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August 2, 2011

Honorable Sheldon Whitehouse
U.S. Senate Committee on the Judiciary
Subcommittee on Crime and Terrorism
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Hearing on "Drug and Veterans Treatment Courts: Seeking Cost-Effective Solutions for Protecting Public Safety and Reducing Recidivism"

Dear Chairman Whitehouse:

The National Association of Criminal Defense Lawyers (NACDL) would like to thank you for your leadership in holding the July 19th hearing to discuss the extremely important issue of drug courts. Addiction is a disease, and providing defendants with substance abuse treatment instead of criminal sanctions is an important step towards appropriately addressing addiction as a public health issue rather than a criminal justice problem. While NACDL supports decriminalization of drugs and better access to substance abuse treatment, properly administered drug courts can and do provide a valuable alternative to incarceration and the other consequences of a criminal conviction.

As the enclosed NACDL report discusses, however, these courts are not uniform in their procedures, and care must be taken to distinguish courts with model practices from those with practices that hinder recovery and reintegration, waste scarce resources and skew law enforcement priorities by focusing on offenders who do not need treatment, or unjustly and unnecessarily eviscerate the rights of the accused. An example of the latter, as featured in the March 25th broadcast of NPR's "This American Life", is the drug court in Glynn County, Georgia. Among the alarming abuses perpetrated by this drug court is the imposition of *indefinite* jail sentences for drug court participants who repeatedly fail drug tests.

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We do not suggest that this example is the norm, but drug courts without adequate procedural protections threaten to undermine the purposes of drug courts and the rule of law. Moreover, unduly restrictive and “one-size-fits-all” admission criteria and a requirement that the prospective participant plead guilty greatly diminish the potential value of these courts.

As compared to criminal sanctions, drug courts represent a more humane and cost-effective approach to substance abuse, but we firmly believe that any federal funding should be tied to the adoption of drug court policies that:

- (1) Do not require that the defendant plead guilty and suffer collateral consequences, forgo the 6th Amendment right to competent counsel, or execute blanket waivers of viable defenses and constitutional issues in exchange for accessing treatment;
- (2) Rely on objective, fair and transparent admission criteria, rather than ad hoc prosecutorial decisions; and
- (3) Do not include blanket prohibitions on participation by high-risk defendants facing lengthy jail terms, where the benefit to society is potentially the greatest.

These are the recommendations of NACDL’s Task Force on Problem-Solving Courts after conducting public hearings in seven cities and taking testimony from more than 130 witnesses. We offer the resulting report, *America’s Problem Solving Courts*, in hopes that you will find it useful in considering the federal role in the development of drugs courts.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim E. Lavine".

Jim E. Lavine
President

Cc: Members of the Subcommittee and Honorable Al Franken