

Day Two

Federal Problem Solving Courts (Views from the Practitioners)

Moderator: Honorable Michael E. Horowitz, Commissioner, United States Sentencing Commission

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Valerie Martin, *Chief United States Probation Officer, Western District of Michigan*

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SUMMARY

This panel discussed reentry courts in three federal districts from the perspectives of a probation officer, federal public defender, and prosecutor. In addition to describing the details of the programs in their districts, these practitioners shared some of the benefits and challenges of these programs from their own unique perspectives.

The district court in the Western District of Michigan relied on evidence-based practices and decided to directly target high-risk offenders. In this mandatory program, the highest-risk offenders identified by their score on the Risk Prediction Instrument (RPI) are required to participate. Under the direction of both a magistrate and district court judge, this program provides small rewards for success, and successful completion can result in a one-year reduction in the term of supervision. One benefit from the probation officer's perspective is that judges now participate in successful reentry cases, rather than only in cases where defendants violate the conditions of their release.

The program in the Eastern District of Pennsylvania also can result in a one-year reduction in the term of supervised release. Attorneys meet informally with a magistrate judge to discuss the participants' status, and then they join the participants in a biweekly court session. One of the biggest challenges for the federal public defenders has been to abandon their usual adversarial posture. To ease any dispute, the participants developed a sanction list. Additionally, they have worked with a local community college and health care providers to address lack of education, poor employment records, substance abuse, and other health concerns.

The Court Assisted Recovery Effort (CARE) in the District of Massachusetts is a voluntary program that can result in a one-year reduction in the term of supervised release based on successful participation in the program for 12 months. Each week, attorneys from both sides meet with a magistrate judge to discuss the participants' progress. Following this meeting, the participants arrive for a formal court proceeding. Noncompliance can result in sanctions such as a formal reprimand, a written essay, community service, or jail time. The prosecutor from this district reported a number of concerns with the program. Participants receive good substance abuse treatment but receive little other skill or employment training. The program requires time to review cases, and this has strained prosecutorial resources. To ease this burden, the office has decided to send prosecutors to the court sessions only when there is a compliance problem.

All participants agreed that one key to success is a fair and open-minded judge who will reconsider old methods and assumptions and also listen to the collaborative input from all sides.

**FEDERAL PROBLEM SOLVING COURTS
(VIEW FROM THE PRACTITIONERS)**

COMMISSIONER HOROWITZ: We were just talking about our panel and [were asking] how we cover ground that's already been covered by all the judges who have spoken in the last day and a half or so. But I think what you are going to hear are some of the practical realities, practical tips of people who have operated in reentry programs, specialized courts, how you deal with it from a probation officer perspective, from a defender perspective, from a prosecutor perspective.

So let me introduce from the far right starting with Valerie Martin. Valerie is the chief probation officer for the Western District of Michigan which has a program, as you can see on the board, called ACE, the Accelerated Community Entry program. She's headquartered, and the district is headquartered, in Grand Rapids, Michigan. Valerie has a master's degree in social work from Western Michigan University, and a bachelor's degree in psychology from Eastern Illinois University. She served from 1989 to 2001 in the Central District of Illinois as a U.S. probation officer and as a supervisory U.S. probation officer before coming in October 2001 to the Western District of Michigan. And since her arrival, she has been instrumental in helping facilitate the development of the re-entry court and the ACE program in the district.

Sitting immediately to my right is Rossman Thompson. Rossmann is an assistant public defender for the Eastern District of Pennsylvania. He graduated in 1985 from the University of Pittsburgh School of Law. He has been a public defender since 1989, and in those intervening few years, he was both a law clerk and in private practice, and he also was instrumental in helping to develop and implement the re-entry program in his district in September of 2007.

And then to my left is Laura Kaplan. We heard a little bit about Laura's program yesterday in the District of Massachusetts where Laura is a prosecutor and the chief of the Violent and Organized Crime Section. As section chief, she handles major crimes and the drug task force units as well as the organized crime and gang units. She has been a prosecutor for 15 years in Massachusetts as well as in the District of New Jersey, and she has also served in the Kings County District Attorney's Office about which we heard from Charlie Hynes yesterday, although I gather you never were in the diversionary programs and specialized court programs in that district. But she has the state experience and the federal experience, and she is a graduate of the University of Michigan and American University Western College of Law.

