that we would go back on what we've done,
5 it's taken so long to get this far. But, yeah, to be greedy, I
6 totally agree with you.

7 MS. KINARD: I do, too. I agree, also. It's
8 just hard to envision that system, but I agree that I'd prefer to
9 spend the money on social services.

10 MR. CLARK: So, I guess, from -- and I don't mean
11 to interrupt. So if I understand what the two of you are saying,
12 the reason that we have these courts is the way our society and
13 our structure is set up, the courts are basically where these
14 people end up. It's like the common bond for them. They get
15 arrested for something. The motivation or the cause of that is
16 not necessarily -- because for criminals, because they have some
17 other problem: mental-health issues, drug addiction or
18 alcoholism, whatever it might be. That's why we're even here,
19 because it starts in the courts as opposed to somewhere else. Is
20 that --

21 MS. KINARD: I think that's correct and I think
22 the impetus for our elected officials to do these therapeutic
23 models is jail overcrowding and it costs so much to lock people
24 up. That's their motivation.

25 MR. CLARK: I didn't mean to interrupt,

1 Ms. Hernandez.

2 MS. HERNANDEZ: Oh, no problem. And the fact
3 that it's a revolving door, right? If you don't -- if you just
4 lock them up and then they serve their sentence, they go out and
5 it's the same cycle and they're back and they're back and all
6 this money is going to house them when they could be going to
7 treatment.

8 And it's true the problem is the lack of funding
9 and the lack of resources, like in El Paso the drug court has --
10 can get ambitious, but they're thwarted by the fact that we don't
11 have the social services. They're very limited as to the number
12 of facilities they can send clients to. They're very limited as
13 to the amount of health professionals that they have access to.
14 They're limited in terms of housing.

15 I was asking Jay Nye, the lawyer that practices in
16 that court, what would be your wish list? Of course, it all had
17 to do with money, but he was saying we need money for temporary
18 housing for these individuals. We don't have anywhere to put
19 them and we don't have the money to pay for the housing. He was
20 saying we need money to train these individuals, the ones that
21 are successfully staying clean. We need to train them for jobs,
22 because how are they going to stay clean? What are they going to
23 do once we release them from the program? El Paso has hardly any
24 job-training options available.

25 They also function in a system of incentives and

1 rewards and they have to do golf tournaments and other fund
2 raisers in order to get some money to purchase rewards for them
3 as they reach certain marks, certain stages, and they graduate to
4 the next stage, so that is a problem.

5 Like Jeanette mentioned, in an ideal world this
6 would be a separate system, but it was tried before. It was a
7 separate system -- social-services system and it wasn't meeting
8 these needs, and that's why cases got to the courts, because the
9 needs weren't being met. Now it's the courts trying to go
10 backwards to get them to these social services. The reality is,
11 is that that is the stick that they have to make them go through
12 these --

13 MR. JONES: The judge -- I mean, the court being
14 the stick?

15 MS. HERNANDEZ: The stick, exactly, that you know
16 you've got this case pending and you're going to prison unless
17 you make an attempt to clean up.

18 MR. CLARK: I have one other question, I think,
19 for the two of you more than for Mr. Gonzalez and then I'll pass
20 on. One of the things that we're struggling with is how you
21 define success. I think, Ms. Hernandez, you made mention before
22 about the legislature -- your sources of funding like to see
23 success. We've seen wide-ranging definitions of success. In
24 both of your courts, what is a successful Defendant? How do you
25 define success?

1 MS. HERNANDEZ: In our drug court in the 243rd,
2 success is not defined so much by the person that gets out of the
3 program, but by whether a person continues to try, because with
4 these individuals that are trying to kick a habit, it's a day-to-
5 day thing. The typical time period in that program is, say, 18
6 months, but it can be extended. They can be there five years.
7 If that person is there five years and is still in that program,
8 that's considered a success because they're still working on it;
9 they're still working on it.

10 MR. CLARK: Let me ask a question. Can you
11 remain in the program if you pick up a new criminal conviction?

12 MS. HERNANDEZ: You can. You can so long as it
13 doesn't violate the guidelines of that particular drug court.
14 Say, if the 243rd drug court, because it receives federal and
15 state funds -- you can't go in there if you're being charged with
16 a crime of violence. So let's say if the new crime is a crime of
17 violence, then you wouldn't be eligible to participate anymore.

18 MR. CLARK: Even if it's related to your
19 addiction or your mental-health issue?

20 MS. HERNANDEZ: That's right, because of the
21 guidelines that preclude it.

22 MR. CLARK: All right. Ms. Kinard, how do you
23 define success in Travis County?

24 MS. KINARD: I think recidivism is the answer.

25 MR. CLARK: For what period of time? Because

1 that's where -- there are some courts we've seen, if you have no
2 contact with law enforcement for six months, you're a success.
3 Other places it's two years and you can have contact with -- it
4 varies. How do you define it, for what period of time?

5 MS. KINARD: I don't think there is a definition
6 of period of time. I guess I'm referring to our frequent fliers
7 that, like Mr. Brown, everybody knew and they were just astounded
8 that he hadn't been back in the system in so long in my Mr.-Brown
9 example.

10 MR. CLARK: Okay.

11 MS. KINARD: I think our funding sources look at
12 average length of stay for jail beds, but for my program that
13 doesn't really fit because I might leave somebody in jail two or
14 three days longer while I'm trying to arrange them housing,
15 because I know if I can carry them to a boarding care, maybe they
16 won't be back in the jail so it doesn't really translate.

17 MR. JONES: Elizabeth?

18 MS. KELLEY: I have a couple questions. When
19 dealing with the mentally ill, one of the real challenges is that
20 -- is the stigma. What do you do with a client who simply wants
21 to dispose of their case without alerting the world, putting the
22 world on notice that they have an axis-one disorder?

23 MS. KINARD: I think for me usually I let them do
24 that. I guess if it's a situation in which I think they're
25 really doing something detrimental or damaging to themselves, I

1 might step in as a big earth mother and try to convince or
2 manipulate them not to do that.

3 MS. KELLEY: So ostensibly they could still
4 remain on on the regular docket?

5 MS. KINARD: That's possible, but I've had
6 clients like that. They just don't anyone to know they're
7 schizophrenic.

8 MS. KELLEY: Other responses?

9 MS. HERNANDEZ: But the problem there is one of
10 competency, because putting aside the mental-health court, as a
11 defense lawyer you have to make sure your client is competent to,
12 say, enter a plea or go to trial, and so even if there is a drug
13 court, then if we know that they have an axis-one diagnosis, then
14 we'd be ineffective if we didn't have him or her screened for
15 competency.

16 So, you know, that's a dilemma because let's say
17 it's a misdemeanor and the prosecutor wants them to plead to time
18 served, right, where he gets out and, of course, that's what the
19 client wants but he's not competent to stand trial, and so he
20 could be there another six months until he's determined whether
21 he's competent or not. If he's found incompetent, he can go to
22 Vernon and be there until he's deemed competent again. So that's
23 a real dilemma for us as defense lawyers.

24 MS. KELLEY: My second question is somewhat
25 related. What do people in Travis County who don't have a mental

1 illness but who have some type of intellectual disability do? Is
2 there a special court for them, as well? Do they remain on the
3 regular docket?

4 MS. KINARD: They remain on the regular docket.
5 MHMR priority population is the same for axis-one diagnoses that
6 I mentioned earlier. But like the veterans -- a lot of them or
7 PTSD or other diagnoses. They're just ignored.

8 MS. KELLEY: So there are no special support
9 services in your county for someone with an intellectual
10 disability?

11 MS. KINARD: I think no is the answer. I've had
12 a couple clients with an IQ of maybe 55, 58, something like that
13 that will be found incompetent, unlikely to regain competency,
14 and then perhaps you can get them to dismiss the case. But no is
15 the short answer to your question.

16 MR. GONZALEZ: There are -- and this is one of
17 the fundamental problems of having lawyers do a lot of social-
18 related work, is that there are organizations like Advocacy,
19 Inc., and nonprofits and Life Works and shelters, that if you
20 could make the appropriate referrals to -- I mean, that's what
21 those organizations do. The problem is those referrals often
22 aren't being made. I don't know even if by the time they get to
23 probation, it's kind of too late. They're already either on
24 probation or they've pled guilty, but those interventions aren't
25 being made. There is no one to make those interventions between

1 the time they go to jail and the time they go to court unless
2 that lawyer has some experience and knows what community
3 organizations are out there.

4 MR. CLARK: Vicki?

5 MS. YOUNG: Okay. My question is, when you go to
6 law school, all three of you were taught how to be a trial
7 advocate, and when you became defense attorneys, that's what your
8 trial skills, your skill set was, to be a trial attorney. What
9 we're talking now is clearly a different court system and it
10 requires different skills. Some people call it restorative
11 justice or therapeutic jurisprudence. Do you think that those
12 skills should be taught at law school or is it something -- where
13 do you think therapeutic jurisprudence fits with trial skills and
14 fits with law school?

15 MS. KINARD: I think it should be taught and I
16 think we're in a time in history when our society is changing
17 rather slowly in the great State of Texas, but it's changing to
18 see other paradigms and other ways of processing criminal cases.
19 So, yes, I think it should be taught.

20 MS. YOUNG: But is it part of law school or
21 should you just go to social-work school?

22 MS. KINARD: In what I do it's a blur. Perhaps
23 David feels the same way.

24 Do you sometimes feel like a social worker?

25 MR. GONZALEZ: I do, but, I mean, that that's --

1 because I think they do such a good job of listening and I don't
2 think we do a great job of listening and client reviewing and
3 learning. Social workers have made us much better trial lawyers
4 because they're picking up on different details on the client --
5 on how clients felt that are critical for self-defense, defense
6 of others, duress, other issues that I think I was missing,
7 having not listened.

8 You know, UT is starting a law and social work
9 joint degree program, but historically there has been law and
10 business school joint degrees and there is no problem with having
11 those kind of cross-pollination ideas and mediation is being
12 taught, negotiation. I mean, so you don't need to go to the
13 business school to learn negotiation, that those are classes they
14 teach in law school.

15 I think as far as client counseling and the fact
16 that many of us still have attorney and counselor on our business
17 cards or at least used to, that there is that notion that that's
18 kind of fallen by the wayside as we've become more and more
19 litigious and I think through the rise of alternative resolution
20 processes, that there must be a new change in law-school
21 curriculums to include that counseling provision. So I think it
22 should start with law students, especially in the first year when
23 people are idealistic and they are believing that I'm going to
24 help people and I will do these models and things.

25 MS. HERNANDEZ: I agree that it should start in

1 law school because I don't think the problem-solving courts are
2 going to leave us anytime soon, and I believe that if we're going
3 to have the right type of -- the judges and the lawyers there
4 that are truly looking for the client's best interest, then I
5 think they need to start to be trained rather than shift somebody
6 who's been used to doing things a certain way for years and years
7 and all of a sudden they have to become an expert in that area
8 with no training whatsoever.

9 So I do think that's where the process needs to
10 start, and you need to expose lawyers to that type of law and let
11 them see that as an option, that you don't just have to be in an
12 adversarial system if you're interested in criminal justice, you
13 don't have to be a prosecutor or a defense lawyer. You can be an
14 individual involved in this restorative-justice system.

15 MR. JONES: Gail?

16 MS. SHIFMAN: I have a follow-up question because
17 we're talking about sort of where does this all begin. Judge
18 Gist provided us with a number of very helpful documents, and one
19 of the reports was issued by the Criminal Justice Policy Council
20 called the Overview of Drug Courts in Texas. One of the charts
21 in there talks about Drug Courts, Our Response to Increasing
22 Arrests and Incarcerations for Drug Offenses. The chart itself
23 shows that both violent crimes and property crimes -- at least
24 the arrests for these offenses have gone down somewhere between
25 14 to 34 percent over a ten-year time frame, yet the arrests for

1 drug offenses have gone up almost 63 percent during that same
2 time frame.

3 One of the things that we haven't talked about is
4 the role in law enforcement in all of this. You're testifying
5 and we're asking a series of questions as a result of some
6 decisions -- policy decisions being made by law enforcement. So
7 I'm curious as to whether law enforcement is at the table
8 discussing these issues at any time, whether it's before the
9 legislature, what the legislative body here or in the local
10 counties -- are they part of the process? Is there any social-
11 work decisions or interventions made on the law-enforcement side
12 at the very beginning? What recommendations you might have in
13 this area, because I think we actually need to address this,
14 because of right now they're not at the table as far as I can
15 tell.

16 Anyone who would like to respond?

17 MR. GONZALEZ: Do you want to start with the
18 mental health?

19 MS. KINARD: Well, in Travis County, which is
20 probably unique in Texas -- our sheriff has 28 social workers on
21 his staff and corrections facilities and Austin Police Department
22 and sheriff's office as several mental-health officers with extra
23 training. They've been helpful. We get along pretty well.

24 MS. SHIFMAN: On the mental-health side?

25 MS. KINARD: On the mental-health side. In fact,

1 the sheriff's office, if I have a client that needs meds they
2 will -- when they're released from jail, they will drive them
3 over to a facility where they can get their meds to make sure
4 they're linked up. They see the long-range advantage for them of
5 doing that, keeping somebody med compliant. But I suspect the
6 answer to your question would be different in different counties.

7 MS. SHIFMAN: What about on the drug side where
8 the arrests have really shot up? Can anyone comment on that?

9 MR. GONZALEZ: Yeah. Okay. So if we take the
10 three biggest problems with -- well, there is a lot in Texas, but
11 in terms of our funding levels, you look at how we treat indigent
12 children's health care and what our funding is toward that and
13 then our funding toward poor kids' education and then you look at
14 your criminal justice dollars. I think one reason why the
15 problem-solving courts get the money is they have money. We
16 allocate money for law enforcement, and so if we can divert that
17 money from law enforcement to social services, it's certainly
18 much better than trying to do it head on, which has been very,
19 very unproductive, just trying to be able to get the SCHIP or any
20 of the CHIP work done.

21 Drugs. You know, we have a pretty new progressive
22 chief of police who's been really, really good about being able
23 to come to the table and starting to negotiate or talk to the
24 defense bar about things. The problem is is that Texas, amongst
25 other states -- and we do a lot of juvenile work -- sees a lot of

1 the increase in the drug offenses related to zero tolerance
2 policies at school. And so post Columbine you have two police
3 officers on every single campus and one kid gives another kid
4 ritalin, a felony, because it's on campus, it's not a
5 prescription, and so a lot of what we deal with in juvenile court
6 are the explosion of drug crimes in school. A lot of them don't
7 have to do with cocaine, heroine; it's the prescription meds. So
8 that's the first issue.

9 Second. There is also a guy names David Lebowitz
10 in Austin and Cliff Brown is his predecessor, and they're
11 different APD or Austin Police Department liaisons with the
12 Travis County District Attorney's Office that basically do
13 different neighborhood activism. A lot of that in the past
14 several years has been on open-air drug markets and on basically
15 the zero-tolerance policy of every single drug offense for less
16 than a gram or so must be an arrest. There is no discretion.
17 Every single thing gets ticketed for possession of drug
18 paraphernalia in a response to some pretty good community outrage
19 saying we don't like our streets being safe (sic).

20 So I don't know of the good answer to be able to
21 say, well, how do you divert these folks from getting them off
22 the street, because a lot of the problems were they were bonding
23 out or that the offenses were so small that they can be able to
24 get out of jail and without any intervention or treatment if you
25 can plead to back time. You're having that revolving door. I

1 think we are in a good situation where we've got a police chief
2 that's actually really willing to sit at the table and you've got
3 a sheriff that's actually investing in social work.

4 But with the drug offenses, I think a lot of those
5 numbers -- and I can't speak to all of them. You've got a lot of
6 problems with rural counties for the methamphetamine explosion
7 that's happened and a lot of those small counties don't have the
8 access to drug courts or any social services. A lot of the
9 juvenile courts across Texas in non-metropolitan areas don't have
10 services. It all relates to the fact that if you don't have the
11 base-line levels of those intervention programs, then the court
12 is the only place to do it. Even those are few and far between.

13 MS. HERNANDEZ: Well, there is a dichotomy when
14 you talk about law enforcement because the drug-court movement
15 here in Texas has been largely driven by the Texas Department of
16 Criminal Justice over the concern that so much money was being
17 spent on having to build more and more facilities, prisons, and
18 realizing that they were having to house a lot of individuals
19 that wouldn't have been there, but for drug problems. And so I
20 think the movement largely stems from that wanting to use the
21 resources more efficiently.

22 The problem is that it hasn't trickled down to the
23 police officers on the streets. In El Paso we have the county
24 attorney trying to train the police officers on how to deal with
25 individuals with mental health. That's been a big concern. But

1 no one wants to take up the cause of people suffering from
2 substance abuse. They don't know how to handle it and there is
3 that perception that, you know, you can understand somebody who
4 has mental-health problems that you have to deal with them
5 differently, they might be violent and they may pose a danger to
6 a law-enforcement officer. But somebody who's voluntarily using
7 drugs, they figure why should we give them any special treatment?
8 So I think the culture just hasn't gone down to the law-
9 enforcement officer on the street and something does need to be
10 done about that. I don't know what.

11 MR. JONES: Thank you for being here. This has
12 been an incredibly useful and productive session. We appreciate
13 it. Thank you.

14 MS. HERNANDEZ: Thank you.

15 MR. JONES: We are going to break. We are going
16 to reconvene at 11:00 o'clock. Let me just say once again, if
17 any of you out there in the audience are interested in learning
18 more about the work of this committee or the National Association
19 of Criminal Defense Lawyers generally, please see Norman Reimer,
20 our Executive Director, who is right over there, and he will tell
21 you everything you ever wanted to know. See you at 11:00.

22 (Recess)

23 MR. JONES: Okay. Let's start. Before we bring
24 up our next panel, I was admonished for not acknowledging two
25 folks who I don't see in the room, so I'll wait until I see them

1 back in the room.

2 Our next panel, though, I believe, is here and
3 that is Vicki Ashley, Dee Hobbs, and Jason Steans. If I've got
4 any of those names wrong, I apologize. If you'd take the seats
5 that have been designated for you, we'd appreciate that.

6 Good morning. We appreciate having you here and
7 look forward to your testimony. The way this works is that we'd
8 ask each of you to give us sort of a five-minute opening
9 statement to benefit of whatever thoughts you have about the
10 topic, and then we have a number of questions and we'd just like
11 to engage you in a general conversation.

12 The way that this works is that one of us
13 generally leads off the questioning for each panel, and for this
14 panel you're in luck. It's Jay Clark who is going to be doing
15 the questioning, so if you would just introduce yourselves for
16 the record and then I'll leave it to you to decide the order in
17 which you'll give your opening statements, but the floor is
18 yours.

19 MS. ASHLEY: All right. I'm Vicki Ashley. I'm
20 Assistant Director of the Criminal Trial Division of the Travis
21 County Attorney's Office here in Austin. I'm also the prosecutor
22 who handles our DWI court, which is a
23 post-adjudication court. I'll talk to you a little bit about
24 that in my opening remarks.

25 MR. JONES: Welcome.

1 MR. HOBBS: I'm Dee Hobbs. I'm the criminal
2 court's chief of the Williamson County Attorney's Office and also
3 one of the key members to getting Williamson County's DWI drug
4 court started.

5 MR. JONES: Welcome.

6 MR. STEANS: I'm Jason Steans, and I'm an
7 Assistant County Attorney for Travis County and I am our mental-
8 health prosecutor and run the mental-health court docket in our
9 County Court at Law.

10 MR. JONES: Thank you and welcome.

11 MS. ASHLEY: I guess I'll begin, ladies first.
12 I'd also like to say, just so we don't forget later on, Jason
13 also serves on a task force that one of our constables created
14 here for veterans services. I know there was some discussion
15 about that in a previous panel. We have a constable who has
16 taken the lead on trying to identify Defendants in our Travis
17 County Jail who are veterans and they suffer from
18 post-traumatic-stress disorder and may have different needs than
19 a typical misdemeanor Defendant.

20 Or I believe she deals with felonies also; is that
21 correct?

22 MR. STEANS: Yes. We're still kind of getting
23 the thing up and running.

24 MS. ASHLEY: Anyway, Jason will talk to you a
25 little bit more about that. I just wanted to make sure that was

1 on everyone's radar.

2 In Travis County last year we filed just under
3 8,000 misdemeanor DWI's. In dealing with this large number of
4 DWI's over the last few years, we started to track multiple DWI
5 offenders and those are persons who have more than one DWI
6 pending at the same time. Could be two or more DWI firsts.

7 I think the one person who sort of is our poster
8 child has six DWI's pending. They're all in bond-forfeiture
9 status. Some of them are many years old. He uses a different
10 name and date of birth every time he's arrested and somehow has
11 managed even on his most recent one, which I think is about three
12 years old, to bond out of jail before anybody knew that he was
13 the person that we were looking for on the previous five.

14 So we started to track those about three years
15 ago, and as we did, we realized that we had about 450 people in
16 Travis County -- people, not cases, with more than one DWI
17 pending at the same time. That's not a probation case and a new
18 DWI; that's unresolved DWI's.

19 In discussing this with some of our judges, our
20 senior judge, Judge David Crain that you'll meet later on, became
21 interested in developing a DWI court, and
22 Judge Elisabeth Earle came on board with him and together they
23 started to talk with us and with the defense bar and with the
24 National Association of Drug Courts, I believe is who came to
25 Travis County two summers ago and did a training for all of us

1 here and other counties in Texas came and attended that, as well.

2 In the last session I'm sure you know DWI courts
3 were mandated by our Texas legislature. If you have a population
4 of more than 200,000 in your county and you don't have an
5 existing drug court that you can put DWI offenders in, then
6 you're mandated to have a DWI court. Williamson County was ahead
7 of the curve by about a year, I think, on us. We were maybe a
8 year ahead of the curve on the legislature, so we had some
9 planning time. We had Williamson County's model to watch and
10 copy and we were ready and started our court in April of this
11 last spring.

12 So we have right now about 20 participants in the
13 DWI court. You'll meet three of them late this afternoon, I
14 think, at the end of this session. Judge Earle is going to bring
15 three of our participants who have moved on to aftercare and
16 they're going to talk to you about what it's meant to them.

17 It is a post-adjudication court. There is a
18 two-prong approval process. I screen with another assistant
19 county attorney most of the multiple DWI offenders that come
20 through our intake division. I say most of them because there is
21 some criteria. No violent criminal history. That certainly
22 weeds out some of the ones that we would normally look at as
23 multiple DWI offenders if they have felony convictions, any
24 criminal history. They're not considered mainly because we have
25 right now the ability to serve so few. To take this large group

1 of 8,000 -- just under 8,000 new DWI's and sort of funnel those
2 down into about 70 slots that we have available in a year for DWI
3 participants -- so there has to be some sort of winnowing down in
4 that procedure.

5 Once we decide as an office that that person is
6 legally eligible based on their criminal history -- and we also
7 screen a little bit for mental-health issues for the axis-one
8 diagnoses that Jeanette talked to you about -- being able to put
9 someone with those co-occurring issues into the DWI court program
10 would make it much more difficult to serve the other participants
11 in the program, so we think there is a better avenue for those
12 folks.

13 Once we determine that they're legally eligible, I
14 approve their application, which includes a personal statement
15 from the Defendant himself or herself asking to be considered for
16 the program and explaining to us why they feel like they will
17 benefit from the program and why they want to be in the program.
18 Some of them are perfectly frank and honest and say my only other
19 alternative is jail so I'll try this. We have found that those
20 people are equally successful with the ones who say I'm an
21 alcoholic and I need treatment.

22 You get a range from I don't want to go to jail to
23 I'm an alcoholic and I need treatment. There are people in
24 between in their personal statements. To me, just the fact that
25 they buy in enough to sit down and write something is all I'm

1 looking for.

2 Once it goes through my process, it goes to our
3 Travis County Counseling and Education Service where an LMSW or
4 Licensed Professional Counselor, one or the other, does a
5 clinical assessment, and it's about a three-hour assessment. I
6 think it's based on the SASSI model, and that's about all I know
7 about that. I'm not a psychologist or a social worker so I don't
8 really know too much about that process.

9 Then she brings that assessment back to our
10 Wednesday afternoon staffing and brings our team, which includes
11 a full-time defense attorney, one or two prosecutors -- often my
12 assistant county attorney goes with me -- the probation officer,
13 her supervisor, the two treatment providers, the group leader and
14 the individual counselor, and generally somebody from court
15 services just to kind of keep the docket rolling and make sure
16 all the cases are there that need to be there and that sort of
17 thing.

18 And we staff their week. How has their week gone,
19 if they're active participants in the program. If they've just
20 been assessed, the social worker goes over the assessment with us
21 and tells us whether they meet the DSM criteria for addiction or
22 alcohol or substance abuse, and then the team decides if they're
23 appropriate to be included in the program.

24 If they are, they plead in. It's a post-
25 adjudication court, as I said. They start court that night.

1 They come every Wednesday at 5:00 o'clock for a docket; they go
2 to counseling three nights a week: Monday, Tuesday and Thursday;
3 they see their probation officer once a week; they see their
4 individual therapist once every two weeks; they have random UA's.
5 It's a full-time program. We do it all in the evening so that
6 they can continue to work, continue to go to school. It allows
7 their life to continue, where most of these offenders, before we
8 had this program, were looking at at least 30 real days in jail.
9 Many were looking at more than that just based on the severity of
10 their offenses.

11 I could go on and talk to you for a lot longer
12 about DWI court. I'll let the other participants talk and then
13 will be happy to take your questions.

14 MR. JONES: Thank you.

15 MR. HOBBS: I just want the record to reflect
16 that Travis County said that for once Williamson County was
17 somewhat more progressive.

18 (Laughter)

19 MR. HOBBS: That may be the only time in history
20 our county will ever have that notation.

21 Judge Tim Wright of Williamson County came up with
22 this idea after coming back from a judge's school and he took it
23 and he ran with it. One of the benefits we have with this
24 gentleman being the driving force behind our program is that if
25 I'm not wrong -- and he'll be here later and you can ask him --

1 but 19 or 20 years of sobriety himself so he's been down that
2 road. The current head of our probation department that also
3 supports our program is also around that time, anywhere from 15
4 to 20 years of sobriety. So they've been down the road of
5 addiction. They've seen that.

6 They got us on board and I have to admit as a
7 prosecutor it was a little difficult to understand the process
8 when we got it. So for everyone on our team, which is pretty
9 much the same personnel, we had to change how everyone looked at
10 it from the judge to the prosecutor to the defense bar to our
11 contract defense attorney for the program to probation and even
12 somewhat through treatment, because there was the court aspect of
13 it involved.

14 We went to our training, as well. We got folks to
15 talk to us from around the United States about how their programs
16 were, some of the pitfalls they faced, and they said you've got
17 to come up with something that will work in Williamson County.
18 In doing that, we had to decide kind of what is the carrot
19 besides sobriety, because sometimes that's hard for them to see
20 that as a carrot. There were some proposals obviously from the
21 defense bar, that how about it end in a dismissal if they
22 successfully complete it. That did not sit well with both our
23 judges, nor our citizens, nor the arm of MADD. It was not really
24 anything we proposed. We considered it with anything else that
25 was brought to us with suggestions.

1 However, what we decided was also post
2 adjudication. What we looked at was subsequent DWI offenders.
3 Most of ours that we have do not have multiples pending, although
4 they would qualify if they had multiples. Most of ours have DWI
5 subsequents on a misdemeanor level. We targeted them, and I
6 would like to say that 90 -- I would guess 98 to 99 percent of
7 our participants -- we have two courts going at this time -- are
8 recommended to us by the defense bar, by their counsel, hired or
9 retained, that bring them to us as potential candidates. What we
10 often ask them to do is have their client sit in on the drug
11 court and see what the process is. We want to make sure they
12 understand.

13 We also do not have, as some other courts do, that
14 they have to say, Oh, please, Lord, help me. I'm an addict and I
15 want to get clean. We don't require that. They can say the same
16 thing, as I say, in Travis, that, you know, this is better than
17 going to jail.

18 At that point it doesn't matter and our results
19 have not shown any variance between those that come to us on
20 bended knees and those that come reluctantly into the program and
21 say I'm not an addict but I can do your program. Once they come
22 to us -- and that will be to the prosecutor's office -- we've
23 kind of broken it to three levels of review, which is first the
24 prosecutors. We do the same thing. Look at criminal histories,
25 make sure we don't have someone that has lied to us or has a

1 violent criminal history. We're not going to let them in. One
2 of our others is accidents involving victims, where they have
3 hurt a member of the community -- will not be eligible for the
4 program, as well. If it's a one-car accident, they hurt
5 themselves, they will be eligible for the program. Again, it's
6 community standards in our county about how we designed the
7 program so that would weed them out.

8 The other part is they have to live in Williamson
9 County or a contiguous county thereto. This is not a type of
10 probation that can be monitored courtesy supervision from another
11 county. This is intense. This is having a dedicated probation
12 officer, that her job -- well, we have two, but their jobs are to
13 go out and visit with the individuals, to do surprise visits,
14 which could be New Years, could be any holiday, Superbowl.
15 Anything that might trigger a drinking episode, there is usually
16 going to be a knock on the door. We kind of have to hit them
17 quick because they bond and they network and they let each other
18 know.

19 We also require that there is some type of
20 alcohol-monitoring device or maybe several. We use three
21 separate types. Of course, the standard ignition interlock,
22 which recently they've upgraded to a camera system so when they
23 blow into their ignition interlock, a picture is taken that can
24 be compared to the individuals that we have on probation.

25 They are post-adjudication. It's a subsequent,

1 but they are pled to a first. They are put to a standard
2 one-year probation, which could be amended depending on their
3 progress. I left that out.

4 The other alcohol-testing device would be a
5 ViCAP device, which also takes a picture but it's hooked up in
6 your house, which we can also use as a curfew device, which makes
7 sure they're home at a certain time. They're called, they have
8 to blow into the device, and it takes a picture.

9 The third, which is more expensive and we would
10 like to see the cost go down because this would be a great tool
11 in some drug court -- DWI courts use them for the first 90 days.
12 We use them in very specific situations due to the cost -- is the
13 SCRAM, which is on the ankle and it monitors the perspiration and
14 the alcohol content there.

15 We also try to help them through the defense
16 attorney, which is to help them try to get their license cleared
17 to where they can work as long as they're in compliance with our
18 drug court so, again, they can be productive members of society
19 while they're in compliance with our court.

20 After they go through the prosecutor's screening
21 to make sure there is nothing that concerns us or how many PI's,
22 how many MIP's, whatever else has gone through, we refer them to
23 the probation department. Probation makes a screen of will this
24 person comply with the rules and regulations of probation in a
25 general sense and explain a little bit more about what the

1 program is going to require.

2 Once they go through that process, they go through
3 the clinical screen, which is SASSI, MAST -- I don't know what
4 all. Again, that's beyond my pay grade and my knowledge, but
5 they go through that.

6 We have again a meeting with the group, with our
7 team, and there are reports from both the prosecutor, the
8 probation department, and through treatment to let us know where
9 is this individual in their life, what are their needs, and can
10 we meet those needs. One of the concerns is also any mental-
11 health issues because early on we've kind of had an open-door
12 policy: you have problems; we have solutions.

13 We learned quickly that multiple problems could
14 not be attacked through this program. Mainly we needed to look
15 at addiction. If there were mental-health issues that were
16 hampering the situation, they would have to be handled in another
17 way just for the benefit of the program and those that were in
18 it. It was just too much to take on and we did not have good
19 results.

20 Then they are pled in, like I said, to a first.
21 They start their probation. If at some point along the way --
22 and we do have the color code so we have random urinalysis, we
23 have all kinds of things. One of our -- and you'll hear a lot of
24 testimonials, I'm sure, from my judge when he gets here --
25 because he visits with every member that graduates at a dinner

1 that he pays for, and visits with them about what they thought,
2 no censoring, no nothing else, and finds out what they thought of
3 the program. But we had one gentleman at the time that pled in
4 and he had alcohol in his system when he pled in. That's just --
5 you come to court with alcohol in your system to plead into a DWI
6 drug court -- I think we hit the right person.

7 But what we found out was here on the UT campus,
8 this gentleman, along with another person in our court, started a
9 support group here on the campus and continued to be active and
10 continued to do -- to help others in that process and came to
11 court even when he wasn't required, to meetings that he wasn't
12 required as he moved through the program.

13 So we have a lot of success stories and a lot of
14 them start out with I thought I could get away with it and
15 Sabrina, our probation officer, proved me wrong or treatment sat
16 down and -- I won't use the words that were used, but they would
17 tell them that basically they were full of it and that what they
18 were telling them was all lies and trying to cover it up and they
19 would continue to try and get away with it.

20 What we use is sanctions. Sanctions is where the
21 creative part of the team comes up and where the prosecutor
22 really needs to change their mindset. For the prosecutor the
23 great sanction is always what? Jail. It's always a great
24 solution for a prosecutor. You go to jail and you're not hurting
25 my citizens. That should teach you. But we had a lot of other

1 solutions that we've come up with that we've used that have
2 worked. We've used 90 AA meetings in 90 days. Ninety in 90.
3 That helps. We might upgrade what their monitoring device is,
4 the SCRAM from an ignition interlock. We might have them do
5 community service on the Road and Bridge Department, helping out
6 with charities in our area.

7 Let me see, what else do we have them do? There
8 is number of things that we can do to try to correct that
9 behavior. The judge makes sure that they understand when they
10 come up there, this is not punishment. If we wanted to punish
11 them, we've now got them pled into the court and we could revoke
12 them and we have a lower standard and if the state wanted to
13 bring the fist of the law, as we would see it, down on them, we
14 could do that but we choose not to. That's not what we want to
15 do.

16 And when they do good, the judge recognizes that
17 in a setting of their peers, and that means a lot. Sometimes as
18 simple as come up here and get a piece of candy from the jar.
19 That sounds funny. I never thought I'd see a bowl of candy in a
20 courtroom, especially in Williamson County, Texas, but that
21 works. Having them stand up at the beginning and say when
22 they've been recognized with a new chip through AA has worked.
23 You know, explaining -- having them do a thanking report. My,
24 you think jail was punishment? Have one of these individuals get
25 up in front of the courtroom -- a packed courtroom with a

1 microphone in their hand and have to explain in their thanking
2 report why their behavior got them in trouble and what happened.

3 And their treatment has given them a lot of tools.
4 At the graduation they often get to speak -- they don't have to -
5 - and they talk about how those tools have really given them ways
6 to address the behavior that got them down this path.

7 So the first step was getting our group to change
8 our mindset before we could change anyone else's. Now, we are
9 early on in the program, because early on -- I mean, I want to
10 look five years down the road, ten years down the road. Did we
11 make a difference? Most of the ones we've had problems with,
12 we've had problems while they're in the program. Once they have
13 successfully completed, so far have seemed to sustained sobriety
14 or at least to our knowledge have sustained sobriety.

15 So I believe it does work, but it may be premature
16 for me to stand up here and beat our chest about this program
17 until we get years down the road. But I know as a prosecutor,
18 while they're in our program, they're being monitored closer than
19 felony offenders in most counties and maybe even in our county.
20 We have day-to-day contact and if we see someone getting off the
21 path, we can adjust that behavior with the consent of the defense
22 attorney.

23 Now, what happens is when private counsel pleads
24 them in, they sign a Motion to Substitute Counsel, which then
25 goes to our contract attorney. The contract attorney is

1 nonadversarial. What they do is represent the needs of the
2 individual in the program. If the individual says this is no
3 longer my cup of tea and y'all are crazy and I don't want to be
4 in this program anymore, the original counsel is then placed back
5 on it to address the Motion to Revoke. So we try to set it up to
6 where they have representation, and if they don't feel like a
7 sanction is appropriate, they're explained that you do not have
8 to acquiesce to this sanction. You have options out there and
9 you need an attorney that can represent you and we go down that
10 path.

11 So it has been a delight having gone down the road
12 of prosecution for many years now to see an option, to stay
13 involved, and if you could ever come to one of our graduations --
14 or when you talk to our judge later today, ask him about some of
15 the testimonials he has had, it's kind of hard to argue. So I
16 look forward to your questions.

17 MR. JONES: Thank you.

18 MR. STEANS: Once again, I have a mental-health
19 docket that meets two days a week in County Court Three with
20 Judge Crain. He'll be here this afternoon, I understand. I also
21 do a Project Recovery docket, which is slightly different. It
22 deals with -- we have people with dual diagnoses, but it
23 primarily focuses on people with recurring alcohol issues. Most
24 of them are PI's. A lot of them are homeless people. That's a
25 separate docket that we do on Friday, but we get a lot of overlap

1 between the mental-health docket and the Project Recovery docket.

