

Day One

Federal Problem Solving Courts (View from the Court)

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***Honorable Leo T. Sorokin**, United States Magistrate Judge, District of Massachusetts*

***Honorable Brooke C. Wells**, United States Magistrate Judge, District of Utah*

SUMMARY

This panel presented the efforts of three federal districts to help defendants reintegrate into the community. These courts promote public safety and rehabilitation and help defendants build sober, employed, law-abiding lives. They do so by providing closer, more intensive supervision than what a defendant would normally receive. As part of the enhanced supervision, defendants receive more access to services such as job training, mental health treatment, and substance abuse treatment. One common goal is to involve as many stakeholders and treatment providers in the process as possible. Defendants who fail to comply with program requirements face swifter and more frequent sanctions than they would face for a typical supervised release violation. The benefit for participation is a one-year reduction in the term of supervised release. The district court in Oregon has focused on evidence-based best practices and will soon be releasing the results of an extensive study of its program.

Although the overall models are similar, the programs differ in some respects. In Utah and Massachusetts, the dockets are handled by a magistrate judge, and in Oregon they are handled by a district judge. The court in Oregon is more informal, with the judge wearing street clothes and sitting at a table; in Utah and Massachusetts, the judges wear robes and parties address the court as in a court proceeding. In Massachusetts, the program is aimed at defendants on supervised release or probation who have a serious substance abuse problem but does not accept sex offenders or others with mental health problems. In contrast, Utah has developed a two-track program that serves drug addicts on one track and defendants with mental illness on another.

The participants in the mental health component of Utah's Reentry Independent Through Sustainable Efforts (RISE) program face unique challenges, ranging from inability to perform routine tasks necessary for full functioning in society to obstacles to getting necessary medical care and housing. This program requires at least one year under supervision, and one benefit of the program has been its ability to help veterans struggling with mental health issues to confront some of the unique challenges they face.

FEDERAL PROBLEM SOLVING COURTS (VIEW FROM THE COURT)

JUDGE CASTILLO: Okay, I think we're going to get started. Let me just introduce myself. I'm Ruben Castillo from Chicago, and serve on the Commission as a vice chair. There has been all kinds of discussion all morning and early this afternoon. Now we're going to get a chance to really explore some successful programs that are actually occurring in districts throughout the country, and particularly we're going to focus on three districts: the District of Massachusetts, the District of Oregon, and the District of Utah. And we're very grateful to have the speakers that we have. So my job is easy: just to introduce them and get out of the way.

First, let me introduce immediately to my left Magistrate Judge Leo Sorokin. He was appointed on April 11, 2005, graduated from Yale and Columbia Law School, and after that served as a law clerk to Judge Sobel, who we all know headed up the Federal Judicial Center aside from being a very capable district court judge. He worked at a law firm, Mintz Levin, for several years, and then became an assistant attorney general. Thereafter, he became an assistant federal defender in the Federal Public Defender's Office in the District of Massachusetts, where he served very honorably until his appointment as a magistrate judge.

We also have seated next to Magistrate Judge Sorokin, Ms. Aubin, who is a staff attorney for Magistrate Judge Coffin in the District of Oregon. She received a B.A. from the University of Florida, an M.A. and a Ph.D. in religion from Duke University and a J.D. from the University of Oregon, School of Law. She was an assistant professor at Florida State University in the Department of Religion after law school. She clerked for Judge Schuman on the Oregon Court of Appeals. She is currently part of a really neat team that is evaluating the District of Oregon Drug Court, a reentry program for drug offenders. And this coming year, she will be a fellow at the Supreme Court of the United States.

Finally, but not last or least at all, is Magistrate Judge Wells. Magistrate Judge Wells was appointed in 2003 in the District of Utah. She graduated from the University of Utah with a B.S. in 1973 and also received her law degree there. Prior to her appointment to the bench, she served as an assistant United States attorney in the District of Utah, and was chief of the Violent and General Crimes Section for eight years. She also worked as an attorney with the Salt Lake Defender Association and the Bexar County Legal Aid in San Antonio, Texas, and was an adjunct professor and a trial advocacy coordinator at the University of Utah, College of Law. Judge Wells happens to be the first woman from Utah inducted into the American College of Trial Lawyers and the American Board of Criminal Lawyers. And in 1988, she was the third annual recipient of the Utah Woman Lawyer of the Year award.

So, without further ado, I'll turn it over to Judge Sorokin to tell us what's going on in the District of Massachusetts and Boston.

JUDGE SOROKIN: Thank you. I want to just at the outset tell you that you should feel free to ask questions, certainly as I go along. And I think from talking to the other panelists that they're open to hearing questions, not just at the end but throughout the time of our presentations.

What I think I know I've found is that in talking about these kind of programs, you can read all the paperwork, and that gives you an idea about the legal structure and the overview, but really there are a lot of details, lot of questions about how it actually works, and they aren't always answered by the paperwork. And so if you have those questions, you should feel free just to so indicate, and I'd be happy

to answer them as I go along.

There are three sort of big points that I wanted to address. The details of our program are set out in a Powerpoint in the materials. It's a little bit longer, and I'm not actually going to present that now. I'm going to give you a Powerpoint on the overview of problem-solving courts in the federal system. And I think there are three questions that override all of that. One is, "Can you do this?" The second is, "Why should you do it, or should you do it?" And, third, "Does it work?" And I will tell you at the beginning that my own view is that you can do it. We've been doing it in Massachusetts for over two years now, and we were by no means the first. We followed Oregon, Michigan, and Judge Sifton in the Eastern District of New York, who all preceded us. I would suggest to you the reason to do it is because it works, and it makes a difference both in public safety and in rehabilitation. And we'll talk more about that.

The first question really is, "What are problem-solving courts?" Problem-solving courts are courts of a variety of different types that promote public safety and rehabilitation. They assist defendants to build sober, employed, and law-abiding lives, and that's really the central focus of our program, which is a reentry program aimed at defendants on supervised release or probation who have a serious substance abuse problem. What they involve usually and certainly—all the programs I'm familiar with in the federal system—is closer supervision, that is, closer supervision than a defendant would otherwise receive if he or she weren't in such a program. More access to services. The services are more coordinated. There is a focus on connecting the defendants in the program with job training, mental health treatment, if appropriate, with substance abuse treatment, with any type of service that can help the defendants succeed. There's more judicial oversight. In our program, in order to graduate, the defendant is going to see me at least 26 times in the course of a year. That's somebody who graduates by having 52 perfect weeks. Obviously, if they have problems, it takes longer, they'll see me more. The court is more involved in the oversight of a defendant. Prompt sanctions and encouragement. This is really one of the central focuses of the program, of all these programs.