And with that, I can turn it over first to Valerie.

MS. MARTIN: Good afternoon. We've decided here that you've heard a lot about these kinds of programs over the last couple of days, and we're just going to brief you about that and hopefully leave more time for Q and A, because if you've reached this point in the program, you probably have some real good questions that you would like to have answered.

Judge Bell spoke a little bit this morning about the Accelerated Community Entry program, ACE as we call it, in the Western District of Michigan. This has been our experiment in reentry. I am not a regular practitioner in that endeavor. I helped facilitate its existence. Sharon Turek, who is here with us, is the federal defender who is a regular participant in that team. So we'll be able to hopefully answer questions that you might have.

Our reentry court was initiated in the fall of 2005 and we decided strategically to give this experiment the toughest go we could find, which meant that we were going to work with the highest-risk offenders in the highest-risk spot we had in the district, and that ended up being Berrien County, Michigan, an area that was known for some pretty high unemployment, also some racial strife, encounters between police and its citizenry that had reached the national spotlight. It was a place that had undergone quite a bit of federal prosecution for drug trafficking and gang crime. We were expecting those folks to come right back to that location. Things hadn't changed too much while they were in prison, so when we designed this program, we thought if we could have success in Berrien County, we could probably have some success in other places in the district.

We know that the statistics for returning offenders to prison is high and that the first six to 12 months are very critical, but there are some things that we can do that might change that recidivism rate. And we knew we could do that by doing some very particular things, and this is where we tried to incorporate the evidence-based practices into our programming. And you've heard a little bit about what those principles are, and as we began to design our program, and we designed it collaboratively with all folks at the table, we wanted to be sure that we addressed each of those evidence-based practices and incorporated them in some way in what we were going to do in this program.

There's a list of the collaborators who worked with us, U.S. District Court of course, the probation office, the U.S. Attorney's Office, the Federal Defender's Office, Federal Bureau of Prisons—and I say that by way of their halfway house personnel because we use them not only as a way to begin the program in terms of that's where folks are residing right before they come out to us, but we are using them heavily as an intermediate sanction, especially for some technical violations that occur—and then our treatment providers.

Judge Bell talked a little bit about the different roles. We have a magistrate judge and a district judge who preside over these particular participants. They do the typical drug court kind of interaction where goals are reviewed at each of those hearings, and new goals are set for the next hearing.

What distinguishes what's happening in our experiment, I think, from other federal experiments is that this is a mandatory program. If you are high risk and you are coming out to this particular geography, this is how your supervision gets conducted, and the risk prediction instrument that we're using right now is the RPI which was an FJC product.

And typical to drug courts, they earn rewards, and once you've accumulated 12 rewards, monthly rewards, you graduate, and we do all the kinds of things that you would normally associate with a graduation, a certificate and a little bit of a ceremony. You graduate to another year of "regular" kinds of supervision, and if that goes well for you, we request an early termination from supervision. So technically speaking, someone could finish this program in 24 months. If you get all 12 of your initial rewards in a row, graduate, and do the next 12 months, then you could be off supervision in 24 months. Most of the folks under supervised release are looking at three to five years of supervision, so it could mean as much as three years, as little as one or less in terms of this as the big carrot. This is the reward that they're looking for.

These are the expectations that are incorporated into what they are working on while they are going through the program. These are the kinds of things the goals are set for. You see employment on

there. You see communication. These are all set out in paperwork that's associated with the program. All of that is on your CD that you have with the materials.

We are seeing some really good byproducts of the ACE program. Judge Bell talked about it a little bit this morning previously. The only time he ever saw a supervised releasee is when they had violated. He saw only the failures. Now judges are involved in seeing successes and seeing progress being made towards success. Sometimes you have to take delight in little bitty successful steps, and that certainly has been a great byproduct of this program.