2 The Special Reduction docket, which is the mental-
3 health docket, that we do Tuesdays and Thursdays -- it is a
4 problem-solving docket. We deal very -- First of all, the people
5 get onto the docket by being flagged when they come into the
6 jail. The only people who appear on the docket are people who
7 still remain in jail. People who get out of jail and bond out
8 who may have mental-health issues -- their attorneys are free to
9 come talk to me and sometimes we put them back on the docket, but
10 primarily the people who are on the docket are people who remain
11 in jail who have been flagged by the mental-health social workers
12 in the jail when they come in, which is either by self-reporting
13 that they have prior mental-health history or if they've had them
14 through the jail before and they've been previously flagged or if
15 -- family members oftentimes contact the jail just to kind of
16 give them a heads up if they've got somebody in custody who may
17 have mental-health issues.

18 It's a collaborative justice program. We have a
19 wheel of attorneys who volunteer to work with the mental-health
20 cases and they do -- that's an integral part of the program. The
21 attorneys who work with mental-health docket or people who are
22 typically more willing to kind of serve a sort of social-worker
23 kind of role, they typically end up having to work with families
24 a lot more. A lot of times they're finding places for these
25 people to live, they're talking to the psychiatrists, the

1 treatment providers and that kind of thing. So that's important.

2 We have an MHMR representative who comes to the
3 docket. He sits over the laptop and he can look up things right
4 there as we're talking about the case. The judge is sitting
5 there with us -- the defense attorney and the judge, the people
6 from Jeanette Kinard's program, the mental-health public defender
7 who was just here earlier. They typically bring their social
8 workers. We usually have a social worker from the jail.

9 So we get input from all these different sources.
10 MHMR people, as I was saying -- they can pull stuff up right on
11 their computer and look at the person's case history and let us
12 know where this person has been in the past and what kind of
13 problems they have.

14 The main goal of the mental-health docket is to
15 try to -- well, it's kind of twofold. One is to prevent
16 recidivism because a lot of these people are just getting
17 funneled through with the same kind of charges. We get criminal
18 trespasses over and over from homeless people who are
19 schizophrenics or whatever condition they meet. They just don't
20 have a place to live so they're sleeping in doorways or whatever.
21 We get them in there and kind of take a look at their mental-
22 health situation and what kind of intent they had in terms of the
23 crimes that they committed.

24 So part of it is just kind of the humanistic
25 approach to dealing with cases. Another part is a lot more

1 pragmatic, of we're having the same people coming through the
2 system over and over and repeatedly prosecuting them for the same
3 kind of thing, so we're trying to cut down on recidivism,
4 obviously, so we're just not spending a lot of money prosecuting
5 and re-arresting these people who do it over and over.

6 That's where these social workers come in. The
7 Mental-Health Public Defender's Office does a really good job of
8 trying to find a lot of these people housing, places to live,
9 hooking them up with counseling, making sure they stick with
10 their MHMR programs, so hopefully they're staying on their meds
11 and they don't keep reappearing in the system.

12 We do probations a little bit differently in terms
13 of the fact that Judge Crain will frequently have people keep
14 reappearing in court, where normally they wouldn't come into
15 court unless they had a violation. If they've got a mental-
16 health situation, he may have them come in every couple weeks
17 just to kind of give them a pat on the back and say -- give them
18 some positive reinforcement, which is something that doesn't
19 really occur in the normal system a lot. We normally don't bring
20 people in just to say good job. With the
21 mental-health system, it seems to have a much more positive kind
22 of effect and seems to keep people on track a lot better.

23 I don't know too much more to say about it. I
24 take a lot of input. In terms of just coming up with sentencing
25 recommendations, I'm always -- I've learned to kind of change

1 gears, once again, in terms of being a prosecutor and to try to
2 really be open to whatever kind of problem solving we can come up
3 with to kind of change the path that the person is on. I mean,
4 we do occasionally -- A lot of the crimes are very minor. You
5 know, like I said, we get a lot of criminal trespass, public
6 intoxications, shoplifting, theft of service for cab rides where
7 they just get out of the cab and walk off. But we do get the
8 occasional assaults and more serious crimes, so obviously my role
9 is also to keep the citizens in mind and the people the crimes
10 are being committed against.

11 But bearing that in mind, our main goal is to try
12 and change the direction these people -- their lives are headed
13 on so they just don't just keep reappearing in the system. Also,
14 keeping in mind that for a lot of the people that we see on our
15 docket, jail is not a huge deterrent. I mean, we have several of
16 these people who have been in the system so much that they
17 literally have been known to greet the guards when they get back
18 to jail because they've spent as much time in there as anywhere
19 else and sometimes -- sadly enough, are more comfortable in an
20 institutionalized setting and that's the one they're most
21 familiar with. So if jail is not a deterrent, we've got to find
22 a different way to change their behavior to help the citizens
23 out, and so we spend a lot of time doing that.

24 In terms of that program, obviously, we can answer
25 any questions. I'm also -- we're in the process, as we were

1 talking about, the veterans intervention program, something I've
2 been attending meetings on. Maria Cantrola, who is the
3 constable for JP 4, has kind of gotten that started up. It's a
4 program where we're trying to just basically get people routed
5 into veteran's services and get the social workers and counselors
6 from the VA more involved in the cases earlier in the process to
7 make it more clear that these people have options for therapy and
8 counseling. Just kind of take into account --if they've got PTSD
9 and that's something they're dealing with, we need to know about
10 it to make us more aware of what they're dealing with and to make
11 them more aware of the options that they have to work with.

12 We've already put a couple people on probation who
13 were veterans with conditions that they have to attend veterans
14 counseling and continue therapy at the VA. Just kind of getting
15 that on track to make sure that the VA is able to give them
16 services in a timely fashion and that they're going to be able to
17 work with the court system in helping these people through a
18 therapeutic environment while they're on probation. Doesn't seem
19 like it should have been that big a deal, but there is a lot --
20 I've come to realize how much bureaucracy is involved in dealing
21 with the VA. It's a major project.

22 And then the last thing, as I said at the
23 beginning, I'm also working on Project Recovery, which is a
24 program for repeat public intoxication Defendants, most of which
25 are homeless, many of which have mental-health problems. It's a

1 six-month program: three months of residential treatment, whether
2 in a center receiving treatment -- it's a really good program --
3 and then a transition program for three months where they try to
4 get them into housing, get them a job, get them out in the
5 community, and actually get them functioning on their feet rather
6 than just in-patient treatment, kick out the door, and good luck.
7

8 They actually have them keep coming back and going
9 to treatment for those three months after the initial three-month
10 residential. Then at the end if they complete the six-month
11 program, then typically their case is dismissed.

12 We have a lot of hiccups along the way. They're
13 brought back into court every couple of weeks to review their
14 case and how well they're doing in the program in terms of
15 compliance.

16 MR. JONES: Thank you. Before we get to our
17 questioning, I just want to take a moment to acknowledge John
18 Cutler, who is a member of the NACDL staff. He has the
19 unfortunate job of working with all of us to bring this off and
20 he's done a wonderful job of making this happen today and leading
21 the way on that. So thank you, John.

22 I also want to recognize Scott Ehlers who is in
23 the audience. Scott was a member of the staff of NACDL and
24 started his journey with us. He now is a senior policy advisor
25 here in Austin for State Senator Rodney Ellis, but we are happy

1 to have Scott with us today, as well.

2 Jay?

3 MR. CLARK: I guess for the two of you with the
4 DUI courts, we've had some other witnesses that have given us
5 some issues that I want to talk to you about. In Texas once you
6 get X number of DUI's as a misdemeanor, do they become felonies?

7 MS. ASHLEY: Yes. Two prior convictions enhances
8 a third --

9 MR. CLARK: Charge?

10 MS. ASHLEY: -- charge. I hesitate with that
11 because, as I said, we do have so many people with -- I have a
12 young woman that I'm working now with David Gonzalez on -- he was
13 here on the panel before us -- who's on, I believe, her fifth
14 arrest, but they came in clusters so that she never had the two
15 convictions to elevate a third arrest to a felony. So it's two
16 convictions, not necessarily two charges.

17 MR. CLARK: Are the two convictions -- is there a
18 look-back period in terms of number of years --

19 MS. ASHLEY: Not anymore. There used to be, but
20 no longer.

21 MR. CLARK: Are people who pick up that third
22 offense -- are they eligible for either one of your courts? I
23 guess it would be their felony -- first felony DUI charge?

24 MS. ASHLEY: Not in Travis County.

25 MR. HOBBS: We have a divided office in

1 Williamson, as well, so that would be up to the DA's office. If
2 they for some reason had a problem with one of their felonies or
3 they wanted to do it as a plea bargain, they could be eligible
4 under our guidelines; however, that has not occurred to this
5 point.

6 MR. CLARK: Ms. Ashley, I want to ask you --
7 because you went through the role of pretty much everybody in the
8 screening process to get in your court. I want to ask you,
9 what's the role of the defense counsel in the screening process
10 and then once the person is accepted, at least through your
11 office, because it apparently changes in Williamson County once
12 it's accepted by your office, if I understand right?

13 MS. ASHLEY: It's very similar to Williamson
14 County's, if not identical. One difference is we do focus
15 somewhat on our multiple DWI offenders, so we made the commitment
16 through my office to screen those to the extent that we can, to
17 the extent that we know about them when they first come in, with
18 the goal being to identify these people as quickly after their
19 most recent arrest as possible because early intervention has
20 proven to be the most effective. We made the commitment to do
21 that in this first year instead of relying on defense counsel to
22 bring us clients with the goal of rehabilitation and treatment.

23 Now we've been about six months into the program.
24 I am getting applications from defense attorneys with clients
25 with second DWI's that have come pretty close in time to their

1 first. Some may be on probation for DWI first when they get
2 their second. Some may have just completed their probation two
3 months ago and suddenly they get a second.

4 So it's a combination, so the hired or appointed
5 defense counsel is involved at the front end up and to and
6 through the point of plea. They sign a withdrawal withdrawing
7 from the case at the time that their client pleads in. We have -
8 - We're very fortunate to have an extremely experienced defense
9 counsel who is our full-time counsel. He, out of his own pocket,
10 sat on the steering committee for the first year while we planned
11 this and came to all the trainings on his own dime. Now I think
12 he probably gets some small fee that an appointed attorney would
13 get for maybe a plea or something like that for coming for two
14 and a half to three hours every Wednesday night for our court.
15 He takes on very seriously the role of representing the DWI court
16 participants' best interests. I think what I've witnessed is
17 that that would be the most difficult role probably on the team.

18 As a prosecutor, I think it was less difficult for
19 me to step outside my box and, as Mr. Hobbs said, we are Travis
20 County and we are very liberal here.

21 MS. SHIFMAN: Careful. That's very relative.

22 (Laughter)

23 MS. ASHLEY: Relative to San Francisco. We're
24 sort of the San Francisco of Texas. You know, many of us have a
25 special interest in this. The public defender who was here from

1 El Paso talked about the need for specialized training for every
2 member of the team, and I think if we all had a big pot of gold
3 and a magic wand, that's what we would all want.

4 But what we've found here in Travis County is that
5 there are those of us who have alcoholism in our families. We've
6 maybe been through -- I've personally been through
7 Al-Anon. I've had both in my biological family and my former in-
8 law family dealt with alcoholism all my life. So I understand
9 the issues. I understand that there is going to be relapses,
10 that we're going to have setbacks along the way. I think that's
11 easier for me than having to walk the line of -- that sort of
12 ethical and moral line that a defense attorney has to walk,
13 sitting and listening to the treatment providers discuss what is
14 the best pathway of treatment and rehabilitation for this
15 individual versus the client who -- our defense counsel meets
16 with outside of DWI court often and meets with the husbands and
17 the moms and the dads and the wives of the participants.

18 He may have them saying, you know, I don't want to
19 go to 28 days in-patient in the middle of this. You know, I just
20 want to keep going with my group that I'm comfortable with. I'll
21 do better. I'll be better. While the treatment team is saying
22 they need more intensive treatment up front, then they may do
23 fine in our program, but we can't help them with this three
24 nights a week of group therapy. This particular individual needs
25 more. So the defense attorney is having to battle those two --

1 you know, an angel on one shoulder and an angel on the other
2 shoulder that are both asking for something different.

3 Does that answer your question?

4 MR. JONES: Yeah. You both had talked about --
5 and I guess I'll ask Mr. Hobbs first, how old is your program?

6 MR. HOBBS: A year before that --

7 MS. ASHLEY: You'd already been a full year, I
8 think, when we started even with ours.

9 MR. CLARK: Your comments led me to believe, if I
10 understood them right, that you've got some idea statisticwise --
11 because I think one of the statements you made was, there is
12 really no difference in the resolve or the success of people who
13 come in and say I'm just doing it because it's better than going
14 to jail as opposed to saying I have a problem. How does your
15 office define somebody who is successful in the program? I'm
16 going to ask Ms. Ashley the same question.

17 MR. HOBBS: Well, successful in our program.
18 There are several different ways. I mean, as a prosecutor I look
19 it as, one, are our citizens protected while they're in
20 probation. Second of all, have they made changes? In other
21 words, from our treatment. If you're on regular probation, you
22 go to a class, you get a certificate, you sat there and you may
23 have said something and you may not have done anything. We get
24 feedback on what types of changes have occurred in these
25 individual lives.

1 As a prosecutor, I look at it as when they come
2 out the other end, do they have the tools that I think that they
3 need to stay out of the criminal-justice system. From what we
4 have seen through our graduates -- and, again, our judge will
5 probably have some better examples because he visits with them
6 one on one. We hear them in a graduate setting. But as
7 prosecutors, we get to visit with them, as well, in the courtroom
8 and it's not about legal issues. It's just how is life? What's
9 going on? And so we're not so standoffish. It's kind of like
10 putting officers in schools so kids get used to not being afraid
11 of officers. We visit with the participants so they're not
12 scared of prosecutors.

13 And we judge it on that on the first basis. In
14 the immediate sense, did they successfully complete the program?
15 Can they get through? If they're going to have relapses, did we
16 get them back on line, that they successfully complete the
17 program? That's the first step. Can we get them through that
18 program?

19 Beyond that then is I want to look at recidivism
20 and are they back in the criminal-justice system and have they
21 relapsed? To be honest with you, we had one lady that I would
22 say -- because I want to correct something earlier. We have one
23 lady that when she got off, she went right back to the sauce. We
24 got her sobriety for a short period of time and she fell and she
25 fell hard. She's back into our criminal-justice system and she

1 came to court with a .18.

2 So worst-case scenario right there. We had one.
3 Now she only has a bicycle so hopefully not much damage done to
4 the citizens of Williamson County because we can't put an
5 ignition interlock on that.

6 Then the other is going to be looking at it one
7 year down the road, two years down the road. My looking at it is
8 five years down the road from their successful completion. When
9 they don't have a watchful eye on them, have they relapsed? Are
10 they back in the criminal-justice system? Are they back with
11 alcohol violations? To me, a simple PI would be -- would qualify
12 as they're back. You know, the alcohol still has a control for
13 their lives.

14 MR. CLARK: Could you see -- Assuming that you
15 have a significant success rate looking back five years -- and
16 this is making you have a look forward -- where your court could
17 be changed to satisfy the citizens and MADD to make it a
18 situation or if they were completed, the treatment and they
19 stayed out of trouble for five years, the case then gets
20 dismissed?

21 MR. HOBBS: With our legal system, I don't know
22 if that would be possible due to the length of time that that
23 would take to go back. We couldn't retroactively do it or leave
24 it pending. I would think that would create legal issues at that
25 point.

1 MR. CLARK: So you'd need like a legislative
2 change or something that would allow something --

3 MR. HOBBS: The legislature could come through
4 for us in several ways and, I mean, I'm open to any idea and
5 that's huge for someone from our county apparently. I mean,
6 we're trying to change the mindset and actually help people, make
7 sure that we're going the extra mile to do that.

8 Legislative changes that would be more beneficial
9 to us is right now you have a surcharge tacked onto your driver's
10 license if you get a conviction for DWI that could be anywhere
11 from \$1,000 a year for three years up to \$2,000 a year.

12 MR. CLARK: Who decides that amount? Is it the
13 judge?

14 MR. HOBBS: No, it's the facts. The facts
15 trigger it. If you blow, if your breath specimen is over a
16 certain amount, then you're looking at a higher surcharge. You
17 know, our judge has advocated that what if they complete this
18 approved program, suspend that; and then if they successfully
19 complete it, then do away with it. They've invested enough in
20 treatment in this court process and everything else. In other
21 words, improving what can benefit their lives.

22 I don't think we can at this point say that we're
23 opposed to anything, but I think also knowing that they took
24 responsibility for it by getting something from the judicial
25 system, I think is also part of the process, that when they're

1 through, hey, I did take it -- you know, I took a hit on this,
2 but my actions got me to that point.

3 So right now I'd say no because I can't see our
4 community going that way, but, you know, what the future holds is
5 hopefully we're heading in the right direction.

6 MR. CLARK: Mr. Steans, I want to ask you about
7 your success. If I understand right, a person completes a
8 treatment, they go through their counseling and they comply with
9 their meds. Six months after the program, then their case gets
10 dismissed. Is that right?

11 MR. STEANS: Are you talking about the Project
12 Recovery Program?

13 MR. CLARK: I'm not sure because you told us
14 about more than one.

15 MR. STEANS: Right. The mental-health program
16 doesn't have a component like that. The Project Recovery Program
17 that's for basically the homeless population --

18 MR. CLARK: Okay.

19 MR. STEANS: Yeah. Their case gets dismissed if
20 they stay out of trouble and stick with the program.

21 MR. CLARK: Do you have any statistics or any
22 kind of data to tell us after it's dismissed, we don't see any
23 recidivism if the two, three, four, five years like that -- I
24 mean, however long term is it successful?

25 MR. STEANS: The program has only been around for

1 about a year and a half and I've only been involved with it for
2 about a year, so I don't think we really have long-term
3 statistical data available yet. We're in the process of
4 compiling it now because it's going to be necessary to keep the
5 funding for the program.

6 MR. CLARK: I want to ask all three of you -- and
7 I guess maybe kind of keep it as short as you can when you hear
8 the question. You all alluded to indirectly and directly that
9 one of the things that was difficult at first was as a prosecutor
10 thinking different, approaching -- I think Mr. Hobbs said --
11 sanctions differently as opposed to just putting them in jail.
12 How did you accomplish that? Was it something that one person
13 basically like being the elected prosecutor said, You will do
14 this. I don't care. Was it a team effort in the office, because
15 we've had other jurisdictions where it's not quite as easy for
16 the prosecution to get their head around it and then trying to
17 help these courts, if that's where we end up, help prosecutors do
18 this. How would you suggest to do that?

19 MS. ASHLEY: Well, I'm very fortunate in our
20 office. We assistant county attorneys that work beneath the
21 elected official have a great deal of prosecutorial discretion.
22 David Escamilla, our elected county attorney, has placed a lot of
23 trust in me with regard to the DWI court to work with the team
24 and determine what I feel like is the best sanction. He's never
25 given me any kind of restriction on that.

1 It's a post-adjudication court. Really, it's a
2 probation program that's judicially supervised. We just take a
3 team approach to it where a prosecutor would not be involved
4 generally up until a revocation hearing in any probation case.
5 So it's a little bit different. We kind of have done our job on
6 the front end to get the correct resolution on the case, and now
7 we're just helping the probation department and the judge and the
8 treatment providers -- offer the best service that we can to this
9 client.

10 MR. CLARK: Okay.

11 MR. HOBBS: As brief as I can be, it's from the
12 top down and I believe it was alluded to here. Judge Wright was
13 a major driving force, encouraged us to look at it this way. My
14 elected boss was very supportive and gave us a lot of discretion
15 in it. One of the things that really helped us was seeing
16 another drug court that was already up and running and visiting
17 with their judge and their prosecutors and having
18 one-on-one time with them to visit about it and see that it
19 works. Now that I've been involved with it, I've handed it off
20 and I've got prosecutors fighting me for assignments with the
21 drug court, which is above and beyond their regular duties now.

22 MR. CLARK: Fighting to get them?

23 MR. HOBBS: Fighting to get in to help with the
24 DWI/drug court. So it catches kind of like wildfire, so it's an
25 addiction that we would like to promote, which is wanting to help

1 it out, but it has to come from the top down.

2 MR. STEANS: I would say the same kind of thing
3 on the mental-health docket. I've had -- you know, our first
4 assistant in our office has been nothing but -- who is my boss'
5 boss and he's been very supportive and encouraged me to try and
6 think creatively in terms of how to deal with these cases. As I
7 said, it's a collaborative process, so the judges have been
8 supportive of it and everybody involved is -- it's a good
9 problem-solving approach to just how to manage that particular
10 problem and everybody has been supportive of it.

11 MR. CLARK: One of the things that we've talked
12 about a lot not just here, but in other cities is the success
13 rates and how far to go back. I was talking to a judge from
14 Minnesota who supervised a drug court for ten years, and he said
15 one of the things they did was find out why people fail. That
16 helped them tweak the program in terms of maybe screening at the
17 front end or the services they were providing. In the experience
18 of the three of you, has there been any effort to find out why
19 the people who don't succeed fail in terms of was it because we
20 missed an underlying mental-health issue? Was it something in
21 the screening process? Why do people not succeed in these
22 programs?

23 MS. ASHLEY: Our program is so new, I can be
24 pretty brief. I think we've only had one person so far who has
25 been removed from the program. She had two cases that she had

1 been placed on probation for. We put her in jail on one of them
2 and we're extending her probation on the second case to two years
3 to try and get her more intensive supervision and treatment
4 outside the DWI court. Just anecdotally coming from the
5 treatment providers, we believe that she had some underlying
6 mental-health issues that weren't identified up front. They're
7 not major axis-one diagnoses, but some personality disorder type
8 of mental-health issues that she couldn't bond with the group.
9 She couldn't -- in the group therapy setting she couldn't -- she
10 couldn't get out of it what everybody else could.

11 MR. HOBBS: A lot of ours -- and we are still
12 relatively new, as well, kind of in the same boat. A lot of ours
13 has been mental-health issues. Not necessarily to that degree,
14 but just underlying. There was emotional --
15 deep-seated emotional disturbances there that the alcohol may
16 have been a symptom of, could have been a cause of. We could not
17 divide it out. Others? You know, they just hadn't hit their
18 rock bottom yet. Our court doesn't look at those as failures.
19 We gave them as much or more supervision that we could. They may
20 be back in the system, but some -- I mean, failing out -- we
21 learn a lot from the failures, as well, and we believe we've made
22 a change. Maybe some of that will kick in the next time as much
23 as we can do.

24 MR. CLARK: I just want to give -- Because your
25 experience with the mental-health docket --

1 MR. STEANS: I was going to say --

2 MR. CLARK: -- is a little bit different; right?

3 MR. STEANS: Right. The mental-health docket is
4 different and you're not -- it's not so much a matter of just
5 putting somebody through a rehab program and expecting them to
6 get better. Part of that is, like I said, there is a lot of
7 social work involved. Part of it is scaling back your
8 expectations. You can't just expect them to just get better, but
9 if we can put them in a situation where they actually have a
10 solid place to live and they're supervised and they've got
11 somebody making sure they're on meds and they can stay out of
12 trouble for three or four years, that's a huge success to us
13 because we're used to seeing them come through the system every
14 couple of months. So you kind of have to amend your expectations
15 a little bit.

16 On the Project Recovery side, we are dealing with
17 alcohol issues. We're still kind of exploring to see, because we
18 are having failures and it's for different reasons. We're
19 starting to realize that a lot of it comes from the transitional
20 point where they're starting to look for jobs and stuff. They
21 get through sobriety fine in the in-patient part. It's when
22 they're trying to readjust to that life out in the community
23 where they're having problems. We're trying to kind of tweak
24 that, make sure they have a little bit more supervision than we
25 initially thought that they needed on the community-residential

1 side of things. We're kind of trying to focus on that more than
2 we initially did at the beginning, but it's an ongoing learning
3 process and we're constantly adjusting everything.

4 MR. CLARK: Vicki and Elizabeth?

5 MS. YOUNG: I have a question regarding the
6 Williamson County documents, because both you and the judge sent
7 us a link to Williamson County.

8 MR. HOBBS: Yes.

9 MS. YOUNG: And did you tell us that you were a
10 part of the ongoing formation of the court and its policies?

11 MR. HOBBS: In regards to the drug court, yes,
12 and probably a lot of the paperwork has been slightly tweaked
13 since I did it. But the original paper was created by myself and
14 our office.

15 MS. YOUNG: All right. Because I was really
16 fascinated by the program attorney contract.

17 MR. HOBBS: Yes.

18 MS. YOUNG: Where did you get the idea that
19 someone actually review with the participant that this other
20 attorney is coming in, and it really sort of sets out -- it's a
21 different role and I just haven't seen it before and I was very
22 intrigued by that.

23 MR. HOBBS: Well, we visited with a couple other
24 counties that had it in place and that was the hard thing, how do
25 we protect the attorney that we're asking to walk this fine line

1 from being part of the program. What we did was we took that
2 private attorney and took his contract that he would go over with
3 the paying client and we took the goals of our program and we
4 worked with that attorney and with our team and we just kind of
5 came up with here is what's going to happen. Because most of
6 ours are represented when they come in, it's gone over by their
7 representing attorney that are hired or appointed, about what's
8 going to happen and they visit with that attorney. We don't want
9 to blindsides anybody on what was going to happen, so it's kind of
10 one of our creations that we set out to do when we did our packet
11 of paperwork.

12 MS. YOUNG: Well, because -- now, the other thing
13 I didn't understand, your contract attorney is funded by the
14 court or funded -- these people end up hiring the contract
15 attorney?

16 MR. HOBBS: No, no.

17 MS. YOUNG: I couldn't tell --

18 MR. HOBBS: Oh, no, and that is confusing. No.
19 They're funded by the court so it's kind of a court-appointed
20 attorney status for that contract attorney, so the individual is
21 not out any money so whatever -- for that attorney. Whatever
22 they paid for their attorney that got them into the program or if
23 they had a court-appointed one, they're going in and that person
24 is representing them on the court's docket.

25 MS. YOUNG: And so they're representing them

1 during staffings. But if there is a violation and they wanted to
2 contest the sanction, apparently this contract attorney does not
3 handle that litigation and it goes back to whoever represented
4 the person before?

5 MR. HOBBS: That is correct; that is correct.
6 And if they -- there are a few that come through that are
7 unrepresented, and if that happens, then they would apply for the
8 court-appointed attorney and one would be appointed for them
9 outside of the contract attorney. That could be -- a revocation
10 could be filed, but most of the time what it is, the individual
11 says I don't want to go to in-patient. I don't want to do the
12 sanction that the court is recommending right now and I just
13 cannot agree to that. They talk with their contract attorney and
14 if the decision is we don't want in the program, then we go
15 forward rather than revocation. So sometimes it's driven by the
16 individual in the court. They are always given an opportunity to
17 opt out to a revocation status.

18 MS. YOUNG: And so these are people that are --
19 when you say post adjudications, post adjudication they've been
20 sentenced to probation and then they get -- their probation is
21 participation in the --

22 MR. HOBBS: Yes.

23 MS. YOUNG: -- DUI court?

24 MR. HOBBS: The conditions of their probation, as
25 we phrase it, is DWI drug court conditions, which is a separate

1 exhibit and separate conditions from standard DWI or standard DWI
2 probation.

3 MS. YOUNG: And then funding on the drug court
4 side they were saying in Texas, it was driven because so many
5 drug offenders were taking up prison beds. What is the funding
6 impetus for the DWI court?

7 MR. HOBBS: Same thing.

8 MS. YOUNG: Were they taking up --

9 MR. HOBBS: Same thing. There is two things
10 Texans love. One is guns and the other is alcohol and drugs fit
11 somewhere in there. But, no. The same motive was there.
12 They're looking at our correctional facilities, that the people
13 who have gotten their two, their three, their six, their ten,
14 their twelve -- are taking up room in our correctional facilities
15 at quite a large number, and I'm sorry I don't have those
16 statistics. But that's one of the driving factors behind it, was
17 if we can catch it early on and we can treat it, maybe we can
18 stop the numbers from growing because in Texas we do have quite a
19 large number that have gone to the felony level and are being
20 housed for long, long sentences. One of the last was probably 60
21 plus years in our county for DWI.

22 MS. YOUNG: Six zero?

23 MR. HOBBS: Six zero. I told you our county is a
24 little different.

25 MS. SHIFMAN: Is Williamson County a border

1 county? Where is it exactly?

2 MR. HOBBS: It's just north of here.

3 MS. ASHLEY: It borders Travis County.

4 MR. CLARK: Is that the blue county in the state?

5 MS. ASHLEY: No. Travis County is. You're
6 sitting in the big blue dot.

7 MR. HOBBS: No. But, I mean, you have to
8 understand, these are folks that are coming to us and we're
9 looking at the 12th DWI and we're looking at the 14th DWI. We're
10 not looking at their third, their fourth. We're looking way down
11 the road and folks that will not stop and continually put the
12 lives of our citizens in danger. So what we'd like to do -- and
13 I don't handle those. But what we'd like to do is head it off in
14 the beginning and that's the reason for the encouragement of DWI
15 courts.

16 MR. STEANS: If I could just interject for a
17 second. I think it's more than just the jail stuff, too. There
18 is also pressure from MADD and other groups to -- you can keep
19 locking them up, but you're still presenting a danger each time
20 if this person hasn't gotten treatment and hasn't gotten their
21 problem under control, even though they may get -- they may be
22 facing prison time under their fourth DWI. Do you really want
23 someone driving drunk so often that they're getting to the point
24 where they have a fourth DWI, even though they're still putting
25 people at risk the whole time? I think that -- the desire just

1 to simply take drunks off the road is part of what's driving it,
2 too.

3 MS. ASHLEY: I think that if I may interject, as
4 well, I wish I had the statistic with me because I'm not certain
5 of this but it's something we can all easily look up on the
6 internet. I believe that Texas has the highest rate of alcohol-
7 related fatalities in the nation, so it is much more than a jail
8 overcrowding issue here. It is a public safety issue, and that's
9 the line that prosecutors have to walk, when we talked about the
10 fine line defense attorneys have to walk. But we are accountable
11 to the public for the safety of the roads in Travis County.
12 That's something we take seriously.

13 MR. JONES: Elizabeth, you may begin.

14 MS. KELLEY: All of you at one point or another
15 have alluded to violations on the part of someone in your
16 programs. If that person, in fact, wants to challenge the
17 violation and they are ultimately unsuccessful in contesting the
18 violation, are they penalized for not just out and out admitting?

19 MS. ASHLEY: I would say that the only punishment
20 that comes in DWI court is for not admitting and taking
21 responsibility for their actions. The sanctions for relapses for
22 drinking again or for a SCRAM violation or an IID violation
23 that's substantial -- we wouldn't punish them for that. We would
24 try to come up with some sort of sanction that was educational,
25 that was treatment oriented. Generally the punishment comes from

1 repeated violations and lack of accountability.

2 MR. HOBBS: Let me see if I understand. Is the
3 question for the revocation, when they're done with the program,
4 they don't want to do it anymore or are you talking about on the
5 ongoing --

6 MS. KELLEY: While they're still on the docket
7 and they have a violation. If they want to contest it for
8 whatever reason, faulty technology or what have you, are they
9 penalized for just not admitting that perhaps they relapsed?

10 MR. HOBBS: Yes, in some instances. In one
11 instance we sometimes have overlap between alcohol and drugs, and
12 if we have -- they have color code for UA's. They can come back
13 and say I want to challenge that urinalysis. I don't believe
14 it's correct. Fine. We will hold off. We don't do anything.
15 We send that off to a lab for further testing. If it comes back
16 and they were right, you know, then okay. You know, no
17 sanctions, no nothing. If they're wrong, then one of them is
18 they've got to pay for that expense of having that tested and
19 then we go through with the sanctions.

20 Now, sometimes up front to cut through all of
21 that, we tell them, you know, just tell us and we will look
22 favorably on that because we want them to take responsibility for
23 it and that does go a long way with the court. We expect to some
24 extent for there to be relapses if we're truly dealing with
25 addiction.

1 MS. ASHLEY: And our defense attorney plays a
2 large role in that, as well. As I said, we staff the cases from
3 4:00 to 5:00 o'clock, maybe a little bit longer than that if we
4 have some problems during the week with one or more of the
5 participants. And then he has an opportunity prior to the start
6 of the actual court docket to go out and visit with that person
7 and say, look, you know, you had a SCRAM violation this week.
8 Everybody knows about it. Generally, what I've found so far is
9 that person has already 'fessed up in group counseling and said,
10 I screwed up. I drank last weekend. I need help. And they're
11 expecting to have that dealt with in court.

12 MS. KELLEY: So there is no confidentiality in
13 the group counseling sessions?

14 MS. ASHLEY: It's limited confidentiality and the
15 participants know that up front. They know that the treatment is
16 --

17 MS. KELLEY: Do they waive it in writing?

18 MS. ASHLEY: Yes. They know that the treatment
19 providers are going to be a part of the intake -- we call it the
20 intake staffing because that's the main role, but part of the
21 staffing procedure. They assure the clients and they assure the
22 -- the defense attorney assures the clients that non-treatment
23 oriented things they do keep confidential. They don't come into
24 staffing and tell us about their prior, I don't know, family
25 abuse or any kind of issues that may have led them to abuse

1 alcohol in the first place. The things that they share with the
2 team are related to their actual substance abuse.

3 MR. STEANS: Well, on the mental-health docket
4 it's a pre-conviction docket so that doesn't really come up
5 because they always can ask for a trial.

6 With the Project Recovery, it has actually been an
7 issue a number of times. Our kind of informal policy is, you
8 know, typically we -- if they have one -- are accused once and
9 they come in and deny it, we usually give them a free pass the
10 first time because we're pretty confident that if they're going
11 to have problems, they're going to continue to have problems and
12 we're going to see a pattern there. But they've already pled at
13 the time so ultimately it's up to the judge. You know, we all
14 sit there and she ultimately makes the decision on whether or not
15 she believes them when they come in, but usually they are given
16 several opportunities. It's not like they're given a sanction
17 immediately.

18 If they come in there and deny -- they're accused
19 by the counselors and staff of having consumed alcohol, say,
20 during the week and they thought they smelled alcohol and the
21 person said, no, that was mouthwash or something, the first time
22 they say it, we're not going to give them a sanction if they say,
23 no, that was -- you guys are in error. If it keeps happening
24 over and over, there is probably going to be a sanction.

25 MS. SHIFMAN: Just a couple questions. You keep

1 referring to your court as the DWI/drug court. Do you also take
2 drug cases or just DUI -- DWI's?

3 MR. HOBBS: Because our county did not have a
4 drug court in existence, we wrote our grant in regards to being
5 able to have the flexibility to take on DWI and drug. We do very
6 little drug offenders because it's only on a misdemeanor level
7 and we would only take them if they had shown a habitual record
8 of getting drug charges and then we provide it as an option.
9 Most of those come to us off of revocations from regular
10 probation when they couldn't make it and they were for drug
11 offenses. The option instead of going to jail would be plead
12 into the DWI drug court. So we have a few --

13 MS. SHIFMAN: Plea to a revocation into DWI
14 court?

15 MR. HOBBS: If they're on regular probation and
16 that wasn't working and we're having violations there, then
17 instead of revoking them and sending them to jail and whatever
18 else, we can provide more treatment and we can provide closer
19 supervision and hopefully give them some tools that they were not
20 getting on regular probation. So we do have that option -- I
21 think you mentioned it before -- for DWI's or for drug offenders
22 if they can be pled into court from a revocation status.

23 MS. SHIFMAN: So could that happen for someone
24 who is on felony probation but who maybe tests positive for
25 marihuana or something?

1 MR. HOBBS: Unfortunately, in our county, due to
2 the divided offices, I don't think that would ever be considered,
3 because they're under the jurisdiction of that district court
4 judge and I don't know if they would want to hand that off to our
5 county courts or our prosecutors down here, because they have
6 sole jurisdiction over the person once they place them on
7 revocation so they're personally responsible for their acts in
8 our community.

9 MS. SHIFMAN: Okay. And is that also true for
10 Travis County?

11 MS. ASHLEY: Yes. Both of our counties are
12 bifurcated counties. We have an elected district attorney and an
13 elected county attorney. Our county attorneys have misdemeanor
14 only jurisdiction. County Court at Law judges have misdemeanor
15 only jurisdiction with the exception of our domestic-violence
16 court.

17 MR. STEANS: We do have a felony drug court.

18 MS. ASHLEY: Our felony drug court handles
19 pre-adjudication, I think. It's the SHORT program that
20 Mr. Gonzalez talked with you about.

21 MS. SHIFMAN: Okay. And what do you do about
22 non-citizens?

23 MS. ASHLEY: Well, the biggest problem that we're
24 facing right now early on in our program is we have a large
25 number of our multiple repeat offenders, multiple DWI offenders

1 and repeat offenders who are either illegal aliens or they don't
2 speak English or both. We feel strongly here that we'd like to
3 be able to provide that service to everyone who needs it. We
4 don't have funding for that at this point in time. We honestly
5 have very minimal funding for the program that we have in
6 existence. I think for the entire program for the year we
7 received \$213,000. That's to cover the probation officer, you
8 know, all of the treatment arm and everything.