It's immediacy that makes the difference. And immediacy is important for a couple of different reasons. From our perspective in our program, our thinking and what the research tends to show is that people relapse before they start using drugs. There are various signs of relapse. So what if somebody misses a treatment session? There aren't many defendants in the federal system who probation is going to bring before a district judge to revoke them for having missed one treatment session, but it's the beginning of a decline. Not always, but often. And so the idea of our program is to intervene when there's a problem right away. If they miss a treatment session, we convene our court every Wednesday, so we intervene, and we address that in some form or another in an attempt to push the person back on the railroad tracks, so to speak, to be headed in the right direction. Part of that is immediacy, part of it is sanctions, part of it is also responsibility and accountability. In our program, you earn credit week-by-week, and you need 52 weeks of credit. If you come late, you don't get credit for that week, even if your week was otherwise good, because you need to show up for work on time if you want to hold your job, you need to show up in court on time for the same reason. So part of it, and part of the idea, is to not only model behavior in the sense of those of us who are with the staff or the judge modeling it, but also in a sense instill appropriate behavior in the defendants who are participating in the program so that hopefully over time that will become a positive habit for them.

So I suppose the question comes up, "Why have such programs?" And I would have two questions for people who ask that. The first: "Is every defendant released from your court, from

supervision, sober, employed and law-abiding, and have they been so for a significant period of time?" If you already have accomplished that with all of the defendants under the supervision of your court, then I'm not sure I have much to say to you, except, "Tell me how you did it." But my experience is that there are a lot of defendants who are not sober, employed, and law-abiding while they're on supervision and they are not being released from supervision in that fashion. And so the question is, "Can we do better?" And the other way to look at it is, "Are you satisfied with the accomplishments of the defendants who are on supervision?" And when I say accomplishments, I mean in terms of jobs, criminal thinking, sobriety, employment and law-abiding behavior. What are the differences between a problem-solving court and other courts? There are a number of fundamental differences that I think are very important. The first and perhaps biggest difference is that a problem-solving court is forward looking. What we're focused on is success. That's the point of the program. The whole purpose is to help a defendant create and then maintain a sober, employed, and law-abiding life. So we're looking forward when somebody has a positive urine, when they don't go to a treatment session, when they're not reporting to their probation officer. Is there going to be a sanction? Yes. Does it have a punitive component? Yes, it does. Is part of the purpose to punish them? Yes, but really the focus is what kind of sanction, what are we going to do to change this person's behavior to be positive. I don't measure the success of our program on how many people I sanction or how many people I don't sanction. That's not really a meaningful measure of success. That's an important tool, maybe, to look at about how effective we are at what we're doing as a management tool, but the question is, "How many people are succeeding?" Are people developing sober, employed, law-abiding lives? And are they moving forward? That's not really the way we generally think about sentencing. It's not really the way we think in other parts of the criminal justice system. We tend to be looking retrospectively. What happened? There was a crime. What's the appropriate punishment?

I think certainly in the post-conviction, post-sentencing context, a forward looking perspective makes a lot more sense. Because in the end, everybody on supervision is going to be released, and the question is, "In what form?" And so what you want to do is try to change people's behavior so that the future is not a repetition of their criminal record that they brought to supervision. And how do you do that? Address noncompliance right away. Immediacy makes a big difference. In our program, when someone goes to jail, they go to jail right then in court on the spot, in front of everybody else. There's no waiting. If we find out about a dirty urine Wednesday morning, then that person, if they're going to go to jail, they're going to go to jail Wednesday morning at the court session. So the turnaround time is fast. The sanctions are smaller, but they're substantial. It's certainty; they know that if they don't do what they're supposed to do, there's going to be a consequence, and it's going to come on Wednesday. And that, from my understanding, is what the research suggests is most successful in changing people's behavior. So immediacy, we've talked about that. Integrate services and positive encouragement. As Judge Creuzot said, it's not just about the sanctions. It's also about positive reinforcement. So then we have phased graduations. People move forward as they succeed in the program. They report less to court. They report less to probation. We encourage people's success. We honor it and respect it when they accomplish something, in the same way that we address when they don't have success, when there's noncompliance, and we deal with that. So both are recognized.

Promoting responsibility, recovering public safety. That's what the problem-solving court is about. Again, it's part of the forward-looking perspective.

Finally, it's removing obstacles to success. My responsibility in the program is to see that people succeed. When I say succeed, I mean really succeed, not just because I've said they've succeeded, but

because in fact they succeeded. There have to be standards. But I'll give you an example of an obstacle to success that we had for somebody in the program a couple of weeks ago. This was a woman who was in a BOP halfway house as a result of a sanction from a revocation prior to being involved in our program. The contractor that runs the halfway house has a rule that, when you're there on a sanction on a revocation, you can only be out of the halfway house for a certain amount of time per week, and that was, as I understand, a part of their contract with the Bureau of Prisons.

This particular woman had a job, and at the job, she had an opportunity to get into an apprentice program to become a baker. Well, this woman doesn't have any sort of skills, and becoming a baker would give her an opportunity in the long run to make more money and to ensure a better future for herself and for her children, and also would, if she could succeed at it, help her build some accomplishments that she might be able to build on for future success in her life. But working and participating in the apprentice program would mean she was out of the halfway house one and a half hours per week too long. Therefore, the halfway house wouldn't let her participate in the apprentice program. And as a result—this sort of percolated up to me because after one or two weeks of meetings, it came up in the meeting, and I began to realize why she wanted this apprentice program. She had been accepted in it, she qualified for it, but she couldn't do it, and this rule was the reason why. And so I said to her in court because I wanted her to understand. She had been coming to the program every week. She was meeting all the requirements. She was doing everything she needed to do. She was accomplishing everything, and it seemed to me she had earned the right to be out of the halfway house an extra hour and a half a week in order to participate in an apprentice program that as far as I could see would benefit the community and would benefit her, and wouldn't pose any sort of public safety risk.

So I said to her, "I'm going to call the Bureau of Prisons and find out why they won't let you participate in that program, and unless they have a good reason, it relates to public safety, I'm going to tell them that they ought to waive the rule." And I told the probation officer, "I want that number of that person at the Bureau of Prisons who makes that decision, and I want that number, you know, right after court. Give me that, e-mail me that number, and I'm going to call them today." And the probation officer e-mailed me later that day and said, "You don't have to call. I called the Bureau of Prisons, explained the situation, said you were going to call, and they waived the rule." Well that, to me, is a positive result. It's because BOP recognized that she was in a program, she was doing things, and that she had earned it. This was real. She really is going to be in the apprentice program. We knew she was going to the apprentice program. And so it made sense to waive the rule. And so that is removing an obstacle to success for her and for the community, and that's what a lot of these programs are about.

JUDGE IRIZARRY: I'm Judge Irizarry from the Eastern District of New York, and I have a drug court program patterned after Judge Sifton's. I brought some of the state court with me. I'm just curious because I see magistrate judges here. How are—are you just handling misdemeanors?

JUDGE SOROKIN: No. How am I doing it, and what's my authority for doing it?

JUDGE IRIZARRY: How do magistrates get involved when doing this kind of program?

JUDGE SOROKIN: In our court, I guess the honest answer is, I got involved because I made the effort to find out how to do it. I went with probation to New York to see Judge Sifton's program. I proposed it, and there wasn't anybody else who wanted to do it, and so from a practical perspective, it was initiative. From a legal perspective, we don't accept people with misdemeanors in our program. It's

only people with felonies. They're all on supervised release or probation. And I'm not revoking them. In any instance of noncompliance, the probation office is free to file a petition in lieu of resolving it before me. And for new criminal conduct, they never bring it before me, obviously. New criminal conduct goes directly to the district judge.