The pro-social supports that get involved with the offenders through the involvement of their families and other community people as this program develops, that has been a good public relations piece, I guess you would call it, for the federal court in a community.

The learning curve. I mean, to have judges actually be able to talk to a probation officer about an evidence-based practice and to use those words brings a smile to my face. It wouldn't have happened five years ago. It's happening now. Sometimes judges are talking to probation officers about evidence-based practices, and the probation officer doesn't know what that is. So we've got a great learning curve going on, and not just between court and probation officers, but among federal defenders, treatment providers, prosecutors so—

I think I'll leave it with that, because I'm sure there are questions that you have and any of them are going to be great discussion starters, so I'll leave time for questions.

COMMISSIONER HOROWITZ: All right, thank you, Valerie.

Rossmann, do you want to talk about the defender perspective?

MR. THOMPSON: Yes. I would like to briefly identify how the court came to fruition in Philadelphia. It took the tireless work of Maureen Rowley, the federal defender for the district, Linda Dale Hoffa, who is actually in the audience today, along with Chief Probation Officer Dan Blahusch, and those individuals had a vision. They were able to identify very early on in the process that traditional methods were not working. I think we all have heard during the course of this symposium that many of the programs and treatment modalities were not, in fact, working, and it was a collective goal of all of those parties to try to determine what would be best to allow defendants to re-enter our society and to be productive citizens. That is the goal of everyone who is a part of the symposium. And one of the things that we noted during the preparation and planning for this was that many of the offenders who we're going to deal with, as you already know, are high-risk offenders who suffer from underemployment, unemployment, drug use, substance abuse issues, absconding from previous supervisions, and these are the kind of individuals who present a unique task for everyone involved in the system.

So the way our court was structured was that we offered these high-risk offenders the opportunity to voluntarily enter the program with the understanding that the carrot works better than the stick. The carrot, if you will, is that if the individual completes 52 weeks of the program, he or she is entitled up to one year off of his or her supervision.

Now I wish I could provide empirical studies for you at this point as to whether or not there is scientific data to support the working of the program, but I think I can provide something better for you. I

have been involved with this since September of 2007. We initially took in 26 of your higher-risk offenders, and during the early stages of the process, Magistrate Judge Rice, who oversees this particular courtroom, would have administrative meetings approximately one hour before we would convene for court on a biweekly basis. We would do this every other Wednesday. With the assistance of the probation department, we would go through a list of all of our participants to determine how they were making progress, what issues, if any, we would have to address, and what sanctions, if they were required to be imposed, and I want to stress this more importantly than anything else that I talk about today. We all recognized as professionals that this was going to have to be a team effort here to make this work. I had to remove my hat as a federal defender and recognize that we were not going to make this work if I was going to argue with the assistant U.S. attorney or the probation office. We were going to get nowhere. So we agreed to develop a sanction list so that we were consistent with our approach as to every offender. We were cognizant of the fact that we could not have it be viewed that these particular individuals would be getting preferential treatment or would make out better than the general supervision body. And we would walk through and try to identify what our high-risk offenders needed, and in that process we were able to learn that many of our clients, or my clients, the offenders in the program, lack basic life skills, and one can very easily infer that if you don't have basic skills in order to just be a citizen in our United States, you are going to set up for failure. And, and the specific examples I can point to you—we had many persons who were undereducated. They didn't have great employment records. They had substance abuse issues that required extensive therapeutic treatments. Many did not know how to fill out applications for a driver's license, open bank accounts, and do some of the basic things that we all take for granted.

So what we decided to do in our program was to incorporate three very essential components to successful reentry back into society. We developed relationships with the various community colleges in the city of Philadelphia, and those units come into our meeting sessions biweekly, and they offer to the clients Work to Learn. That is a program where they will do an assessment to determine what that individual's skill level is and what their needs are, and they will try to match with them educational programs that are designed to allow them to work and to complete their studies. Vocational programs are offered through vocational schools where the persons are able to take advantage of grants and scholarships that will allow them to learn vocational skills and to basically learn a trade, which we believe will make them good candidates as far as reentry.