9 My office -- we do this out of our existing staff.
10 We don't have any funding for prosecutors to do this. So I do it
11 and the other attorney does it for -- as Mr. Hobbs said, just
12 because we want to. There is a great desire to be in that
13 program.

14 Now I've lost track of your question. I'm sorry,
15 did I answer it?

16 MS. SHIFMAN: Non-citizens.

17 MS. ASHLEY: Oh, so at this point in time it
18 wouldn't be their citizenship that would keep them from being
19 able to participate in the program; it would be their inability
20 to communicate in English, whatever their primary language might
21 be.

22 MS. SHIFMAN: And what about in Williamson
23 County?

24 MR. HOBBS: Most of that has not come up to this
25 point just because we've not had an applicant that has a

1 citizenship issue, but we face the same problems as even with
2 citizens, that we do not have a bilingual program for every
3 aspect of our court. We are trying and we would desperately love
4 to have that. It's just difficult right now. Again, more of our
5 barrier is a language barrier, more so than a status. So it
6 really hasn't come up in ours. Most of the individuals that may
7 have come up with that status only want jail time. The DWI drug
8 court has not been enticing to them one bit from their
9 representation. That's what the attorneys are conveying.

10 MS. SHIFMAN: You know, we've asked defense
11 lawyers for one recommendation about these courts -- what they
12 think NACDL ought to consider, what is it. We actually haven't
13 asked too many prosecutors the same question, but it would be
14 interesting to hear your perspective on if there was a
15 recommendation to be made, what should it be, either with regard
16 to funding or the role of defense counsel or the role of the
17 court, the judge, the prosecution, or law enforcement. What
18 would you want to see us to recommend? It would be interesting
19 to hear from all of you.

20 MR. STEANS: I've got one right off the bat. Oh,
21 in terms of the mental-health court, what I would -- I mean, if I
22 could just have unlimited funding for whatever I wanted, I would
23 want them to be able to have a transitional place to put these
24 people, because a lot of the time we deal with a lot of homeless
25 people with mental-health issues and if they don't have a place

1 to live or a family member or somewhere to put them, a lot of
2 times we're pretty much stuck with -- you know, we'll set them up
3 with one -- their first appointment for MHMR and maybe a week and
4 a half worth of meds and we put them back out on the street and
5 we have nowhere to put them. If we had a place for them to have
6 some transitional living -- a transitional living place, we could
7 actually put them on probation, have a place for caseworkers to
8 go and see them and supervise them and make sure that they're
9 doing okay and make sure that they're getting their meds and
10 somebody hopefully maybe even either get them back and forth to
11 meetings with the counselors or have the counselors come to the
12 transitional center.

13 So that would be great as opposed to just having
14 to kind of -- good luck, you know. Because that's really --
15 there is very limited -- the mental-health public defender's
16 office has done a tremendous job in terms of their social workers
17 going out and following up with people that we really don't have
18 any other option than to put them back on the street. They've
19 done the best that they can, but without a place for those people
20 to live, there is very limited amount that you can really do for
21 them.

22 MR. HOBBS: Funding would be a big issue and
23 incentives, like I said, with the surcharges with keeping your
24 driver's license, with keeping opportunities to be productive
25 citizens. Transportation is a huge issue. Our county, although

1 being just north of here, has a very poor public transportation
2 system, so getting people to and from meetings, getting them to
3 and from -- that's why I said the one lady rode her bicycle
4 everywhere, including in the pouring rain.

5 The other part is employment. We're talking about
6 transitions from employment. We have difficulty keeping them as
7 productive members of society just through employment because
8 it's very difficult for them to obtain it.

9 But from a legislative standpoint, maybe
10 guidelines on helping people recognize the validity of these
11 courts by giving some standards that have to be met.

12 Right now we go to training, but how our
13 particular county wishes to implement it is up to us. We just
14 happened to see a model that we liked and we followed it, but if
15 we could get some type of standardization that says these are
16 some of the aspects that must be covered and this is what will
17 certify your program and be recognized, then I think that we
18 would have a lot more respect in the communities and a lot more
19 awareness made of it if there could be given some credibility to
20 these and it's not just some whim that we went out on and are
21 playing with, that this is a real serious tool that we need to
22 have in our tool kit.

23 MS. ASHLEY: And I would echo funding, funding,
24 funding. To me it's a tragedy that we have filed over, as I
25 said, 7,900 cases, just under 8,000 cases in the last year of

1 DWI's and we can serve -- if we were fully funded for our program
2 as it's written, we could serve 75 people a year. That's 1
3 percent of the number of cases that we're filing.

4 It doesn't address public safety and it's just
5 flat not fair. I mean, you talk to the defense attorneys and ask
6 them, is it fair to offer a service to one percent of the
7 Defendants that are charged with the exact same crime? And
8 that's a little bit of a misstatement because they're not all
9 charged with the exact same crime. A large percentage of those
10 7,900 or so are DWI first that we'll probably never see again.

11 But even if you're serving 10 percent of the
12 repeat offenders, that's not enough. We need to be able to serve
13 them all. It serves public safety; it serves the Defendants
14 themselves.

15 There was some discussion in the panel before us
16 about social service programs to address the issues before
17 they're involved in the criminal-justice system. Unfortunately,
18 I think where DWI's are concerned, it's not realistic to think
19 that we can put the money there because I don't know how we would
20 ever identify those people. Going and picking people out of
21 society who might end up having an alcohol problem and might
22 then, while they're intoxicated, get behind the wheel of a car
23 and drive. I don't know how you'd ever identify those people.

24 For this particular segment, I think the money
25 should be focused on once we have identified them, how can we

1 treat them, particularly when they have no other criminogenic
2 behaviors. These are people with alcohol addiction and
3 substance-abuse addictions. If we can treat them, then we don't
4 have to worry about them driving their car.

5 MR. JONES: I've got just one last question.
6 We're just about out of time so I'd ask each of you may answer
7 very quickly. You talked about Mothers Against Drunk Driving,
8 and I think that's among the first that I can remember anyway of
9 outside groups being able to impact policy. I'm wondering if
10 there are other citizens or citizen groups that have had that
11 same ability to impact the policy, the running of these courts
12 and, if so, how that works. Do they reach out to you? Do you
13 reach out to them?

14 MR. STEANS: Well, I know as far as the family-
15 violence court that we have, that Safe Place kind of plays into
16 that just in terms of they send actual court monitors to court to
17 watch.

18 MR. JONES: What is Safe Place?

19 MR. STEANS: Safe Place is a -- what is it, a
20 battered --

21 MS. ASHLEY: Battered women's shelter basically
22 so --

23 MR. STEANS: -- women's shelter --

24 MS. ASHLEY: Modern version of a battered women's
25 shelter.

1 MR. STEANS: It gives counseling for battered
2 women and stuff like that. What is the name of the group that -
3 - the mental health -- I forget. It starts with an A. There is
4 a group that monitors -- in town that monitors through law
5 enforcement how the mentally ill are treated. That doesn't speak
6 volumes -- they really are much more effective. Don't let my
7 slip of memory affect your impression of them, but they do. They
8 come to a fair number of meetings and ask a lot of questions and
9 they're typically pretty involved whenever we're having meetings,
10 policy meetings in terms of coming to meetings and asking about
11 how it's going to impact the mentally ill. They're an advocacy
12 group and they do a pretty good job, as well.

13 MR. JONES: You say they impact policy, what do
14 you mean?

15 MR. STEANS: I think so. I mean, I've been at
16 meetings personally with the chief of police there, the sheriff
17 is there, and there is judges there. Just the fact that these
18 people are there and advocating and saying -- you know, they're
19 just very pragmatic about -- you know, we'll get caught up in
20 these policy discussions and they'll like -- well, how is this
21 going to affect the mentally ill guy that's panhandling on the
22 corner and just kind of bring it back down to earth a lot of
23 times. I think it's a very valid viewpoint to have there.

24 MR. JONES: Anybody else?

25 MR. HOBBS: I don't know of any organization that

1 would rival MADD's dedication to preventing DWI's. We both have
2 the same goals. It's just that theirs is more on the post-
3 adjudication punishment range of it, and some is trying to --
4 thinking that that will deter. But I would have to agree from
5 the prosecution's side, it's really hard to deter because most of
6 your first-time DWI's, maybe even your second -- they don't
7 intend to get behind the wheel intoxicated. They go out and they
8 have a good time and they just don't -- they give caution to the
9 wind. So I don't know anything that would rival that type of
10 policy-affecting machine.

11 MR. JONES: Thank you for your testimony. We
12 appreciate it.

13 We are going to break for lunch, and we will
14 reconvene at 1:00 o'clock.

15 (Recess)

16 MR. JONES: I hope you all enjoyed your lunch.
17 We are missing one of our panelists for this round, but we're
18 hoping that he will join us shortly. Not to keep these other
19 distinguished gentlemen waiting, I think we will just go ahead
20 and start.

21 We've got with us -- and let me apologize in
22 advance if I mess up anybody's name -- Judge Joel Bennett and
23 Judge John Creuzot.

24 JUDGE CREUZOT: Creuzot.

25 MR. JONES: Creuzot.

1 JUDGE CREUZOT: Like Perot.

2 MR. JONES: Like Perot, Creuzot.

3 JUDGE CREUZOT: He's rich; I'm not.

4 MR. JONES: Thank you both, gentlemen, for being
5 here. The way that we operate is to give you both an opportunity
6 to give us some opening remarks, five or ten minutes or so of
7 your thoughts, and then we have lots of questions that we hope to
8 engage you in. The way that we do our questioning is that it's
9 generally led by one of our number, and for this round the
10 questioning will be led by Vicki Young, from San Francisco. So
11 if you would just both introduce yourselves and then give us the
12 benefit of your opening thoughts, we'd appreciate it. I'll leave
13 it to you to decide who is going to go first, but the floor is
14 yours.

15 JUDGE BENNETT: My name is Joel Bennett, and I
16 graduated from this wonderful law school here and am very
17 appreciative of this law school and it's been great to have y'all
18 here.

19 MR. JONES: Thank you.

20 JUDGE BENNETT: I'm also a founding member of the
21 National Association of Drug Court Professionals and I'm a member
22 of the Congress of the State Drug Court Association, and I've
23 been president of the Congress of the State Drug Court
24 Association and I'm also a member of the Texas Association of
25 Drug Court Professionals and I've also been a president of that

1 organization.

2 All of these organizations have been involved with
3 promoting drug courts over the years. The initial membership for
4 the National Association of Drug Court Professionals -- one of
5 the organizing members was Claire McCaskill, who was a senator
6 out of Missouri. Also, Bill Ritter, Governor of Colorado, is one
7 of the members.

8 The reason I'm saying this is that there has been
9 a framework associated with drug courts for a number of years
10 already in place, so it has created at least a starting point for
11 I hope what you all perceive is where you all can be helped. I'm
12 not real clear on you all's goals. I did pull your goals from
13 the internet.

14 I've been a judge of the Travis County Drug Court
15 since -- for 15 years. I do it on a part-time basis and I also
16 practice law full time. I also have been a prosecutor in the
17 past and have represented a lot of criminal Defendants. And I
18 have seen what has happened to criminal Defendants who get
19 involved in the system and I have observed that many of them have
20 either drug addiction or alcohol addiction and you open the door
21 behind the crime, you'll find addiction, one kind or another.
22 That really is what led me into this field of drug courts,
23 because I got tired of seeing people in a revolving-door type
24 situation.

25 We find ourselves representing parents,

1 grandparents, kids, whole families and we never break the cycle
2 of addiction. I'm of the opinion that if we break the cycle of
3 addiction, we can break the cycle of criminal activity.

4 MR. JONES: Thank you. Judge Creuzot?

5 JUDGE CREUZOT: My name is John Creuzot. I am a
6 judge in Dallas, Texas. I handle felony criminal cases only. I
7 am a member of the National Association of Drug Court
8 Professionals. In fact, I'm on the board right now. I am also a
9 member of the Texas Association of Drug Court Professionals and
10 I'm sometimes a faculty member for the National Drug Court
11 Institute, depending on federal money. If it's there, I like to
12 do some teaching. Right now it's not very much there.

13 But, anyway, I in 1998 in January started a
14 diversion program in Dallas County. In the State of Texas we
15 have different punishment ranges for possession of drugs. The
16 lowest level, felony level, is called a state jail felony
17 offense. It's a minimum of 180 days to a maximum of two years'
18 confinement in a facility that's not a regular penal institution,
19 and there is no early release from those sentences if you get
20 sentenced.

21 We look at individuals who have been arrested with
22 no prior felony background. We do a clinical assessment, we do a
23 mental-health screening, and if they're in need of clinical
24 intervention, they can sign up and get into the program. It's a
25 maximum 18-month program. We take a holistic approach to

1 individuals. Of course, the main thing is treatment. That's
2 what they're there for, but we also look at mental-health issues.
3 We look at other cognitive issues, their behaviors, and we do
4 cognitive behavioral therapy. We do in-patient therapy. We will
5 address their mental-illness issues if we can. Obviously there
6 are some people who are too mentally ill for us to be able to
7 deal with, but we don't screen them out, only if they just can't
8 function in the program.

9 So the program has been going now for almost
10 eleven years. Be eleven years in January. We've graduated well
11 over a thousand people. SMU School of Psychology Department did
12 a recidivism study back several years ago for us, and we have a
13 68-percent reduction in recidivism.

14 Now, our control group -- compared to what? The
15 control group were people who came through our Dallas County
16 courts in '96 and '97, before the program started, and we were
17 developing a control sample then before we even started the
18 program.

19 Once we had the program going and went on through
20 it for a while, we went back and grabbed that control group and
21 matched them up as well as we could with our graduates and did
22 the comparisons there and 68-percent reduction in recidivism is
23 pretty much unheard of in criminal justice, but we faithfully
24 adhere to the requirements of the program and the philosophy of
25 the program and the ten key components.

1 And we also had the SMU Economics Department do a
2 cost-benefit analysis, and for every dollar spent we have \$9.34
3 in avoided criminal justice cost.

4 I also switched my attention to what I think is
5 being commonly called re-entry -- a re-entry population. In the
6 State of Texas, I as a felony criminal judge can order someone as
7 a condition of probation into a penal institution that is
8 dedicated only to treatment for substance-abuse issues. When
9 they come out, they're still on probation.

10 The way it works is they're there for six months.
11 They come into a facility in the local counties, assuming every
12 county has one. If it's a small county, they would go somewhere
13 else. But it's called a transitional treatment center. They're
14 required to do 90 days there. They can go get a job and do those
15 things. But they're required to do some things: have a job, have
16 a sponsor, working steps, and have \$500 in the bank before they
17 -- and complete their treatment program there. Then they go into
18 aftercare.

19 So what I started doing and some other judges in
20 Dallas and now around the state are doing is we capture them as
21 soon as they come back from the facility and we start a
22 drug-court model judicial intervention with them at the time. We
23 have probation officers dedicated just to them. Of course, they
24 get into treatment in pretty much one location so we have a lot
25 of good communication there.

1 But the bottom line is we studied that and we have
2 very, very significant reductions in new crimes and significant
3 reductions in revocations with those populations.

4 I don't know that there is a question these days
5 -- if so, I'm not aware of it anywhere in the United States -- as
6 to whether or not these are useful programs or beneficial
7 programs or cost-beneficial programs. I suppose you could find
8 somebody who would want to argue with the great mass of data
9 that's out there, but I think we're past that. We have probably
10 close to 2,000 problem-solving courts of either mental health,
11 substance abuse, DWI, prostitution, family-dependency courts,
12 juvenile courts. I think if you add them all up around the
13 United States, there are probably about 2,000. Here in the State
14 of Texas there are somewhere between 80 and 90 -- you know,
15 counties add on and we don't necessarily know about it. The
16 Governor's Office is doing their best to keep up with it.

17 But, like I said, I think we're past that point
18 and it's a question of do we have the resources and the training
19 to continue to develop these types of courts to meet the
20 challenges that folks come to us, that they present to us.

21 MR. JONES: Thank you. Vicki?

22 MS. YOUNG: First of all, Judge Bennett, I wanted
23 to clarify what you said. You said that you handle the drug-
24 diversion court on a part-time basis and then you said -- and you
25 also currently practice law. Are you a practicing attorney or

1 you're saying you handle other --

2 JUDGE BENNETT: I'm a practicing attorney.

3 MS. YOUNG: So in Texas you can both be -- sit as
4 a judge and practice?

5 JUDGE BENNETT: I only do the drug court
6 half-time.

7 MS. YOUNG: And the rest of your practice is
8 criminal defense or general practice?

9 JUDGE BENNETT: It's not criminal defense; it's
10 general practice.

11 MS. YOUNG: How is it that you decided to do the
12 drug court -- Let me back up. In forming the Travis County Drug
13 Court, were you on the inception of that process?

14 JUDGE BENNETT: No, ma'am, I was not.

15 MS. YOUNG: And you then sought a position as a
16 part-time drug-court judge because of your interest in breaking
17 the cycle of addiction?

18 JUDGE BENNETT: I didn't seek it; they sought me.

19 MS. YOUNG: All right. And how has that affected
20 -- There are just so many different roles the judges play in
21 being a judge on a criminal case, a trial-level case versus being
22 a judge on a drug-court level and being a practicing attorney,
23 and I was wondering, how did the training that you got teach you
24 the role of being a drug-court judge?

25 JUDGE BENNETT: Let me say this: we don't treat

1 the case in the traditional way that we would treat a criminal
2 case. We treat the individual instead of a Defendant, you might
3 say. We treat them as someone who is addicted to drugs, and our
4 focus is trying to come up with techniques and tools to help them
5 get off of drugs, albeit one of the sanctions may be putting them
6 in jail. But the focus of the drug court is dealing with that
7 addiction in a judge setting. The black-robe setting is the way
8 I like to say it.

9 MS. YOUNG: Is yours a diversion court so that if
10 they complete the drug court, their charges are dismissed or they
11 are placed in the drug court as a condition of probation?

12 JUDGE BENNETT: It's a diversion court. Most of
13 our cases are cases where they have not been indicted and they
14 come to our court and if they do complete it successfully, they
15 are eligible to get their cases expunged or their records
16 expunged or erased, in most cases.

17 MS. YOUNG: So if they haven't been indicted, I'm
18 assuming they have been arrested so they do have assistance of
19 counsel before them to apply to the court?

20 JUDGE BENNETT: What we do is we have two very
21 seasonal lawyers in our court that, in fact, represent them.
22 They act as attorneys for them in that court setting.

23 MS. YOUNG: In the drug-court setting?

24 JUDGE BENNETT: In the drug-court setting.

25 MS. YOUNG: And is that someone that's applied --

1 Well, in a paper I found from Williamson County, their court
2 funds someone called a program attorney, who I guess --

3 JUDGE BENNETT: You might call it that.

4 MS. YOUNG: Is that similar?

5 JUDGE BENNETT: I don't know the Williamson
6 County situation, but I wouldn't argue that this is a program
7 attorney.

8 MS. YOUNG: And if there is any violation during
9 the course of their participation in the program, would the
10 program attorney represent the person or is some other
11 attorney --

12 JUDGE BENNETT: The program attorney would
13 represent the person.

14 MS. YOUNG: What kind of advisements, if any, are
15 given either in writing or by the judge when they come into the
16 program as to how this court system is different from the other
17 court system that I'm assuming they've been through before?

18 JUDGE BENNETT: They are advised in writing. We,
19 in fact, have contracted them and they have to voluntarily come
20 into our drug-court program. They are not forced in; they
21 voluntarily come in and they sign a contract setting out the
22 expectations.

23 MS. YOUNG: And are these documents available
24 on-line?

25 JUDGE BENNETT: I don't know. To be honest, I

1 don't know, but they're certainly available. They can be
2 provided.

3 MS. YOUNG: And so a person opts into the
4 program. If --

5 JUDGE BENNETT: Yes.

6 MS. YOUNG: -- either they're terminated or they
7 decide to opt out, then it's just treated as a regular criminal
8 case?

9 JUDGE BENNETT: They go back to the regular
10 criminal court system.

11 MS. YOUNG: Are their charges that they face
12 elevated at all?

13 JUDGE BENNETT: Not at all, no. They start anew.
14 It's as if they had not been to the drug court.

15 MS. YOUNG: One question I have of both the
16 judges is -- I think you're correct, Judge Creuzot, that the
17 model that we've been hearing in terms of treating people with
18 addiction and having the resources available and recognizing that
19 people relapse and reinforcing their participation seems to be an
20 excellent model. I think some raise the question, but does that
21 model belong in a courthouse? Could you speak to that?

22 JUDGE CREUZOT: Well, it's a question of how do
23 you achieve accountability in people very likely not leading
24 accountable lives. You know, they're trying to do -- and I'm not
25 familiar with all the details of what they're doing in

1 California, but it's kind of go take care of this and we'll let
2 you take care of it. We'll give you some time to take care of it
3 and then this won't be a criminal-justice issue. You know, from
4 what I hear, that's not working as well as the drug-court model
5 does.

6 So, you know, it's kind of a curious thing. We're
7 trying to provide a public-health approach to what has
8 traditionally been a criminal-justice issue; that is, you've been
9 arrested and charged with a crime. And so what I see is the fact
10 that -- same thing as Judge Bennett -- is we have a contract.
11 They sign a contract. Now, I don't know about Judge Bennett's
12 program, but once you sign our contract, you can opt in but you
13 cannot opt out. Okay? Now, you can be terminated and expelled
14 from the program, but that's part of our whole vision of this
15 thing, is that we're going to help you do everything that we can
16 and you can to be accountable, even when you don't want to be,
17 which is very likely the reason they're there in the first place.

18 So what I see the gist of the whole thing is that
19 there is the power of a judge there not to punish someone, but to
20 motivate them to change when they know it's possible that
21 something like expulsion from the program, you'll be indicted,
22 you'll have a record and those kinds of things can happen. I
23 think that's a powerful motivating tool for most of the people.

24 Now, some obviously it doesn't matter. I've just
25 called this morning about one who is running a prostitution

1 program out at the treatment facility we put her in, so she's not
2 going to -- nothing is deterring her. She's going to do what she
3 wants to do and so that doesn't work for her.

4 But I think it's a good combination of things, the
5 public-health approach to addiction and mental-health issues with
6 the power of a judge and then kind of the stamp of the judicial
7 system on it to gain compliance when it wouldn't otherwise be as
8 good.

9 MS. YOUNG: What do you see the role of the
10 defense counsel both in the staffings and in the drug court
11 itself?

12 JUDGE CREUZOT: Well, our defense counsel is
13 paid. He's part-time. He has a practice and he does criminal
14 defense work, but he's -- the county pays him to do this. It may
15 be through the Public Defender's Office, but still it's county
16 funds that he's being paid. And he advises everyone before they
17 come into the program what the program is about. He looks over
18 their case. He has the police report. He gives them advice, I
19 assume, as to what the case looks like, whether they can beat it
20 or not and if they want to be in the program. We have people
21 that show up and talk to him and they don't want it.

22 He also participates in staffings. He's there in
23 court. He advises everyone of their rights before they sign
24 anything. He goes over all the paperwork with them. He's in the
25 loop of communication that goes within our group about anything

1 going on with them, good or bad, whatever. He also advises them
2 if we feel a sanction should be imposed and they disagree. He
3 advises them and represents them and we'll have a hearing on it
4 if that's necessary. I have a couple of those coming up soon
5 where people want hearings.

6 But he also advocates for them and he has very
7 strong feelings, and the reason I like him is he'll speak up if
8 he thinks that we're doing something wrong or inappropriate or
9 that we could have a different approach to someone, so he's a
10 very active member of our team.

11 MS. YOUNG: And what kind of -- how much time is
12 allowed -- you said that this person on the team -- or the
13 defense counsel has the police report, so in Texas when is the
14 discovery of the police reports made available, on arrest or --

15 JUDGE CREUZOT: No. I'm sure he could achieve
16 one, but he doesn't know who these people are. We're getting
17 them sometimes a referral from lawyers who would come in and do
18 that and sometimes we're getting them through a screening process
19 that we do at the jail as best we can, so they come to us from
20 different places and different manners. But we have an assistant
21 district attorney who gets paid for this team role and otherwise
22 she's just an attorney, and when she gets it, she gives it to
23 him. I don't necessarily see it. There may be some
24 discrepancies between what the person tells our evaluator and
25 what the police report says. You know, "I just had a little bit

1 of weed, you know, just enough to smoke for myself," and it's
2 really like two pounds and a pistol. So we kind of need to know
3 that.

4 So those are the only times I really know, but she
5 freely shares that. She may make a copy for him. I don't know.
6 But we keep all that as part of our paperwork and he always has
7 access to it and he certainly, certainly has access to it before
8 he talks to anyone. In fact, we don't even let it go through.
9 They can't even do anything to get in the program if we don't
10 have that paperwork.

11 MS. YOUNG: The paperwork being the reports?

12 JUDGE CREUZOT: Yes, whatever is generated. If
13 it's a lab test -- you know, whatever it is, we don't do anything
14 until we have that paperwork. And it may be sometimes they have
15 to wait two, three months, but we're not going to do anything
16 until everybody can do their part, including him doing his part.

17 MS. YOUNG: And then so the person doesn't have
18 to make a decision. Let's say they meet with the program
19 attorney, they have a five-second conversation out in the hall,
20 and then they have to decide?

21 JUDGE CREUZOT: No. In fact, what we do is we
22 set people up for orientation. We actually almost every -- we
23 run ours on Tuesday night. This past Tuesday night I think we
24 had five or six people who will come in for their first time and
25 they get to sit through the first part of court where these

1 incentives and sanctions and some accountability stuff is going
2 on. Then we take a break and we take them to another room and
3 give them an orientation packet. We let some of the participants
4 go with them and explain the program, what would be expected of
5 them, what they can get out of it. Then at the end of the night
6 the last thing I do is talk to them and try to get some feedback,
7 learn a little bit about them so I can understand what I'm
8 dealing with here and try to encourage them to get to the
9 evaluation on time, remind them what's in their packet, talk to
10 them about their drug use, their case -- not the details, but
11 what were you arrested for, try to get some kind of social
12 history, background, education, work, family, kids, and try and
13 encourage them to get to AA or NA meetings. We pull that out,
14 look at it, talk about where they live, what might be near where
15 they live or work and all that. So they have, I would think,
16 more than enough time to decide if they want to do that.

17 MS. YOUNG: And, Judge Bennett, the process in
18 your court for someone making a decision, whether they choose to
19 participate in the drug court?

20 JUDGE BENNETT: The sources of our cases are
21 those that are in jail and those that are out of jail. A lot of
22 times the cases that come to jail -- that are out of jail, they
23 already have their attorney and they would have gone, let's say,
24 to their attorney's office and discussed the case and looked at
25 the strength of the case with their own power of attorney

1 generally. They will sit in their office and make a decision as
2 to whether they want to opt in, voluntarily come into the
3 program.

4 Let's say they come to court and they have their
5 attorney. Their hired attorney, let's say, will talk to our
6 program attorney and they will kind of get together, making sure
7 that the hired attorney will know what's going to -- in great
8 detail what's going to go on in the court, go over the contract,
9 and at that point make a decision to come into the program. Once
10 they come into the program, the hired attorney goes about his way
11 or goes his way and the program attorney takes over representing
12 him in court. If he leaves, if he's kicked out of court or if he
13 leaves, he has to go back and hire him another attorney. He
14 won't keep the program attorney.

15 Jail, on the other hand -- sometimes they have an
16 appointed attorney, and that appointed attorney is different from
17 the program attorney. But the appointed attorney will go through
18 with the person and talk to them about the program and a
19 counselor also will have gone out and gone over with the person
20 about the program, so you've got two people communicating with
21 the in-jail person about the program.

22 They will come before me, make a decision about
23 whether he wants to come in. We will let him into the program
24 or her into the program that night from the jail. That doesn't
25 mean that they will get out of jail, but they are represented by

1 the program attorney once the decision is made to get in.

2 MS. YOUNG: This goes to both judges. If there
3 were something that you wanted to convey to defense counsel
4 through the National Association of Criminal Defense Attorneys
5 that you wanted to tell defense counsel about drug courts, what
6 would that be?

7 JUDGE CREUZOT: Well, I know there are places in
8 the United States where public defenders and some defense
9 counsel are afraid of drug courts. I've been exposed to that
10 through training that we do because we train teams. I never
11 quite figured out what the fear was. I think some of it was
12 losing control and taking it in a different model. They want to
13 have a witness-called hearing and want to fight the case when
14 we're not trying to fight the case, we're trying to fight
15 addiction. If somebody thinks they can beat their case and they
16 don't want to get in the program, that's fine. Don't get in.
17 Good luck beating your case.

18 Once we get in, the focus is to motivate people
19 to change and not to lock them up and those kinds of things. I
20 think there is a mind shift that needs to occur with some
21 counseling around the United States. The bottom line is if your
22 person is going to be handled in the criminal-justice system and
23 you're not just looking at pieces of paper and facts, if you're
24 looking at looking out for the good will of the individual --
25 the long-term good will, these programs are good programs.

1 They're effective programs. They're the programs that best
2 guarantee you don't see that person as a subsequent client.
3 These are the programs that are going to get them well, put them
4 back to work, get them back with their families.

5 I think some defense counsel see it very
6 narrowly. He's my client. I've been paid. I've got to beat
7 this case and anything that comes up along the way is going to
8 war about things. I mean, I've had that happen a few times with
9 people in treatment. We wind up going to war over where they're
10 placed in treatment and they're handling it like they would a
11 Motion to Suppress or, you know, somebody charged with a serious
12 crime that wasn't even there and didn't do it.

13 So I just think it's a -- from my perspective,
14 it's just a mind shift really to understand what we're trying to
15 accomplish and that the defense counsel has a very big and
16 significant role in trying to accomplish those goals, but
17 they're outside of what they ordinarily do. It's looking at the
18 person as a person, not as a client, not as a case, and it's
19 looking at the health of their long-term best interest, not just
20 when the case is over.

21 MS. YOUNG: Thank you. Judge Bennett?

22 JUDGE BENNETT: I agree there must be a shift,
23 but I think the public has already shifted. I think the public
24 is expecting more of judges. We can look at some of the shifts
25 in Texas on what's going on in judges, and I think the public is

1 expecting more of defense attorneys. I mean, just to take
2 somebody down and get a great plea bargain and put them on
3 probation, knowing that they're addicted is almost malpractice
4 in my opinion in some cases. I mean, there is no way they are
5 going to complete probation if they're addicted to crack
6 cocaine, let's say, or heroin or something.

7 On the other hand, if you have a choice of saving
8 that probation for later, if I may say that, and telling this
9 client, look, bud, you're going to go over here and get clean
10 and sober. This judge over there and -- be very hard on you.
11 He knows a lot about addiction and has a team of people over
12 there that's willing to help you stay sober. Now, we'll save
13 the probation if you mess up. We'll deal with that later. But
14 I want you to go over and try this first.

15 I think defense attorneys need to come to terms
16 with the concept of addiction -- and I'm talking about myself.
17 I mean, I didn't know a whole lot about it when I first got
18 started, but addiction just plays such a terrible -- has such a
19 terrible effect on families, mine and everybody else's family.

20 I think the public is saying we want to try this.
21 I mean, I think they're telling their legislators that I want to
22 try treatment, let's say, in a controlled environment. The
23 families don't want to just turn -- you asked, why can't we do
24 it out of the courtroom? They've been dealing with these people
25 for years. You know, they've stolen them out of their property

1 and their rings. I've lost rings. They want somebody with some
2 authority to have to control this person because they can't.
3 The community hasn't been able to, so to speak, churches, if you
4 will.

5 So they want somebody in a black robe seeing this
6 person, let's say, once a week and giving that person
7 instructions that may be in the form of orders, trying to help
8 change that person. So I think that is where the public is and
9 I think we as defense attorneys need to move in that direction
10 and listen to the public.

11 MR. JONES: Gail?

12 MS. SHIFMAN: In your courts are the Defendants
13 required to make admissions before they get accepted into the
14 program?

15 JUDGE CREUZOT: Not in mine, not anything
16 formal. Now, they'll go through their evaluation and give their
17 version of what happens, but we have a rule of what is said
18 there stays there. In other words, if it ever comes up in
19 court, we don't have anything recorded, number one. We have an
20 agreement that what is said there stays there and won't be used
21 against them later on.

22 MS. SHIFMAN: Judge, in your court?

23 JUDGE BENNETT: Same here, but I go a step
24 farther. I'm a 12-step believer. It's kind of -- the admission
25 that I want is not so much that I committed a crime, but that I

1 have a problem. I need to hear them -- If they think they don't
2 have a problem, they don't need to be over in the court, but I
3 want to hear that I really have a problem and I want some help.
4 I have a drug problem. That's the admission I want.

5 MS. SHIFMAN: And these admissions, for lack of
6 a better phrase --

7 JUDGE BENNETT: I understand.

8 MS. SHIFMAN: It gets recorded somewhere, does
9 it not, in the notes and the treatment plan, the intake --

10 JUDGE CREUZOT: Well, yeah, it will be recorded
11 in the initial evaluation. You know, yeah, it's there, but that
12 stays with us. They may talk to their probation officer and
13 talk about their addiction, their using, and this, that and the
14 other. But, I mean, do we have them say what happened on this
15 day at this time when they arrested you? No. That's not really
16 so much what we care about. It's treating the addiction, is
17 what we care about.

18 I agree with Judge, that's the major admission we
19 need.

20 MS. SHIFMAN: And what happens in the case of a
21 noncitizen in your courts?

22 JUDGE BENNETT: We take noncitizens.

23 JUDGE CREUZOT: We take noncitizens, also.

24 MS. SHIFMAN: I appreciate that as part of the
25 program it's kept sort of within the program, these admissions,

1 but what about the federal agencies like ICE or whomever who
2 might think that's charming, but don't really care about your
3 policies and your courts?

4 JUDGE CREUZOT: They've never asked for one
5 thing.

6 JUDGE BENNETT: I've never had a problem with
7 that.

8 MS. SHIFMAN: Have any of your -- Have you heard
9 of any of your participants in the courts themselves having
10 later problems with ICE or --

11 JUDGE CREUZOT: Oh, yeah, sure. They get
12 deported but --

13 MS. SHIFMAN: They get deported as a result of
14 being --

15 JUDGE CREUZOT: No.

16 MS. SHIFMAN: -- in your program?

17 JUDGE CREUZOT: No. No, no. They get deported
18 because they're illegal. They may get arrested. I mean, we've
19 had occasion -- in fact, we've had to rethink this putting
20 people in jail for very short periods of time as a sanction,
21 depending on what's going on. We've had a couple disappear.

22 MS. SHIFMAN: Right.

23 JUDGE CREUZOT: Adios. You know, away they went
24 to another country, whatever it was. Spanish-speaking country,
25 all of them. So we've had to rethink that about our non-

1 American and very often non-English-speaking participants in the
2 program.

3 MS. SHIFMAN: And has that also been the case
4 with green-card holders? Not illegals, but green-card holders?

5 JUDGE CREUZOT: Not that I know of.

6 MS. SHIFMAN: Okay. And as part -- I was
7 interested in your comments, Judge, when you talked about
8 problem-solving courts and you named the various kinds of
9 problem-solving courts, which include drug courts and DWI courts
10 and then expand out to include perhaps prostitution courts and
11 maybe sexual addiction or deviants courts, gun courts, et
12 cetera. Can you -- I mean, the difference between a diversion
13 court and these sort of specialty courts -- is there in your
14 mind a difference between these kinds of courts? We've heard
15 various kinds of testimony about them.

16 JUDGE CREUZOT: You know, when you say
17 diversion, let me narrow that word down, diversion. Okay? The
18 only thing that makes a diversion court a diversion court is
19 that we're trying to divert them from having a criminal record.

20 MS. SHIFMAN: Right.

21 JUDGE CREUZOT: The substance of the issues is
22 all the same. The approach subject to this population versus
23 that is pretty much all the same. For example, prostitution
24 court. You're going to be challenged there with probably
25 multiple addictions, perhaps, well, maybe sex addiction, too,

1 maybe not. And you're going to be challenged with various and
2 sundry mental-health issues there in addition to this
3 prostitution issue, but usually in a lot of cases those women
4 have also been sexually abused so you've got a lot of trauma
5 issues there. Okay?

6 Now, I'm not going to come across all that stuff,
7 except my little lady who was running her prostitution game out
8 of the treatment program. Okay? For the most part, in my
9 diversion court, because we don't take prostitution cases, I'm
10 not going to be confronted with that. But we have a wonderful
11 judge who is very kind and very patient who has taken the
12 challenge of these prostitutes and putting them together and I'm
13 giving them a lot from my re-entry program and she's going to do
14 a wonderful job. She's going to focus on all of that and all of
15 that alone, where it's difficult for me to get that in addition
16 to all this other stuff I've got going with all the other
17 people.

18 MS. SHIFMAN: Well, let me ask, the
19 problem-solving courts that are more specialty courts versus a
20 drug-diversion court.