So that's how I get involved, and anybody who has an issue that needs to go to the district judge, say, for example probation files a petition, they go back to the sentencing judge for a revocation proceeding. So the authority that we've resolved for me to impose an immediate sanction is the consent of the defendant. That is, that it's a voluntary program, although I would say that word with some degree with quotes, voluntary in the criminal justice sense. But it's a voluntary program, and a defendant can quit at any time. Now if he or she quits, and if there's outstanding noncompliance, I'm positive the probation office is going to go directly to the district judge for the petition and bring it forward in almost every instance. But it's consent. And so that's my authority to impose the jail sanction, and we've spent a lot of time attempting to dot every "i" and cross every "t."

So for example, one thing that we do is whenever there's any positive test, drug test for anybody, if it's resolved in the program because there wasn't a petition filed, I will send a memo to the district judge saying that this person had a positive drug test, it's been resolved in the program, and I recommend that the district judge invoke the treatment option under Section 3583(d), which is an exception as you probably know to the mandatory revocation for either a fourth positive, it's also an exception for possession. And I send that memo even on the first positive, because even the first positive could be evidence of possession, and could be drawn as a conclusion that there is possession. And then the district judge can sign off on that or not, as he or she chooses. And if he or she doesn't sign off—so far they've always signed off—but if they don't sign off, then the person would be brought before the district judge. And so we're actually perhaps more careful with the people in this program than the probation office might be with respect to others.

JUDGE IRIZARRY: Does the district judge refer the supervision to the magistrate judge?

JUDGE SOROKIN: When you say "refer the supervision," what do you mean?

JUDGE IRIZARRY: I mean, in other words, because there is more supervising somebody who is under a federal—under a felony sentence. So my question is where do you get the jurisdiction?

JUDGE SOROKIN: That's an interesting—

JUDGE IRIZARRY: —[inaudible] the consent because normally—

JUDGE SOROKIN: Can't consent to—in a felony case, right, to a magistrate judge.

JUDGE IRIZARRY: To a magistrate—

JUDGE SOROKIN: That's a question, that as framed like that, we haven't considered. The district court, as a court, approved the program, the entire court. So the court approved the program, and approved in that sense, I guess, although we don't have a specific referral to me, the court, it's implicit, right. So there was an approval of the program provided the defendant would consent, and—

JUDGE WELLS: Can I respond to that as well?

JUDGE SOROKIN: Sure.

JUDGE WELLS: In our district's program, the supervised release documents would be modified to include being in the program which is, by authority of the district judges, supervised by me.

JUDGE CASTILLO: The incentive, Judge Sorokin, for a defendant to agree to this is a reduction in the supervised release time, right?

JUDGE SOROKIN: Correct. There are really two incentives for a defendant. One is, if the defendant graduates, they earn one year off their term of supervised release. Now if the defendant is in the program and doesn't graduate, they don't earn anything off. The other incentive that comes up sometimes for some defendants, and this is sort of somewhat out of my range of vision, but probation may go to a defendant and say, "You know what, we think you're appropriate for the program; we really want you to go to the program. If you go to the program, you know, either we won't file a petition, or if you don't go to the program, the next positive is a petition." There may be informal discussions between probation and someone they're supervising, but the principal benefit is the one year off if they graduate. And for our program to graduate, you need to accomplish first 52 weeks of good conduct. We have four phases, and each phase the last four weeks has to be perfect. So if someone comes in, as we just recently had, and they had 11 or 12 good weeks, and on the 12th week in the first phase he had a problem and he didn't get credit for the 12th week, he can't graduate phase one on the 13th week. The best he can do is the 16th. And then you need to be employed, and then you need to be sober.

For our program, we take basically anybody who meets the following criteria. First, you have to have a significant substance abuse problem. So if you don't have a significant substance abuse problem, we won't take you. Second, we've found with a couple of people whose primary drug of choice or only drug of choice was marijuana, maybe even daily marijuana, that didn't seem to fit as well as working with the people who do heroin, cocaine type drugs. But it's a serious substance abuse problem. We don't take sex offenders for two reasons. One there is the general view that sex offenders probably aren't appropriate candidates for a year off, and also because many of the treatment programs won't take sex offenders. Third, we take people who have mental health problems, but not serious mental health problems. Not Axis I diagnosis. Depression, we'll take people like that. Then what happens is, if they come to us because they're interested, more often because probation approaches the person and says, "We think you're appropriate"; sometimes a defense attorney raises it, sometimes a district judge brings it up at a revocation or at a sentencing, and will suggest it to somebody. They come in those different ways. The defendant has to agree, and then we review it, the AUSA, the AFPD, the probation officer and I review the package, which is basically a referral form, the PSR, and then see if anybody objects. We haven't really had an issue given those criteria at that point.

One question comes up, I suppose, "So what's the risk and the cost?" From my perspective, the risk is small because the defendants who are in the program are under closer supervision. The requirements and expectations are higher, and the one-year-off reward requires the defendant to succeed. And to give you an idea of what I mean by that, for the people in our program who have graduated the program, it took them 12 to 14 or 15 months to graduate. They were drug tested 39 to 61 times. People who aren't in our program, but who are in supervision, are drug tested far less than that. So it's just sort of one measure. It's a lot more difficult, and the results are a lot more certain.

JUDGE SOROKIN: Yes. You have a question?

MS. TERENZI: Elaine Terenzi, chief probation officer, Middle District of Florida. You said that you test them 39 to 61 times during the course of the year, and you see them approximately once a week in court. How do you handle conflicts between that kind of a schedule and their employment schedule?

JUDGE SOROKIN: Here's how we do it. They start out in phase one. They come to court every Wednesday for 12 weeks, and they see probation on Mondays and Fridays. Most of the people in phase one, some of them are employed, some of them are not employed. That's a time period when they're getting employment or getting well enough to get employment. And so far we've found that some people tell us that they can't do it. They can't hold a job, they're not going to be able to do it. And those people sometimes don't succeed, but sometimes they do. But we found that people find a way to do it. When we started this out, we went to New York, and Judge Sifton meets at 4 o'clock in the afternoon in order to accommodate people's employment schedule. And we started out meeting at 11, I'm not sure why. We just did it that way. And we found that they work around it, they figure out a way to do it. They make their treatment meetings on Wednesdays. Their work schedule is done. We've got most of the people in our program employed, and the ones who aren't tend to be at the very beginning. Sometimes they're looking, sometimes they have a reason that they're not ready for employment because of the amount of treatment they're in. So they've been able to do it. When they move on to phase two, they come every other week to court. And then phase three is every third and then every fourth week. So the court reporting is phasing down, the reporting to probation phases down, and they go on the color code. I forget if they go on the color code after phase one or phase two. They seem to be able to do it, and it's not easy, but, you know, life's not always so easy. And they've found a way to make it work. That's the best I can tell you.

MR. BEELER: Your Honor, Art Beeler, warden at Butner. I just have a comment more than a question. First of all, thank you doing what you're doing and the other panelists, because I think it's a two-way street both in the community, at the court level, and at the institutional level, and at the pretrial level. This doesn't work unless everybody is working it. So I say thank you to everybody.