We have also brought in a health component to it because we recognized that many of our clients did not have health services and were not able to handle basic needs, and we believed that if we were able to address some of the basic issues, we would allow offenders to have a greater opportunity to succeed. And these services are brought into our group biweekly, and it's something that we believe in, and we believe that it will work.

The biggest component, however, is Judge Rice who I think is a person who had a great vision at the inception of this court, and he understood intuitively that one of the best ways to allow an offender to become a productive member of our society is to make that individual accept responsibility for the family unit, for himself and his conduct in society. And that being said, we encouraged the participation of the families, spouses, significant others and children, and I can cite one example where one of the offenders was talking about a playground setting where, on a weekly basis, he tries to talk to the young men in the community to explain to them why they should not do things that will cause them to go to prison, because he has been to prison before, and he knows that that's just not a good thing. He immediately asked Judge Rice if he would be willing to go down and meet with us at the playground, and believe it or not, Judge

Rice with the probation officer went down to this playground, and we kind of learned the following week that the U.S. marshals literally had a conniption when they found out that a U.S. magistrate judge was down in a playground in one of the worst sections of Philadelphia that you can imagine.

But Judge Rice during our sessions has made it a point to let our clients know that he really cares about them, he really wants them to succeed, and during the three hours that we're actually in the courtroom setting, we inquire about what they need and what we can do to help them succeed. In many instances, it is providing a mentor, and Judge Rice was able to draw upon his many years in the U.S. Attorney's Office where he was the chief of the Criminal Division. He was able to identify former federal prosecutors who he thought had the right temperament and demeanor and asked those persons to be mentors to at-risk people so that they could have a buddy, so to speak, who they could make contact with if they needed a life skill question answered, if they needed help in getting a driver's license, opening a bank account, and someone who could discuss basic things with them, and we were quite successful in getting the support of the bar association as well as many private practitioners who have offered their support in a mentoring role.

Why I really think that the program is showing great signs that it will be successful, during the ten months that I've been involved in it so far, we can expect you are going to deal with issues such as substance abuse and failing to report to the probation office, but so far, and knock on wood, so to speak, we have not dealt with any grade A violations or serious violations that by practice in the district court would have to go to the district court judge for disposition. We have been able to handle ourselves the failures to report to the probation office, positive urine screens and lower-level infractions and misdemeanor arrests; so far we have had persons who have fallen out of compliance, and we have addressed that. We've worked hard to reach a consensus and agreement as to what the sanction should be. We have addressed those problems, and I think that it has produced at least a positive result overall, because we were able to start a second reentry court, and that court started June 10th of 2007. Magistrate Judge Felipe Restrepo, who used to be a former federal defender, oversees that court, and they have approximately 26 higher-risk offenders in that program as well. My colleague, she staffs that particular courtroom, but it's somewhat too new to actually talk about.

But we are seeing at least positive signs with respect to the court that I'm involved in, and what really amazes me is that as I look back and some of these are my former clients, I actually have two or three former clients who are in the program. On the front end of a case, my initial role with respect to clients, many of whom are going to be detained, is "Are we going to trial? What are the guidelines, and what is the potential penalty, or if I'm going to plead guilty, how do we mitigate it?"

Seeing these persons, now that they're out, you see a different side of them, and I think what they all will for the most part exhibit is that they really, truly want to succeed, but they just need to have the help and the proper support and structure to do that. And I think as what we've done to provide these extra services to people, I truly believe that it is going to go a long way towards making them achieve their goals. And while it is new, and this is a concept that is novel, it is one that we're realistically going to have to consider.

The cost of incarceration now is approaching \$27,000, \$28,000 a year at the federal level, and if we're going to spend that kind of money on the front end only to spend it again on the back end when a person gets out of jail and is sent back for six months or five months for a technical violation, we're just putting a band-aid over a bigger problem.