21 JUDGE CREUZOT: Like when you say specialty,
22 what do you mean by that? More specialty court?

23 MS. SHIFMAN: Special-docket courts to a certain
24 extent.

25 JUDGE CREUZOT: Okay. Well, let me say this.

1 Other than the population and some of the things that may be a
2 little different about that, in the criminal-justice system, we
3 have one of our mental-health court judges here, Kristin Wade.
4 I don't know if she has or will speak to you. I think she's
5 going to tell you that most of those people have drug and
6 alcohol issues, so it's hard to escape that. There are other
7 issues imbedded in there that may take a different kind of
8 approach to it than just a drug or alcohol thing, but drugs and
9 alcohol are laced throughout all of these people: prostitutes,
10 the mental-illness courts, the DWI. You think they just drink?
11 No. They smoke weed and do this and do that. And so even
12 though you call them special populations, they have a lot things
13 in common.

14 MS. SHIFMAN: Judge, how about -- I guess what
15 I'm trying to get at is the sort of big benefit of diversion is
16 only offered in your county and I think in your county, as well,
17 for certain kinds of drug offenses.

18 JUDGE BENNETT: My knowledge is about drug
19 offenses.

20 MS. SHIFMAN: Okay. And does it include any
21 kind of distribution offenses -- drug distribution offenses?

22 JUDGE BENNETT: If they are users, also.

23 JUDGE CREUZOT: No in my situation.

24 MS. SHIFMAN: All right. So in your court they
25 would be charged just with --

1 JUDGE CREUZOT: Possession.

2 MS. SHIFMAN: -- possession?

3 JUDGE CREUZOT: Yes. Now, let me tell you, that
4 police report may show -- they may have charged them with it.
5 You know, they've got scales and a gun and we had one like that
6 recently. Well, we're not going to let him in.

7 MS. SHIFMAN: You are or you are not?

8 JUDGE CREUZOT: Not. Are not, n-o-t, going to
9 let him in.

10 MS. SHIFMAN: Okay. So it's just straight
11 possession or use?

12 JUDGE CREUZOT: Right. Even though they may be
13 charged with possession, if the facts reasonably appear to us
14 that they're dealing -- okay? His story is I like buying two
15 pounds at a time. Well, okay. That's nice, but the scales and
16 the gun and all that together -- that's a whole another story.

17 MS. SHIFMAN: So in your county it is decided
18 between yourself and the DA as to who gets in and who doesn't?

19 JUDGE CREUZOT: Really, it's the DA's role
20 technically, but we go over all of these and make a decision but
21 she makes the call. I'm a strict -- I want to adhere strictly
22 to what our guidelines are. I kind of watch that for in or out,
23 all of that stuff.

24 MS. SHIFMAN: And, Judge Bennett, in a situation
25 where you might have a police report that indicated scales and a

1 gun in the house?

2 JUDGE BENNETT: Not necessarily a gun now. That
3 would give me some concern, but certainly we've let scale cases
4 in where they tell me they're addicted to drugs and they have
5 five marihuana misdemeanor convictions and they come in with
6 some other dope case other than marihuana. You know, that means
7 to me they're selling something to get marihuana or something.
8 Here you evaluate the case.

9 MS. SHIFMAN: Right. And does the DA also sit
10 with you in that role in determining who gets in and who doesn't
11 get in?

12 JUDGE BENNETT: I make the ultimate decision.
13 All these programs are DA -- that's their job in Texas, but they
14 give us the liberty of having veto power, if you will.

15 MR. JONES: We've been joined by Judge Wright,
16 who I would like to --

17 JUDGE WRIGHT: I would hold myself in contempt.

18 (Laughter)

19 MR. JONES: I'd like to welcome you and I
20 certainly appreciate the opportunity to hold you in contempt.

21 MS. SHIFMAN: We're going to have a sanctions
22 hearing.

23 JUDGE WRIGHT: I felt like -- when I walked in,
24 I felt like I needed my lawyer anyhow.

25 MR. JONES: I will tell you that the sanctions

1 will be mild because your reputation precedes yourself. Dee
2 Hobbs was here earlier and said nothing but good things.

3 JUDGE WRIGHT: I do apologize.

4 MR. JONES: So you're off the hook and that's
5 fine. If you'd like, just give us five minutes of -- three
6 minutes maybe because we're short on time. Just tell us a
7 little bit about your court and how it operates, if you will.

8 JUDGE WRIGHT: Okay. I have a standard DWI/drug
9 court. I take only Class-A DWI's or a combination of something
10 with other offenses like a drug conviction or something else
11 that shows that there is an addiction problem. I don't know how
12 I differ from anyone else in what I wanted to share with you.
13 I'd be happy to answer any nuts-and-bolts question about my
14 court.

15 Something happened this week that I think y'all
16 should know about. It finally dawned on me after a lot of
17 evidence, is that I always take my graduates to eat on the night
18 that they graduate from my court, and I take them out in a more
19 relaxed situation, they're no longer on probation, and I get
20 them to share with me sort of like an exit interview. They
21 don't know that's going on, but that's what I'm doing. What's
22 good about the program? What's bad about the program?

23 So I have discovered this week -- I had a guy in
24 response to a question about what have you learned in my program
25 that helped you to get sober and to help you to stay sober, and

1 he looked at me and said, with all due respect, Judge, I found
2 out that I don't have a drug or alcohol addiction. What I found
3 out was that I brought a lot of other baggage in here that
4 caused me to make the two stupid decisions to get my two DWI's
5 and what I've taken from -- what I've received in this court is
6 that discovery of those problems and then you equipped me with
7 the tools that have helped me to solve those problems and this
8 court has set me free.

9 So I was going to tell you that we do other than
10 just solve drug and alcohol problems. People come in and have
11 lots of other baggage that they bring, and the tools that they
12 receive are effective for all of those things.

13 MR. JONES: Thank you for sharing that. I
14 appreciate that.

15 Jay?

16 MR. CLARK: Judge Bennett and Judge Creuzot, I
17 think I kind of want to pick up where Judge Wright just made the
18 comments about I don't have a drug and alcohol problem. I had
19 other baggage that I brought in. You gave me the tools to deal
20 with it. You both said a few minutes ago that basically you
21 don't want to hear somebody say I don't have a problem if
22 they're coming into your court. As defense attorneys -- one of
23 you commented earlier you're not sure what our goal is or what
24 we're looking for. One of the things we're trying to get a
25 handle on is the dilemma that is created for the defense

1 attorney who has a client who does just that. I don't have a
2 problem.

3 Well, here are your options. You can say you
4 have a problem, go to drug court, you don't go to jail.
5 Litigate your case, maybe lose your case, maybe go to prison.

6 As an ethical issue for the defense bar -- and
7 then this, I guess, I want to ask how your court attorney or
8 contract attorney deals with this. How do we resolve that,
9 because whose case is it? It's not our case, and with all due
10 respect, it's not your case. It's the client's case and the
11 decisions they make, they have to live with. How do we advise
12 them given the mindset -- and I'm not saying whether I think
13 it's right or wrong -- but given the mindset that you have, we
14 want somebody to come in open to treatment and open to dealing
15 with the demons that brought him there.

16 JUDGE CREUZOT: I'm going to say this. I think
17 I'm speaking for both programs. But that doesn't decide the
18 issue.

19 MR. CLARK: Okay.

20 JUDGE CREUZOT: Okay? We have some attorneys
21 who tell them, go on and try it anyway. Okay. But I want to go
22 back to something I said and I want to -- now is the time to
23 highlight it. The clinical evaluation drives the entry into the
24 program. If they go tell our evaluator I don't have a problem,
25 this is a one-time deal or whatever or it doesn't -- or whatever

1 it is, it doesn't arise to the need of a clinical intervention,
2 they can't get in the program. Now, the problem is when they
3 lie so they can accomplish what you said, get this case off
4 their backs, et cetera, et cetera.

5 My experience has been that they can't make the
6 program because the program asks too much for a person who
7 really does not need clinical intervention, because what will
8 happen is, is they get resentful, they get angry, they don't
9 know why they're there, they don't want to participate with
10 other people talking about their drug and alcohol and family
11 problems and on and on and on. Before long, they're not going
12 to be able to do it and it will show maybe noncompliant. Those
13 things kind of pop up just pretty quickly.

14 JUDGE BENNETT: The other thing is if you've
15 done it as long as I've done it, you know the lawyers that will
16 send them over there with a lie. I mean, it's just the bottom
17 line. You know, they have gone to the probation officer and
18 they'll say I don't have a problem, but then they go see Lawyer
19 Smith or Lawyer Clark, if you will, and I know in the past
20 Lawyer Clark has sent a bunch of them over there and they all
21 change their minds after they've seen Lawyer Clark.

22 Well, I don't want to hear that. What I probably
23 would do is say I want you to go to in-patient treatment first.
24 If they go to in-patient treatment and still come out and want
25 in, I let them in. You know, you create a hurdle, but you have

1 to deal with that.

2 MR. CLARK: How does the contract attorney or
3 the program attorney keep straight his ethical obligation with
4 his client working in that environment?

5 JUDGE BENNETT: And I want to be real clear when
6 you say his ethical obligation.

7 MR. CLARK: To protect his client's best
8 interest. What is in his client's best interest besides that?

9 JUDGE BENNETT: Well, the program attorney is
10 only going to represent him once he gets in. So he's not
11 worried about whether he's lying or what have you, I don't
12 think. I think he's more worried about, you know, appropriate
13 treatment, whether my sanctions are too hard or something along
14 those lines. He may want to travel and I said no travel. But
15 the end court type things that he's more worried about, so I
16 don't see the dilemma associated with lying at that stage.

17 MR. CLARK: Can a Defendant who has a private
18 attorney before he is accepted in the program keep that attorney
19 in the program, or does he have to use the attorney that is the
20 program attorney?

21 JUDGE BENNETT: He can have two attorneys, as
22 far as I'm concerned. The program attorney deals with in-court
23 issues that arise in the courtroom.

24 MR. CLARK: And so the Defendant doesn't have a
25 choice who his attorney is at that point?

1 JUDGE BENNETT: At that point.

2 MR. CLARK: What about yours?

3 JUDGE CREUZOT: Ours is different. Our attorney
4 doesn't want to represent them if they have a private attorney.
5 We contact the private attorney on things. If he or she says
6 I'm out of it and I'm no longer in it and we present that to the
7 person, you can have this person as your attorney for whatever
8 or you can go hire someone, most -- I think almost all of the
9 attorneys are interested in following up with it. I don't think
10 we've had a problem with this and, no, I'm not involved anymore.

11 MR. CLARK: Okay. I want to follow up on
12 something that Gail talked about in terms of the types of
13 offenses that qualify. She talked about, basically,
14 distributing or selling the drugs and given some facts you may
15 or may not let them in. What about charges that appear to be
16 non-drug-related like thefts, that when you read the report, why
17 did you steal the TV or whatever? I've got a drug problem.

18 JUDGE CREUZOT: They should be included.

19 MR. CLARK: Okay.

20 JUDGE CREUZOT: I think that anybody in criminal
21 justice who practices law and however involved judges, probation
22 officers, whatever -- you know, this whole thing started in '89
23 to address drug issues, and then we have some public policy out
24 of Washington that addressed drug issues and drug cases. Then
25 we excluded the so-called violent offender, somebody who

1 probably was being violent because of the alcohol and/or drug
2 issues. So I think it's evolved, that it's a drug case.

3 However, in 2001 our legislature passed a
4 drug-court bill that doesn't require that it be only a
5 drug-court case, but that there obviously be some underlying
6 drug and/or alcohol issues. So it's not -- there is no statute
7 in this state that limits it to that, but I think my practice
8 has pretty much been for drug cases.

9 MR. CLARK: We've heard some testimony based on
10 the population of the county, whether you do or do not have to
11 have a mandatory drug or alcohol court?

12 JUDGE CREUZOT: Now, at first it was a county --
13 any county over 500,000. It's been reduced to any county with
14 200,000 plus.

15 JUDGE BENNETT: One last point. That's an issue
16 with the district attorney as to the kinds of cases. You know,
17 that's really -- that's where that argument should be taken up.

18 MR. CLARK: Is there a mechanism in any of your
19 three courts -- I guess, real quick, just yes or no -- where if
20 the prosecutor's office or district attorney says, no, Jay Clark
21 is not eligible, that person can appeal to you to override that
22 decision?

23 JUDGE CREUZOT: No.

24 JUDGE BENNETT: No.

25 JUDGE CREUZOT: It's their case; it's their

1 prosecution.

2 JUDGE WRIGHT: Could I address one thing? I'm
3 different from them and mine is not a diversion court. I don't
4 have a problem with anybody being dishonest to get into my
5 courtroom -- I mean, to get into my program. Okay? And then
6 also you're presupposing that the people who come to see us know
7 whether or not they have an addiction problem or not and there
8 is many who will come to us who will sit there and tell the
9 person that's doing the intake that they don't have a problem
10 and then after going through the SASSI and the other tests that
11 they take, we find out that they certainly do. So I haven't run
12 across that problem because there are other things that
13 encourage them to come into my court, but not a diversion.

14 JUDGE CREUZOT: Let me -- You know, the flipside
15 of your question is, the person that comes to you with a drug
16 case and they -- everything they tell you -- you know, I'm a
17 dope fiend, I'm a drunk, I'm a this, I'm a that, I'm the other,
18 but I don't need any treatment. Hello?

19 MR. CLARK: I'm familiar with those.

20 JUDGE CREUZOT: Right. I mean, that's all, so
21 that's the other side and that's a dilemma for you all, also.

22 MR. JONES: We are technically out of time, but
23 I'm going to exercise the chair prerogative and take five more
24 minutes. I know that Elizabeth and Gail both have a couple of
25 questions.

1 MS. KELLEY: Thank you. As you three may know,
2 we've conducted similar hearings throughout the rest of the
3 country, and some of your judicial colleagues -- not all of them
4 -- have noted that they are perceived by some of their other
5 colleagues on the bench as being more social workers than
6 judges, and because of that, they are not perceived as being
7 true jurists. Do you receive any of that type of feedback; and,
8 if so, how do you handle it?

9 JUDGE CREUZOT: Oh, you know, when I started
10 this, everybody told me I was crazy, it was too risky, and this,
11 that, and the other. It wasn't that I was being a social
12 worker; I was crazy. Now we have a whole new batch of judges
13 and they're trying to figure out how to start a court of some
14 sort and try to do some good.

15 You know, it is social work. I think he put it
16 perfectly. Neither one of us said it really, but these people
17 come with a host of problems, and it's not just the drugs and
18 the alcohol necessarily. There are other things that are big
19 problems in their lives, and so that's part of what I said is a
20 holistic approach and as part of it, those clinical evaluations
21 are done and as part of continuing reassessing them on where
22 they are. The program is not just about going to treatment;
23 it's about getting a job and a bank account and all the things
24 that normal people do to get them acclimated to being a regular
25 person in society so it is some social work in a sense.

1 You know, one of the components that aren't very
2 -- I haven't seen really in drug courts very much is they really
3 need a social worker in there to take care of all those issues.
4 Some do and I think most don't.

5 JUDGE BENNETT: My position is that the public
6 wants judges to be social workers in dealing with the problems.
7 They are very complex problems. I think judges need to
8 understand that they want more out of their judges, and I see
9 more and more judges coming to understand that. That's my
10 position.

11 JUDGE WRIGHT: That would cause a fistfight for
12 me. They would have to follow me around during my day. My
13 part-time job is the DWI drug court. I have two courts, thank
14 god, and so I have two. One of them starts at 5:30 and the
15 other one starts at 4:00 o'clock and we staff before that. But
16 the truth of the matter is that I have a full-time family docket
17 and a full -- double full-time criminal docket and so I don't
18 run into that, although since I'm in the world of the Mothers
19 Against Drunk Drivers, I will have to tell you that I did take a
20 lot of grief in trying to start my court in my very conservative
21 county just north of here. It has been worth every bit of it.

22 Before the chair changes, I cannot believe I
23 thought I was supposed to be here at 2:00 o'clock. So I've got
24 to tell you that I missed everything and there is something that
25 I have no idea what sort of influence you have on legislation,

1 but would you give me just a couple of seconds to suggest some
2 legislation?

3 MR. JONES: Certainly.

4 JUDGE WRIGHT: If you want to fill our courts
5 and allow me to be a full-time -- which I would love to. I'm
6 trying to start a -- I'm the mental-health judge for Williamson
7 County and I'm wanting to start a mental-health court so we're
8 working on a grant for that.

9 If we want to quit worrying about grants and we
10 want people to come in there with problems and foot their own
11 bill unless they, of course, can't afford to and they're
12 indigent -- if we could pass a bill in this state to where the
13 three of us were given an option to hold in abeyance the
14 collection of the surcharges that come up from our Department of
15 Public Safety for people who get a driving while intoxicated, on
16 a second offense it's \$1500 a year -- if I could hold that in
17 abeyance and then they wouldn't have to go through the
18 occupational driver's license phase but could just go ahead and
19 qualify for a regular license and then if they complete my
20 court, then allow me to terminate the collection of that by the
21 Department of Public Safety, that would go a long way towards
22 filling my courts, where I'd have one every day instead of two
23 days a week.

24 The other thing is, is that I live in this world;
25 I dream in another one. So if I'm going to dream in the other

1 world, I would say make me like a lot of other people and if
2 someone can complete a DWI/drug court, stay clean and sober for
3 two, three years thereafter, and submit to random drug testing
4 or whatever and stay clean for that long and have no other
5 arrests for anything higher than a Class-C misdemeanor, then
6 allow me to not -- not just to give -- sign an order of
7 nondisclosure, but to join in any other classes of crimes in
8 this state where we could extinguish that.

9 In that regard, it wouldn't be just a gift that
10 came at the end of the deal. They would have to show us that
11 the program worked for them and that they have the -- two types
12 of people come out of my court: those who just struggle to get
13 through, but the vast majority of those people who made life-
14 changing things in their life and we're never going to see them
15 again. I know good and well that two-thirds of those people
16 from what I see from the statistics, that I'll never see them
17 again. They're people that come through my court and my county
18 of 320,000.

19 I've seen the same people with DWI's so many
20 times and other related crimes of assault/family violence and
21 other things. Once those people finish and they complete my
22 course, more than likely I'm not going to see them again. And
23 so let's do anything that we can to encourage them to come in
24 there.

25 We've also cut down on the amount of funding that

1 was necessary, because the way I get people in my court is that
2 we offer the incentives that we offer to get them to come into
3 the courtroom deal basically with money a lot of times. It's a
4 shorter probation and it's less of a fine and there are other
5 things that we do to get them to come in there. But I'm saying
6 there are people that would come in with those carrots hanging
7 out there to where we wouldn't have to finance their
8 participation in the DWI/drug court.

9 Thank you for letting me say that.

10 MR. CLARK: Judge Creuzot, you talked about your
11 studies from SMU.

12 JUDGE CREUZOT: Yes.

13 MR. JONES: If John Cutler gets in touch with
14 you, can you get us copies of that?

15 JUDGE CREUZOT: Oh, absolutely.

16 MR. CLARK: Okay, thank you, sir.

17 MR. JONES: There is never enough time and there
18 are certainly more areas that I'd like to explore with you, but
19 my job as timekeeper trumps my job as questioner and so I'm
20 going to thank you gentlemen very much for your testimony and we
21 wish you a good afternoon.

22 JUDGE CREUZOT: Thank you.

23 JUDGE WRIGHT: Excuse my tardiness.

24 JUDGE CREUZOT: I'll deal with that later.

25 (Brief recess)

1 MR. JONES: Our next panel is Carl Reynolds,
2 Anne Brockett, and Ana Yanez-Correa, and if I've mispronounced
3 any of your names, I apologize. Welcome.

4 MR. REYNOLDS: Welcome to Austin to you.

5 MR. JONES: If you've been here at all -- I
6 don't know that you have and I think you at least saw the last
7 panel -- the way that we operate is to give you all an
8 opportunity to introduce yourselves and take maybe five minutest
9 to give us the benefit of your thoughts, and then we've got lots
10 of questions that we'd like to ask. Each one of our panels is -
11 - the questioning is led by a different one of us and the
12 questioning for this panel will be started by Jay Clark. So I
13 leave it to you to determine amongst yourselves who will go
14 first, but the floor is yours.

15 MR. REYNOLDS: I'll go first.

16 MR. JONES: Great.

17 MR. REYNOLDS: My name is Carl Reynolds. I'm
18 the State Court Administrator here in Texas. For those of you
19 from California, I'm the Bill Vickery of Texas. I don't know if
20 you know Bill. He lives in San Francisco. One difference is
21 that Bill has 800 people that work for him; I have about 60.
22 California has a very unified court system as of the last ten or
23 so years, and Texas has probably the most decentralized,
24 desegregated collection of courts and judges in the country. We
25 have 254 counties, about 3400 judges in the state, a highly

1 decentralized system, and very little unified control or
2 management of the system from the state level.

3 I say all that to preface the fact that I wanted
4 to bring to your attention some more structural policy-level
5 issues about the implementation of drug courts. What I wanted
6 to do is tell you a little bit about a document that was created
7 by my group -- my national group, which is called the Conference
8 of State Court Administrators. They wrote a little policy paper
9 back in 1999 and I just wanted to give you a little bit of an
10 idea what's in that paper and I sent that to John Cutler the
11 other day. Then I want to tell you a little bit about some more
12 recent thinking by my national group and then finally a little
13 bit about my perspective on the drug-court situation here in
14 Texas.

15 So looking back to 1999, I think it would be safe
16 to say that state court administrators, perhaps much like
17 defense lawyers, were looking at the groundswell of activity in
18 drug courts with a little bit of apprehension, a little bit of
19 concern. There was a perception that drug courts were -- drug
20 courts and problem-solving courts in general were coming -- kind
21 of just evolving out of nowhere, individual judges taking up the
22 cause, as you just heard about from Judge Creuzot, in
23 particular. He certainly said what I've been for a long time
24 wanted to and has taken up this issue for many years.

25 Coming up out of the budget of legislative

1 initiative and out of the executive branch initiative to some
2 extent and not so much out of the court system itself, problem-
3 solving courts go against what had been a long-term trend in
4 court administration of more of a unified court system having
5 nonspecialized judges, having a unified docket, and so this
6 whole trend toward specializing and having judges who have these
7 particular dockets goes against that trend and creates a little
8 bit of a strain on court organization.

9 Drug courts -- Certainly expressed in this paper,
10 that drug courts create a strain on court resources. We've got
11 a judge doing a really great job with 20 people instead of
12 handling 200 cases, just to use round numbers. And then the
13 potential negative impact on judicial neutrality and ex parte
14 issues, ethical issues for judges that were also mentioned in
15 this 1999 paper.

16 Fast-forward to 2006. There was a summit that
17 was held by my colleagues around the country, a problem-solving
18 court summit. I should step back and say that I have not been
19 particularly involved in this issue at the national level or at
20 the state level, and in a minute I'll tell you why, so I wasn't
21 at this summit. I'm reading things and I've talked to one of my
22 colleagues, Dan Becker, from Utah, who is much more involved in
23 the drug-court issues than I am.

24 But the sense that you get when you read this
25 2006 summary of what happened at the summit is that they have -

1 - the state court administrators have kind of come around, that
2 they're now basically saying the drug courts are here and
3 they're all over the place. We need to get our arms around
4 this. We need to work on implementation, institutionalization.
5 We need to grapple with this issue, not fight this issue,
6 essentially. So they're talking about strategies to
7 institutionalize problem-solving courts such as adapting case-
8 management systems so that they are not just in the mold of old
9 case management so that they contemplate problem-solving court
10 systems, re-evaluating the random assignment of judges,
11 basically, looking at court administration and adapting it to
12 problem-solving courts rather than seeing problem-solving courts
13 as a problem for court administration.

14 The big focus of that summit was primarily on the
15 ethical issues, the ex parte issues in particular that they saw
16 as a concern for judges, Conference of State Court of
17 Administrators, and the Conference of Chief Justices, which is
18 our parent organization -- the Chief Justices of all the states.
19 They lobbied to have the ex parte communication issue addressed
20 in the ABA model Code of Judicial Ethics. That effort was
21 somewhat unsuccessful, but it did result apparently in a changed
22 -- in alteration to a comment to the ABA model code recently
23 adopted. And then considerable attention has also been given to
24 the need for effective state coordination of problem-solving
25 courts.

1 So that's kind of the challenge to the state
2 court administrators around the country, and I want to bring
3 that challenge here to Texas to you and tell you that in Texas -
4 - and Judge Creuzot alluded to this -- the state level judicial
5 branch, which is me in my office and the Chief Justice -- we
6 have absolutely nothing to do with drug courts. In Texas drug
7 courts are governed by the Governor's Office, the executive
8 branch.

9 In fact, the last session of the legislature
10 passed a bill that further drilled that point home. There is a
11 bill that was passed that Judge Creuzot also alluded to that
12 lowered the population threshold for counties that are required
13 to implement drug courts to 200,000. That bill also mandated
14 that the Governor's Office be in a governance role over drug
15 courts, so we have this peculiar -- and this is not unique to
16 drug courts. There is a lot of oddities in the Texas court
17 system, where the executive branch is, in my opinion, much too
18 involved in governance of the judicial branch and this happens
19 to be one of those situations.

20 So that bill also -- couple of concerns about
21 that. I mean, I don't want to come across as anti-drug court
22 because I think it's a terrific innovation and I do think that
23 it works. I think the evidence shows that it works. I wanted
24 to just get across to you that here in Texas and perhaps
25 nationally there are some structural considerations to how it's

1 implemented and how it's brought to scale, as the drug-court
2 people like to talk about.

3 The other problem with the bill that passed in
4 Texas is that it required -- the funding source for all these
5 drug courts is to impose more fees on people in the criminal
6 justice system, and you heard a little bit about a particular
7 fee a minute ago that's particularly onerous, but this drug-
8 court bill has a \$50 fee, I think, that is required and that --
9 apparently they're having a little bit of trouble collecting and
10 so we're having a funding issue in drug courts.

11 But there is a tendency in Texas and I think in
12 many states to try to fund court system innovations through the
13 continued imposition of more and more and more fees, and that's
14 perhaps an issue in itself for another day.

15 That's all that I wanted to touch on, and I'll be
16 happy to try to answer your questions.

17 MR. JONES: Thank you. Next?

18 MS. BROCKETT: Yes. I'm Anne Brockett, and I
19 want to just talk a little bit about the Texas Department of
20 Criminal Justice and particularly my division, which oversees
21 probation in Texas, and that's called Community Justice
22 Assistance Division.

23 Just basically what I'd like to say is that about
24 eight years ago we began to hear, particularly through Judge
25 Bennett and through Judge Creuzot and Judge Gist about drug

1 courts and about how pleased they were with the effectiveness of
2 them. Just as Carl pointed out, we're in kind of an unusual
3 situation, too, because probation in Texas is responsive to the
4 judicial system and we're part of the executive or
5 administrative part of government, so there is -- you know,
6 probation departments are -- 122 different probation
7 departments. They have probably, I'm guessing, 400 district
8 court judges. I don't know, but quite a number.

9 MR. REYNOLDS: Closer to 450.

10 MS. BROCKETT: 450 district court judges and
11 they're very independent. The probation departments are semi-
12 autonomous from us so, therefore, we're in the position
13 basically of providing some guidelines, some standards and the
14 primary incentive that we have is funding.

15 So little by little but starting from about eight
16 years ago, we began to request some designs that people sent to
17 us through their community justice planning process each
18 biennium, some ideas for diversion programs that would use the
19 drug-court concept, and it has been an overwhelming response.
20 But, of course, part of that was the legislation that first
21 required drug-treatment courts for very large counties and then
22 it came back and amended it two years later for a little bit for
23 moderate-sized counties.

24 Many counties, many counties that did not even
25 become -- were not even close to the mandate decided that they

1 would also like to start courts and we have done everything that
2 we could possibly do to encourage that through funding. We have
3 a couple of different kinds of funding. We have formula
4 funding, we have treatment alternative to incarceration funding,
5 we have discretionary grant funding and so on, all of which
6 generally comes to our division from the state. Some of it is
7 also -- we also sometimes receive federal funds.

8 So that's how we've kind of shaped or crafted or
9 worked in partnership really with probation departments and
10 judges to be able to put together for 122 different probation
11 departments programs that were guided by the ten key components
12 of drug courts, but that had their own local idea behind it.
13 Some of them -- as an example, one of the things that is a local
14 decision is that whether or not it's going to be a pure
15 diversion court, and that is to say that it is pre-indictment or
16 even pre-trial or whether or not it's going to be a probation
17 court or a re-entry court.

18 My current job is that I oversee our -- you've
19 heard several references to today called our SAFFP program, our
20 Substance Abuse Felony Punishment Facilities, which are actual
21 prison units that have as their whole mission substance-abuse
22 treatment. We don't have enough of them but we have enough to
23 have made an impact in Texas.

24 Many departments have now crafted re-entry
25 drug-treatment courts, which are probation courts. Even though

1 people go in and they go in as inmates, they still stay under
2 the status of being decisions made about them by the judge, so
3 when they come back out, they're still on probation. So now we
4 have a number -- I believe it's six or seven at this point -- of
5 what we call SAFP re-entry courts, which is a person comes back
6 out of the treatment facility and then they have very intensive
7 contact with the drug-treatment court to help them maintain
8 sobriety and drug-free status. Certainly our division funds
9 part of those courts, as well.

10 So I would say that the main thing that we'd like
11 you to know is that we would like to see every probation
12 department have the funding, the resources, the help to be able
13 to establish drug-treatment courts that would provide -- our
14 first emphasis would be on complete diversion, but if that is
15 not their local decision, then certainly the probation courts
16 that have really offered people this incredibly expanded
17 progressive interventions in their addiction so that they're not
18 revoked, so that they do not end up in prison, so that it is not
19 time and money that is not best spent.

20 I've heard several people say today that the cost
21 was one of the primary reasons that the state began looking at
22 drug courts, but my own opinion, having been in on the planning
23 a decade ago, I don't think it was just cost. I think cost was
24 an issue, but I think it was the potential for reducing
25 recidivism and having less crime, fewer victims, and healthier

1 people that are able to go back into our neighborhoods that we'd
2 be happy to have as neighbors. So I think that that was as much
3 part of our thinking at the time.

4 Certainly, it's more cost effective to treat
5 people in the community than it is to treat them in prison and
6 how we kind of have a hybrid system where we can do both with
7 our SAFP system. So what we would like -- I mean, what I think
8 that we would like to see is an expansion of something that has
9 proven to be very successful.

10 We've also had funding -- I might add it's not
11 just the drug-treatment courts. We also have mental-health
12 courts that treat mental-health issues, as well as the
13 substance-abuse issues and, certainly, we need expanded funding.
14 Maybe the funding -- you know, I certainly can see the point
15 that was made earlier by Vicki, that perhaps if MHMR as an
16 example had additional resources, we could divert people
17 completely into the mental-health system. That would be a
18 wonderful thing. That would certainly be in an ideal world of a
19 wonderful thing.

20 Texas, with our TCOMI program, Texas Council on
21 Offenders with Medical and Mental Impairment, has certainly been
22 working to that end and we've been working hand in glove with it
23 to that end. But the truth of the matter is, people commit
24 crimes along with their mental-health problems and their drug
25 addiction and their alcohol problems and those crimes have to be

1 dealt with also through the criminal justice system often
2 without a complete diversion into another system.

3 So I would say resources are a really big part of
4 how we would like to see the future and that we would like to
5 see this particular innovation used in every county for the
6 people that are assessed at being able to benefit from it.

7 Any questions for me?

8 MR. JONES: Not yet.

9 MS. BROCKETT: Okay.

10 MR. JONES: In a minute. Thank you very much.

11 MS. YANEZ-CORREA: Bienvenidos a Tejas. Welcome
12 to Tejas. My name is Ana Yanez-Correa. I'm the executive
13 director of the nonpartisan, nonprofit organization by the name
14 of the Texas Criminal Justice Coalition, and I'm really happy
15 that you're here. I'm really happy and I feel honored to
16 present to all of you, along with a lot of individuals who are
17 in your agenda who I have the utmost respect for and who I have
18 gotten to learn about their work.

19 What I wanted to touch base with you here is
20 mainly that just before I go into the survey that we've had in
21 coalition with the Office of the Court Administrator and the
22 Office of the Task Force on Indigent Defense is that I want you
23 to just kind of think about where you are. You know you're in
24 Texas and you know that usually the dialogue has been the issue
25 of how many prisons are we going to build in the State of Texas.

1 Historically that has always been the argument. Not whether or
2 not they're going to build prisons; it was how many and where
3 are we going to build prisons.

4 And so something happened historic -- something
5 historical happened last session where the dialogue was no
6 longer about how many prisons are we going to build, but the
7 dialogue was how do we do away with the need to build prisons.
8 That's historical in our point of view.

9 And so a lot of wonderful policies came out of
10 this dialogue. This was a bi-partisan effort where people got
11 together, people who may not have agreed on every single issue.
12 Regardless of parties, they came together and they created a lot
13 of initiatives to do away with the need of constructing new
14 prisons, and that's where we are sort of from last session.

15 Basically, this means a lot to us in the field as
16 advocates, those of us who have been working really hard to do
17 away with the overreliance on building prisons, and so that has
18 sort of brought the advocates to kind of move beyond, well,
19 let's just not build prisons, there are still other
20 alternatives, but to really go down to what is going to identify
21 the problem, what is going to stop the flow of people into
22 prisons, which in Texas historically has been probation
23 revocations, among other things. And so that's how the
24 coalition started to get really involved with the people, with
25 probation departments, with agencies, with CJAD, with other

1 people who are actually having to deal with the populations that
2 are driving the prison growth, which is people with substance
3 abuse, people with mental illness and so forth.

4 So that's basically kind of where we are; and
5 just kind of to bring it back, even the Pew Foundation had a
6 study out on it -- are you familiar with it -- that just
7 recently happened a couple months ago saying that Texas is doing
8 something right. For us, that's very reassuring because we
9 don't get to hear that. You know, we usually hear Texas is the
10 worst in this and Texas is the worse in that. But, I mean, to
11 have a foundation come with a report saying, oh, my goodness,
12 Texas is doing it right, it was very rewarding for us as
13 advocates, very rewarding for the practitioners in the fields
14 and so forth. So I just want to throw that out there.

15 So one of the things we decided to do was not
16 just go away after the advocacy, but actually stick around to
17 see whether or not the implementation of diversions were taking
18 place and so forth. In doing so we have been very active during
19 the interim studies and providing testimony. In one of those
20 interim studies that took place not so long ago, the
21 appropriations committee, there were some questions in regards
22 to whether or not the investment that the legislature had put in
23 terms of diversions were actually working.

24 One of the questions that was brought forth by
25 the chairman of the subcommittee on appropriations, Sylvester

1 Turner, was under what circumstances would judges feel
2 comfortable diverting people with substance-abuse problems and
3 mental illness. In this hearing Jim Bethke, who was the
4 Director of the Task Force on Indigent Defense, myself and
5 others were thinking that's a good question. You know, we
6 should try to figure that out, under what circumstances would
7 judges feel comfortable diverting people with substance-abuse
8 and mental illness. Out of that conversation came this
9 collaborative process that resulted to the survey of judges and
10 we're really proud of that and you should have that in your
11 package.

12 Basically, to summarize the findings, is that
13 judges understand that they need more resources and they want
14 their hands to be untied so that they can actually provide -- so
15 that they can identify whether or not a person has mental
16 illness or substance-abuse problems, whether or not they can
17 properly, by having assessment -- they want to be able to place
18 them in the appropriate places to where those issues can be
19 resolved, and they want to make sure that there is
20 accountability within the programs and they want to make sure
21 that the individual has the tools necessary to also reintegrate
22 back into the community.

23 These findings overall -- and you have the
24 results with you and you can look at every single one of those.
25 These findings overall were surprising to us because we only --

1 we thought that only judges like Judge Creuzot and the other
2 ones that are going to come after this panel and who have come
3 before you, have that mindset, but a lot of these judges do not
4 run specialty courts. In fact, I believe only 44 of the judges
5 who run specialty courts responded to this. These are
6 judges -- there is 244 respondents. These are judges who don't
7 run specialty courts, kind of going through that mindset; right?

8 Why that is, I think a lot of it does have to do
9 with the fact that the public is demanding more of judges, is
10 demanding more of -- is asking judges to kind of fill this gap,
11 this void that, quite frankly, the criminal justice system
12 shouldn't have to be dealing with to begin with but here we are
13 in Texas. People with mental problems, people with substance-
14 abuse problems who have committed crimes, and something has to
15 happen.

16 There is this -- you know, people are expecting
17 judges to be able to come up with solutions. People are
18 expecting defense attorneys to also come up with solutions, so I
19 guess that's why you're here, to try to figure out, well, should
20 I advocate for my client to make sure that they don't get a
21 sentence or should I kind of say, oh, my client does have a
22 substance-abuse problem but you have some -- he probably better
23 go up to this drug court or my client has a
24 mental-health problem.