But my comment is, please consider expanding what you're doing to stable mental health offenders, even those with Axis I diagnoses, because they're the ones who benefit. They would benefit most by the structure that you're providing in the program. I understand that you have an unstable Axis I, but somebody who is stabilized on medication, they're exactly the kind of people that need the structure of this kind of intervention that you're talking about, because if they don't have that structure, the intervention that you're talking about, often they'll relapse by not taking their medications, and then not taking their medication means they relapse in the general behavior, and the whole spiral starts again, and I end up with them back in my institution.

JUDGE SOROKIN: That's actually a great comment, I think on a number of levels. One of the things I found when I was put on this panel is that Judge Wells and I were talking, and she told me that she had a mental health court in Utah. And that hadn't occurred to me to have a program, I'll be perfectly honest, like that. And I think one of the benefits both of being on a panel like this or coming to a presentation, a conference like this, is you can learn from other people. One of the things at least in our program we ask ourselves all the time is what can we do to do better or how can we improve? And actually one of the sort of take-aways that I took from even before we got here but from talking to Judge Wells is what can we do for the people with mental health problems in our court that's equivalent to what

they're doing there? So thank you.

So in terms of the other issues, what's the risk and cost? It's a small risk. What are you doing? You're using court resources. For us it's the time of a judge, a prosecutor, defense attorney, a probation officer. The person who puts in the most time is the probation officer. Really, they're bearing the greatest burden, and it's a lot more work for the probation officer to do this. The other issue for us is we have two treatment professionals who come to the court every week and sit in on the meeting before court. And at least if you're dealing with people with substance abuse problems, we wouldn't do it without that. We started out, we said we'll do it for two months and see how it goes, and they make an invaluable contribution to the discussion, because they understand what is going on with people, what kind of treatment is appropriate, they can explain what people's behavior means in terms of the disease, and that's very helpful, even though in the end we often have to resolve it to some degree in a more legal context.

And what are the savings? We haven't quantified these savings, but I can tell you just sort of common sense, there's fewer marshal arrests, there are fewer revocation proceedings because people are doing better, and there's less incarceration, and a shorter supervision period if a defendant graduates. Each and every one of those actually saves money.

Last question is, "Does it work?" The answer is "yes." So far we've been doing this two years. We've got 10 graduates. I'll give you a little profile of two people who graduated. One was a 35-year-old guy, two prior federal convictions. When I say two, I mean he got a federal conviction, he did his time, he got out, he was on supervision, then he got a new federal offense, did his time, came out, and came into our program. Long history of drug abuse. As he described to me one day in court when he was describing having somebody steal his personal possessions out of a locker at the gym that he worked at, he said, "I rob people. I don't get robbed, and I'm not used to that." And that was about as accurate description of who he was that I think I'd ever heard. He came through the program, and he did beautifully. He was sober. He was employed. He was law-abiding the entire time in the program, and he's continued to do so since January or February when he graduated. Of the ten graduates, nobody has been convicted of a new crime, and only one has been rearrested, and that rearrest, I don't know all the details. Probation tells me they think it may in the end be dismissed, although I don't know.

Another is a woman who came into the program, multiple treatment failures, serious drug addiction. Came into the program and she failed in the program. She left the program because of her failure and was revoked by the district court judge. Got a period of time in custody, came out, did the program again, restarted it from the beginning, because if you get revoked and you come back, you start in day one, and she graduated. And the lesson from that is, if at first you don't succeed, try again.

So it's real success. We are doing a study comparing the people in our program to a control group of similarly situated people in the caseload, and although I don't have any kind of final results to present to you now because we're still analyzing the data, it appears that the people in the program are doing meaningfully better than the people on regular supervision. This is not something we invented. NIH did a presentation sponsored by the FJC at one of our conferences, and what they recommended are basically the components of problem-solving courts as a way to approach people with substance abuse problems who are involved in the criminal justice systems. And there is various research. This is just one study that I know of that suggests that it works.

That's all I have unless there are other questions.

JUDGE COUCH: I'm Valerie Couch, District of Oklahoma. I would like to hear a description of the judge's interaction with each participant in these court proceedings. Is it informal? Judge Creuzot described a very informal interaction.

JUDGE SOROKIN: Why don't I tell you how I do it, and then maybe Judge Wells can tell you how she does it, and then if Judge Aiken doesn't mind, because she's here and she does it differently than the two of us, ask her to describe how she does it.

What I do is I'm on the bench. I wear a robe. All of the defendants who are participating in the program sit in the jury box or on the edges of the jury box. The lawyers and probation officers sit at the counsel table. I call the defendants forward one-by-one to the well of the courtroom where they stand at a microphone in front of the bench, and I ask them my standard question, "Well, how was your week?" Or two weeks, or a month, or however long it's been since I last saw them. And then I have a discussion with them, and the length of that discussion is going to depend on how well they're doing, which I'll know about from the meeting beforehand, and what kind of messages I think I need to send to them. Some of those messages are my own messages, and some of those messages are messages that had been sort of handed to me, if you will, by the probation officer or the lawyers or the treatment people as things that I should instruct the defendant participant on. And so, ten minutes would be a long time discussion. It might be 30 seconds for someone who is doing well, who I saw last week and all reports are fine. "How are you doing?" "Fine." "You going to treatment? Going to work?" "Yes, yes, fine." "Anything else you want to tell me?" "No." "Okay." It might be really quick. It will be a longer discussion with anybody who is having a problem, and sometimes a longer discussion, even if they're doing well, because I might want to compliment them. I might set goals and objectives for them to accomplish until their next appearance.

You want to talk about what you do?

JUDGE WELLS: I also hold the court docket in the courtroom, and I wear my robe. But staff and counsel are at front, and staff and the defendants are intermingled with each other in this small courtroom area. I have a dialogue with each individual, but as I've learned from watching Judge Aiken's court, it's not all about the judge and the person, and counsel as well as other members of the group or the professional staff are free to make comments and state things as they wish. At the conclusion of the entire court session, everybody waits and then I go, I take off my robe, and I go down and I mingle with them. We shake hands. We converse on a more informal basis, and I'm quite comfortable doing that.

JUDGE SOROKIN: Judge Aiken, do you want to describe how you do it? Because I think it would be interesting for people to understand.

JUDGE AIKEN: [Inaudible] I do it very differently. I was a state court judge, and, I probably would say, more comfortable in the context of being a judge who sat around the table. So I don't wear a robe, and I sit around the table, and the night before we have what I call a summary or the virtual reports on everybody circulated to our team, which includes the U.S. Attorney, the public defender, the treatment providers and all—the probation sheet. It's written by the probation officer, and it gives a vignette on everybody's performance throughout the month. And we meet around the table. We meet informally. I sit off to one side, and the whole meeting is run by the probation officer. I don't have to wear a robe.

Everybody in the room knows who I am, and it's about setting a different tone and getting people to talk. The probation officer will pick whoever he wants to lead off with, and he'll start talking about the success or problems that that person is having, and then ask what we want to say about it. And the conversations just begin. We let everybody weigh in, including other defendants who sometimes are the hardest critics of their peers and who talk to them about what their behavior is doing, either in that room, or whether it's happening differently in the treatment providers groups. Because everybody sort of has some connectiveness throughout, and they call each other on what I would say their problems and their issues would be.