I am truly encouraged by what I'm seeing thus far, and hopefully in two years if the Sentencing Commission will have me back, we have created a situation with Temple University where their social science graduate students are going to come in and to evaluate our two programs. They tell us it's going to take about 18 months to have numbers that are statistically significant, but hopefully we'll be able to report through statistical data that we are seeing what I believe we are seeing. And that is a positive influence on these offenders, and it's a public safety issue as much as anything in Philadelphia. Philadelphia is a city that has a very high homicide rate. Many of the persons who are in our program—and it's one of the requirements that they are Philadelphia residents—are persons who are from these high-risk areas, and to the extent that we're able to change or mold their behavior, I think it goes a long way towards affecting public safety and putting persons back out on the street who have the ability to succeed.

I think I'm going to conclude there, because I suspect that many of you have heard at least how the program works in theory from the judges and the academics who spoke earlier, and I think that it might make more sense for me to address specific questions that you may have during the question and answer session.

COMMISSIONER HOROWITZ: Thank you, Rossman. Now from a prosecutor's perspective, Laura.

MS. KAPLAN: Thank you. One thing I've learned here is that the order in which you speak is certainly important. I come from the District of Massachusetts. You've all heard from Magistrate Judge Sorokin about our CARE program so I'm going to try and cut it down quite a bit also. But I am here today to speak a little bit about the prosecutor's perspective in participating in these programs, and I have to say that I do feel a little bit like a fish out of water as a prosecutor. I think there are only about ten of us here. But I have learned quite a bit, and my thinking about these programs has really evolved. So it's been very interesting for me.

I just want to start by providing some basic background information for those of you who may not have heard about the CARE program in Massachusetts. It's the Court Assisted Recovery Effort. I'll speak a little bit about the challenges we faced, whether our program has been successful to the extent that we can tell, and then just end by briefly telling you what's been going on around the country with respect to these programs. Again, I apologize if any of this is repetitive.

Our program began in May of 2006, so it's a little bit over two years old, and we were asked by the court and probation to participate along with the federal public defender's office. It started as a one-year pilot program with ten participants. It was expected to have 20 by the end of the year. I'm not sure we made the 20, and the participants were identified by probation as individuals who were struggling with issues of substance abuse, and it was interesting timing because we jumped on board primarily because the court and probation asked us to, and I think immediately thereafter, we received an e-mail from I believe it was EOUSA saying, you know, "Stop whatever you're doing. We've been ordered to have this feasibility study on drug courts, and you have to get approval." So we did go through the process, and we did get approval from the Department of Justice to participate in this program.

Our CARE program is a completely voluntary program. I understand that some of the others are not. That really interests me, because what I had been told was, not being a clinician myself, was that in order for drug addicts to get help, they have to want to get the treatment, so I'm not sure how that works

in the programs where people are required to participate. And in our program, we also have the incentive which is that, if you participate for 12 months and you're in compliance, and you make it through all four phases of the program, then you get a year off of your supervised release. So that is the carrot that we have.

The program, like some of the others that you've heard about, is meant to be a team effort by the participants, which is the court, probation, the public defenders, the U.S. Attorney's Office, and the various treatment providers. And again, it's a program that the participants will remain in or not for 12 months. There are four phases that they have to go through, each with increasing amounts of time that they spend with the court, or decreasing amounts, depending on the success with the court and probation.

The courtroom part of the program is presided over by Magistrate Judge Sorokin and the CARE team, meaning probation, U.S. Attorney's Office, and the public defenders and the treatment providers, are present as well. On the day before the court session, we get an e-mail from probation which basically has a report about the progress of the participants who we can all review, and the following morning we have an assistant from my office and as well as the rest of the CARE team that goes and, and sits with Magistrate Judge Sorokin and discusses the progress of the various participants: who has been in compliance, who hasn't, and if there's been noncompliance, what sanctions should be imposed.

We then move on that same day to the courtroom. Each individual participant stands, is addressed by the magistrate. It lasts about an hour. He starts by asking, "How're you doing, how's it going," and if there have been no issues of noncompliance, they get an attaboy, and they sit back down, and if there have been some issues of noncompliance, then they're asked about those issues, and they're asked about what's been going on.