25 So I know that this as a difficult dilemma, but

1 I'm really excited that you're looking at it and I know that the
2 report is going to be fabulous and we look forward to seeing it
3 and hopefully using it not this session, unfortunately, but the
4 upcoming session.

5 That's what I have to say right now.

6 MR. REYNOLDS: Thank you very much. Jay?

7 MR. CLARK: One of the things that we're
8 interested in and we haven't really talked about today in the
9 panels that we've had so far -- and I think you all might be a
10 good panel -- you probably all have a good idea of the
11 statistics of the people in the criminal-justice system. Would
12 that be fair in terms of the gender, race, ethnicity and all
13 that?

14 MS. YANEZ-CORREA: Between the three of us.

15 MR. REYNOLDS: Uh-huh.

16 MR. CLARK: So I'll ask Mr. Reynolds, I guess,
17 in terms of tracking the percentage of the different ethnic
18 backgrounds that are in the criminal-justice system, how does it
19 compare to those who enter the diversion or the drug DP's
20 programs versus those who don't, and then the success -- how
21 does that track?

22 MR. REYNOLDS: I can only partially respond to
23 that and maybe my colleagues can help me. I do know that in
24 Texas -- in the prison system in Texas the demographics are
25 basically 48 percent African-American, where the state is about

1 11 or 12 percent.

2 Is that about right?

3 MS. BROCKETT: Yes.

4 MR. REYNOLDS: Probably 25 percent Hispanic,
5 which is more or less the same as it is in the general
6 population; and then the Anglo population is the remainder. I
7 don't have any figures at my fingertips that would go any
8 further than that in terms of the diversion population.

9 MS. YANEZ-CORREA: There is 29,000 that we know
10 of. There is 29,000 who are there for solely possession only.

11 MR. CLARK: Total?

12 MS. YANEZ-CORREA: Uh-huh, 29,000. There is
13 158,000 people --

14 MS. BROCKETT: Almost 160,000 people in prison
15 and there is about half a million people, a little less, on
16 probation.

17 MR. CLARK: How do the numbers break down that
18 Mr. Reynolds just gave us, kind of track who's on probation?

19 MS. BROCKETT: You know, unfortunately, I don't
20 have that with me so I hate to just say it off the top of my
21 head.

22 MR. REYNOLDS: I will bet it's pretty
23 consistent, though. I mean, there is an overrepresentation of
24 African-Americans from beginning to end in the system.

25 MS. BROCKETT: I would say that report that you

1 have from the Criminal Justice Policy Council on that drug-court
2 report that they did -- I think it broke down some of the
3 figures a little bit as far as how the demographics go and
4 gender participation and so on in that research study.

5 MR. CLARK: Let me ask, I guess, this question
6 then. If I got the percentage right, 48 percent African-
7 American, 25 percent Hispanic, and the balance being other.

8 MR. REYNOLDS: Mostly the Caucasians.

9 MR. CLARK: Okay. How does that compare with
10 the statistics of people who were in the program, in the drug
11 courts or the DUI courts?

12 MS. YANEZ-CORREA: Well, I mean, as you have
13 heard --

14 MR. CLARK: Is it overrepresentation?

15 MS. YANEZ-CORREA: As you have heard, there is a
16 decentralization --

17 MR. CLARK: Right.

18 MS. YANEZ-CORREA: -- that is going on in Texas
19 and so it is really difficult. You would have to go for -- it
20 depends. I mean, when there is like rural locations --

21 MR. CLARK: We don't know?

22 MS. YANEZ-CORREA: I mean, it's really
23 difficult. You'd have to go county by county to count those.

24 MR. CLARK: Okay. We haven't heard from any
25 court administrators and I think, Mr. Reynolds, you made the

1 point of trying to apply traditional court administration theory
2 and technique to these problem-solving courts and it is not
3 necessarily a good fit. Can you give us two or three things
4 that if you could wave your magic wand would make it fit better?
5 Do we have to change the ethical rules? Do we have to change
6 the role of the judge in a specialty court as opposed to a
7 traditional trial court? Maybe training? Because I know that
8 the National Judicial College has its annual program every year
9 where judges are taught move your dockets along, don't take crap
10 from defense attorneys, all that stuff.

11 MR. REYNOLDS: Right.

12 MR. CLARK: What about training?

13 MR. REYNOLDS: Yeah. I think that sort of
14 bringing the principles of problem-solving courts kind of into
15 the mainstream of court administration is bridging that gap,
16 because you're exactly right. The basic idea of court-case
17 management is the judge is supposed to be in control, not let
18 the lawyers run your docket, and move things along. You know,
19 the judge is in control of a drug court but it's a very
20 different approach and it's a more case-intensive approach and
21 that's a tough reconciliation.

22 MR. CLARK: What suggestions would you -- if you
23 could change something, what would it be? What would your
24 recommendation be? We've asked different panels each day from
25 their unique perspective what might help them in making these

1 courts, if you want to use the word more effective or
2 successful, more efficient?

3 MR. REYNOLDS: Well, what Texas needs, I think,
4 is a more unified approach to drug courts from across the state.
5 We have a lot of great things going on county by county, and
6 you've heard from three great examples just a little while ago
7 and you're going to hear some more. But we can do more to bring
8 those people together and to help them learn from each other and
9 to have a little bit more uniformity and understand -- make sure
10 that we're really targeting these precious resources towards the
11 people that need them the most. I think that you could do more
12 with the same amount of resources if you had a bit more of a
13 coherent approach to this issue.

14 MR. CLARK: More centralized, I guess, is you're
15 talking --

16 MR. REYNOLDS: At least more central
17 coordination, if not actual central coordination.

18 MR. CLARK: Ms. Brockett?

19 MS. BROCKETT: Yes.

20 MR. CLARK: In terms of probation, is it more
21 centralized in probation because there is a central probation
22 department?

23 MS. BROCKETT: Well, yes and no, okay? We do
24 have -- we're part of Texas Department of Criminal Justice, but
25 probation departments -- there is 122 different probation

1 departments that are responsive to their judicial districts, so
2 there is some decentralization because they're semi-autonomous,
3 okay?

4 We're part of the executive-administrative part
5 of government, but we do have very close collaboration and we do
6 have -- as an example, every biennium we have a sentencing
7 conference that we sponsor and we invite judges, prosecutors,
8 district attorneys, county attorneys, defense attorneys, and
9 probation chiefs and field officers to come in from all over the
10 state and we try to introduce various different models and
11 communicate the success of certain types of diversions over
12 others, certain types of programs over others. Usually we have
13 some national speakers that present.

14 So we do training, we present models, and we do
15 set standards and fund departments. You know, we pay for about
16 two-thirds of the funds of probation departments across the
17 state, so that certainly makes us very involved.

18 But also ultimately, though, local decisions are
19 made about what kinds of diversions they want and what they want
20 them to look like. As an example, pre-indictment, post
21 indictment, pre-trial, post adjudication and deferred
22 adjudication and re-entry. All of those are perfectly
23 legitimate locally decided issues for the department instead of
24 deciding to have drug courts. We have more than 70 drug courts,
25 so that represents a huge number of -- a very, very significant

1 number toward the 122 different probation departments.

2 MR. CLARK: Of those 70, do you know how many of
3 them are diversionary courts in that if they complete the
4 program, the charge gets dismissed?

5 MS. BROCKETT: Yes. You actually have that on
6 your list. There was this one little handout that was from our
7 bench manual. In the back there, there is kind of a list of how
8 many of them are pre-trial. I'm guessing that probably
9 something close to a third are probably pre-indictment or
10 pre-trial. But even with some of the pre-trial, they have to
11 make a plea, but then they hold a plea in abeyance and if the
12 person successfully completes, well, then they never process the
13 plea.

14 So, I mean, there is probably six different
15 configurations of how they've decided to do it locally. And
16 some -- like Judge Gist was saying earlier today, their judicial
17 district decided to have all of those things. They decided to
18 have misdemeanors and felonies, they decided to have a pre-
19 element, they decided to have a probation element, and they
20 decided to have a re-entry element.

21 So, you know, departments can make that decision
22 and we try to help them with various different kinds of funding:
23 substance-abuse funding, discretionary grant funding, we have
24 formula funding.

25 MR. CLARK: I want to talk about something

1 Mr. Reynolds brought up about the funding, I guess, with the
2 house bill mandating by population a county to have a court. If
3 I understand what you said, the governor controls the funding
4 for the drug courts, but the judiciary controls the funding for
5 all other courts, your office; is that correct?

6 MR. REYNOLDS: Actually, I did say the first
7 part; I didn't say the second part.

8 MR. CLARK: I guess I'm trying to --

9 MR. REYNOLDS: Well, another thing that is run
10 by the executive branch in Texas is -- well, courts are very
11 much creatures of local government in Texas. Even district
12 courts, which are state courts, are -- the salary of the
13 district court judge is paid by the state; but, basically,
14 everything else is taken care of locally. I mean even the
15 salary is not paid for mechanically through the judicial branch.
16 It's actually paid for by the comptroller's office.

17 MR. CLARK: Is the district like the general
18 trial division for felonies?

19 MR. REYNOLDS: Yes. So almost anything that
20 could be taken out of the judicial branch in Texas is taken out
21 of the judicial branch. It's a very -- and I've even heard my
22 office and its counterparts around the country referred to as a
23 weak AOC model, that we have limited authority and limited
24 functions and so forth.

25 MS. SHIFMAN: Some Texas politicians -- it goes

1 back a ways. We've seen it nationally.

2 MR. CLARK: Gail?

3 MS. SHIFMAN: Question, I sort of want to stick
4 on the funding part. I find it interesting about the weakened -
5 - it's sort of a weakened role of the judiciary, which the last
6 eight years we've seen that trying to be implemented federally,
7 as well. But we've clearly heard testimony so far today about
8 sort of individual members of the judiciary trying to find a way
9 to create more of a role and more sort of influence in the
10 community from which they judge and from which they sit, which
11 is really terrific.

12 But one of the questions that I have in all of
13 this is, we're hearing sort of about a patchwork of funding
14 sources: some grants, some from the state, controlled maybe out
15 of the Governor's Office, some coming into your branch going to
16 probation departments. I'm wondering in all of this, where is
17 the funding for the role of the defense lawyer in this, if any?
18 Is that a consideration in the state of Texas at all? Where, if
19 any, is the funding for the actual treatment facilities? By
20 that I don't actually mean these -- I would call them jails.
21 They happen to have substance abuse as one of its tenets. But
22 for other sources of treatment for the DWI court, for these
23 other diversionary drug courts, or post-plea drug courts, where
24 is that in those two components?

25 MR. REYNOLDS: Couple of responses. On the

1 indigent defense side, my office -- Ana mentioned the Task Force
2 on Indigent Defense, which is part of my office and part of the
3 Texas Judicial Counsel. That group oversees -- Much like Anne's
4 office oversees funding from the state to local probation
5 departments, the Task Force on Indigent Defense oversees funding
6 and standards for the implementation of indigent defense at the
7 local level, which has traditionally been a county fiscal
8 responsibility in Texas. That only goes back to 2001 when the
9 statute created that state acknowledgment of its responsibility
10 to begin paying for indigent defense. I think we're still --
11 although we've had a lot of increased funding in that area,
12 we're still paying something like 17 cents on the dollar for
13 indigent defense costs in Texas. So it's something that's been
14 coming along, but basically that is seen as a county financial
15 responsibility.

16 Substance-abuse treatment funding outside of the
17 Department of Criminal Justice, we have a separate executive
18 branch agency that does drug treatment traditionally. I don't
19 know much about them, but they basically are getting federal
20 money and passing it through them to the local level. Not very
21 strong state funding for substance abuse or mental health
22 treatment in Texas. I think we're almost running in the high
23 forties, 48th or 49th in terms of funding per capita for that sort
24 of service.

25 MS. SHIFMAN: And going back to the funding for

1 defense lawyers, my understanding -- I could be wrong about
2 this, but my understanding is in Texas there isn't a strong
3 local PD office in these large or moderate-sized counties over
4 200,000. Most of them don't have that?

5 MR. REYNOLDS: Most of them do not. The task
6 force has been very successful in generating interest in public
7 defenders offices and we've seen a number of new offices pop up
8 because of the task force in the last few years, and we're even
9 seeing some real serious consideration of that in Houston and
10 Harris County just right now, but Dallas has had a PD office for
11 many years.

12 But other than that, the PD offices that have
13 been implemented have sometimes been specialized. There is an
14 appellate office, there is a -- here in Travis County they've
15 created a PD's office around mental health. But large-scale,
16 across-the-board, soup-to-nuts type PD's offices like you see in
17 the District of Columbia, for example -- more of the exception
18 in Texas.

19 MS. SHIFMAN: So if your office is doing 17
20 cents on the dollar of the cost, the other, whatever it is --

21 MR. JONES: Eighty-three.

22 MS. SHIFMAN: Thank you. -- is being paid by
23 the counties supposedly?

24 MR. REYNOLDS: Correct, correct.

25 MS. SHIFMAN: And from where do they get their

1 funding, from taxes?

2 MR. REYNOLDS: Property taxes, basically.

3 MS. SHIFMAN: So most of this work is being done
4 by the local lawyers on an appointed basis?

5 MR. REYNOLDS: Correct.

6 MS. SHIFMAN: And so any oversight or
7 supervision or training of lawyers who might go into any of
8 these courts is being done either on an individual level because
9 of the interest of the defense lawyer on their own or some other
10 ad hoc basis?

11 MR. REYNOLDS: Yeah, that's basically right. I
12 think there is some training that's being driven at the state
13 level, but a lot of it's ad hoc.

14 MS. BROCKETT: I might add that there is -- you
15 know, some funding for the drug courts, specifically for drug
16 courts, actually comes from several different streams. Our
17 division provides some of the funding, the Governor's Office
18 provides some of the funding, counties provide some of the
19 funding, program participants pay -- I think it can be up to a
20 thousand dollars for the participation. There is another \$50
21 fee that's now added to that specifically for drug courts.
22 Federal funds -- there is federal funds that come into it and
23 even -- some departments get federal grants, some federal grants
24 come into the Governor's Office and are redistributed.

25 So it is a real patchwork of funding, but, in

1 fact, there are several streams of funding that are available to
2 the drug courts and to -- and that means to pay for the program
3 attorneys, as well.

4 MS. YANEZ-CORREA: Even priority foundations.

5 MS. BROCKETT: Yeah. Even some foundations are
6 paying for some participation in some of the drug courts. So
7 it's a very -- you know, very few drug courts -- as far as I
8 know, none get their funds just from one source like a county.
9 They get it from many different sources.

10 MS. SHIFMAN: And in Texas is there some sort of
11 either legislative or standardized administrative requirement
12 for the number of -- and the variety of treatment options for
13 these courts or is every county just free to adopt whatever they
14 want?

15 MS. BROCKETT: Well, they have to follow the ten
16 key components that were nationally established. They're not
17 considered a drug court if they don't, so in terms of following
18 that model, they have to. For the most part, the treatment is -
19 - Well, I might add that even the Department of State Health
20 Services, which has a substance-abuse division -- they do set
21 standards for treatment and many of the departments use those
22 treatment providers. So I would say that for the most part
23 there are standardized treatment that's available that meets
24 federal and state guidelines.

25 MR. REYNOLDS: In terms of different drug courts

1 that you've heard from, there is not -- I mean, except for the
2 ten principles, there is not like this is how you run the drug
3 court --

4 MS. SHIFMAN: Right.

5 MR. REYNOLDS: -- and these are the treatment
6 options because the resources vary from place to place and local
7 practice fees.

8 MS. SHIFMAN: Right. So some could be run
9 in-house through the probation department and some might be
10 outside providers?

11 MR. REYNOLDS: Yeah.

12 MS. BROCKETT: Correct.

13 MS. SHIFMAN: And is there anywhere in Texas
14 where all this information is gathered as to what's happening?

15 MS. BROCKETT: Now it is the Governor's Office
16 actually as of the last legislative session. They are keeping
17 all of the information in one place about courts that call
18 themselves drug courts or special-population courts, because
19 they also have the list of tribal courts, of mental-health
20 courts and that sort of thing. That is one place where you can
21 get the central information.

22 MR. REYNOLDS: Although I don't think they have
23 much information, I think they know -- they have some sense of
24 which counties have implemented what types of courts and who the
25 judge is and that sort of thing, but I have not seen anything

1 that's very granular below that.

2 MS. SHIFMAN: So there wouldn't be a centralized
3 location where it would say in this particular county this is
4 how they do their drug court, these are their treatment
5 providers?

6 MS. YANEZ-CORREA: There has been an effort.
7 There has been several efforts to try to gather all of this
8 information, and I think it's really important to keep in mind
9 that anything that is seen as mandating a specific -- we'd like
10 to -- we don't -- we like to call them road maps and there have
11 been some pieces of legislation that have attempted to create a
12 road map for best practices for judges to be able to use, one of
13 which was very successful last session and because of the timing
14 it didn't make it through. It's by Senator Rodney Ellis, which
15 is creating a road map for best practices, and who has been
16 reviewed by the best of the practitioners, which is Judge
17 Creuzot and other -- and major probation departments who are in
18 this. So there are efforts. Hopefully by the time -- by the
19 end of this session we will be able to say an affirmative to a
20 lot of the questions that you have.

21 But right now it's really difficult. We have the
22 -- Tony Fabelo used to run the Criminal Justice Policy Council
23 and in our experience they were instrumental in keeping all of
24 these resources. They also did studies in terms of best
25 practices and what worked, and that was vetoed out so they no

1 longer exist. But there have been some efforts to be able to
2 centralize this information.

3 MS. BROCKETT: I might say that about four years
4 ago a group of drug-court professionals in the Texas Association
5 of Drug-Court Professionals and concerned state agencies,
6 including the Governor's Office and the Texas Department of
7 Criminal Justice, put together a set of guidelines. Those
8 guidelines are exactly what we send out to everyone that's
9 interested in receiving any kind of funding for a drug court, so
10 we would look for those guidelines to be met if we were asked
11 for funds.

12 MS. SHIFMAN: And how is it that it gets
13 monitored? I mean, what's the accountability once the funding
14 is provided?

15 MS. BROCKETT: Well, we have -- for instance,
16 each entity probably has its own monitors. TECJ, CJAD, which is
17 the probation division -- we have our monitors who go out and
18 monitor program quality of programs that are funded by our
19 division, and we do have a research section and our research
20 section does research on the effectiveness of the program.

21 MS. YANEZ-CORREA: They have reporting by
22 appropriation writers that they have to report in terms of
23 numbers. Each probation department has to report if I'm not
24 mistaken.

25 MS. BROCKETT: That's right.

1 MS. YANEZ-CORREA: Their success rate.

2 MS. YOUNG: I was just trying to clarify. So
3 this Travis County Mental-Health Public Defender, I had thought
4 was just one of the public defenders within Travis County, but I
5 guess that's not correct? Her office stands alone and there is
6 not a separate Travis County Public Defender?

7 MR. REYNOLDS: Juvenile. There is a juvenile
8 and they're also talking about setting up a public defender's
9 office, actually two, to handle child protection cases and child
10 welfare cases.

11 MS. YOUNG: So it's still very segmented?

12 MS. YANEZ-CORREA: The bill just passed. I
13 mean, it passed not so long ago and the task force -- I wish Jim
14 Bethke was still here. Fabulous man. You should have a
15 conversation with him. I mean, they've done tremendous amounts
16 of work with very little resources, quite frankly, and it is
17 expanding.

18 The whole issue is, us as advocates. You know,
19 we've always wanted to mandate something. It's like, look, this
20 is the best practice. You should do this way. I don't care if
21 you have X number of counties and different judges and
22 everything else. But the truth of the matter is that people
23 have to buy into these programs. People have to be
24 understanding of these programs and every single county has
25 different resources. There is a lack of treatment

1 infrastructure; there is a lack of professionals who really care
2 about this stuff.

3 So even though it may seem like we're taking the
4 approach kind of like the short -- it's not going fast enough,
5 you have to be able to have buy-in within the community, and for
6 us as advocates that's been somewhat difficult to understand,
7 but it's gotten us the best kind of results that we're looking
8 for.

9 MR. JONES: Thank you for your testimony very
10 much.

11 MR. REYNOLDS: Thank you all for coming to
12 Austin.

13 MR. JONES: We are going to take a break. We'll
14 resume at 3:15.

15 (Recess)

16 MR. JONES: Our next panel is Judge David Crain,
17 Judge Brent Carr, Judge Michael Mery, and Judge Kristin Wade.
18 Once again, if I've mispronounced anyone's name, I apologize.
19 Welcome.

20 The way that we've been operating if you've not
21 been here is to have each one of you just tell us a little bit
22 about yourselves and then give us a five-minute or so opening
23 statement, the benefit of your thoughts, after which time we
24 have a number of questions that we'd like to pose to you. And
25 the way we do our questioning is to have one of us lead the

1 discussion. For the purposes of this session, that person will
2 be Elizabeth Kelley.

3 So, welcome. We're glad to have you. I guess
4 I'll just have you start down here and go down and introduce
5 yourselves and give us maybe five minutes of opening thoughts.

6 JUDGE CRAIN: My name is David Crain, County
7 Court at Law No. 3, Travis County, Texas, downtown here. I was
8 trying to figure out the framework for how to make comments
9 about the issues that appear to be presented. I was fortunate
10 to talk to Judge Mery out in the hall a few minutes ago, and I
11 realized that probably all of us are approaching something about
12 the mental-health docket or mental-health issues in our jail
13 population differently. I realize mine is different from his,
14 so I think it gives me a little bit of framework.

15 It's a long story how we got where we are, but
16 basically where we are right now and we have been for the last
17 six months is we have a mental-health docket in Travis County at
18 the misdemeanor level two times a week, Tuesday and Thursday
19 mornings starting at roughly 8:45. It's intended to be over by
20 10:30, but that is coming to be increasingly optimistic as a
21 time by which we could be finished.

22 When we have our dockets, the prisoners who are
23 on our dockets -- and they're almost all in jail. Some of them
24 are -- some of the Defendants have been released, but that's
25 rare. We have a system set up for identification in the jail

1 and notification to our administration office and transfer of
2 those Defendants to these dockets on Tuesday and Thursday
3 mornings. They get there within, oh, two or three days of their
4 arrest or possibly four days.

5 When they get there, we try and approach the
6 problem as all the way from the very beginning to the case to
7 the end of the case. We adjudicate the cases. If we decide
8 we're going to dismiss the case and have some sort of deferred
9 process whereby they perform something and then their case gets
10 dismissed later, then that's all done there. In other words, we
11 do the whole package. We're not just a probation court, but we
12 do that, as well.

13 The way that we do that and my theory about
14 justice in general and criminal justice is that if you want to
15 get to an intelligent point or an intelligent decision about how
16 to adjudicate the issues in a case, you have to have as much
17 possible information as you can in order to do that. Typically
18 if a citizen is arrested, say, today and they go out and hire
19 Gerry Morris -- I don't know if he's here anymore -- or start
20 coming to court when they're out of jail, the issues that are
21 pertinent to have a fair resolution of that case can be
22 developed over a long period of time.

23 We have a big jail population of people who are
24 mentally ill. Sometimes they're repeat offenders; sometimes
25 they've been through jail -- I hate to say it out loud, but

1 maybe over a hundred times, maybe a couple hundred times, say,
2 in the last ten or fifteen years. So if we're going to look at
3 their cases, we have to have all the information there right
4 there that morning.

5 So you start off with me. We've got a mental-
6 health prosecutor, who was here earlier. His name is Jason
7 Steans. The county attorney's office provided that. The
8 commissioner's court provided that at the county attorney's
9 office three or four years ago when we began working on these
10 issues enough to where they thought they needed extra resources.
11 We've got -- funded by the Task Force on Indigent Representation
12 the mental-health public defender, which has a staff of two
13 lawyers and -- now I'm getting a little bit lost, but two or
14 four caseworkers who are also a great benefit. We have some
15 other lawyers who are subset of our overall appointment list who
16 are trained for mental-health issues. We have, very
17 importantly, a counselor from the jail who is able to bring up
18 information about clinical diagnoses for the Defendants who
19 appear before us, the medication that they're receiving, where
20 they are housed in the jail, and other sort of additional
21 information that helps us when we're trying to resolve or trying
22 to conclude the case. We have a worker from the MHMR office
23 there who has a database with a computer there in our
24 adjudication room, and he can give us information about prior
25 contacts with the local MHMR and again clinical diagnoses and

1 prior successes and failures. We have a pre-trial services
2 officer there who can tell us social information, whether or not
3 the Defendant has relatives in town, close friends, a job, where
4 they live, if they have a residence, how long they've been
5 there, and some information about whether they have any
6 relationships that can further our interest and take care of
7 more than they get outside.

8 So once we've got all of those different sources
9 of information at the table, then we sort of start solving the
10 problem by, say, what was the behavior that's been committed, if
11 it was committed, and we go through that, both sides of the
12 alleged facts, and try and make a decision. If they did do it,
13 what is the level of behavior? How dangerous is it to the
14 community?

15 In other words, if the police department is
16 cracking down on jaywalkers -- and this is a real case. They
17 get a guy that's jaywalking, they go up to him, he doesn't want
18 to give his name. Says, well, I'm going to charge you with
19 failure to ID, and so he starts running and the next thing you
20 know he's charged with failure to ID and evading arrest and,
21 well, the jaywalking fell by the wayside or they may take care
22 of that later.

23 But I ask the question to the prosecutor, Really,
24 Jason, do we really want to go there? Is there any point to
25 having a conviction on this case and what is that point? What

1 was the gravity of the behavior that was occurring at the time
2 the person came in front of a police officer? Is it just
3 something where the peace officer was aggravated with them and
4 arrested them or is it a technical violation of the law or was
5 it a true public threat to the fellow citizens or themselves?

6 So we go through that type of analysis and we
7 think about public safety, public nuisance, restitution issues,
8 their clinical diagnosis, their social context, that is, their
9 family members and friends and co-workers if they have any. We
10 try and address all those issues and say, number one, should the
11 case be dismissed or should we have some sort of jail sentence,
12 and if we do, what is the fair jail sentence considering the
13 person may have schizophrenia or major bipolar disorder, which
14 at some level is going to contribute to whether they are truly
15 responsible for and have culpability for the thing they've been
16 charged with. So all of that factors in and that's pretty much
17 what we do.

18 We put some people on probation and we bring them
19 back periodically because we find that bringing them back to
20 court reinforces their need or their feeling to comply with the
21 conditions that they, number one, take their medication, that
22 they stay in their housing if they have housing, or that they
23 address their needs one way or another.

24 When we adjudicate people, the best-case scenario
25 is if they have housing. If they do have that, then we try and

1 put them in that housing and give them tight supervision with
2 the probation department that enforces their medication routine,
3 their contact with social services, their receiving of Social
4 Security benefits if they're disabled.

5 If they're homeless, it's pretty much a difficult
6 case and we're trying to develop programs -- or I'm trying to
7 figure out different ways to address that homeless population by
8 giving them places where they can feel safe and they can trust
9 that they can go and get the social services they need and
10 avail themselves of medications.

11 In any event, I've probably given you more
12 information than you want. But I'm very pleased with our docket
13 and I think we do a good job of adjudicating issues in regard to
14 the mentally ill in our community well, and the result is that
15 in some measure we have a safer community, because those people
16 who become stabilized because of their encounter with the court
17 system are less likely to have some sort of misfortune in the
18 community. I'm sure you're all aware of incidents in your
19 respective communities where there are fatalities that come out
20 of mentally-ill cases both committed by a mentally-ill person or
21 a fatality -- police officer sometimes on a mentally-ill person
22 or another person in the community because of the behavior
23 that's being experienced out there.

24 So in any event, that concludes my comments.
25 I'll be willing to answer any questions.

1 MR. JONES: Thank you. Judge Mery?

2 JUDGE MERY: I don't know if I need to get real
3 close. Can you hear me?

4 MR. JONES: I can hear you fine.

5 JUDGE MERY: Well, I want to begin by saying
6 good afternoon and thank you all for having us here. It's given
7 me an opportunity to meet with my fellow mental-health judges in
8 Texas. I'm sad to say that even though we've been functioning
9 for about six or seven months in Bexar County, I had not taken
10 the opportunity yet to meet with my fellow brethren here and I'm
11 very, very pleased to be here.

12 I also want to commend the National Association
13 of Criminal Defense Lawyers. I looked at your mission
14 statement, and I think that the issues you're concerned with are
15 very significant and important issues and I hope that as a
16 result of our discussions today, it might help you all maybe
17 find a little bit of a compass of how you want to proceed
18 because I was listening intently to Judge Crain's comments and
19 there is no question at all, when you think about somebody who
20 has been through the system a hundred times -- there has to come
21 a time when the criminal defense lawyer asks himself, how am I
22 really going to serve this person?

23 Now, there is so much to say and five minutes is
24 just a little bit of time, but I'm going to have faith that
25 y'all will ask questions later. But I'm anxious to jump into

1 those ethical issues.

2 I practiced law for a good time before I became a
3 judge. I've been a judge nine years, but I've been licensed for
4 26 years and I did a lot of criminal defense and I know what it
5 is to be on the horns of an ethical dilemma and I think it's
6 most appropriate that y'all are tackling these issues and
7 hopefully you'll disseminate a lot of the information to your
8 members.

9 I do want to commend to you, though, the Texas
10 Association of Criminal Defense Layers and their main office is
11 right here in Travis County. I don't know if y'all have met up
12 with those people. But I'm told that they have some excellent,
13 excellent forms with regard to HIPAA requirements and other such
14 things, waivers. So I think they've done a lot of groundwork.
15 I know that Bexar County has done a lot of work and we've worked
16 closely with them.

17 But let me briefly give you some information
18 about Bexar County. County Court at Law No. 12, which is the
19 court I preside over, is a court of general jurisdiction. It
20 was created in 1999 and I was appointed and I've since run three
21 times. I think y'all have figured out that in Texas we have to
22 run for election. But in any event, it handles both criminal
23 matters that are misdemeanors -- Class A and Class B
24 misdemeanors and civil matters up to \$100,000 in damages. I
25 have a very full criminal docket. The number of pending cases

1 exceeds definitely over a thousand. I think -- I don't know,
2 several thousand at this point.

3 Well, when certain powers that be were coming to
4 the realization that we had to do something more than what we
5 had been doing, which I'll tell you about, about the mentally
6 ill, people got together and Bexar County submitted a grant to
7 the federal government to try to create a mental-health court
8 and we were successful and we got a grant of half a million
9 dollars for two years, which is 250,000 for each year.

10 Well, then they were looking for a judge that
11 would be brave enough to go ahead and take that on and I
12 volunteered to do so. Like Judge Crain, I have my regular
13 docket. In no way has that been diminished. But I have devoted
14 one afternoon a week, which is Monday afternoons, and we hear
15 our mental-health cases at that time.

16 Now, we're very fortunate in Bexar County. I
17 haven't heard my other brethren's comments, but I bet you
18 anything that I might have the most resources and the most help
19 based on what I heard Judge Crain has, because what happened was
20 the commissioners got together -- of course, we lobbied them a
21 little bit. But decided that the money we were getting from the
22 federal government would simply not be enough. That was going
23 to fund a couple of probation officers maybe and a chair or
24 something else, a little room somewhere, which wasn't going to
25 be enough. So they actually committed \$1 million and they call

1 it the Mental-Health Initiative, so we married those two sources
2 of funds. We've got the million dollars from the county and
3 we've got half a million dollars to cover us for the first two
4 years.

5 Basically, when the grant was written, there were
6 very restrictive criteria, which were in keeping with BJA's
7 experience throughout the country. Obviously there have been
8 other mental-health courts. For example, these judges have been
9 doing it longer than I have and also Judge Crain. But we were
10 just getting started so BJA had heard of the experiences of all
11 the different jurisdictions and they were very restrictive as to
12 who we could accept into our program.

13 Well, as we got going, we realized that we were
14 not going to be able to serve as large a population, so Bexar
15 County expanded the criteria. The way we get around these
16 things -- and BJA knows exactly what we're doing. In fact,
17 they're thrilled and I'm told for the cycle they're going to
18 expand their criteria.

19 For example, it used to be you can't have anybody
20 that had any type of violent offense in their past. Well, we
21 all know who deal with the mentally ill that it's very normal
22 for them perhaps to have an episode when they're going to be
23 violent, maybe with a caretaker or with someone else. That
24 doesn't mean that like a typical Defendant, they are prone to
25 violence, just that maybe it happened once or something like

1 that. Well, I understand in Bexar County that's no longer a
2 restriction where you can't come into the program and I
3 understand that BJA is looking at all that, as well.

4 But in any event, just to tell you quickly what
5 we do have, combining all those funds, I'm very privileged to
6 actually have a court manager. I mean, I've got my own court
7 coordinator that I've had for nine years, but this court manager
8 is strictly assigned to the people on our mental-health docket.
9 We have two public defenders. Now, Bexar County has a Public
10 Defender's Office and it does not take all the criminal cases.
11 Now, we have a wheel that we appoint people, you know, on an ad
12 hoc basis. But the public defenders were created to solely do
13 appeals -- criminal appeals.

14 Well, when all this was brought together, we
15 convinced the commissioners and the Public Defender's Office to
16 take on two lawyers who would do nothing but criminal defense of
17 the people on the mental-health criminal docket, so we have two
18 public defenders. We also have two public defenders that are on
19 the civil side doing the civil diversion cases, which is not
20 what I have.

21 So most of you, I'm sure, are aware of diversion
22 where you divert and you don't go through the criminal system
23 where there is a dismissal up front and they put them in a -- in
24 San Antonio it's called SASH, the state hospital, but, you know,
25 a facility like that.

1 So the Public Defender's Office actually got four
2 defenders funded through these funds and two of them are
3 assigned to my court. We have four case supervisors that are
4 county funded, and we have two probation officers, so I must say
5 that I feel very blessed compared to how Judge Crain is putting
6 his resources together. I think I have a tremendous amount of
7 resources.

8 A couple of quick developments I want to let
9 y'all know. One is that we have a pre-trial officer who
10 strictly, 100 percent is devoted to these people and makes the
11 home visits and follows up and makes sure that if we're dealing
12 with somebody who was homeless or whatever the case might be,
13 that we have good contacts and we get them to court.

14 We also have from the Center for Health Care
15 Services, a person that we finally got on board. I think at the
16 end of this month they will have an eight-to-five job at the
17 jail where they're there and they do the assessments as soon as
18 people are arrested and they're brought before a magistrate.
19 They're immediately assessed by the Center for Health Care
20 Services.

21 So just very, very briefly I want to say that the
22 genesis of all this started maybe ten years ago when people were
23 watching the jail population problem, and it was observed that
24 people with mental-health issues would stay in the jail system
25 three times longer than your average Defendant who does not have

1 those problems. What those reasons are we can all speculate as
2 to, but they would stay in the jail and get nowhere, so we
3 created what's called a mental-health jail docket. These people
4 would be identified, they would be brought before a judge that
5 would basically go out to the jail, just a little auxiliary
6 court there, and they would basically plead out for time served.

7

8 But what that accomplished was, as y'all can all
9 follow, is that they got out of jail a lot quicker, but they
10 also observed that what was happening is these same people would
11 come back. So you'd get them out of jail quicker, but they'd be
12 back because there was no follow-up. There was no support for
13 these people. The only focus was on, A, reducing the population
14 of the jail and, B, in a humanitarian way giving these people
15 their freedom.

16 Well, that didn't solve the problem so that's
17 when the thoughts began, let's have a mental-health court where
18 people can actually be put on probation -- in our court the
19 minimum time is one year -- where you can flood them with
20 resources and you can have periodic staffings. We have just so
21 many disciplines working together, so many agencies all working
22 together to get this accomplished.

23 There is a lot more to say, but I'll pass on.

24 Thank you.

25 MR. JONES: Thank you, Judge Mery.

1 JUDGE MERY: You're welcome.

2 JUDGE WADE: My name is Judge Kristin Wade, and
3 I preside over a misdemeanor criminal court in Dallas County.
4 In Dallas County -- I know this came up earlier -- we do have
5 quite a large Public Defender's Office, as well as we do have a
6 wheel and appoint private attorneys, so we sort of have a
7 combination of both. I'd say probably now 70 percent of our
8 clients in jail are served by the Public Defender's Office. So
9 just to give you an idea of the atmosphere of Dallas County.

10 I have been running a mental-health jail
11 diversion court now for about four years, and we have had
12 approximately 200 successful graduates over the four-year
13 period. Our court -- the emphasis on our court is to timely
14 divert the clients from jail and get them out of the jail
15 environment into treatment in the community, so we do have an
16 emphasis in our court on timely getting people out of jail.

17 We do that by a computer program. We have a
18 computer program in Dallas County that matches the indigent
19 population that gets mental-health services with those that book
20 in jail, and it's on a real-time basis so those names pop up the
21 minute they are booked into jail. It sends updated lists all
22 the time to our coordinator, who then screens those names, and
23 that's how we get the clients for our program.