What I have concluded in doing this for three years is there's a book out, and if you have a chance, you might pick it up, called *How Doctors Think*, by Dr. Groopman, and it really talks about how we've lost the art of listening. So I would tell you that in our sessions everybody has to stay through the entire session unless they're given particular excuses. In that entire session, there are lessons and themes and comments that just seem to weave throughout the session. One of the lessons I learned about court is, if you have a problem and someone is in need of a sanction, what I wanted people to learn is that judges don't just go behind a robe and have a secret manual that says that what we're going to do will change the behavior or what will affect them. That they hear us struggle with, "What's the right sanction? What's the right thing to do? Do they need community service to be more involved and worried about how to take care of others? Do they need different kinds of sanctions for a particular offense or do they need an 'atta boy' or a compliment? How are they moving forward? What are their goals?"

What I've concluded in all of this is that they understand that they're unique, that they have both sanctions and rewards tailored to what will help them in their journey to be successful. That the team operates as a team, that we make decisions collaboratively, and that they understand what we're trying to accomplish. And sometimes, I mean, I've locked people up on their child's birthday and sitting right there and said, "You're off, and you're gone." And they are understanding of boundaries and they're understanding of what we are doing in setting those boundaries and setting high expectations. So I don't do anything with a robe. It's one of those sessions where people will say, "How did you get him to talk?" And I will tell you—sitting where you can't see a clock, not looking at your watch. It's all about this.

My time is not about me. It's about them. And you know what, sometimes we've gone sessions where we've gone a very long time and there hasn't been a single positive UA and hasn't been a single [inaudible], but we've knocked down barriers. We've knocked down all sorts of obstacles, not only for the people in that room but beyond—so it's really about those things. You don't need a robe, and you don't need to do something more than thoroughly give them a chance, so over time they'll trust and understand they can tell you what they need and you can help.

JUDGE SOROKIN: I don't have anything else.

JUDGE CASTILLO: Thank you. Now we're going to move to the other part of the country and go to Ms. Aubin to tell us a little bit more about what's going on in Oregon.

MS. AUBIN: I'd like to expand on what Judge Aiken just explained about the District of Oregon reentry court. It's an example of a federal problem-solving court, and the problem that it seeks to address is recidivism. And as you may have guessed, it really follows the script that Judge Sorokin set out for problem-solving courts in general. Probationers who are released to the District of Oregon have the opportunity to join the program. They undergo intensive supervision that is court-involved. And if they

make progress on their individualized release plans, they stay sober for a year, then they graduate. And the reward is a reduction of their supervision period. And if they have a year left, then the year reduction applies to them. And the idea here is not to kick people off probation early. Rather, the idea is to promote a durable shift away from the kind of crime-causing behaviors that got these folks in trouble in the first place. And how do you do that? Well, the model is committed to evidence-based best practices. So ultimately over time participants ideally are equipped with skills to maintain their own progress after their duration in the court is finished, and they're building social networks, and they're developing a level of satisfaction that will help sustain this turn away from crime-causing behaviors. And right now I think it might be useful just to give you a sense of the program for the perspective. So I'm going to play a short video clip. And one of the people that you'll see in this video, in addition to the team that Judge Aiken described and Judge Aiken herself, and I should say at the outset that Judge Aiken is the spearhead and absolute enthusiasm behind this model, and it's up and running in the Eugene Division and in the Portland Division, but the staff and the participants are just nourished by her. So it's been a real pleasure to work with her, and we're very lucky that she's here to talk about it today.

One of the participants that you'll see in the video is a man named Richard Noblette, and he had a very difficult crime ridden, repeat offender life, a longtime drug user. One of his experiences during this time was severe dental problems. And during his progress in the reentry court, his teeth were restored. His dignity was also restored. He takes a lot of pride in his turn away from crime, and he's become a mentor to those offenders who have been in the program. So he's a great asset now to the court, and he has great cultural capital among those people who are trying to make the same turn that he successfully made. So I'll just play this and then talk a little bit about why the court exists in the first place. We've already heard something about the model and its design. So I'll skip right to our evaluation, which was just recently completed.

[Video playback]

MS. AUBIN: So you get a sense of what the program's like from the participants' perspective from that video. And let me just skip ahead and talk about why we have this model in the first place. It was developed really in response to the meth epidemic in Oregon five years ago. Meth use hit all-time heights, and Oregon was spending more in its social services per capita than any other state to address meth abuse. So revocation rates in Oregon were higher than the national average because of it. Seventy percent of people under supervision in Oregon have substance problems and were vulnerable to revocation. This was a problem that the existing system really wasn't addressing, the role of addiction in this catch and release cycle. And, of course, this is a problem that doesn't understand jurisdictional boundaries, and the scale of it was such that it was very important for state and federal agencies to partner together. And so there was a lot of work on the front end. There was a great deal of collaboration with social service agencies, law enforcement, the courts. So an Offender Treatment Committee was eventually set up, and convened a summit at our federal facility in Oregon. And out of that discussion, workgroups recommended court-involved supervision. So we were working very diligently to address this problem in 2004. "Drug court" as it was then known, "reentry court," as it's now known, was up and running in Portland in May of 2005, and just a couple of months later in the Eugene Division.

So it's really significant from the point of view of the developers that the reentry court was generated as a partnership in response to meet a need. Because ultimately that is the model that fuels the drug court on an operations level, month in and month out, serving offender by offender. It's the partnership of the federal judge, probation officer, the [prosecutor], the drug and alcohol service

providers, the community services coordinators. This is what happens on an operational level at the hearings. And I should also say that drug use is a very important part of why we have the model. Drug use, as you know from listening today, is a very significant barrier to reentry, but it's not the only one. Research shows that there are a number of dynamic factors. These are factors that are within an offender's control as opposed to status factors such as age and race. Dynamic factors, a number of dynamic factors besides drug use can predict failure for reentering offenders. And those can be lack of problem-solving skills, lack of job skills, problems with housing, accessing medical care, lack of pro-social support groups. All of these things need to be addressed in a comprehensive way in a reentry court, and a partnership setting like this is one way of doing that.

So to give you a sense of how the problem is addressed as a comprehensive one, in Oregon I can tell you just a quick story about another reentry summit that took place this summer at our state capital in Salem, and at that point our state Department of Corrections director was testifying before the legislature, and he was trying to explain to them the critical role of addressing reentry as a way of tackling recidivism. And in order to do that, he offered a metaphor. And he said to them, reentry of a criminal offender back into the community is a lot like another kind of reentry that we see and are familiar with every day, and that's the reentry of the space shuttle back into the earth's atmosphere. In both cases, you're dealing with a very critical moment where changing conditions have to be paid attention to and we need to calibrate and recalibrate to account for these things. And when reentry is done well, in that context of the space shuttle coming back, it's almost an uneventful success. But when less care is taken, catastrophe can result. And so you see where he's going with this in the criminal context. Those critical moments before and during reentry for the offender are a very vulnerable time, and they demand a comprehensive look and a lot of careful planning. When it happens, well, it's a great success. When it's done poorly, it's a catastrophe for the offender, but also for everyone in society who has a stake in this process.