Noncompliance might be failing a drug test, could be coming late to court, not looking for work, not writing the essay that they were supposed to have written from the previous week or lying about where they were, obviously testing, having a dirty urine. Some of the sanctions might be a judicial reprimand in open court, the participant having to write an essay about their noncompliant behavior, the participants having to participate in community service, completing a term at a community corrections center or spending a period of time in jail or actual termination from the program. And some of the rewards might be that, if they have been compliant that week, they stand at the end, and they're applauded by the CARE team and anyone else who is in the courtroom, where they actually advance to the next phase.

We don't presently provide the services that I've learned about some other districts providing such as out in Oregon and I take it in Pennsylvania and I think that that's a great reward. My concern about what we're doing is that we're offering substance abuse treatment and, you know, they may make it through the substance abuse treatment, but then we're sort of sending them out without any other life skills to become employed, to get their driver's license or do whatever else it's going to take so that they can remain sober and have a law-abiding life.

That's how our CARE program works. There have been a total of 38 offenders enrolled in CARE since May of 2006. We currently have 18 participants. They're offenders of all different types. We have four bank robbers, three distributors of heroin, two for cocaine, money launderers, felon in possessions of firearms, bank fraud, assault on a federal officer, theft of stolen mail, and our average RPI

index is 5.3. I take it that's on a scale of one to ten. We have had ten graduates since May of 2006, nine terminations or opt-outs.

So now I just want to talk about some of the challenges that we've faced in the two years since CARE has been in existence, and as a prosecutor, I have to say that the role that we play in CARE is very unique and very foreign to us. We're not trained to be social workers or clinicians, therapists, or drug counselors and, you know, we don't usually get to hear the life stories of offenders—of defendants. You know, the first few times I attended, it was really fascinating to sit in the courtroom and to listen to the life story of some of these people. That's just not what we do, and I've been a prosecutor for a long time, and I've rarely asked the question, and so it's interesting to hear, but again, we rarely see a glimpse into the lives of the people that we prosecute.

The CARE courtroom proceedings are nonadversarial, something we're also not used to. We have a very small role. We never speak in the courtroom setting. We never speak to the participants, and that's different from every other member of this team.

Now, in our district, we are very fortunate, and I think that this is very important, that we have a magistrate judge, and I'm not just saying it because he's sitting here, who has the temperament to run this program. He does come from a defense background, but he is extremely fair and willing to listen to the government's views. But I do think it's really important, in listening to Judge Aiken, I can see, you know, the type of person that she is, that the judge who is running these programs, I mean, you have to have somebody who's got the right temperament to be able to deal with these offenders. I don't think that these programs would be successful with just any magistrate judge or district judge.

In our first year, and I'm going to tell you about some of the challenges that we had, only because some people might be here thinking that they want to start one of these programs in their district. I think it's helpful to tell you about some of the challenges that I think you would have in any pilot program and just a matter of working out some of the kinks. First—our first concern was this, this was going to be a considerable drain, a resource drain for us. At the time that we agreed to enter into the program, we were down 22 AUSAs, and we had two AUSAs that we had to assign to participate in the program. Our program meets once a week. So we have two assistants who are assigned to it, and they alternate. One goes one week, and the other one goes the next week. These are prosecutors who we could have been using to make new cases, and these are prosecutors who when they went to CARE, they were not working on their other cases. We didn't take cases away from them. They kept their full caseload and, you know, they had to review the progress reports, and they had to go to the court session and meet, you know, beforehand, before court. So that was one of the concerns that we had was about drawing on limited AUSA resources.

In addition, we felt initially during the first year that some of the rewards that were being given to the participants were not appropriate. We just didn't feel comfortable with them. We were giving out Dunkin' Donuts gift certificates and movie theater gift certificates as they advanced in the program, and so that was a concern that we had that this was trivializing the program. As I said, I like the idea of offering services. I think the dentures idea was a great idea. I don't know how they did that, and I'm sure that we couldn't do that on a larger scale, but I think that's a real reward.

We also felt that even though the goals of the program were laudable that there was such a small role for us that it was really a diversion for us to be sending our prosecutors to participate on a weekly basis.