24 The coordinator passes those -- she checks to be
25 sure because due to our grant money, the people in our program

1 have to be indigent and they have to have axis one, two or three
2 diagnosed mental-health disorders, and that information is
3 available on the computer screen.

4 So from there, once we determine if they're
5 eligible in that regard, they go straight to the district
6 attorney's office, the prosecutor in my court who screens them
7 to see if they are case eligible.

8 Our program is not based on any particular case.
9 It can be any misdemeanor. We have a lot of prostitution, a lot
10 of criminal trespass, possession of drugs, theft by check. I
11 mean, really, basically, we go across the board for criminal
12 offenses. They're mainly screening criminal history just to be
13 sure it's not an extremely violent criminal history or a lot of
14 what we screen out is if they have things like out-of-county
15 pending cases or, say, out-of-county pending felony cases where
16 we would not be able to put them in our program.

17 So that all happens, you know, hopefully within
18 the first 24 hours of when they're booked into jail. If they
19 are then determined to be case eligible, we immediately bring
20 them down on our jail chain on our holdover cell, and then that
21 very morning we have a mental-health designated public defender,
22 which would sort of be like our program attorney in comparing it
23 to the other programs you've heard about today.

24 She will interview the client and so will a
25 probation officer, and they will determine if the person, first

1 of all, wants to be in the program. That's really one of our
2 big barriers in our mental-health jail diversion program, is
3 that we are looking at, you know, fairly petty offenses. Lots
4 of times the clients are not so keen on participating in our
5 program when they know they can plead out to 30 days jail and
6 get their back time or they can do four or five days in jail and
7 just get out of jail and go on about their business, so we do
8 have quite a few clients that choose not to participate in our
9 program voluntarily.

10 I've read your mission statement. I think it's
11 very interesting, and I think that's one of the areas that we
12 constantly, I feel like, have some ethical dilemmas as far as
13 the defense bar, is how far does our mental-health public
14 defender go into pushing clients into the program versus
15 pleading them out to their back time. So that's something that
16 I know that we talk about and that she does grapple with all the
17 time in making those decisions.

18 Once they get into our program, it is a true
19 diversion program. It's a six-month program and their case is
20 dismissed at the end of the six-month period if they
21 successfully complete the program.

22 Our funding basically does not really pay for any
23 of our staff. A lot of our staff is sort of voluntary or just
24 funded through their normal sources through the county. Our
25 funding mainly goes to providing our clients with intensive case

1 management. We also are able to give them five days of crisis
2 housing. We have other grant moneys where we're able to do in-
3 patient drug treatment. So that's where all our money actually
4 goes to, actually aiding the client. The whole administrative
5 part of it is sort of involuntary on everyone's part that
6 participates in the program.

7 Another issue that comes up in our program is
8 once we get a client into the program, if they aren't
9 successfully compliant with the program -- and we, once again,
10 have a very difficult population. Although it's a mental-health
11 program, I would say 70 to 75 percent of our clients are dual
12 diagnoses. In other words, they've got a drug addiction and
13 mental-health issues, so we've got a very needy population.

14 You have to be indigent to be in our program. I
15 would say maybe five percent of our clients are employed.
16 Probably 70 percent are living on SSI, which is about now in
17 Texas a maximum of about \$600 a month. That's the income they
18 live on for life. Then the rest of them basically have no
19 income sources.

20 So we have a lot to deal with. We've got clients
21 that don't have any kind of housing, do not have any funds for
22 bus passes, probably are eligible for SSI, so we do a lot of
23 social-work issues to try to get them connected up with the
24 services they need.

25 So if they're not compliant with the program,

1 sanctions -- we really try to steer away from putting them back
2 in jail because, first of all, in our jail at least we have very
3 difficult -- very large difficulties getting them their
4 medication that they need to have. Medication is a very -- you
5 know, we have a huge Dallas County Jail and I think last I heard
6 they have to administer over 3,000 drugs a day to the clients in
7 jail, so we hesitate to put them in jail because they're not
8 going to get their medication.

9 Basically, Dallas County Jail, if you have a
10 mental illness, unless you are acutely mentally ill -- which is
11 kind of if you're on suicide watch -- it takes about seven days
12 to get your medication, so normally we're getting them out of
13 jail before they've been stabilized on their medication.

14 So as far as sanctions go, we'll do things like
15 have them come more often to court, go see their caseworkers
16 more often. Our program is mostly driven by the mental-health
17 caseworkers out in the community. They actually come to court.
18 They actually meet them the first day they're diverted. They
19 are sort of -- I would analogize them to more like what you can
20 think of as a probation officer. They come to all of our
21 staffings. They keep us notified on how the client is doing, if
22 they're taking their medication, if they're going to their
23 appointments.

24 Our probation officer -- we only have one. In
25 our court at any one time we run about 50 to 60 clients at any

1 one time, so we have one probation officer for 50 to 60 clients.
2 They're more working on the front end of the screening and doing
3 some case management from the court's point of view. They're
4 not doing more actual hands-on case management. It's the
5 mental-health caseworkers that have stepped up to that role, and
6 our funding that we get provides them extra case-management
7 hours to be able to do that.

8 So it kind of runs a little bit differently than
9 maybe some other courts. I feel like it's been very successful.
10 Like I say, we have a very challenging population.
11 Unfortunately, we do not have a lot of long-term outcome
12 studies. Part of the problem is, is that we're so lacking in
13 administrative money that we don't have the computer programs or
14 we try to get some graduate students to do some studies for us
15 and we're constantly working on that.

16 But, on the other hand, sometimes I think we're
17 all hesitant to see what the long-term results are like, because
18 our population is so very, very difficult. We feel like if for
19 even six months we can keep them in a stable environment and not
20 back in the jail, to some extent for us we feel like that's our
21 success, because many of our clients are going to need long-term
22 supervised situations for their entire life. It's not quite
23 like an addiction court where you can get over your addiction
24 and then maybe move on and have a successful life. I mean,
25 these are people that are going to be grappling with these

1 issues forever. You know, the very fact of trying to eke out an
2 existence on \$500 a month for basically your entire life with no
3 potential to have any other sort of income source is just
4 extremely challenging.

5 So it's been a really rewarding experience, and I
6 think that it's great that you're taking a role in this. In
7 Dallas County we also every -- my court meets every Tuesday and
8 Thursday, but every Thursday we actually have a group that sits
9 down and it's approximately about 40 people -- that sits down
10 and brainstorms every week for an hour each week to talk about
11 diversion issues, to talk about what to do about offenders that
12 are -- you know, prostitution, mental illnesses, mental
13 retardation, to talk about how we can get a more innovative
14 approach to it. I think it's been very helpful. We have -- the
15 Public Defender's Office sits down. We have advocates from the
16 community. We have people from jail.

17 So we really are trying to constantly look at all
18 of our programs in Dallas County because we do have a lot of
19 innovative different programs, and see how we can better serve
20 clients. I think that's one way that the criminal defense bar
21 can get more involved, is to get pro-active in their communities
22 and sit on these kind of committees and get involved.

23 I also think that just education. I know Dallas
24 County is a big county. It's hard for us to even educate our
25 defense bar about all the different programs that we have

1 available because there are so many even just in Dallas County.
2 You know, we don't really have any sort of mandatory way to
3 require court-appointed attorneys to, you know, really avail
4 themselves of all the different resources and different things
5 that are out there, so I think any kind of education emphasis
6 would be really beneficial to give the defense bar.

7 In regards to funding, I mean, I know this is
8 kind of a minor thing, but we have a huge Christmas party every
9 year for our clients. The Criminal Defense Lawyers Association
10 in Dallas County has sponsored that for us every year and they
11 provide a couple of thousand dollars to provide a barbecue and
12 do some things for clients, so, I mean, I think that's a great
13 way that the criminal defense bar has gotten involved to help
14 these clients.

15 MR. JONES: Thank you. Judge Carr?

16 JUDGE CARR: Everything they've said. Thank
17 you. I feel like a professional baseball player at a
18 congressional hearing on steroids.

19 (Laughter)

20 JUDGE CARR: I will echo many of the comments of
21 my colleagues. I want to key in on a couple of things that were
22 alluded to. I think the mental-health courts -- we've been in
23 business for about five years, 2003. We were studying whether
24 or not to have a mental-health court as early as the end of 2001
25 when our local mental-health association brought a group from

1 Indianapolis, Indiana, who was running a mental-health diversion
2 program, and they didn't have a budget at all. They borrowed
3 and stealed and put together programs and provided services and
4 brought their model down here.

5 Now, we don't run ours that way. We do have a
6 modest budget, which I'll get to in a moment. But unlike the
7 drug-court model, which is basically a phased promotion model -
8 - you run it for a little while, you get a promotion to the next
9 phase and so forth. Well, ours kind of looks like that. If you
10 walk in the door, you would say it looks a little bit similar.

11 But as Judge Wade was saying on the drug side, if
12 you get them off the drugs, they do better. On our side if you
13 get them off the drugs, they do worse and they become a
14 potential great liability for the local government. In fact,
15 when they come off their support of medications, you're even at
16 some points concerned about mortality. We've all had -- in any
17 major county we've had mentally-ill people who have died in our
18 jails or have died shortly after being released, and we all have
19 a lawsuit we can point to as a badge of dishonor.

20 This, of course -- our jails have become the
21 major institution for the mentally ill. This is in part a
22 product of the deinstitutionalization that occurred beginning in
23 the sixties when the thought was we'll do away with these
24 institutions. We don't need all these supportive services. In
25 some cases that was right. In many cases there are a lot of

1 people that needed a lot of supports that were just kicked out
2 from under them and what else is a police officer supposed to do
3 at 2:00 o'clock in the morning when someone is having a terrible
4 out-acting episode and he or she just can't walk away from that.
5 So for that reason a lot of them end up in our county jails.

6 Any time you start -- Because these programs are
7 so new, any time you start any type of a mental-health program
8 in an urban area, because the local officials are so criminal-
9 justice-and-mental-health starved, even if your program was
10 created for a very limited purpose -- to use a line from a song
11 by a Texas band ZZ Top, a well dressed -- or Sharp Dressed Man,
12 as soon as they hear about you, they'll all come running just as
13 quick as they can, because, for the most part, at least in the
14 courthouse, there hasn't been an identifiable resource that
15 helps the sheriff deal with somebody who won't take their
16 medication, is about to die. They really need some help getting
17 some orders filed or they need some people -- other agencies in
18 the county pushed so they can start a civil commitment
19 proceeding. So it's much broader -- the issues are much
20 broader, frankly, a lot of times than just the resolution of a
21 criminal case.

22 I was listening to the earlier conversation and,
23 Ms. Shifman, one of the questions I think you were focusing on.

24 In some courts, particularly mine, being admitted
25 to the court is kind of the end game for the attorney. Once the

1 person is in the program, they've kind of done their part.
2 There are papers that are signed which you may have some
3 questions about in a moment and they do kind of require the DA's
4 -- and their role is essential. They are the executive. They
5 are the only ones who have the power to, at the end of the day,
6 sign the piece of paper that results in the dropped charges so
7 that people can get expunctions or nondisclosure agreements or
8 things of that nature, so there is a very important relationship
9 that has to occur there.

10 Frankly, my program is something of a -- we have
11 such a bumper crop. This is such an unplowed field. It's
12 cherry picking, and our program focuses on the ones that they
13 think in a very short period of time that we can do something
14 with.

15 Now to the part where it looks similar. We do
16 have the admission criteria, the usual list of exclusions: sex
17 offenders. That's not to say that they don't need a lot of
18 mental-health treatment, but they're not going to be generally
19 in the diversion program, although we do have some of what we
20 would call public lewdness or public exhibitionists that are in
21 the program on a case-by-case basis and we do accept a few
22 assaultive offenses in our program and we have felons in our
23 program. The fact that you've been to the penitentiary before
24 is not necessarily an exclusion. If you look at the record, and
25 if it appears to be the type of offenses you would typically

1 expect someone to commit in that vein, they're still potentially
2 -- still potentially eligible.

3 If they get past the administrative admission
4 criteria, we have a case manager.

5 I guess I'll pause a moment to tell you we have
6 basically 150,000 bucks for a year, is what we need to operate
7 on. We have a case manager, we have an administrative
8 assistant, we have some dollars for treatment and supplies, and
9 our local community service and supervision department,
10 probation, has supplied us an officer to work with our about 45
11 or so caseload. We also have a number of local agencies that
12 are also publicly funded, nonprofits that provide us some
13 case-management services, and we do offer everything up to and
14 including wraparound services for people who get in the program.

15 We do recognize phase promotions. We've kind of
16 done it our own way. Usually in the first part of any program
17 that's where there is more treatment and counseling, medication
18 stabilization going on, and that's really the most critical
19 period.

20 About the next section of the program, we're
21 hoping that we can start taking the training wheels off and we
22 count on them to go a little bit more on their own. We don't
23 require them to come to as many meetings.

24 And in the third section we're really hoping,
25 just like pushing a little bird out of the nest, they'll start

1 flying on their own and we can wish them well when we get to the
2 end.

3 I always have interns in my court every year, and
4 every year I run a check on who's gotten -- who's been
5 re-arrested for some offense. We're running -- after five years
6 and about 230, 40 graduates, we're running maybe about 80
7 percent. I know that number is going to go down. If we keep it
8 above 70 percent over -- I kind of use -- I don't really know
9 what a good measuring stick is.

10 I kind of use the -- I had a brother who died of
11 leukemia one time -- I guess you can only die once. But the
12 doctor said, you know, in cancer if you're in remission for five
13 years, we consider that a cure.

14 So we're really so new at this game, and across
15 the nation the oldest programs can't be more than 12 or 14
16 years. It's hard to get a lot of long-term success data, but
17 that's kind of what we're looking at.

18 We do staff the cases before our court sessions.
19 We have a big tent meeting once a month. Early on the
20 participants are meeting with the probation officer, and she
21 acts more as a supportive personality, also. They're meeting
22 with her about once a week and they're going to -- they're
23 treatment or counseling sessions. We have a -- One of our
24 community agencies -- they have supplied us with some
25 psychiatrist time, so they're keeping all their appointments.

1 She's monitoring that. Then, again, we kind of ratchet that
2 down -- kind of ratchet that down as it goes on.

3 So that's kind of my staff; that's my budget.
4 The greatest thing that I guess I'm proud about in this area --
5 my background is I was a prosecutor for eight years. I was
6 elected for the first time in 1990 and I've been a judge ever
7 since. In a prosecutor's role you don't really see that many
8 success stories, although I saw a few. It wasn't all about --
9 the prosecutor's job shouldn't be just about conviction; it
10 should be doing justice and sometimes justice didn't mean
11 conviction. As a judge, you see the person come in and you
12 resolve their case, they go on about their way.

13 But I've got to tell you, even as an old grizzled
14 Marine veteran, it sometimes brings a tear to your eye when you
15 see some of the obstacles that these people have overcome and
16 some of them have -- I have one guy who went from street --
17 living on the street. He is now a manger of the vegetable
18 section in one of our local supermarkets. He had some amount of
19 education before his illness invaded his life to the degree that
20 he couldn't function, and it basically straightened him out and
21 he's been doing that now for two years, so I'm very happy to see
22 when things work.

23 There is a lot of work that needs to be done in
24 this area and not just in diversion. There is a very successful
25 program down in Houston where a judge takes his time to -- every

1 week they meet with the hard-core mental-health probationers.

2 So what is success? Is the role of a defense
3 attorney changing? Well, of course it is. The role of a judge
4 is changing; the role of a prosecutor is changing. The federal
5 government adopted very harsh guidelines and then the human cry
6 went up that we were putting the crack dealers in prison for too
7 long so now that's been backed off.

8 So there is going to be change. We're not
9 totally like Jello, but our boundaries are always a little bit
10 fuzzy and it's kind of hard to all the time fill out -- or find
11 out where we are and where we should go, but this is a great
12 area. I got involved in it because I was invited to a free
13 lunch by the mental-health association and there was the
14 Indianapolis people and they made a great presentation, and I'm
15 very proud that I've been involved with this for the past five
16 years. At least until I hang up the gavel for the last time,
17 I'll consider it an honor to continue to participate in these
18 programs.

19 MR. JONES: Thank you. Elizabeth?

20 MS. KELLEY: Good afternoon. I may direct some
21 of my questions to specific ones of you, but certainly all of
22 you are welcome to chime in.

23 Judges Crain and Wade discussed the issue of
24 medication in your jails. In particular, I believe, Judge Wade,
25 you said that the average time for an inmate to see a

1 psychologist or a psychiatrist or at least someone in the
2 infirmary is seven days. My question to both of you and to all
3 of you is, what is the average wait of an inmate in your jail in
4 order to see someone from the medical staff and, secondly, if
5 someone is admitted to the jail and they can produce or their
6 family members can produce a bona fide prescription, can your
7 jail staff immediately begin to provide that inmate with the
8 drugs as specified in the specified dosages?

9 JUDGE CARR: Yes to the second question if it's
10 in a prescription bottle. Like any other situation, if it's an
11 emergency, you know, the squeaky wheel gets the grease. That's
12 where the limited mental-health resources will run to.
13 Otherwise, I would say it's about the same time.

14 JUDGE WADE: In Dallas you cannot get a
15 prescription necessarily in an original prescription bottle. My
16 understanding is the jail's position on that is they have no way
17 to verify if that's actually what it's purported to be, and if
18 someone has an overdose or whatnot, they're responsible for them
19 so they will not work with the drugs.

20 Now, if you have the prescription and not the
21 pills, sometimes they will be able to work with you, but it
22 depends upon what the drug is, too, because we have a very
23 limited pharmacy in our jail. My understanding is a lot of our
24 drugs have to actually come in from Galveston for some reason.
25 I don't really understand why. So there are limitations on that

1 based on what the medication is.

2 JUDGE CRAIN: I don't know exactly the answer to
3 that. I think our jail -- I don't know for sure, but from what
4 I do know, I think the jail would be very -- very much would not
5 want to give some medication that was brought by a family
6 member, even if it's in the bottles and the pills there, unless
7 they could for sure verify that because they're going to be
8 worried about liability issues.

9 It does take in our jail -- again, I don't know
10 the exact answer. There is not an exact answer because it
11 changes all the time. But they're usually seen by the
12 psychiatrist within the week, sometimes much sooner, depending
13 on their level of acting out or how bad they are, how
14 deteriorated they are.

15 JUDGE MERY: I told y'all I was lucky, didn't I?
16 We have this lady from -- well, I say lady. It just happens to
17 be a female. But brand new position that got created and
18 they're right there at the jail and they see people as they come
19 in. If the magistrate -- you know, if the guy is acting a
20 little bit off or something like that, the magistrate has that
21 person evaluate the person right on the spot, and if it's
22 determined that there are some mental-health issues, they're
23 treated accordingly.

24 This might sound crazy to you all and maybe I'm
25 wrong, but my understanding is we don't have those kinds of

1 issues. If we have identified a person that is mentally ill and
2 in need of medications, they can get them in our jail. That's
3 what I understand.

4 MS. KELLEY: I'd like to learn a little bit more
5 about the restoration process in each of your jurisdictions. If
6 someone is found not to be competent, do you have out-patient,
7 as well as in-patient restoration processes available; and what
8 is the statutory time during which a person can be restored?

9 JUDGE CARR: Yes, we do. We have a new -- We
10 just started an out-patient competency restoration program.
11 Out-patient competency is addressed in our competency statute,
12 and it basically is the same period of time for in-patient
13 competency restoration. It's 120 days plus a 60-day extension.
14 If the treatment person believes -- That's for the initial short
15 commitment. We have, basically, a two-step process.

16 MS. KELLEY: And is that for all levels of
17 crime?

18 JUDGE CARR: Yes. Well, B misdemeanor, which is
19 the lowest confinement misdemeanor, and above. Because anybody
20 who goes is sent for in-patient care -- is sent to a state
21 hospital, whether it's a misdemeanor offense or a felony
22 offense. I think there is some movement within our state
23 hospital system that's attempting to decentralize that to some
24 degree.

25 We've got about 12 people in the process of out-

1 patient competency restoration, and I would say right now the
2 results are mixed. It's getting people to stay on medication,
3 is proving to be a bit difficult but we're certainly going to
4 give it the school try.

5 JUDGE CRAIN: And we have a program locally,
6 too, that we've started maybe three months ago. We probably
7 have eight to twelve people that we've put in the program and
8 the results are mixed. The reason ours are mixed is because
9 although it says it's out-patient -- well, it is out-patient,
10 but they're supposed to stay there as if it were an in-patient
11 facility, but it's not designed that way so they wander out so
12 at least half of them have just wandered off the program.
13 They've gone somewhere else. A couple times they've come back,
14 but more often they have to be re-arrested.

15 So you have to select down to a very small group
16 of people that are going to succeed in that program. We spend a
17 lot of time weeding them out, making sure that they don't have
18 any violent tendencies or any other -- any idea that they may be
19 wandering off and maybe creating other crimes while they've
20 wandered off and can create some huge problems. But we're
21 working on it and we're trying to figure out different ways to
22 approach the problem and getting more people into it and we find
23 the approach and it definitely works to a certain extent, but
24 it's not any kind of magic bullet.

25 JUDGE MERY: Likewise, in Bexar County that's in

1 flux right now, but we have received funding and the Center for
2 Health-Care Services will be supervising that effort and I
3 believe the funding is going to take effect beginning January
4 15th of 2009. But there will be an out-patient component to
5 that.

6 JUDGE WADE: We do have out-patient competency
7 and I think we've been doing it for about a year -- close to a
8 year now in Dallas. We run pretty small numbers, as well. I
9 think at any one time it's around tenish. I think, once again,
10 our results have been very mixed. It's very difficult to -- you
11 know, they're obviously very mentally ill to be at that point in
12 the process, and it seems like we have the best success with
13 those clients that have very strong family support in the out-
14 patient competency program.

15 We've also done a lot of -- we've really worked
16 hard in the past two, three years in Dallas County to monitor
17 our population and their transfer to the state mental hospitals.
18 We actually have someone whose dedicated job is to constantly
19 monitor those numbers and we have been really improving the wait
20 times to get into the mental hospital by just being very on top
21 of that process. It's very difficult to get clients into the
22 mental hospitals in Texas because they're so overcrowded, so
23 that's been something that we've really worked hard on in
24 Dallas.

25 MS. KELLEY: So in the interim they have to wait

1 in jail?

2 JUDGE WADE: Well, I'm saying not the out-
3 patient, but the ones that are not doing out-patient competency.
4 The ones that have been found incompetent -- I mean, the wait
5 time sometimes is just an amazing amount.

6 MS. KELLEY: So they wait in jail?

7 JUDGE WADE: Oh, yeah, they wait in jail.

8 JUDGE CARR: Yeah. A couple of years ago they
9 were waiting like up to three months to get to the hospital.

10 MS. KELLEY: Three months. Sometimes it's even
11 more because there is a lot of bureaucracy over which particular
12 hospital you go to and which county, the beds, and it's very --
13 it's a very complex issue. But since we have been really
14 monitoring it -- and there were literally people that were
15 literally lost, unfortunately, in our own jail system before we
16 really started tracking it.

17 MS. KELLEY: Judge Wade, if I understood you
18 correctly, someone is only eligible for your docket if they're
19 indigent?

20 JUDGE WADE: Yes.

21 MS. KELLEY: So if there is someone who, for
22 better or worse, comes from -- has an independent source of
23 income and that person does have a mental illness, is that
24 person then put to the regular court docket; and, if so, what
25 type of resources and accommodations are available for that

1 person?

2 JUDGE WADE: We also have a mental-health public
3 defenders section and there are two attorneys that handle
4 mental-health cases exclusively and they --

5 MS. KELLEY: But the person is supposed to be
6 indigent?

7 JUDGE WADE: Not on that caseload. They do not
8 have to necessarily be indigent. Part of the reason why our
9 clients have to be indigent is because they have to use public-
10 health services. If they have their own private insurance, we
11 could not put them in our program because, basically, our
12 program provides all this case management and extra dollars for
13 services.

14 So if you have your own private insurance, there
15 would be no way for us to monitor you. So if you're not
16 indigent -- and when I say indigent, I mean, you can have some
17 kind of menial job and obviously still be indigent. But if you
18 have your own private insurance, you would not be eligible for
19 our program, but you could go over to the public defender's
20 mental-health program.

21 Now, if you have your own attorney and you would
22 have your own hired attorney, you probably would not be eligible
23 for either of those programs. That's not to mean that the
24 district attorney's office wouldn't do some special conditions
25 on your probation, et cetera, but they wouldn't be eligible for

1 any of our programs.

2 MS. KELLEY: All of you have addressed the issue
3 of people with mental illnesses on your docket. If there is a
4 Defendant in your jurisdiction with some type of intellectual
5 disability, are they eligible for your docket or do they have
6 their own or do they go to the regular docket?

7 JUDGE CARR: Mine go to the same.

8 MS. KELLEY: To?

9 JUDGE CARR: They can come into my courtroom.

10 JUDGE MERY: In my court they don't qualify
11 either under the mental-health initiative or the money that was
12 provided. I call the mental-health initiative what
13 commissioners court provided, the million dollars, or under the
14 half million dollars, which was the federal government
15 guidelines. They don't qualify. But I told you the great staff
16 that we have, all the personnel -- they're instructed to help
17 these people. We say, no, they're not going to do probation
18 with me, but get them hooked up.

19 You know, I don't know what type of services, per
20 se, are available to someone with mild mental retardation or
21 something of that nature, but the people that work under me are
22 very, very knowledgeable and so they get with the attorneys and
23 they get with the family and they try to provide support. But,
24 technically, that person does not come under one of my
25 probations.

1 JUDGE CRAIN: Yes, they do come in my courtroom.

2 JUDGE WADE: And they would not -- they would
3 not come in my program, but they would all be eligible for the
4 other mental-health program run through the Public Defender's
5 Office.

6 MS. KELLEY: Some of you have alluded to the
7 fact that people suffering from mental illness are sadly capable
8 of violent crimes. If, in fact, someone like that is on your
9 docket and you fashion a sentence which includes some type of
10 probation for them, that is to say, a penalty that does not
11 include jail or prison, do you still need to get the victim of
12 that offense to consent?

13 JUDGE CARR: Well, I think that that would kind
14 of be part of the plea bargaining process and more a function of
15 the district attorney's policy, who usually would not --
16 depending upon the degree of violence. You know, the greater
17 the level, then as a policy I know the Tarrant County District
18 Attorney's Office in Fort Worth -- they would kind of encourage
19 their assistant to contact the victim and get that. But that
20 has not seemed to be in the cases where it's been appropriate --
21 that has not, for the most part, seemed to be a hurdle.

22 JUDGE CRAIN: Well, the way we do it, we just
23 look at that element and decide how severe it is and what input
24 we can get from the victim. We've had victims that have been
25 beat up pretty bad. I mean, a very scarred up back from being

1 beaten in the back with a whip or a belt by somebody who had
2 PTSD syndrome and she very much wanted him to get treatment, so
3 we had to hook him up with the veterans clinic here locally and
4 try and get them on a program like that.

5 On the other hand, if you have indications, which
6 we frequently do, that somebody has what we call in the business
7 homicidal ideations, you want to handle it with care. We had a
8 guy this summer that had a goal to commit great violence to the
9 governor. Needless to say, when the governor's mansion burned
10 down, we went and checked and he was in jail and not out on the
11 street.

12 But, you know, it's just like any other criminal
13 case, misdemeanor or felony. If there are huge warning signs
14 there that somebody is going to -- has a proclivity to commit a
15 violent act against other citizens or other kind of mayhem,
16 they're probably not going to just give regular probation. If
17 they do, it's going to be with some idea that there is an
18 ability to overcome those violent tendencies and there hasn't
19 been a tendency in the past to really go all the way and kill
20 somebody or just continuing on with this assaultive behavior, so
21 you just have to address it that way.

22 JUDGE CARR: Can I also say that Texas law
23 requires district attorneys' offices to have victim-impact or
24 victim's representatives, so to some degree, all victims of
25 violent crime should be receiving notice of settings. Just like

1 any other case, a lot of times the victim kind of drops off the
2 face of the planet and so the degree of participation of the
3 victim in the case will also drive the prosecutor's office to
4 some extent in how much consultation there is.

5 MR. JONES: Vicki?

6 MS. YOUNG: I had one question and maybe I
7 misunderstood. But, Judge Wade, you were talking about people
8 pending commitments to state mental hospitals because of
9 competency questions, and I thought you said that you handled
10 misdemeanors so that people -- Is that correct? Or these are
11 people facing felonies?

12 JUDGE WADE: No. That's correct. We do also
13 have competency evaluations done on pending misdemeanors, as
14 well.

15 MS. YOUNG: So that someone facing a
16 misdemeanor, if they're declared incompetent, would then be
17 placed probably in a mental institution for -- is there an
18 upward time limit on that?

19 JUDGE WADE: Yeah. They're all statutory time
20 limits on that, but the problem is not the time that they spend
21 in the state hospital; the problem is the time they spend
22 waiting to get to the state hospital.

23 You know, I think that brings up once again, in
24 my opinion, an area where the criminal defense bar, you know,
25 can really aide this population through education, because we

1 have really tried to sit down with our criminal-defense bar and
2 work with them on what is competency. Because we have found
3 that if you're not familiar with this population, it's easy to
4 speak with someone for five minutes in a jail holdover cell who
5 may be a little difficult or whatever and just say, oh, you
6 know, they're incompetent and I need an evaluation. Whereas,
7 you know, when you're more familiar with the population and you
8 understand what you're dealing with, we find we have less
9 attorneys that are actually even referring clients for
10 competency evaluations.

11 That's the thing we're really working on in our
12 county, to educate the criminal-defense bar as to when -- you
13 know, when you really need this evaluation and when you don't.
14 Partially because we feel like a lot of times -- and we're also
15 bringing people back down once they've been found incompetent
16 and then they're in jail waiting to be sent to the state mental
17 hospital, we're bringing them back down for interviews, we're
18 encouraging the attorneys, because there is no necessarily sort
19 of requirement to then subsequently visit your client, to go
20 back and revisit their client and see during the time they've
21 been in jail in a stable environment receiving their medications
22 -- has their competency been restored and can we re-evaluate
23 them and prevent them from having to go to the mental hospital.
24 So we're kind of working on that front, too.

25 MS. YOUNG: Just following up on that, if the

1 other three judges could address if you needed -- what you would
2 want to tell the criminal-defense bar about mental-health courts
3 or mental-health treatment, what would you say?

4 JUDGE CARR: Well, I think training, because one
5 of the things we are going to pursue -- just like we have
6 specialized wheels. If it's a Spanish-speaking Defendant, we
7 want to match them up with a Spanish-speaking attorney. If it's
8 somebody who's deaf and needs a sign interpreter, we want to
9 match them up with that resource. So we don't have -- Texas is
10 such a patchwork state. I mean, there is big Public Defenders'
11 Offices. Tarrant County has been per case ad hoc appointment
12 with state-mandated experience standards.

13 But in our particular case, we are going to seek
14 to train a certain cadre of lawyers and establish some criteria,
15 that when a Defendant presents with a certain level of symptoms
16 or a certain diagnosis, then we should consider appointing one
17 of these specially trained defense attorneys to handle their
18 case.

19 To tell you the impact, if I may address what
20 Judge Wade said -- I was wrong a moment ago. In the short
21 commitment, the initial commitment is up to 120 days, and on a
22 good day a criminal trespass case in Texas will fetch you about
23 a 15-day sentence. So if you go to the state hospital -- and
24 that's why these mentally ill people -- they serve such per
25 capita longer sentences, is that you've already served many

1 times over just being confined in the state hospital. And then
2 if you're still not competent, then we send you away for up to -
3 - the only cap that's left on it is you can't be confined in a
4 state hospital longer than the maximum confinement period for
5 the offense, which for a criminal trespass on a property would
6 be six months.

7 So, you know, a lot of these -- there are some
8 people who max out and never get found competent, are discharged
9 from the -- and then they're kind of pushed out the door unless
10 they're so sick that they're eligible for a civil commitment,
11 which is a totally different standard. So just by me answering
12 this question, it's a very complicated area and it does require
13 special expertise and we have to get more defense attorneys up
14 to this level of expertise.

15 MS. YOUNG: Judge Mery?

16 JUDGE MERY: Yes. I want to refer to your
17 mission statement when you're asking me what would I tell
18 criminal defense lawyers. To see some of the problems that
19 y'all were trying to identify, you mention issues of
20 confidentiality, of waiver of all the many different types of
21 rights under the amendments.

22 You know, many lawyers, when they come out, they
23 put on their card attorney and counselor at law. I've always
24 tried to emphasize that when you're a lawyer, you're a
25 counselor, too. You really are. Now, I think a lawyer can be

1 very creative and has to look at the resources available to
2 their client, namely, family, friends, things of that nature,
3 and they have to be able to marshal those resources while being
4 protective of their client's rights.

5 So the first thing I will tell the defense
6 attorney is, look at your client as a whole person. You're a
7 counselor at law. Now be creative. All right. So it's like
8 any problem we have to solve. You've got a homeless person,
9 they were accused of trespassing over here, and they happen to
10 be mentally ill. Now, what are you going to do about this?

11 Well, why are you homeless? Find out. Do they
12 have relatives in town? Yes, they do, but the relatives are
13 burned out. They've had it. It's been all these number of
14 years. They can't control this person, the person won't stay on
15 their medications for a long period of time, and they're just
16 tired of dealing with them.

17 Well, now you're going to have to, as a defense
18 lawyer, try to marshal these resources. Lo and behold, you're
19 in a county that has a mental-health court. What are the
20 resources available there? Well, you can have all these
21 caseworkers, you can have psychiatrists, you've got probation
22 officers. Everybody is all out there to serve your client. And
23 you've got a judge who hopefully has been trained and gone to
24 different seminars and conferences, but on top of that they
25 really care. They volunteered for this. They're not getting

1 paid any more. They're not working any less so they really do
2 care. How are you going to help that person?

3 Now, to me, if the defense lawyer starts from
4 that perspective, the ethical dilemmas become much less and much
5 clearer. There are certain bright lines you should never cross,
6 but if you see the arena you're working in, then you can work
7 within those bright lines and do something for your client.

8 I harken back to Judge Crain's initial comments.
9 It's not an exaggeration that there are people who have been
10 arrested a hundred times.

11 How can the defense lawyer feel that they're
12 serving their client when their client is going to plead for 15
13 days because they've been in seven or eight days and they get
14 two for one, and they're right back out on the streets with no
15 place to get a meal, no place to have shelter, no one to talk
16 to. You know for an absolute fact they're going to be back in
17 the jail.

18 But are you just there to collect your court-
19 appointed attorney's fee for that day and move on? You have not
20 served your client and you cannot say that, well, I really cared
21 and the client just didn't want to look at probation. That's
22 not the way to go about it.

23 Now, if you've done your investigation, if you've
24 shaken every bush, you looked under every stone and there is no
25 alternative, that's one thing. But if there are family members,

1 if there are resources, then -- as Judge Wade said, you know,
2 yeah. When you talk to somebody for five minutes and it looks
3 like they're incompetent, but if you get to know your client,
4 you're going to see that they do make sense. You can enter into
5 their world.

6 I feel that you can't give up unless and until
7 you are satisfied that this client really and truly understands
8 what they're giving up and that's the direction they want to go
9 and you as a counselor at law and an attorney have exhausted
10 yourself in attempting to convince them that there is a better
11 future available to them and they don't want to take it. I
12 think at that point if they're competent and they want to plead,
13 fine. But, you know, short of that, there is a whole lot you
14 can do without violating your client's rights to get them to the
15 point where they can make an intelligent -- you know, a lot of
16 these people are highly intelligent, but they're mentally ill --

17 MS. KELLEY: And that's why, Judge Mery, I have
18 a real problem with some of your analysis because, for me at
19 least, it's not that clear cut. It goes back to what Judge Carr
20 said earlier. When we deinstitutionalized our population, we
21 didn't think through the situation, and I don't think that we
22 should sit back and see people going through our doors maybe --
23 our jail doors maybe a hundred times in a short period of time.
24 I don't think as defense attorneys we should take the
25 overcriminalization of really nonviolent contact or nonviolent

1 conduct sitting down.

2 When we went through our deinstitutionalization,
3 we also severely underfunded our community mental-health
4 resources, and if we had a population out there that was able to
5 avail themselves of those services, then our police departments
6 wouldn't be arresting them for conduct that otherwise would not
7 be occurring.

8 JUDGE MERY: Well, I happen to agree with you,
9 okay, but I think that's a different issue, frankly. I think
10 this -- Sure. Society has fallen down on the job. Society, the
11 community has not provided the resources. Okay? But in the
12 meantime we still have these people being arrested, so, yes,
13 overall should we talk to our legislatures or legislators, to
14 congress? Should we get new funding? Absolutely.

15 But right now where we are, we've got the
16 criminal-justice system and many of us feel that a lot of these
17 people don't belong there, but they're there. They're there.
18 And they're going to keep coming back until we do something, so
19 in the meantime, we're saying within that justice system today,
20 until we address the true needs, how are we going to handle this
21 person?