So interventions along those dynamic factors that I mentioned are hard wired into our reentry court model, and addressing them calls for a collaborative approach. Judge Aiken gave a description of what goes on in the operations level. So I'll move ahead to discuss the district's commitment to evidence-based practices. At the outset, this demanded a commitment to collecting data and comparing the reentry court experience to the experience of others under regular supervised release in the district. So we designed a retrospective study that accounted for this data and tracked certain outcome variables over time. So our comparison group was a group of individuals under regular supervision. And in a quantitative study, they were compared with reentry court participants, graduates and terminators. In the study, the number of UA's was tracked, the number of sanctions, and the number of support services utilized.

And I'll just tell you a little bit about our outcomes on that front. It became clear very early on that reentry court participants were receiving a much higher level of support services than those under regular supervision. And it's really likely not because those under regular supervision have fewer needs. It's likely because those in reentry court are getting much more intensive supervision. Their needs are being evaluated much more frequently and by a larger number of people, including other offenders, during these monthly hearings. So the needs are being assessed more effectively. Services are being delivered more immediately. And that's a good sign. It means that the reentry court is achieving one of its goals.

About urinalysis and sanctions, it also became clear that those who are participating and

graduating from the reentry court are experiencing more sanctions and they're undergoing a higher level of monitoring, more urinalysis. So they're being sanctioned more often than those under regular supervision. Probably not because they're more hardheaded, but it's because those under regular supervision are just not being monitored as closely, and so they don't have an opportunity to experience a setting where there's swift, proportional sanctions for missteps. And at the same time they're not in a situation where they're getting rewarded for making progress on their individual release plan. So greater attention is being delivered in addition to more services. And we also tracked employment rates for those under the reentry court categories and under traditional supervised release. And what was important there, those under traditional supervision and graduates and current participants in the reentry court had a higher rate of employment than those who were unsuccessful in reentry court. And so this suggests to us that those people who have the advantage of succeeding in reentry, of getting UA's, complying with their monitoring, making progress in their plans, are more likely to be employed, which in turn leads to a greater degree of success on reentry.

So that's the quantitative side of our study. We also had a qualitative side, which I would recommend to anyone who would like to see how the process unfolds in an actual hearing. The qualitative description is the result of observations using a method called "pattern analysis." Observers sat in on the hearings and used pattern analysis in order to discern what types of themes arose and track those themes over the course of several months of hearings, and reconstructed case studies based on that analysis. And it's useful not just to see what the substance was in the discussions, but also to see the type of interactions that took place. And you will recognize when you read this whole study, which by the way, is going to be posted on the District of Oregon website. So I recommend it to you, if you have questions about observing what goes on in observational level at the drug court. But in any case, you'll recognize the technique of motivational interviewing as a tool for encouraging problem-solving in the hearing context.

So I'll stop there. I have more to say about limitations of our study and the direction for future research. I just want to mention also that the district is very committed to enhancing service delivery. And so there is currently a pending grant that would do something new, and it's elegant and obvious, but not done yet. Developing tools to enhance the delivery of services for state and federal reentering offenders. And the idea is to create one stop reentry virtual web centers so that someone reentering society from prison to Oregon can county-by-county look up the services they need, the wraparound services they need to access in order to facilitate their reentry. That would be funded, if our grant were awarded. In addition, we are seeking money to hold job fairs for both state and federal offenders coming out so that we can share resources on that level and continue that kind of collaboration.

So I'll stop there. I want to make sure that Judge Wells has enough time to deliver her talk. But if you have questions about our evaluation, its limitations, and what we're doing later for our research plans, I'd be happy to address those.

JUDGE CASTILLO: Thank you, Ms. Aubin.

We'll turn to Judge Wells.

JUDGE WELLS: I'm going to make certain assumptions about who you are based upon your attendance at this, that you're all involved in the federal system, and that you're interested in either learning about implementation of a problem-solving court, modification of one that you already have, or

that you may be listening to us to determine what support policy change might be on the forefront on a national level. And for each of those reasons, I'm honored to be able to speak.

Our program from the District of Utah is called RISE. Everyone has their acronym. Ours is "Reentry Independent Through Sustainable Efforts." Now, we began our program in February of 2008, but as the *de facto* leader of that group, as well as the participation and collaborative effort of others like me, pragmatists, we had many of us come from the state system where we had seen the implementation of successful drug courts first and successful mental health court components. But when we go out to the federal system, we found little, if any, alternatives available other than incarceration. There hasn't been a lot of room for programs and for alternatives. And, as everyone knows, with our difficult and hard sentences imposed, people are spending long periods of time in custody and then facing the dilemma of reentry. So we in Utah developed a dual-track program. I believe we may be the only program who has a dual track; one being drug court, which I preside over, the other being the mental health specialized docket. And that's what we call them, specialized dockets, to differentiate between the two.

Because the format of our program is much like that of Judge Sorokin in Massachusetts—although I must say that we've had the advice and help of Judge Aiken and the Oregon program with which to implement ours, I'm going to focus today on the second track of our program, which deals with those that are mentally ill.

The origins of the conception of this problem-solving court I think are important. First of all, as a former defense counsel and then as a prosecutor, I believe I personally, along with the people I work for, recognized the severe problems that the severely mentally ill face. The question of competency obviously is a different one from that of whether or not there's a severe mental illness, and many severely mental ill people coming out of federal prisons are back on supervised release. And there was a recognition by many of us that these individuals are going to be on supervised release anyway. Given the serious nature of their illnesses, why couldn't, why shouldn't we do something additional to help them through? There was also recognition that these severely mentally ill people may be the least likely to be able to self-advocate and to successfully advocate through a system. There was also the recognition from a judicial standpoint that when you're dealing with mentally ill offenders, whether it be pretrial or whether it be on supervised release, that there were enormous human and systemic costs at issue.

As you all probably know, if you're in the federal system, somebody who is believed to have a mental health diagnosis and/or a competency issue may likely be sent for an evaluation. That evaluation involves a number of other agencies, pretrial services initially. It involves the marshal service and the extraordinary transportation costs which are put into play if someone is sent for an evaluation. That is followed by cost to the Bureau of Prisons, a diagnosis, treatment plan, the transfer back, which may not equate to what that person's needs are, and as was indicated earlier, my experience was and has been that many people in that transport and transfer process [deteriorate]. They aren't given their medications. Their treatment plans aren't followed. They're sent back. And the costs continue to roll upward. As a result of recognition of that, we began in our district a working group, which involved everyone coming to the table who was involved at some point in this issue with the mentally ill criminal defendants in the federal system. We communicated really for the first time and recognized that each of our agency goals were different. Each of our agencies were dropping the ball, and that included the courts, in its orders and various things. Everybody was slipping somewhere. And the result of all that was higher economic cost and a loss to the person or individual involved. As a result of recognizing those problems and brainstorming among the agencies to fix them, what we ended up with when we started talking about

problem-solving courts was the, you know, obvious notion then that we need to address both populations as they come back. We realize at this time that we're limited, and we hope that it will change, to dealing with those persons who are on supervised release status.