We were also concerned that we weren't being provided the opportunity to give our input into who became a participant in the program. Sometimes we were getting told after the fact that, you know, A, B or C had been chosen as a participant, and we frankly didn't feel that they were suitable. We didn't feel that they had enough of a substance abuse problem. We felt that they were too violent of a felon, that they were not somebody who would succeed in the program. And you know, some of them we felt were just going to clearly sail through the program and get their year off of supervised release, and somebody else could have been benefitting. So that was a concern we had.

We did meet with the court, and we talked about some of the issues that we had, and they were very amenable to our suggestions for change, and so some of those changes were made. We now do receive all the paperwork regarding new participants in advance, so we can have input into who is getting into the program. Many of the rewards that were previously given out have been completely done away with. I think they get a certificate at the end when they graduate, and they get some gold coins along the way.

And now more importantly from my perspective, what we decided to do in terms of our AUSA resources is that the only time AUSAs will go to the courtroom session is when there has been an issue of noncompliance. So we get notified, you know, the day before, the night before, afternoon before whether there's any issues of noncompliance. If there are no issues of noncompliance, an AUSA does not go. There's no need for them to go. But if there is an issue of noncompliance, then the AUSA will go to the courtroom session.

This really has made a tremendous difference. In the first year of CARE, we had two AUSAs participating in the program who both were from state DA's offices, and they were frustrated with the program and their role in the program, and we currently have two different AUSAs who are in the program now, and they are very encouraged by it, and you know, very willing and happy to participate.

I can tell you that when we talk about whether CARE is successful, for me that is the million dollar question, and having come here just, you know, in the short time that I've been here and listening to everyone, it certainly seems like we're on the right track and that it may very well be.

Again, you know, as a prosecutor it's a difficult role to go in and, you know, I measure success by when I read the progress report, I see that somebody has a dirty urine. To me this is not successful. This person is failing. The concept that relapse is part of recovery is not something, you know, having done this for a long time is not something that I am educated about. So you know, I think we measure success in a different way.

We do have a control group that has been operating alongside our CARE participants so that is how our probation department is measuring success. I'm told that of the ten graduates as of May 2008, none has incurred new criminal convictions. I believe that there has been one new arrest in state court. Again, in our program and some of the other reentry programs we've heard about, there are less revocations, and I guess that's because they're being so much more closely supervised but, you know, I also question whether there are less revocations because we're letting them get away with conduct for

which we would otherwise be violating—having them violated for before. But having said that, fewer revocations means less resources spent doing full-blown hearings, and we're saving government resources in not having to do those. It means less prison time, and that's an expense we save, but on the other side of the coin is, you know, how much money is probation really spending for this intensive treatment and supervision? I'm not sure what the figures show on that.

I think it's believed by our CARE team that the participants in CARE have become more sober, meaning for a longer period of time, more employed and more law-abiding while the control group's performance has declined, and that is the goal of CARE, and its success is not measured just by the recidivism rate but by whether these individuals have been able to remain sober and employed and law-abiding.

In Massachusetts, we continue to participate because the court has asked us to and because, more importantly, probation has asked us to. And we feel that it's important to support probation, especially when they're in there with federal defenders and the treatment providers and they're asking for sanctions to be imposed. And we also participate because we think it's important for our voice to be heard in who is getting into the program, so screening the participants, and also being able to advocate for the sanctions as I said. And also importantly, we—the prosecutors, the government—never give up our right to seek revocation for sanctions. So we don't give up that right.

Finally, what's going on around the country. There are 22 districts who are either participating in a reentry program or are anticipating doing so in the near future. Those districts are Arizona, Northern California, Guam, Idaho, Southern Illinois, Southern Indiana, Southern Iowa, Maine, Western and Eastern Michigan, Eastern Missouri, Eastern New York, Western Oklahoma, Oregon, Eastern District of Pennsylvania, Middle District of Pennsylvania, Puerto Rico, Northern Texas, Utah, Eastern District of Virginia and Eastern District of Washington. There are some districts who are completely enthusiastic about these programs. I think you have heard from many of those districts and others that are sort of lukewarm, and I think there are others that are simply not interested. And some of them do it for no other reason than to maintain good relationships with the courts and probation.