22 And as I indicated in my comments, we were seeing
23 people that were spending three times the amount in the jail
24 just to get the attention to go anywhere, to even plead out and
25 get out. And the first response was, good. We're going to set

1 up a special jail docket. They're going to plead out and get
2 out today. But that didn't serve those people. They came back.

3 I agree with you, but what I'm saying is there
4 are two parallel tracks. You know, that should exist. I think
5 the defense bar maybe should be very vocal, should lobby. You
6 know, your association should lobby for more funds. It's
7 inhumane the way things are today. I agree.

8 But at the same time I feel that in the short
9 four months -- I don't know if I mentioned that our first docket
10 was called April the 16th. In that short -- Not four months, ten
11 months. Ten and a half, eleven months now -- I mean, seven
12 months now. What's wrong with me? Six to seven months. Okay?
13 In this short period of time --

14 JUDGE CARR: That's why you're a lawyer and not
15 an engineer.

16 (Laughter)

17 JUDGE MERY: That's true. I have 44 people right
18 now -- 44 that have pled because mine is not a diversion
19 program. You have to agree -- By the way, all the rights are
20 meticulously observed. If a person does not want to agree,
21 okay, to enter the program, we'll give them time served and we
22 still try to hook them up with all these resources that I have.
23 The difference is if they drop off the face of the earth, there
24 is nobody looking for them. I mean, you know what I'm saying?
25 It's a different level than under court supervision.

1 So my point is these 44 people are doing
2 extremely well. We have some studies underway right now -- I
3 don't know if the sociologists would approve, but the way they
4 decided to go about it in Bexar County was they were going to
5 take -- they took 30 people that are currently on my docket and
6 they tried to get age, gender, race, type of offense, and they
7 tried to match them up with 30 similar people that have been
8 through the system, records that we have in the past, and
9 they're going to try to compare recidivism rates. Okay? So
10 we're going to find out -- I don't know if that's technically a
11 good study, but it will tell us something.

12 But I must tell you, I've only had two Motions to
13 Revoke filed in these six months now and these people are doing
14 exceptionally well. I hear from the people. They come to the
15 court. They look like a changed person because they've been on
16 their medications all this time. I hear from their families.
17 Lives are being put together. People are getting jobs.

18 So I do agree with your point, but short of a
19 complete change in our society where we're just throwing
20 billions of dollars into this problem, which I hope we'll do
21 some day -- short of that, we can do a lot of good with the
22 little few dollars that we have right now in our current court
23 system. That's what I'm talking about.

24 MR. JONES: We have gone over our allotted time.
25 Judge Crain, if you want the last word on this, you can have it.

1 JUDGE CRAIN: I don't need to have the last
2 word.

3 MR. JONES: Okay. Then we'll thank you all very
4 much for your testimony, and we are happy that you could
5 facilitate getting y'all together and allowing you all to meet.
6 Thank you.

7 JUDGE CRAIN: This was very informative to me,
8 too, so thank y'all very much.

9 (Brief recess)

10 JUDGE EARLE: I want to tell you, we met
11 Wednesday night. I wish y'all had an opportunity -- I know most
12 of y'all weren't here in time to come visit to the court. It's
13 one of the best things that we have going, and I can tell you
14 that I asked all of them on the spur of the moment, can y'all
15 come on Friday, and they were willing to come today.

16 MR. JONES: Great.

17 JUDGE EARLE: So I want to thank each of you for
18 taking time out of your own schedules to come down here and
19 share your experiences with the group.

20 MR. JONES: Fantastic. Thanks and welcome.
21 We're happy to have you here and looking forward to having a
22 conversation with you.

23 What we've been doing, what we'd like to do is to
24 have each of you introduce yourselves and talk a little bit
25 about your experiences. I'm going to also have Judge Earle tell

1 us a little bit about the court and the way that it runs. We
2 then will have a number of questions that we've got for you and
3 just sort of engage in a little dialogue back and forth. The
4 way that we operate -- the way that we do that is to have one of
5 our members sort of lead the discussion. For the purposes of
6 this panel and this discussion, it will be led by Gail Shifman.

7 So I am going to now be quiet and turn the floor
8 over to you. Maybe, Judge, you can start and then have each of
9 you, after the judge is done, tell us a little about yourselves.
10 Again, welcome and the floor is yours.

11 JUDGE EARLE: I guess I can -- I'll start and
12 then I'll introduce everyone.

13 My name is Elisabeth Earle. I'm the judge of
14 County Court No. 7 here in Travis County. It's an elected
15 position every four years, and we have been tasked with starting
16 a DWI court. We have a very successful drug court here in
17 Travis County. Joel Bennett -- I think you've had a chance to
18 hear from Judge Bennett today.

19 When I was asked to help start the DWI court, I
20 didn't quite know what I was getting involved with, but I
21 quickly learned what a success this has become in a short period
22 of time in my eyes. I was a community-court judge before being
23 elected to where I am now, so I was used to doing problem-
24 solving courts through some of the training with problem-solving
25 courts, so I knew the pros and the cons that you can get from

1 it.

2 This program has been up and running just a short
3 amount of time. I think we started taking our first applicant
4 in February, so we're less than a year in running and we have
5 approximately 20 active participants in the program. Some are
6 in IOP, intensive out-patient; some have already been advanced
7 to aftercare. These three that are with us today have been with
8 us the longest, I would say, and can share their experiences
9 with the court and what they feel like it has helped them with.

10 We handle DWI cases, multiple DWI cases, usually
11 multiple charges. If there is more than one before the other
12 one has been resolved, they will offer -- the State of Texas --
13 how we've done it so far is the offender and their attorney will
14 go through the application process, whether or not they can be
15 accepted into the program. The program is designed not to
16 accept anybody with felonies pending or assault/family violence
17 cases. We're strictly trying to deal with the alcohol issue.

18 Once that is -- the county attorney's office goes
19 and runs the background check, et cetera, and decides they want
20 to offer this as an alternative to jail or a regular probation
21 somehow, some way but usually jail when there is multiple DWI's
22 we're talking about -- they will offer that to the defense
23 attorney.

24 At that point the defense attorney will send
25 their client, if they choose to accept it at that point, to be

1 evaluated through CES to determine whether there is any other
2 issues we need to know about -- be evaluated for mental health,
3 be evaluated for, like I said, family violence, be evaluated for
4 drugs, et cetera.

5 At that point if the person is going to be able
6 to be helped in our program -- it's a very intensive program --
7 we will send that out -- that will be submitted to the group.
8 We meet once a week on Wednesdays at 4:00 o'clock to discuss new
9 applicants that are going to be in the program. Then at 5:00
10 o'clock we have our court docket, which everybody comes once a
11 week to meet with me, and go over their progress for the week
12 before.

13 These individuals here have been advanced to the
14 second phase, so they only come every other week so I only get
15 to see them twice a month.

16 But they can tell you also in the first phase --
17 and we have the phases all divided out and I have all the
18 packets for you but I realize that you probably are inundated
19 with a bunch of paperwork so we're going to e-mail them all to
20 you so you have it electronically, as well.

21 MR. JONES: Thank you.

22 JUDGE EARLE: And the phases are designed very,
23 very -- on purpose how they're designed, because like the first
24 phase you're going almost every day to some sort of treatment,
25 either group, individual, or meeting with me or meeting with our

1 probation officer. Then once you go into aftercare, it is, of
2 course, less time. You're only going twice a week. So it's
3 different if you're still coming to see me.

4 So there is different phases which you graduate
5 to. Then if there are any sanctions or any violations during
6 that time, sometimes you can get bumped back or other things can
7 happen along the way.

8 So I don't know if that's what you wanted me to
9 talk about, but I can -- I was just kind of giving you an
10 overview -- very, very broad overview of it and you may have
11 some specific questions. But at this point I guess it will be
12 time for me to ask our participants to introduce themselves.

13 MR. BENNETT: I'm Bill Bennett. I have written
14 a little letter earlier. I'm going to use it for a base because
15 I seem to be a little too wordy.

16 But before I do that, I would like to tell you
17 that one of the overall positive sides of this program is going
18 through it with these other people. I mean, your -- many
19 faceted people. A problem with the alcohol disease is that you
20 think you can read anybody else's mind whether you know anything
21 about them or not, and pretty soon in the program you learn that
22 that is a part of the insanity, is to think you know things that
23 are not really valid or not have been validated.

24 To give you a little background on me -- and I'm
25 going to really sketchily go through this. After a successful

1 career in the automobile business, 39 years, I began to slow
2 down. Previous to this my alcohol use had occasionally caused
3 me issues. As I think back, it caused me issues from a very
4 young age.

5 Of course, I grew up in Texas when an open
6 container was legal. I'm 62 years of age. And I think
7 everybody has tried to educate we Texans as to the consequences
8 of DWI, but we just don't listen because we grew up different
9 and we think we're special.

10 I ignored any possibility that I was abnormal
11 because, after all, I was one of the leaders in income in my
12 field and lasted a few jobs for long years. The last place was
13 a dealership that I was employed as the boss for 17 years. My
14 wife and I have a son that graduated with honors from Texas A&M
15 University, has a successful career. My wife of 38 years also
16 has a successful career.

17 I drank socially and rationalized that the
18 occasional abuses were merely normal stress relief from a
19 difficult career, either celebrating or misery of the job.

20 I'm going to go on to a little more about the
21 class and skip that about me. I say in here that I hope that
22 all of you involved realize the commitment the DWI court makes
23 when trying to rehab. There are many types of people who offend
24 the law by drinking and driving.

25 I was never going to go to AA meetings on my own.

1 The first two meetings I went to surprised me at the honesty
2 that seemed to flow in that environment. Those compulsive
3 meetings and the careful counseling that I received at the
4 Cornerstone DWI class was the beginning to soften my attitude of
5 entitlement and defiance. I took about six weeks of sobriety
6 for me to shift my attitude towards an interest in dealing with
7 the character issues and the habits. The AA meetings and
8 Cornerstone classes began to become fun and my sobriety was
9 becoming enlightening in many ways that are hard to explain,
10 some spiritual.

11 My previous brush with a sincere spiritual life
12 was starting to become real again to me. I was not angry or
13 anxious. I found that I was moving from defiance to beginning
14 to wonder if my using was a symptom of alcoholism. It probably
15 took me at least two months to deal with that fact.

16 Shortly after that the desire to fight the
17 program was totally gone. I began to care about the individuals
18 in Cornerstone class and their sobriety. I saw that I was -- I
19 saw that I was sincere in encouraging all of the -- of us to
20 help each other.

21 This is a program that has had life-changing
22 reality take hold solidly. I'm 62 years old and I needed this.
23 The younger adults need it also. The program helps them to get
24 a focus on what should be important to them in life. Even the
25 most resistant of being open-minded about the alcohol or drug

1 use have, in fact, embraced the program. I've actually had
2 several of the young people start talking after two or three
3 months about how much better they feel since they don't drink
4 anymore.

5 My wife made a comment -- she said, "As Bill's
6 wife, I would like to say this program has been a godsend for me
7 and our family's peace of mind. Encouragement Bill has received
8 through the program has been a true personality transformation
9 for him, which helps us to better understand the disease and the
10 control and strength over his life."

11 I want to thank all of you for your efforts.
12 I'll be glad to answer any questions. I hope that's given you
13 some of what you wanted to know.

14 MR. JONES: Thank you for sharing that.

15 MS. MAYER: My name is Sarah Mayer. I'm 21,
16 very young. I grew up close to here, Dripping Springs, in a
17 family that doesn't drink very often, not never. They're not
18 against it, but doesn't drink often. It's not something that
19 was ever really a part of my life until even the beginning of
20 high school. Stayed away from it and then became friends, I
21 guess, with some people that were much older than me. Started
22 school at ACC while I was in high school. Continued --

23 Sorry. I'm a little bit nervous.

24 Continued to take classes there and wanted my
25 independence. As I did, I just did not think rationally,

1 honestly, and started working in a couple of restaurants and
2 made that my focus and just got drug into this lifestyle that
3 was not healthy for me at all.

4 And I think what this program has given me -- and
5 it is very intense when it starts out, like she said, every day
6 doing something and that was something that was just good for
7 me. To be structured to -- as simple as that is -- I'm very
8 strong when I put my mind to something, but the problem is I
9 have to put my mind to something in order to do it. And my mind
10 was just not -- my priorities were not in the right spot.

11 So I think that the actual curriculum that we
12 have -- we have the curriculum that we do every day and that's
13 good. You read it and it's very basic and it's nothing that you
14 don't know. It's just good to be reading it. And then the
15 comradery with all the people is something that's definitely
16 very helpful.

17 We have the NA and I actually started going about
18 four months before I started the program, so I had the notion of
19 what it would be like, but it's also different because not only
20 is it people that are going through the same issues with their
21 lifestyle with alcohol, but also people who are going through
22 the same legal issues and they're doing the same things that
23 you're doing every day and are just essentially dealing with the
24 same things, so I think that's the biggest thing.

25 MR. JONES: Thank you.

1 MR. HILDEBRAND: My name is Joe Hildebrand. I
2 started the program. I've been in it about six months now. I
3 started drinking when I was in high school, but not really
4 heavily until I got into college. I went to UT here for my
5 undergrad, and I got arrested my first weekend I was away from
6 my parents and I got a couple of my P's and then this past year
7 I've gotten two DWI's. Through all of that and everything I did
8 and the time I spent in jail, I decided that it still wasn't
9 worth it to quit drinking. Honestly, what this program has done
10 for me, has given me the motivation to actually have the time of
11 sobriety, which I haven't had since I was 18. I'm 27 now.

12 So for the past six months I have had sobriety
13 and it has been really, really great. Without the program and
14 the court, if I was just on probation like normal probation or
15 spent my time in jail, I would never have had that opportunity.

16 The way that they do it is Judge Earle -- when we
17 come in for court, she will question us and if it's something
18 that happened -- we all have interlock devices on our cars, so
19 if we blow into them and it gets a violation, then we go into
20 court and she will put a SCRAM device on one of us and those,
21 I'm sure you know -- they detect alcohol and if you have that on
22 and then you get in more trouble, then it will escalate up and
23 you can eventually be put into jail. And with normal probation,
24 you wouldn't be in there in that situation and you wouldn't have
25 to go see the probation officer once a week or go to court once

1 a week or you have ten hours of counseling at the start of the
2 program.

3 So I think that's the main difference between
4 main probation and the DWI court, and I think that's what helped
5 me out the most with the -- was the actual forcing of the issue
6 to not drink. Thank you.

7 MR. JONES: Thank you very much. Gail?

8 MS. SHIFMAN: Thank you for coming and for
9 sharing your stories. We really appreciate it. And the few
10 questions that I would like to ask, I'd actually like to direct
11 to the three participants in the program.

12 JUDGE EARLE: I'll stay quiet.

13 MS. SHIFMAN: Judge, as always, if you want to
14 intercede or correct anything, we will all stop talking. But
15 it's so rare that we get a chance to talk to participants, so
16 we're really happy that you came.

17 I want to take advantage of that if I can and I
18 want to ask your expertise about certain things, because you
19 know something about this court that none of us know and maybe
20 that even Judge Earle doesn't specifically know, and we want to
21 hear about your experiences with your lawyer and whether or not
22 your lawyer's role was what you needed and -- defense lawyer's
23 role was what you needed in order to understand what you are
24 embarking upon, what rights you're giving up, and whether it was
25 helpful or what recommendations you might have for how a lawyer

1 in this kind of a courtroom might be of more benefit to you.
2 That would be both before you take the plea and embark on the
3 program and also once you're in the program going forward.

4 So I don't know who might want to volunteer first
5 of the three of you, but I really would like to hear your
6 thoughts on these issues.

7 MS. MAYER: My lawyer was very -- I mean, very
8 helpful in the front, very -- like the person was talking
9 earlier, counselor, and this is what he thought would be better
10 for me. At the time I was -- Joe and I were the first two into
11 the program. We did not know much about what the program would
12 actually be. We knew it would be weekly counseling and that we
13 would see the judge weekly, but beyond that I didn't really know
14 exactly what the program would entail other than the fact that
15 it was going to allow me to see a judge and talk to her about
16 what we're doing -- sorry, I'm a little bit scatter-brained --
17 and have counseling a few times a week.

18 What I think he could have helped me with was the
19 other options. We went to a prosecutor two or three times
20 beforehand -- before we were able to find out about this court
21 and I wasn't quite sure as to what they had figured out.

22 So once we had decided -- my parents were a lot
23 in this decision, but once we had decided to do this court, I
24 didn't really know what my other option would have been, so I
25 think that would have also been helpful.

1 MS. SHIFMAN: If I could ask you one or two
2 follow-up questions on what you just said. So did you kind of
3 get a sense that your lawyer was advising you of all of your
4 rights and everything that was available to you, or did you get
5 a sense that your lawyer was kind of making a decision for you
6 that he or she wanted you to jump on board with.

7 MS. MAYER: I definitely feel that he made it
8 known that he believed this would be a good opportunity for me,
9 but I do think he set out every possibility. My parents, like I
10 said, were also involved in this. I think he talked to them a
11 little bit more about all the possibilities than I actually
12 heard myself.

13 MS. SHIFMAN: And how about since you've been in
14 the program? What's your contact been, if any, with a lawyer to
15 represent you?

16 MS. MAYER: There hasn't been much. We have a
17 volunteer lawyer so if we have questions, we can go to him. I
18 had contacted him one or two times when I had questions, but I
19 have had not had contact from him.

20 MS. SHIFMAN: So all the weekly court sessions,
21 you've been there and then there has been a lawyer available in
22 the courtroom for you?

23 MS. MAYER: Yes.

24 JUDGE EARLE: And I just -- I want to add one
25 thing, because we do -- when we had Leon come on board as the

1 lawyer there, their lawyers are with them until after they plea
2 in, and then once they plea in, that's when the introduction is
3 made with Leon. However, each of them have had interlock
4 devices on their vehicle and so that's something that Leon will
5 just do on his own without even -- I mean, he'll just come to
6 them and say, do you want an interlock -- do you want to be able
7 to drive -- not interlock device, I'm sorry. Occupational
8 license. Most of the time people who have subsequent -- two
9 pending -- in Texas you can't get an occupational license.

10 One of the benefits of the program, since you
11 have to go to so many counseling classes and meet so many
12 different people, you need to be able to drive and I will be
13 happy to sign that occupational license, but the deal is you
14 have to have some sort of ignition interlock device on your car,
15 et cetera. And so he will prepare those for them once a month,
16 because we have to -- it's basically a temporary order that
17 we're doing to get our -- to just make sure that we're up and
18 they're legal and we're all good that we're doing. He does that
19 just on his own.

20 I'm sure if one of them said I don't want to
21 drive -- that has happened, I think, in one case. He wasn't
22 going to drive. But, otherwise, it's -- you know, he does that
23 without them even coming to him on that, so that's the only
24 thing that the attorney, I think, steps in to do. And then if,
25 of course, there are sanctions involved, they are definitely

1 involved in those kinds of things.

2 So I'm sorry to interrupt. Go ahead.

3 MS. SHIFMAN: And Mr. Bennett or
4 Mr. Hildebrand?

5 MR. BENNETT: My lawyer -- I had gotten a DWI
6 prior and it had been dismissed, but I had to go one year so
7 obviously I didn't think that would ever happen again and it
8 did. And we don't need to go into that old news, but I knew the
9 lawyer pretty well. Same lawyer. And very capable. And when
10 he called me up on the phone and explained to me that this was a
11 program that was recently a start-up and he admitted to me that
12 he had gathered the important facts as necessary and that he
13 knew the gentleman, Leon, who was going to be on the DWI court
14 as a rep.

15 He explained to me that I wouldn't be going and
16 doing jail time because of that, that my community service would
17 be waived if I chose to do this, I would be able to obtain a
18 limited driver's license, I'd need to keep a log of everywhere
19 that I went, and I thought his details were very clear.

20 Then after I got into the program, which I'm very
21 thankful that I did -- I'm one that would probably -- if someone
22 had told me you're going to have to go to jail for 90 days, I
23 was so obstinate that I would have probably gone to jail for 90
24 days where I probably didn't belong there.

25 I've talked to my lawyer three times since then,

1 twice of which he's called me to see how it's going. But, then
2 again, with Leon -- And also a big teacher in the overall thing
3 is when these people get in trouble and Leon represents them and
4 we're sitting in court and we see that, that is a teacher to us
5 at the same time.

6 MS. SHIFMAN: Is this Leon behind you?

7 MR. BENNETT: Yes, ma'am.

8 MS. SHIFMAN: Okay.

9 MR. GRIZZARD: Perhaps I should leave the room
10 because the comments might not be so positive.

11 (Laughter)

12 MR. BENNETT: We have people that are in the
13 class that have had several violations with the SCRAM on and
14 such things as that, that we sit in class with and we shake our
15 heads just like you shake your head about us and wonder why.
16 But it just goes to prove to you that that's the type of
17 curriculum you've got to have to deal with it. Some people just
18 aren't willing to be honest enough to deal with it and they --
19 there is just so much funds available.

20 But concerning the lawyer thing, I think that he
21 made it clear to me I had -- the other choice was I would do
22 jail time, so how much I don't know. But I was not in a good
23 frame of mind when I started, but I got in a good frame of mind
24 pretty quick afterwards. I could see after at least three or
25 four weeks that these people were trying to help me and that

1 there needed to be a change in the conduct that I had -- that I
2 had shown to my family.

3 MS. SHIFMAN: And have any of you -- and you
4 don't have to tell us, but have any of you had any, you know,
5 blips where you've had to be sanctioned by the judge?

6 MR. BENNETT: I haven't.

7 MR. HILDEBRAND: I haven't.

8 MS. MAYER: I have had a boyfriend blow into my
9 Breathalyzer.

10 MS. SHIFMAN: A boyfriend what?

11 MS. MAYER: At the very beginning of this. Then
12 I had a SCRAM on for 30 days.

13 MS. SHIFMAN: Okay. And so when you had the
14 initial problem, what kind of contact did you have with the
15 defense lawyer when you had that first problem?

16 MS. MAYER: At that time there wasn't. I don't
17 believe -- I don't believe we talked about it after the sanction
18 happened.

19 MS. SHIFMAN: So when you went to court and, you
20 know, the fact that you had had a violation and there would be a
21 sanction -- were you standing there by yourself or was there
22 anyone advocating on your behalf?

23 MS. MAYER: I honestly don't remember. This is
24 within the first few weeks of the court.

25 JUDGE EARLE: Leon might remember because he was

1 there.

2 MS. MAYER: I don't remember anyone standing
3 with me.

4 MR. GRIZZARD: I certainly was there and, you
5 know, I'm not on the panel or anything, but I will just say the
6 issue of clients' rights in these programs is one that is both
7 unclear and I think very seriously needs to be addressed. As
8 long as the judge is a judge of good will and good heart and
9 everybody is kind of on the same page and these are supposed to
10 be nonadversarial courts and things have worked fine for these
11 folks, but that's a testament to both Judge Earle and Judge
12 Bennett here in the drug court.

13 But I think you're hinting around or raising
14 the issue of what are the client's rights? I'm there all the
15 time in my participation with the client. One of the powers of
16 these types of courts is that the participant addresses the
17 judge him or herself and that's one of the most powerful and
18 effective things. But our courts have a lawyer there all the
19 time and we step in, you know, and represent them if there is
20 actually going to be a real hearing and then our support or
21 participation -- we just kind of do it on a case-by-case basis,
22 what is the best thing for this person in this particular time.

23 But, again, I think the client's rights are an
24 issue which has not been addressed and needs to be -- ought to
25 be clarified and spelled out because these are a different type

1 of animal than we're used to dealing with.

2 MS. SHIFMAN: Just for purposes of the record,
3 could you give us your full name?

4 MR. GRIZZARD: Yes. I'm Leon Grizzard.

5 JUDGE EARLE: I can say that we've had some
6 violations. What usually happens -- and the participants don't
7 know this, but since we meet at 4:00 o'clock before they come at
8 5:00, Leon has usually either talked to the participants or is
9 going to when they get there and we'll have the group, which
10 consists of counselors, prosecutor, defense attorney,
11 caseworker, probation officer, myself -- we'll all sit around
12 this table and we talk about each person, how their progress is,
13 before I even go out to court. And if they've been a violation,
14 there will be a discussion about like whether -- what the
15 sanctions should be.

16 It's a group discussion: if there should be a
17 sanction, there shouldn't be a sanction, if we should kick the
18 person out of the program entirely or they should not. And
19 there have been many times where -- I mean, more than likely,
20 everyone comes to an agreement that that's -- this is the best -
21 - whatever the violation is or whatever the sanction is, it's an
22 agreement by everybody. Sometimes there is not. One person
23 would want something else and one person would want something
24 different and I make the decision there with them.

25 That's when Leon is really good advocating for

1 his client, because there may be something different -- this
2 caseworker may want something different and Leon is trying to
3 see -- trying to explain what their reasoning for doing what
4 they did or whatever it might be. So a lot of that happens
5 behind the scenes at 4:00 o'clock before we go out there at 5:00
6 o'clock, and then he will relay what has been going -- what's
7 happened with their individual case when he discusses it with
8 them.

9 MS. SHIFMAN: And, Judge, do you take
10 noncitizens in your program?

11 JUDGE EARLE: We cannot right now. It's a pilot
12 program and we don't have any funds. We just got some funds
13 from the Governor's office, but we would -- it's all been with,
14 you know, the grace of the extra probation officer that we've
15 been getting from the probation department and everyone working
16 overtime to do it in the program since it is a pilot program.
17 We're hoping -- and the problem with Spanish-speaking clients,
18 which I'm thinking you're asking about -- we have a lot in
19 Travis County and in Texas in general. But we'll have to have a
20 whole group for just Spanish speakers, so if we have 20 people
21 for one group, we would need to have that cost efficiency for
22 another group.

23 And that's another thing that got brought up.
24 I'm assuming that -- and Bill didn't mention this, but it had
25 to do with Bill and this whole group, is when we started the

1 program we didn't realize the cost it was going to cost for
2 treatment, and getting anything through treatment is so
3 incredibly expensive. It was up to \$100 a week in some cases
4 for their treatment, and that was not expressed because it
5 wasn't expressed to me either. We were all pretty much in shock
6 over some of that because it was -- the expense of how much it
7 was going to go into it and we didn't have any funds.

8 Now that we have a small grant and we have not
9 had the opportunity to go to commissioners court and ask for any
10 other funds, we will hopefully in the next year or less than
11 that -- hopefully within the next six months we'll be able to go
12 and have a presentation at the commissioners court kind of like
13 we're doing now, but with more specific numbers, et cetera, to
14 provide for them to show the benefit of a need for at least
15 another -- or Spanish-speaking group, because right now we can't
16 -- what I've asked the defense attorneys to do in Travis County
17 is to go ahead and apply so we can show the numbers of people
18 who would be otherwise offered this opportunity to be in this
19 court, but for the fact that they're Spanish speakers.

20 MS. SHIFMAN: And, Mr. Hildebrand, your
21 experience and your contact with your defense lawyer -- what
22 recommendation, if any, you might have to improve their ability
23 to service you?

24 MR. HILDEBRAND: When I -- from my defense
25 attorney I didn't really have a very good shot at taking my

1 court -- my case to court so I gave blood and it was over the
2 legal limit. So because of that, the deal they were going to
3 give me for if I pled guilty was not very good, so when my
4 lawyer saw what the court offered, he said that this is the best
5 thing that you can possibly get in your situation so I took it.

6 And they gave me a little packet that describes
7 everything that would be required in the court and it was a
8 little vague for at first. You know, I didn't really know what
9 I was going to be getting into completely. And if I was going
10 to say anything be changed, more accurately define what's going
11 to be required of the person that's going into the program.

12 During the court process, I haven't gotten in
13 trouble myself but I've seen Leon represent the people that do
14 get up there and they've -- the prosecutor and the defense
15 attorney and they'll try to work out the best possible thing for
16 the client, I guess.

17 But with that situation, I think it's -- I think
18 they're doing the best they can. I'd agree with Leon that the
19 possibility of what could happen to you needs to be spelled out.
20 I understand that it needs to be flexible for different
21 situations, but I think that the client needs to know what
22 they're getting themselves into before they decide to set up,
23 because once you're in, it's my understanding it's not so easy
24 to get out. That's all.

25 MR. JONES: Vicki?

1 MS. YOUNG: One question I have is that in
2 listening about these problem-solving courts and the services
3 that the court and the staff are providing, it's clear -- or it
4 appears that in looking at the three of you that it's possible
5 you could have on your own certainly got involved in AA or some
6 sort of counseling, but it was only until you got into the court
7 setting that it actually happened. The question that some of us
8 have is, both in the DUI court and in the drug court, does this
9 process belong in the courthouse or does it have to be in the
10 courthouse to get your attention to go with the program? Do you
11 understand my question?

12 MR. BENNETT: My case would be absolutely. I
13 would have never gone. I had already bought a beginner's AA
14 book about three years ago and I looked through it and I said,
15 oh, no, I don't want that, and I would have never gone if I
16 wasn't compelled to go. So that's just me.

17 I think in connection with that, the counseling
18 that you get -- my buy-in was that I had -- I was one of these
19 fairly narcissistic successful people that made their success
20 and money their god, so to speak. Of course, we all find out
21 that's not true after a while and there is sometimes a litter
22 of bodies behind you and relationships where that you trampled
23 over to get to that point. When we talked about character
24 defects, I thought, well, you know, at my age I'm in on that.
25 You know, I think I've carried this with me long enough. And

1 that was the real help for me.

2 But would I have gone to a shrink on my own or
3 would I have -- which I have. It was several years before for
4 depression. Or would I have gone to AA on my own? I would not
5 have, I can assure you of that. And I'm amazed that my
6 preconception of the idea is so wrong.

7 MS. SHIFMAN: Thank you.

8 MR. JONES: How about you two?

9 MS. MAYER: For me, yes and no. I mean, it was
10 the two DWI's that got me to start going a few -- probably four
11 months before the program I started going to AA a couple times a
12 week and went to a DWI counselor. That was in Austin. But I
13 think that was also knowing that I was going to be going to
14 court and going to be starting this and it just seemed like it
15 needed to be done. Had I not gotten the two DWI's, though? On
16 my own, no, because my life, to me, appeared normal. So it was
17 the fact it was court and this happening that got me to go to
18 AA, but not necessarily going for me.

19 MR. HILDEBRAND: No. I wouldn't have gone
20 without the court. I had gone with a friend before I had gotten
21 my two DWI's and I thought it was a clubhouse for old men to sit
22 around and tell war stories, you know. So it didn't really
23 appeal to me, but, I mean, being in the program and being forced
24 to do it, you can actually make relationships and it can work
25 for people of any age. So to answer, no, I wouldn't have gone.

1 MR. JONES: I just have one last question
2 because we are out of time. I just want to understand the
3 boyfriend blip thing. So if you are with someone who is
4 drinking or drunk or intoxicated, does that somehow gets impuned
5 to the participant and they get sanctioned? How does that work?

6 JUDGE EARLE: Well, if someone has the ignition
7 interlock device on their vehicle, they're told they cannot have
8 anybody else use -- blow into that vehicle. As you know, you've
9 heard the stories of kids blowing in or anybody else blowing in
10 and starting the car for you. The machines that we have -- we
11 had, I think, placed on her vehicle I believe did not have a
12 picture. It was just -- and some of the machines have a picture
13 so then you can prove, okay, it wasn't me. It was my boyfriend
14 and he was drunk and he took my keys or whatever it was.

15 Otherwise, you just know that I have someone who
16 I just got into the program, I mean, maybe a week, maybe two
17 tops. Been in the program. She has two DWI's and they're
18 pretty bad DWI's and she is starting treatment and she is in a
19 place where she is -- I can honestly tell you, I don't think she
20 was being completely honest with me or her parents about where
21 she was -- she had a boyfriend there sometimes, not there
22 sometimes. It was very vague about what was going on. And then
23 she came up positive -- ignition interlock blow that was high.
24 I at the time -- I'm like, okay, Sarah, you prove to me that you
25 can go without alcohol for a month so I put the SCRAM device on

1 her. SCRAM is the device -- the ankle bracelet that they wear.
2 And she did, and so I took it off of her.

3 Some participants do not prove that. They can't
4 stay away from alcohol, even knowing that I'm going to know that
5 they have it on their leg. So that's -- and none of them were
6 in that situation that are up here.

7 So at the time there was nothing -- at the time I
8 either took a girl's word for it who was just been put in the
9 program, who I could kind of tell there was just some
10 inconsistencies of some of the things and she's probably -- it
11 was probably her boyfriend, but the violation was the fact that
12 she allowed somebody else to blow in her car. Do you see what
13 I'm saying?

14 MR. JONES: Uh-huh.

15 JUDGE EARLE: So that's kind of the mentalities.
16 And that's one thing that Leon has taught me in problem-solving
17 courts, is not necessarily to punish the alcohol use, but punish
18 the deception or punish the not being truthful. And so they
19 have seen me many times ask somebody in front of me, if you're
20 honest with me, it's going to be completely different for you
21 than if you stand up here and not be honest with me about it.
22 And it is amazing how many people do come clean and be honest
23 about their situation and then some that just stand by their
24 statements.

25 So in that situation that's how it was more of a

1 violation for allowing somebody else to use the machine.

2 MR. JONES: Thank you all for your testimony.
3 We certainly appreciate your courage and your commitment, and
4 good luck.

5 MR. HILDEBRAND: Thank you.

6 MR. BENNETT: Thank you all.

7 JUDGE EARLE: You're doing great. Thank you
8 very much.

9 (Brief recess)

10 MR. JONES: We've saved the best for last.
11 Our final panel member/witness/person to give testimony is Mae
12 Quinn, Associate Professor at the University of Tennessee
13 College of Law. We thank you for being here and are looking
14 forward to your testimony.

15 You know how this works, I'm sure. Tell us a
16 little bit about yourself and give us the benefits of your
17 thoughts briefly, not too brief, opening statement and then
18 we've got lots and lots of questions. We have greatly
19 anticipated your arrival, so we look forward to the discussion
20 and the floor is yours.

21 MS. QUINN: Thank you for having me here to
22 speak here at the University of Texas, which you may know is my
23 alma mater. This is my first time back actually to the law
24 school since I graduated in '95, and so it's been a good trip
25 with a trip down memory lane.

1 I'm a professor, as you said, at the University
2 of Tennessee College of Law, the other UT, where I teach
3 primarily in our advocacy clinic. I focus there on indigent
4 defense issues, both adult and juvenile defense, but I also
5 teach criminal law, substitute criminal law, juvenile rights and
6 re-entry practicum, and a course on problem-solving courts. In
7 fact, it occurs to me I probably should have brought with me,
8 although I can forward to you, the syllabus that I have for that
9 course.

10 MR. JONES: Thank you.

11 MS. QUINN: Before joining UT, I was a public
12 defender in New York City. I did that for six years, I think it
13 was. I was both with appellate advocates and with the Bronx
14 Defenders. I know you've heard from some folks from Bronx
15 Defenders. I was a law clerk to the Honorable Jack B.
16 Weinstein, where I focused on criminal matters. He's a judge
17 who's known for his innovative approaches to sentencing. I was
18 a clinical teaching fellow at Georgetown University doing
19 criminal defense work there with my students and there also
20 practiced for a short time in problem-solving courts. They were
21 just sort of starting then. I also was an adjunct professor at
22 Cordoza School of Law.

23 In the interest of full disclosure, I should
24 probably mention that for a brief time I did work at the Center
25 for Court Innovation, which, as you know, is one of the primary

1 advocates and proponents of problem-solving courts in the
2 country.

3 But for almost a decade now, both as a
4 practitioner and an academic, I've been studying and writing
5 about problem-solving courts and my work has focused on the
6 legal, ethical, and other issues presented by the courts
7 particularly for the defense bar. I've been looking at the
8 modern problem-solving movement as of late through the lens of
9 history, and what is not often said and I think it's a really
10 interesting narrative, the narrative about the modern problem-
11 solving court movement told mostly by proponents fails to talk
12 about this earlier set of attempts in our country to create
13 courts that are eerily similar to what we see today.

14 So my recent writing is focusing on the work of
15 Anna Moscowitz Kross, who was a defense lawyer actually turned
16 judge in the 1930's who, for the beginning of the -- throughout
17 the beginning of the last century created many specialized
18 courts that sought to reform the low-level police courts in New
19 York City and create institutions very much like the ones we saw
20 today -- heard about today using social-science interventions to
21 displace due-process-based criminal court proceedings. Because
22 they no longer exist, I think it's quite clear that that
23 movement failed.

24 In terms of my comments, I have a two-hour
25 presentation that was a CLE that I cut to 45 minutes that I will

1 now cut further. You know, my thought was to sort of give you
2 my sense of the narrative, plug in some of the holes in the
3 history of the problem-solving court movement that I think are
4 often left out.