As a result of this, I, as well as others from the U.S. Attorney's Office, the Bureau of Prisons, the Marshal Service, Probation, all of us went into working groups and we formulated the RISE program. And if you—I know you were asking about how things flow through the system. In our materials, there are flow charts that will outline for you how we worked out how things can flow through the system. Because in our court, it's a magistrate judge who is overseeing these programs with the absolute support of our district judges. But it meant that we had to figure out the practical problems. All right. Now as I indicated, the philosophy is that these individuals are going to be on supervised release anyway. Why shouldn't we do what we can within the resources allocated to us to see that they succeed? And I'm just not talking about the drug-court prong at this time.

The participants in our program. We determined that our resources, as we have them, would allow a maximum of ten participants. Right now we have eight participants. And I want to point out something very specific that is of specific importance to me, for no particular reason except that I see it over and over. Two of those individuals—and 25 percent of our specialized mental health court docket participants—are vets. That comes to play in things in a moment. Each of them has an Axis I diagnosis. We have someone with paranoid schizophrenia, bipolar disorder, delusional disorder. We have an individual who was brain injured from a gun wound to the head, and we have two people with organic brain disorder. And so unlike the drug court population which can talk and communicate on some level with each other, and logically can help one another, our participants are very difficult. They are difficult. Their socialization skills are minimal, and they are less able, although they try, to be supportive of one another.

We meet every week along with drug court. So I spend my Monday mornings and my Tuesday mornings in court, and am very glad to do it. As I outlined, we're a collaborative model. And as far as eligibility, as far as sanctions to a certain extent, and as far as continued participation, there is a three-vote system. Everybody speaks with one voice, even though there may be more than one representative for a group. Probation has a voice and veto, the prosecutors have a voice and a veto, as do the defenders. Now the prosecutors know that they can exercise that veto in appropriate cases. But this has turned out for us to be a successful collaborative model with each individual group having its say, although ultimately I will make the decisions.

And this I learned from Judge Aiken in one afternoon of watching the Oregon court. She said get as many people to the table as you can, because one of the things you're going to do as a problem-solving court is just as someone else indicated. They would ask me, "What do you need? What can we do for you this week?" We're fortunate enough to have also the director of the Forensic Unit of Salt Lake Valley Mental Health as well as one of their therapists. We now have a Veterans Administration person. And surprisingly enough, if you have the participants around the table, we are able to ask those questions, and we have found we can answer them with relatively small resources or we can, if you will, take advantage of the things that the different participants have to offer.

I remember in Judge Aiken's court, one woman asked for a stroller. She couldn't get out and do things because she couldn't afford a stroller. But if she had a stroller, she could take the baby and she could make baby-sitting arrangements, which Judge Aiken also set up. But that small thing, which was

available through, I think, a YWCA, she was able to do. It's been mentioned that dentures have been provided. We have likewise asked people, "What do you need from us that's pretty minimal, that we can do for you to help, and will make your reentry process easier and more successful?" Dentures. What we found out we had to do was just contact a dentist, who had previously made the dentures for this individual before he became very ill and went to prison. He still had them. We could do it. We've gotten an individual signed up for Medicare. Now that sounds like it shouldn't be a difficult thing, but to a severely mentally ill person who comes out of prison and wasn't allowed to have a prosthetic, someone helping that person with the simple application—not so simple, I don't mean that—it made a big difference. So we meet weekly. We've gotten to know each other quite well on a professional and personal basis. There is a relationship developed between the case managers, the probation officers, the prosecutors, defense attorneys, who are all very supportive, and with me. And I'm hopeful that we'll be able to report successful results.

Now our people must have, for mental health court, at least a year of supervision because we're going to give them services for that period of time. There is, in essence, no carrot here except good solid services and a caring community type of reaction. Because we want them to stay under our jurisdiction as long as possible. Because, if so, that means they're going to continue to get those services.

All right, we praise liberally. We take joy in the very small successes. One of the things that we do, and I brought a copy, if anybody wants one, we have developed a laminated card that we put the individual's name on, that they began the RISE program on a certain date, and their expected finish time with a probation member there. This allows people to go within the community, where it appears to a landlord, an employer, someone who might be able to provide something, but they might be afraid of this person, they might be hesitant to employ them. That little card gives them some credibility, and it says, "I'm a person who is receiving court treatment." These are matters of public record. So we don't think that there are any privacy concerns about that.

All right, sanctions are imposed in mental health court as well, and often we have individuals who have cross-over dual diagnoses. They have drug addictions and problems as well. So we modified their treatment in our treatment plans to allow for that, and sanctions have been imposed where someone was kicked out of, say, a treatment group for abusive language, abusive behavior. That warranted a sanction. Others have warranted sanctions or timeout sanctions down in the Marshal's Office.

All right, now, no new money has been allocated. Rather, it has been a reallocation of resources. Now we have two full-time case managers, two federal defenders, one AUSA, and one clerk. We also, as I said, have various people who have contracted with probation, but also who give of their time because of their interest and their expertise. An evaluation is in the works.

Finally, what I want to talk about in summary are the challenges that we face, and that I would expect that you, if you undertook some similar program, would face. I worry about sustainability. I worry that, you know, when I retire, is there going to be someone, are the personalities going to be in place in the same way, and I want to see things happen that will ensure the sustainability of both of these programs. I have a slight fear of success. I'm afraid that if all of us do really, really well, that we'll try and take more and more people in, who deserve to be in, but without the appropriate resource allocation we can't provide the same level of service. I want to point out, and I have been critical in the past, and if this touches anybody, I hope you take it constructively. But housing is one of the biggest issues that the severely mentally ill face, and as I indicated earlier, two of our participants (and I expect more as time

goes on), are veterans. I don't know if anybody knew this, but the Veterans Administration has a "three strikes and you're out" policy. That means over a lifetime, if a mentally ill vet has a housing placement through a contract provider and is kicked out, and is kicked out three times over a lifetime, that person is then ineligible for further Veterans Administration benefits. I didn't know that. I'm surprised to hear it, and I'm saddened to hear it. I hope that policy changes involving that type of problem will be addressed.

In our court, geography is a problem. We're a one-district state. People come into our court from seven and a half hours away. They're closer to Albuquerque than they are to Salt Lake City. But probably the biggest challenge that we have is remembering every week that we are a problem-solving court. That means that when it seems too hard, the problem seems too difficult, then we collectively look to brainstorming, to thinking outside of the box, and coming up with the immediate and simple solution that will keep these offenders hopefully out of our federal criminal justice system for the rest of their lives.

Thank you.

JUDGE CASTILLO: We've heard three energetic judges in three districts, and hopefully this can be replicated as it's studied.

Does anyone have any final questions? I think there's enough time. Judge Gelpi from Puerto Rico.

JUDGE GELPI: I'm Judge Gelpi from San Juan. My only question is, when you apply sanctions, you send somebody to BOP for three, four days. How is BOP responding to that? Especially if it's somebody who has been on probation, never been inside BOP, and all of a sudden there's an order of three days in BOP?

JUDGE WELLS: My sanctions don't go to BOP. They go to the Marshal Service. And because the Marshal Service is partnering with us, and because that still is a small economic, less of an economic burden for them, we haven't found that to be problematic.

JUDGE SOROKIN: That's the same for us. They're not going to BOP custody. They go to marshal custody. And they have not had an issue with it at all. They've been fine with it.

JUDGE CASTILLO: Other questions—yes.

JUDGE COUCH: What role do your law clerks and staff attorneys play in these programs?

JUDGE WELLS: In my court, none specifically. They're busy doing the rest of my work.

JUDGE SOROKIN: That's exactly right for me. In mine, none. The people involved in the program are probation, the AUSA, the AFPD, myself. We have some treatment providers who come every week, and my clerk does some docketing and obviously calls court and the like, but my law clerk doesn't. And I only wish we had staff attorneys like Oregon. It seems the First Circuit has all the staff attorneys, and we don't seem to have any.

JUDGE AIKEN: I want to pay tremendous tribute to Judge Coffin. Melissa works for Judge

Coffin. She was my intern as a law student. But Melissa has probably done 900 to 1,000 hours worth of research in developing all the reading, all the literature in the evaluation, and that was all done on her evenings and weekends starting last August. So she has done this in the capacity of we all believe in community service and being a part of the community, and this was her gift to Oregon to do this—on top of preparing a tremendous caseload for Judge Coffin. So you know sometimes when you set the bar high and you ask people to participate, you'll be really surprised to find out who will step up. And I just have to tell you, one of the best things about this is to meet these incredible people around the country, and working with Judge Sorokin in the last two years, and Judge Carmody from Michigan, and to meet Judge Wells, because my passion is to address the needs of dual diagnoses. Because it's just hideous what we're seeing happen by the system. Working with Melissa. These are all gifts, and it's made this job already a privilege now, and incredibly meaningful.

JUDGE CASTILLO: Just time for one or two more questions. Yes.

QUESTIONER: [Inaudible.]

JUDGE SOROKIN: My own thought is that one of the lessons I take, is you first have to ask, "What are you doing, and why are you doing it?" So here at least for our program, what we were doing—what we set out to do was change the cycle of revocations, and our goal was forward looking. We said to ourselves, people are going to be released from supervision, and our goal is what can we accomplish? I think the lesson for the front end of the system is the same, "What's our goal?" If our goal is to change behavior, to reduce crime rates, to resist violence, then I think there are lessons to take from programs like this, because these kinds of programs and some of the other presentations we've heard seem focused on changing people's thinking, changing behavior over the long term. And so I think those are important lessons to take on the front end.

JUDGE CASTILLO: Judge Aiken.

JUDGE AIKEN: When you're trying to change into a system, you have to understand, when you build this system, we don't have the infrastructure in place to address any of these needs in a comprehensive capacity building way now. So if we're going to change how we do this work, we actually thought about setting up models, constructing them in a way that was on the best practices, data driven, and using the resources over in a way that—if we tried to do this immediately now—there's not enough money.

JUDGE SOROKIN: Two other points about that. I agree with Judge Aiken. One is that, one point to remember about studies about these programs, and just because it's a good idea, it has to be well done. If somebody has a program and doesn't have resources behind it, and there's one probation officer supervising 184 people, it's probably not going to work that well, and that's not an indictment of the idea. That's an indictment of the implementation in that location. And the other is, I think the involvement of the community is very significant, whether the community is a community college and a speaker from that program talking about what's available, whether the community is a recovering substance abuser, or the community is a child of a substance abuser talking about the harm that's been done to that person. I think bringing the community in is important in these programs, and even more important than the front end.

JUDGE CASTILLO: Judge Irizarry, you had a question?

JUDGE IRIZARRY: It seems to me that part of the success that you've had in the treatment courts or the solving problem courts is having all of the parties coming and participating, including the U.S. Attorney. So how did you get the U.S. Attorney to participate? Because I was able to get the federal defender to work with me. Probation, of course, is onboard. But try as I might, I can't get the U.S. Attorney onboard. They can't see the plus to attacking recidivism as really part of the law enforcement function. How were you able to get them onboard?

JUDGE SOROKIN: Well, in our district, I'm actually looking around to see if—there was somebody from the U.S. Attorney's Office, who was here earlier. The U.S. Attorney signed on to our program at the beginning. Probation went to him, and he said, "Okay, because it's the back end of the system, and if it helps, then fine." There have been issues along the way. Resource issues. They were concerned about the time commitment that they were making, and we've made some adjustment to attempt to accommodate them in that regard. There's been some resistance from the Department of Justice in Washington, I think, who a couple of years ago wrote a report opposing drug courts in the federal system. You could read it. I don't know how much application it has to anything that's going on in the courts around the country. But I'll tell you, my attitude has always been, "Well, if you think there's somebody too dangerous, so dangerous you want them supervised less closely, drug tested less often, seen by the court less often, you want them on regular supervision, come to court on the record and make the motion." And, I think on the other side, their participation is really important because they both are a watchful eye of public safety perspective. And it seems to me what the system is about is about public safety. It's not about how many people you convict. It's about what you can do for communities in terms of reducing crime.

JUDGE WELLS: I did it by simply saying, "Why wouldn't you want more supervision for people who are on supervised release anyway?" And I think that logic's kind of hard to argue with.

JUDGE SOROKIN: Is the problem not so much that they disagree with that, but they don't want to show up?

JUDGE IRIZARRY: You know individual prosecutors love the idea, but it's the upper levels for some reason—I don't understand the resistance. Maybe they're getting other messages from higher than them. I don't know what it is.

JUDGE AIKEN: Our U.S. Attorney [inaudible] executive chair of the [inaudible] and they [inaudible] so that message is before the Attorney General.

JUDGE CASTILLO: Yes. Last comment.

JUDGE COUCH: I was just going to add—community based programs we've worked on—the way that we're selling it, public safety. We're not selling it as —public arena. The way we sell it is public safety. And we sell it as public safety by saying there's more supervision, there are more programs, there are more resource allocations. Why wouldn't you want to do this because you're going to make the public safer, because these people that couldn't get intervention the first time are going out robbing and pillaging the community. And by being able to do that, we've been able to sell it, but we have not even tried to sell it as a touchy-feely program. We're selling it as a public safety program.

JUDGE CASTILLO: Judge Jackson, did you want to say something?

JUDGE JACKSON: I'm Carol Jackson. I'm from the Eastern District of Missouri. We started our drug court program, now reentry court, just a few months ago, and as far as the U.S. Attorney's Office is concerned, our U.S. Attorney has been very supportive of this program from the very beginning. And they view it as a nonadversarial situation, which it is. On the other hand, they would not be in favor of any kind of program that would focus on intensive supervision before pretrial or the pretrial level, because they view that if someone commits a crime, they think that they should be prosecuted. Once that person has been prosecuted, has completed his or her sentence and is now on court supervision, they're fine with supporting the program that would make sure that they adhere to their release conditions. And I think if, if your U.S. Attorney would like to speak to our U.S. Attorney, I would be happy to have her call because I think she would, she would be very happy to talk.

JUDGE CASTILLO: On that note, I'm going to close the formal discussion. You can continue the informal discussions. And we will continue the formal discussion tomorrow morning. So thank you.