5 For instance, the beginning of the movement, as
6 you know, started in Miami in 1989. Some of what's left out
7 often is it didn't come from some benevolent place. A lot of
8 the reasoning behind that court was concern for overcrowding in
9 the prisons, concerns that the feds are going to come in and
10 start shutting the prisons down, and so I think this is
11 important when we frame these issues and think about what are we
12 doing, who's perpetuating the movement, and what are the
13 possible implications for Defendants and the defense bar.

14 Then there are more pieces of that history I can
15 address, but let me just jump in and talk about four main issues
16 today in terms of the legal and ethical problems, I think,
17 facing us who practice in problem-solving courts or have
18 practiced in problem-solving courts and facing the defense bar
19 generally.

20 The first is this teamwork approach that's been
21 talked about quite a bit and its unfortunate undermining of the
22 ability to zealously represent and zealously advocate on behalf
23 of the clients.

24 A second issue I'll talk about are the plea
25 structure. So many of these courts -- folks were using the term

1 "diversionary" in a very loose way today. A lot of these courts
2 involve pleas up front, and so they are not true diversion
3 courts in the sense that many people might understand; that is,
4 if you fail out you can go to trial and then through that route
5 avoid a conviction. I mean, it is you're pleading guilty up
6 front and the risks associated with these plea structures in
7 some courts.

8 The third issue I think that affects defense
9 attorneys and the defense bar generally is this notion of the
10 rhetoric not meeting up with the realities of these courts. I
11 was really taken aback to hear that the sense that the jury has
12 come in and that the answer is, yes, these courts are
13 successful. I think it's not clear at all yet, and even the
14 federal government, I think, in their many reports is forced to
15 concede that fact in many respects.

16 The fourth issue I'll talk touch upon is the lack
17 of transparency and review in these courts in part because of
18 the pleas and in part because of what you heard today, the ex
19 parte very informal processes that take place in these courts
20 often off the record.

21 The ten key components were talked about quite a
22 lot today, and Rule 2 or the second component issued by the
23 Department of Justice -- and I should say any drug court in the
24 United States to get funding from the feds has to comply with
25 the ten key components. You have the federal government issuing

1 those, I think, in 1997 and so soon everyone sort of signed on.
2 I think it may be 47 million, but many millions of dollars have
3 been given out as a condition of having courts that use this
4 Rule 2, using a nonadversarial approach, prosecution, defense
5 counsel promote public safety while protecting participants' due
6 process rights.

7 I think this is problematic in that you have the
8 Department of Justice, federal executive branch, unilaterally
9 establishing a requirement for state courts or state judiciary
10 without there being any change in the ethical obligations of the
11 lawyers under model rules or otherwise, without there being any
12 change in our community practice standards, for instance, the
13 ABA's guidelines or the NLADA's guidelines and, more
14 fundamentally, without there being any change in what it means
15 to be an effective advocate on behalf of your client in
16 providing effective assistance of counsel.

17 Since you've heard from New York, I won't talk a
18 lot about it, but I'll touch on something that's gone on in
19 Tennessee with regard to the ten key components and this notion
20 of nonadversarialism. Tennessee was somewhat late to the table
21 in terms of signing onto the drug-treatment-court movement, but
22 once it did get there, it was signed on whole-heartedly and, in
23 fact, is one of the few jurisdictions that has adopted the ten
24 key components legislatively. In, I think it was, 2003 it
25 adopted the Drug-Treatment-Court Act, I think is the title of

1 it, and it's codified at TCA 15-22-101. It says clear as day -
2 - you know, sets forth the ten key components legislatively.

3 More problematic, though, it goes on to offer a
4 definition of nonadversarial, which is missing from the DOJ's
5 explanation. It says nonadversarial means the disagreements --
6 and I quote, "Disagreements are to be resolved prior to court
7 and not in front of the participants," sort of what you've heard
8 about here in the DWI court. So, quite significantly, without
9 any change in ethical guidelines, it's now mandated nonpublic,
10 nonrecord resolution of issues, things that should be dealt with
11 in a public court setting with participation by the Defendant
12 involved and often that is not happening. I would argue that
13 that's wholly improper.

14 Even without legislation, as I explained in my
15 2000 article about being a public defender in a drug-treatment
16 court, the DOJ teamwork approach in the Bronx meant that defense
17 lawyers were often expected to acquiesce to sanctions that were
18 being imposed.

19 Let me pause to say -- and I know you've heard
20 from Judge Safer-Espinoza -- the judges running these courts are
21 good and benevolent and kind and they mean very well and she --
22 I have the utmost respect for Judge Safer-Espinoza. I will say
23 that she often cut things in favor of my client when things were
24 unclear, but we can't be sure that there is always going to be
25 that good and benevolent judge who's running these courts.

1 So even without legislation creating the
2 nonadversarial situation, we have this thing going on where the
3 expectation is that you will not fight too hard. I had
4 colleagues called aside for trying to fight too hard for
5 sanctions -- against sanctions, for instance, spending a weekend
6 in jail. What's worse, I think defense attorneys' involvement
7 in the status hearing was seen as optional. Clients had their
8 cases called without lawyers being present to speak on their
9 behalf. They were questioned directly about their drug use and
10 other violations, and in some instances sanctions imposed,
11 including jail time without anybody advocating on behalf of the
12 clients. Again, I would argue this is improper.

13 MR. JONES: This was in Judge Safer-Espinoza's
14 court?

15 MS. QUINN: In the Bronx. And I should tell
16 you, you know, this is interesting me having this conversation
17 now. I mean, I've been doing this for a decade now, talking
18 about these issues and so some of this is sort of trying to
19 think back to what my experience was and I commend you for doing
20 this, but it has been a long time and so I'm glad to know that
21 everyone is at the table now but I wish that there was more
22 attention paid earlier on by the defense bar.

23 So, yes. In the Bronx. You know, we would find
24 out sometimes after the fact by a phone call your client is in
25 jail.

1 MR. JONES: She was the most benevolent of
2 judges?

3 MS. QUINN: True, true. And I think Judge
4 Espinoza would acknowledge that and she has tried her best not
5 to make that happen. The realities, as I talk about in my
6 paper, of the busy, heavy caseload of public defenders is such
7 that you're all over the courthouse, and when you're spread
8 thin, that's the last thing you might pay attention to,
9 unfortunately. And while all this funding is being dumped into
10 the courts and dumped into the prosecutors' offices, the feds
11 are not dumping extra money into public defenders' offices to
12 cover all these extra courtrooms that are being set up. You've
13 heard the numbers. I mean, it's unbelievable in some
14 jurisdictions how many extra courts PD's are expected to cover
15 now without additional funding. So I would argue that kind of
16 sanction without representation is inappropriate.

17 You know, even if the DTC, drug-treatment courts,
18 purported desires to improve the lives of clients, the clients
19 still have a right to counsel and the lawyers involved still
20 have, I would argue, an ethical duty to be there and provide
21 that representation. We as a community are just as guilty in
22 terms of advocating our responsibility, I think. My colleagues,
23 me -- as I just said, it was often the last thing that you got
24 to because you knew she was nice, you knew she was kind, you
25 knew your client had this special agreement.

1 In Tennessee, as I understand it, most defense
2 lawyers don't go at all. Once someone is in treatment court --
3 I'll talk more about the structure in Tennessee -- you do not
4 see the defense lawyer anymore.

5 So this, as I say, even in the post-plea,
6 pre-sentence type courts, which are procedurally anomalous in
7 New York at least. There is no statutory provisions that create
8 this kind of process. There should be a lawyer present and the
9 probation type courts, like we've heard some about today -- and
10 that really seemed to be the norm in Tennessee -- there the same
11 argument applies perhaps with even more force since it's clear
12 that probation violation hearings are a critical part of the
13 criminal process at which the right to counsel applies.

14 I found it fascinating to hear about the way
15 Defendants are questioned and the burden is placed on them to
16 kind of get themselves out from under. It's quite clear that a
17 violation of probation -- the burden is on the prosecution and
18 they have to prove their case by a preponderance at least in
19 those places before there can be a violation found, notice is
20 required, a hearing is required. That is not happening in many,
21 many problem-solving courts across the country.

22 The evidentiary standard beyond the sort of
23 preponderance question, but what counts as evidence is quite lax
24 at these hearings, at these status reviews. For instance, in
25 Tennessee by statute at a violation of probation hearing to get

1 in a report about a positive drug screen, there are certain very
2 high standards that need to be met that are very relaxed in
3 these courts across the county, and you may see even higher
4 standards after the Supreme Court gets done with a case
5 currently pending. I would argue those should apply in these
6 drug-treatment courts.

7 MR. CLARK: You mean like evidentiary standards?

8 MS. QUINN: Yes, yes.

9 MR. CLARK: The liability and what we'd normally
10 see --

11 MS. QUINN: Right. Well, there is this question
12 pending right now about is there supposed to be
13 in-person cross-examination from someone who creates a report,
14 and the literature is quite good in the literature I've seen.
15 There are acknowledgments that these tests are sometimes bad.
16 They come back positives when they're not. The funding -- these
17 courts, you know, admittedly are operating on a shoe string.
18 There are different price ranges for different tests. You can
19 get the more reliable or the less reliable.

20 The programs being used -- and I won't get into
21 this a whole lot in my comments today. The programs being used
22 have problems themselves from the domestic-violence court in the
23 Bronx, the director of the batterer's program shooting his own
24 partner, to drug-court programs being run by people who are --
25 you know, there are questions about the proof coming forward out

1 of some of the programs. And so we really should be careful
2 about making sure they're meeting certain evidentiary
3 requirements and that counsel is there to press on behalf of the
4 clients.

5 The second issue, as I said, I would talk about
6 is plea-based programs and the risks. We've heard a lot about
7 these being alternative to incarceration. Often when you sort
8 of take away -- you know, clear away some of the brush you see
9 that some of these courts are not alternatives to incarceration
10 at all, that they're changing going rates, and that many of
11 these folks who are entering into the courts -- we heard from
12 the three participants who were just here. It's a little
13 unclear to me just how much jail time they were facing, if at
14 all. I heard 90 days. I bet that's the statutory max. I bet
15 the going rate is probably far less. And when the client can't
16 answer what the question -- you know, what amount they're
17 facing, that's not a knowing and intelligent plea.

18 For instance, in the Bronx the folks who came to
19 my court -- and it may have changed since then, but these were
20 first-time drug-sale or intent-to-sell charges, B-level felonies
21 for which the Defendants were facing a one-to-three minimum,
22 eight-and-a-third-to-twenty-five maximum. Everybody in town
23 knew if your client picked up a first-time drug sale and you
24 wanted to resolve the case, the Defendant came forward and
25 wanted to plead guilty, you would get a one-to-three sentence.

1 Your client would get the minimum.

2 It's my understanding before the drug court was
3 created -- and I came to town there right about when it was
4 created so I don't have this personal knowledge. This has been
5 passed down to me. Prior to the creation of the drug court not
6 only could you get the one-to-three, but C-level felonies were
7 often offered as the plea offer. So you were charged with a B,
8 you wanted to resolve the case, we'll drop it to a C, attempted
9 sale, and you're facing only probation at that time.

10 And so to claim that it's an alternative to
11 incarceration is a little disingenuous when previously it was
12 possible to get a probationary offer from DA's in these cases,
13 but they changed their policies as a result of the creation of
14 the court.

15 So in our court the one-to-three minimum, once
16 you entered into drug court, worked like this: You come into
17 drug court and usually these folks are held pending their
18 appearance before the judge or often held pending before their
19 appearance before the drug-court judge. You plead guilty today,
20 we'll get you into the program, you step out. You're stepping
21 out to the street to your out-patient program, but if you screw
22 up, if you fail out of the program, you're going to get two to
23 six, so the sentence the Defendant was facing was doubled. One-
24 to-three minimum, you plead guilty straight up, and if you go
25 into the program and you don't successfully complete, two to

1 six.

2 This is so even if in an 18-month out-patient
3 program the client got through 17 months. There was no discount
4 as often happens when a judge is left with the discretion to
5 make decisions in a probation-violation scenario to say, hey,
6 this is somebody who actually entered in good faith, made some
7 good efforts, here is the range, I as the sentencing judge still
8 have the ability to sentence them to something less than some
9 higher amount of time in prison.

10 I must tell you, I saw Judge Safer-Espinoza
11 struggling with that. I mean, I think -- I don't want to speak
12 for her. I think it troubled her where she could in the right
13 case get around it, she did, but as was talked about today, you
14 are really dealing with the prosecutor by and large. The
15 prosecutors are the ones that are setting up these courts, at
16 least the ones that I have seen most -- practiced in in New
17 York. They're the ones that control the deals.

18 I know that you spoke to Nestor -- I can't think
19 of his last name right now -- from the Bronx, a very fair and
20 good person, but our clients, when they finish the drug-
21 treatment program, didn't write a letter to the judge seeking
22 dismissal of their charges; they wrote a letter to Nestor. I
23 think it's an interesting commentary on the court.

24 So some of these courts are changing the going
25 rates, punishing clients not for the crime, but punishing them

1 for not staying clean, punishing them for not successfully
2 completing treatment and being an addict, something that was
3 deemed unconstitutional long ago. And some are beginning to
4 look at this -- other academics are beginning to look at this
5 and asking whether these sort of lop-sided deals that seem
6 pretty coercive are legal at all.

7 The third issue I would want to talk about is
8 this issue of rhetoric and reality and the efficacy issues of
9 problem-solving courts. Are they problem solving or are they
10 problem shifting?

11 As I said, the problem-solving courts proponents
12 have sung their praises, claiming that they've been a success,
13 but many of these studies that are coming out demonstrating
14 their success are being undertaken by the very institutions that
15 are creating the courts with funding from the Department of
16 Justice. And so I think that there are real questions about
17 just how straightforward and reliable some of this information
18 is.

19 Even with that, you have people, you know, with
20 the government entities questioning the success of the
21 institutions. For instance, in Tennessee the Office of Court
22 Justice Programs has said, you know, we've got all these studies
23 coming out saying that things are reliable, are reducing
24 recidivism, but we're not even clear what you mean by
25 recidivism. Different courts are collecting data according to

1 different measures and then those pieces of data are being
2 analyzed by folks who arguably have an interest in the outcome,
3 so you then have Tennessee state government saying, hey, there
4 may be some problems here with this information.

5 When I began writing about these courts in 1999,
6 2000, the dropout rate, those who failed out of drug courts, as
7 I recall, was one-third. At least I suggest that it was
8 one-third, you know, and some people said, oh, no, it's not
9 true. Well, New York Times just last month said not one-third
10 but nearly one-half of Defendants are failing out of these drug
11 courts. So how successful are they? The retention rates in
12 Tennessee admittedly are only 48 percent, so less than half are
13 able to successfully complete without going to prison or jail.

14 I would say I've been to a lot of different
15 forums, although not as much as you'd think. I often don't get
16 invited to these conversations.

17 MR. JONES: Imagine that.

18 (Laughter)

19 MS. QUINN: I find it interesting, though, we
20 always hear from the participants in the program, one, often who
21 are required to come and speak as part of their involvement in
22 the court. I taught a class and I have, as I say, the utmost
23 respect for the most decent, good judge in Knox County who runs
24 our drug court, and he brought to us a gentleman who was
25 participating. I believe that individual, as part of his

1 graduating, requires him to go out and speak to the community.

2 We never hear from the Defendants who failed out.
3 We never have gotten data collected from them to say, hey, what
4 was told to you by your lawyer, what were you thinking about
5 when you went into this court, and how has it affected you now
6 in terms of your desire to stay clean, right? If we're going to
7 talk about recidivism and keeping people out of the system, that
8 50 percent who failed out and have been told, you know, you
9 tried, you made a good effort, but we're going to double your
10 sentence now -- I wonder just how successful they will be going
11 forward, how therapeutic are these courts, in fact.

12 You know, more questions about how effective the
13 courts are. In 2002 the Federal General Accounting Office
14 issued a report stating that the Department of Justice needed to
15 do a better job of collecting data and evaluating the impact of
16 drug-treatment courts. According to the GAO, sufficient data
17 when put together, good evaluations would not be available until
18 2007. If these reports coming out were premature, we didn't
19 have enough information.

20 To be totally honest, I've not followed up. I
21 haven't looked to see, well, do we have enough and what does the
22 GAO say now.

23 It's not just the drug-treatment courts that have
24 these efficacy issues. As you probably saw, I wrote a paper in

1 2006 that looked at the Midtown Community Court and its attempts
2 to address prostitution in Midtown. Bottom line, I don't think
3 it was problem-solving at all; it just shifted the problem. I
4 would argue that private interest captured the criminal courts,
5 perpetuating pernicious police practices, I would argue, with
6 its sweeps and simply failed to solve prostitution, pushing it
7 to outer Burroughs where prostitution advocates looked at the
8 issue and said now they're in more dangerous settings and making
9 less money. I don't think this is a very good idea.

10 In fact, in St. Louis, Missouri, there was an
11 attack on their community court model on constitutional grounds
12 and the court was dismantled as a result of it. I would note
13 for this committee that some really good work was done by
14 law-school clinics, that they were really the ones that helped
15 lead the way in challenging that court and lead to its being
16 dismantled.

17 And that would be one of my recommendations to
18 the bar, is that you work more closely with clinics and with
19 students who want to work on these issues. Because of some of
20 the tensions between what public-defender offices can and cannot
21 do, allies in the clinical community could help you.

22 I already talked about the shifting. The fourth
23 issue, lack of review. There is very little, by the way, in the
24 way of reported decisions on problem-solving courts in part, I
25 would argue, because the Defendants waived their right to appeal

1 when they take the plea so few have ever, ever -- few, if any,
2 seek to have the decisions in those courts reviewed and things
3 are taking place under the radar. And then you have the problem
4 exacerbated, as I suggested, by this
5 off-the-record, informal process that insulates decision-making
6 in these courts from transparency and public scrutiny, a very
7 important feature of our criminal justice system.

8 So those are the four issues I would sort of
9 point out as issues for the defense bar. There are more. I'll
10 just say a little bit about the historical parallel movement
11 that I'm writing about. I'm in the process of writing a book.
12 I have several articles out about Anna Moscovitz Kross, and this
13 is a figure who I both adore -- you know, I write about her
14 because I find her fascinating and she was ahead of her time in
15 trying to fix problems facing the criminal justice system, but
16 her innovations, well intended and well meaning, violated, I
17 would argue, Defendants' rights.

18 She had a court I wrote about in the Midtown
19 Community Court paper about a prostitution court that Kross
20 actually tried to shut down called the Woman's Court, which had
21 some of the very same features. This idea of private agendas of
22 wealthy interests running the courts, private policing taking
23 place like we have business-improvement districts now. Back
24 then you had wealthy individuals coming together as committees
25 to helping press the agenda of the prostitution court and, of

1 course, the lack of success in suppressing prostitution.

2 She also in the 1940's -- I had an article that's
3 just come out this year that was the first, I argued, domestic-
4 violence court in this country, that took low-level domestic-
5 violence prosecutions and tried to -- quite interestingly
6 different from we see today -- process them in a non-adversarial
7 fashion. There I think she may have gotten it right in that she
8 did not assume that all women were victims and that all accused
9 batterers were going to batter again and tried to create some
10 kind of individualized approach, social work approach. It was a
11 breakdown in the home. How do we address it?

12 All of her innovations, the thirties, the
13 forties, and fifties, got a lot of attention. Like the folks we
14 see doing the work today, she was great at PR, she was great at
15 putting out her version of events, she was great at getting
16 funds for her efforts. But I think it's interesting that they
17 all came to an end in the 1960's and this is where I am in my
18 research.

19 That is when we had Gideon come down; that is
20 when you had the right to counsel in misdemeanors, at least in
21 the seventies. With Terry, with Miranda you started having a
22 defense bar, you started having Defendants' rights and that's
23 when these courts came to an end. I think it's also remarkable
24 that right now when the defense community is at an all-time low
25 or quite low in terms of its ability to even carry the caseloads

1 that they're expected to carry in public defenders' offices,
2 that's when you see this rise in these institutions.

3 You know, we're too busy off filing lawsuits,
4 trying to prevent ourselves from being overwhelmed, trying to
5 get the number of cases we have to carry to be lower. It's a
6 great time for these courts to rise up and succeed and I just
7 urge all of you to continue with this work and think about ways
8 to make this more of a focal point of NACDL's agenda. It's sort
9 of unfortunate that we're 20 years in and we're right now just
10 putting our shoulder against it to try to figure out how to stop
11 the movement from going forward.

12 MR. JONES: Thank you. This is Anna M. Kross of
13 Rikers Island fame?

14 MS. QUINN: I'm sorry?

15 MR. JONES: Is this Anna M. Kross of Rikers
16 Island fame?

17 MS. QUINN: You got it, yes.

18 MR. JONES: Is that right?

19 MS. QUINN: Uh-huh, AMK.

20 MS. YOUNG: When I read your article and
21 listening to you speak, what I am having a hard time grasping is
22 we've been listening to the people that run the courts, as well
23 as anecdotally people coming in and saying, "But for the court,
24 I wouldn't have had treatment" or whatever.

25 MS. QUINN: Sure.

1 MS. YOUNG: And are you saying that because the
2 courts -- because there appears to be such a disregard -- and
3 even it was quite interesting today and I guess you were here
4 -- that the three people that got into the court pretty much
5 said, "Well, I didn't really know what I was getting into, but
6 it's been good for me."

7 MS. QUINN: Right, right.

8 MS. YOUNG: and I guess some of the judges
9 seemed to say, "But it is good for them. We have to break the
10 cycle of addiction. This is the only way we can deal with it we
11 know given the world that we live in." And so is your response
12 to that, that we can try to correct the constitutional
13 violations procedurally or is the whole process broken?

14 MS. QUINN: No. A couple of things. I mean, I
15 think what my position has been starting nearly ten years ago
16 was, whoa, slow down. You know, I've been painted, I think, as
17 someone who is opposed to innovation, opposed to what was
18 described as holistic lawyering on behalf of the defense bar.
19 I'm absolutely in favor of defense lawyering, and I might be in
20 favor of certain problem-solving courts under certain
21 circumstances. I'm not in favor of the federal government
22 throwing millions and millions and millions of dollars at an
23 experiment that we don't know if it works and nobody is
24 monitoring and really, in an effective way, what's taking place
25 on a day-to-day basis in terms of protecting Defendants' rights.

1 So my initial argument has always been slow it
2 down. I'm no scientist. You know, the data I offer you, the
3 numbers I offer you -- those numbers are crunched by other
4 folks. I couldn't do that. But I did do a third-grade science
5 project and I knew that when you're doing an experiment, you're
6 kind of supposed to control for variables and have a small
7 control group and figure out, does your hypothesis apply in
8 light of that small group, developing some best conclusions,
9 looking very closely at what you've got at hand.

10 You know, maybe each state should have created
11 one problem-solving court and used it as a laboratory to
12 determine what works best, what's most effective, and how can we
13 make sure that we're infusing constitutional practices in those
14 courts. Instead, now we've got this widespread, over 2,000
15 courts across the country. It's really hard to address it at
16 this point in any broad way.

17 You have, I will note, defender organizations
18 across the country struggling with do we even continue
19 participating, things have gotten so out of control. Baltimore.
20 I was just contacted by them. I just saw Michael Morrissette at
21 a juvenile-defender conference. I mean, they're ready to pull
22 out, kit and kaboodle, of all the problem-solving courts given
23 what's going on.

24 So I'm not necessarily opposed to all of them. I
25 wish back ten years ago we would have really pushed to have them

1 slow down, pull back and figure out what works and how we can
2 help defense lawyers really playing a role in them effectively.

3 In terms of hearing from the judges and
4 participants, yeah, were it not for this, I wouldn't have done
5 treatment, my response is all three said were it not for the
6 arrest. Right? They didn't necessarily say were it not for
7 this specialty court that's getting federal funds, where my
8 confidentiality is not protected, where I don't really have a
9 lawyer standing up to challenge the underlying violation, not
10 just should I go to jail for three or two days.

11 I think probation might be able to do some of the
12 things that these folks were talking about. I've had clients
13 outside specialized courts ordered into a program, come back in
14 a year, and show me that you've successfully completed it. If
15 you don't, you'll do time, you'll be sanctioned in some way.
16 But we're making sure that there is some separation between
17 Defendant and judge, that there is some understanding of what
18 the judge's role is in this process.

19 So that would be some of my response to what
20 you've asked about. And I would say, too, you know, people are
21 saying the way things are right now. The way things are right
22 now, we have to respond to it. I'm a hopeless optimist and I
23 think that we should not accept status quo. That the mentally
24 ill are being arrested in ridiculous numbers for nonviolent
25 offenses based on their illness is not an acceptable situation,

1 and I don't think it's appropriate for the defense bar to say,
2 okay, great. This is happening so let's set up these courts
3 that might violate folks' rights and have them -- people who may
4 not necessarily want treatment in treatment for very, very long
5 periods of time.

6 I think it's interesting, too, on this drug-
7 court-versus-mental-health-court conversation that as I
8 understand it -- again, it's not my -- not an expert in this.
9 But the mental-health consumer-advocate groups are really very
10 much against the mental-health courts. So it may be a reality,
11 but they, too, are hanging on to this hope that let's change
12 this underlying problem and don't buy into the fact that it
13 can't be changed and we'll do this other thing instead, put all
14 these services into the court instead of maybe giving funds to
15 public defenders' offices who have relationships with their
16 clients or giving funds to community organizations to work with
17 people with needs.

18 MS. YOUNG: Did someone else have a question?

19 MR. SCHUMM: I did.

20 MS. YOUNG: Go ahead.

21 MR. JONES: Joel?

22 MR. SCHUMM: How do we find people who failed
23 out? You mentioned it's important to look and that's a
24 discussion that we've had. I think it would be better, but how
25 do we find them?

1 MS. QUINN: Well, I think it's interesting. I
2 mean, get your FOIA request -- get your FOIA request going. The
3 data, the information, the number-crunching has been dominated
4 by the proponents. Why not get on the horn and call them up and
5 say, hey, where are these other folks? Have you looked at that
6 population? Have you got their names? Have you got their
7 information? You could ask to pull all the files from a
8 particular court. You know, who's come through here? What
9 happened to each one?

10 Frankly, you know, it's not us against them.
11 It's certainly not that way. We agree much more than we
12 disagree. It's just that those who have gone forward without
13 necessarily looking at all the constitutional issues have had a
14 kind of running start on us and we are only now catching up and
15 saying, hey, we don't think this is so perfect as is. Why not
16 just ask?

17 MR. SCHUMM: In sort of a broader question, do
18 you have a relatively straightforward definition for problem-
19 solving courts? I think a drug-treatment court clearly is
20 within the line, but when we talk about things like domestic-
21 violence courts, it seems like they're outside and then we have
22 mental health and other things. What do you tell -- I mean,
23 there is a whole class on it. I mean, what do you tell your
24 students?

25 MS. QUINN: Well, I mean, I'm a law professor.

1 I raise questions; I don't answer them. No.

2 (Laughter)

3 MS. QUINN: You know, we raise the question of
4 should we call these courts problem-solving courts at all. Are
5 they problem oriented? Are they problem focused? The
6 proponents, those who created the courts are really interesting.
7 They'll talk in -- we go to the -- and the same rhetoric, the
8 almost verbatim language being used to describe these courts was
9 used in the thirties, forties, and fifties by Kross. You know,
10 carrot and stick, root cause, all this stuff.

11 They'll say that, you know, getting at -- a court that tries to
12 get at the underlying problem and not the crime is what a
13 problem-solving court is and we seek to resolve that issue.

14 And then we get to the domestic-violence and say,
15 well, that one is a little different and we address the problem
16 a little differently. But, you know, the people who set up the
17 courts and run them would argue domestic violence is problem
18 solving and that's another area where in terms of advocacy, I
19 think the data is quite clear, the very clear admissions from
20 the people that run these courts, these
21 batter-intervention programs do not change behaviors. We're
22 only doing it to keep tabs on these guys 26 weeks, once a week
23 and they're clear about that.

24 So I'm not sure. Problem solving, you know,
25 helping the victim get out of the situation maybe is the way

1 they would define it and you can see that's the problem that's
2 been solved, even though I have stood next to -- you know, as
3 you all have, I'm sure -- crying complaining witnesses who said
4 once he goes, I don't have any money, I don't have any
5 assistance I need, I don't want to press charges.

6 MR. JONES: Do you want to ask some more?

7 MS. YOUNG: Well, in looking at your RSVP to
8 Professor Winnick, at least in that article what I came away
9 with is that you're saying as an effective criminal defense
10 attorney, we're doing basically what you're talking about.
11 You've just created a whole new therapeutic jurisprudence entity
12 that is not really needed, or is that --

13 MS. QUINN: No, you got it. I mean, I'd say
14 that's fair. I mean, it's Professor Wexler who I'm having --

15 MS. YOUNG: Oh, sorry.

16 MS. QUINN: -- the back-and-forth with.
17 Professors Wexler and Winnick work very closely and they're both
18 the pioneers of the movement. I know that you heard from
19 Professor Winnick.

20 Yeah. I think it's also important to know, at
21 least from my perspective, that those who are part of the
22 therapeutic jurisprudence movement are not necessarily the folks
23 that started these courts and are not necessarily involved in
24 them.

25 I think what's part of my problem with the

1 therapeutic jurisprudence movement is that it tends to say,
2 well, if it's good, it must be therapeutic, like that's a good
3 potted plant and so that's a therapeutic potted plant. Like
4 anything that seems to comport with their school of thought,
5 they kind of try to bring under their tent, and so I try to keep
6 those two schools of thought quite separate. The
7 problem-solving court movement and therapeutic-jurisprudence
8 movement are related but separate things.

9 Another related but separate thing is the whole
10 client or holistic advocacy movement, and I talk about this in
11 terms of insiders and outsiders. Those who are doing the work
12 who are in the courts with clients day in and day out, I think,
13 have some good insights into what they're doing and what their
14 relationships are with their clients and what it means to
15 effectively represent them.

16 When you have outsiders who are not in the courts
17 who don't see the relationship with the clients who come in and
18 say, hey, why don't you try this other thing, but don't really
19 have good data on what you're doing day in and day out
20 -- you know, I'm just not willing to sign onto that,
21 particularly when the examples they give of the therapeutic
22 jurisprudence lawyer taking TJ all the way means you're telling
23 your client -- you as a paternalistic attorney are telling your
24 client what is best for him, what he needs to do, and if he
25 doesn't do it you're not going to represent him or if he goes

1 down a certain path you might withdraw from the case midway
2 through, thereby undermining your relationship with him and a
3 noisy withdrawal to the court demonstrating -- kind of showing
4 your client out.

5 Yeah. And I think we've been doing a lot of this
6 stuff that they're suggesting that we should do. I mean, the
7 PDS -- I mean, all these offices that have had social workers
8 that have been out in the communities and building relationships
9 that are working with families, that are working with children.
10 We are doing this stuff and to throw stones at us when we don't
11 have the money to even carry the cases we have -- I'm sorry, I'm
12 offended by it.

13 MR. JONES: Jay? Hopefully they're not going to
14 turn the lights out on us at 6:00 because we're going to go just
15 a few minutes longer.

16 MR. CLARK: I want to ask a question and it
17 might be kind of long so bear with me.

18 MS. QUINN: Sure.

19 MR. CLARK: I want to make sure I understand
20 this. Basically, the problems you have with the court, you
21 divide the courts into four different kind of categories; would
22 that be fair?

23 MS. QUINN: Yeah. I mean, I think that's fair,
24 uh-huh.

25 MR. CLARK: If I look at them loosely, there are

1 constitutional issues and then there are other issues like the
2 definition of "success." Are they really a success or not?

3 MS. QUINN: True.

4 MR. CLARK: If you had a court that was run in a
5 way that satisfied all the constitutional issues and it had a --
6 what I'm going to -- for my purposes and I don't speak for
7 anybody else -- a concrete definition of "success" -- for
8 example, as you said, the participants in the last panel, but
9 for the arrest, they never would have gone to treatment. So can
10 you use the measuring stick of no more arrests for a given time
11 period? I think one of the panel members earlier said if you
12 have cancer and it's in remission for five years, they consider
13 you cured. So no more arrests for five years. How would you
14 feel about the courts then?

15 MS. QUINN: It was meeting both my
16 constitutional concerns and, in fact, they were successful?

17 MR. CLARK: Well, I don't know if they're
18 successful --

19 MS. QUINN: Or by their five-year definition? I
20 mean, if their definition was irrational, I'd have a problem
21 with it, right?

22 MR. CLARK: Correct.

23 MS. QUINN: But if it was a rational definition
24 of success, I might agree with it. I'm not saying I'm against
25 all forms of problem-solving courts. I'm against using it as a

1 panacea without sufficient data and without sufficiently
2 protecting Defendant's rights.

3 MR. CLARK: So if we were able to structure a
4 court that addressed the constitutional concerns, given that a
5 drug court, by the definition of the work it's trying to do,
6 might be very different than a mental-health court. It may be
7 conceivable that you could not have certain types of courts
8 because you couldn't satisfy that constitutional concerns. For
9 example, like the mental-health court, the HIPAA requirement,
10 the confidentiality of the patient, the medical information. It
11 may be such that you could never do that and make it successful.

12 MS. QUINN: Right, right.

13 MR. CLARK: So you could have them -- that would
14 be constitutional, a smaller number of them treating a limited
15 number of ills, if you will, with a concrete measure of success.
16 You wouldn't have as much concern then?

17 MS. QUINN: Right.

18 MS. SHIFMAN: Transparency and tracking the
19 system, keeping the stats.

20 MS. QUINN: True, yes. I think that's fair. I
21 mean, you know, again, I'm not against innovation, I'm not
22 against trying something different. All of us on any given
23 case, holistic lawyers say, What does my client want? What's
24 appropriate in light of that? How can I address this case in
25 light of the facts? And you're always trying to think of

1 innovative ways.

2 At least I don't sit around saying, I can't wait.
3 I just want to go to trial after trial; right? Before problem-
4 solving courts we were pleading out 95 percent of our cases and
5 many times in coming to some sort of innovative client-centered
6 outcome. So, yeah, I would be in favor potentially of a court
7 that allowed for that to happen but was protecting rights,
8 including allowing enough resources for the lawyers to even get
9 to all these courts. Right? You can't be an effective counsel
10 if you're not there.

11 MR. CLARK: So I guess the concern is what we
12 all have as defense attorneys. A lot of times we don't have
13 good facts, we don't have good laws, all we have is the process.
14 If the process is not fair -- and our definition of fair has to
15 be what the constitution gives us -- that's where your major
16 concern is? If the process of how we get there is what -- it
17 seems like --

18 MS. QUINN: Yeah. In the individual case within
19 the institution or the development of this movement? When
20 you're saying --

21 MR. CLARK: I think the individual courts. The
22 development of the movement -- I don't know that we can lay down
23 in front of that bus, but how they're structured from here on
24 out or changes other courts can make or as these courts that
25 we've heard today have been in existence for six or eight

1 months, as they grow and change, the positive changes they can
2 make.

3 MS. QUINN: Yeah. Look, I think now is the
4 time; right? You know, we've had two administrations behind
5 these courts and it might be time to go to the table with this
6 new administration and say there are many things we agree about.
7 We don't like to see our clients re-arrested. Our clients
8 probably don't want to be re-arrested. What are the things we
9 agree about here, how can we do this effectively, and how can we
10 make sure the funds are coming from the feds in a way that help
11 all of us? And, for instance, ten key components. Let's
12 revisit that. It was adopted in 1997. What can we add to that?
13 You know, there are --

14 MR. CLARK: Based on what we've learned since
15 then?

16 MS. QUINN: Yeah, yeah. I mean, you've got
17 Tennessee defining nonadversarialism as off the record and the
18 client is not even present, like a little bit of a problem.
19 Maybe we should take that up with the federal government at this
20 point with a new administration.

21 MR. CLARK: I'm good.

22 MR. JONES: Fantastic. Thank you very much.

23 MS. QUINN: Thank you.

24 MR. JONES: Appreciate your testimony.

25 MS. QUINN: I appreciate being here.

1 MR. JONES: Thank you all. We've enjoyed
2 Austin. It's been a very good and productive and useful day.
3 Thank you all. Good night.

4 (Hearing adjourned)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

I, LINDA J. AVITT, Certified Shorthand Reporter, do hereby certify that the above and foregoing contains a true and correct transcription of all proceedings requested to be included in this volume of the Reporter's Record, all of which were reported by me.

WITNESS MY OFFICIAL HAND this the 11th day of December, 2008.

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Ana Yáñez-Correa

**Transcript Edits
Austin Hearing
Friday November 14, 2008**

Jim Bethke was in the room during the morning session, he had to leave. (PLEASE CHANGE WAS TO IS)

3 mental illness. In this hearing Jim Bethke, who **was**(PLEASE CHANGE WAS TO IS) the

4 Director of the Task Force on Indigent Defense, myself and

12 MS. YANEZ-CORREA: The bill just passed. I 13 mean, it passed not so long ago and the
task force -- I wish Jim 14 Bethke was still here **(in the room- can you add in the room to clarify
that he still holds his position as Director).**