The programs, as we've all heard, seem to vary from whether they are allowing in participants who have violent, high-risk offenders or nonviolent offenders with drug problems, seem to be all over the board on that.

I think that's about it. I welcome any questions. I want to thank everybody who is involved in doing this. Like I said, it's been a great learning experience for me, and I thank you all.

[Off topic.]

COMMISSIONER HOROWITZ: Thanks, Laura. We have a fair amount of time for some questions, so hopefully people have questions to ask.

JUDGE COUCH: I'm Valerie Couch. I'm a magistrate judge in the Western District of Oklahoma, and we are in the planning stages of a project similar to what you all are already implementing, and I'm wondering what advice you have for those of us who are just starting to get the

constituents of the various agencies together and talking about and preparing the program documents, anything of that nature.

MS. MARTIN: Right, and I'm Valerie Martin, and I'll answer that question, because I was involved most heavily in the planning stages for this program. It began with a group of probation officers who were really committed to trying something different, to hopefully get better success rates. And we put together a proposal that went to the bench first. That proposal included a lot of background information about why we want to do this, and how would we want to do it, and we had a model that we wanted to replicate, and that came from the state court in Allen County, Indiana. You can google Allen County, Indiana reentry court and get a lot of good info just off the Internet.

In any event, once we had the court's support, we spent a good six months in planning stages. And I say six months because we had six monthly meetings that were all about planning the intricate details of how we wanted this to work, and around that planning table were representatives from the U.S. Attorney's Office, the Federal Defender's Office, certainly the court and probation, treatment providers, the U.S. marshal in our instance, because we wanted to have this court in a city where we didn't have a federal courthouse. So we had security issues that had to be ironed out.

And the process, I facilitated the agenda. These are the things we need to work on. We drafted a policy, and everybody marked it up, and we discussed it. Then I would give them a new policy, and it would get marked up again. We had a list of obstacles that we would identify. Well, you know, this might actually derail our efforts. We would talk about what that obstacle was and someone on the team was assigned to work on that obstacle, and as a legal obstacle, you know, one of our attorneys went after it. So we tried to think about every possible scenario and plan for it. Of course, you're not ever going to get all of them, but we tried to do that in our planning stages. And then when we got ready to launch, before we launched, we did a mock where people played parts of offenders and participants and the judge played the judge of course, and the attorneys played their attorneys, but we tried it, you know, in the safety of a courtroom where it was just us. I think that was very helpful.

Those are the ideas I had.

JUDGE IRIZARRY: If I could reply to the magistrate judge, I'm Dora Irizarry, judge of the Eastern District of New York, and I have a reentry program which I patterned after the assistant who started the initial reentry program in our court. We took our model from his program which has been in effect for three years, mine for two. We both have had great success in the program, and I have materials that I am happy to e-mail to you. Our participants sign a contract. It spells out exactly what the program is about, what everybody's role is, what everybody's obligation is, and it includes in there the escalating—the graduated sanctions, and it is a voluntary program. So if someone wants to opt out of the program and go into regular supervised release, they can do that. I've only had one young lady who unfortunately left the program, but other than that I've had five graduates already. None has recidivated, and we have another graduation coming up on Friday.

I did have a question if I may ask.

COMMISSIONER HOROWITZ: Sure.

JUDGE IRIZARRY: For—

COMMISSIONER HOROWITZ: I never say no to a judge.

JUDGE IRIZARRY: —for Ms. Kaplan. In our program, Judge Sifton and I invited the U.S. Attorney to participate, and [the invite was] declined.

I believe in the team approach. I came from state court, so I worked with the DTAP programs and the drug courts and so on where there is that team approach with the prosecution. I'm just wondering why, if your office is only really getting involved at noncompliance, why you even have an interest in who goes into the program. Or why you should even have a say as to who goes into the program, if basically you're just doing your traditional role of stepping in once there is noncompliance, and there's a jail sanction. Because that's what we do. If it is going to get to that point, thankfully none of my participants has reached that point, but if there is going to be a revocation, at that point we follow the traditional, standard procedures and have a hearing and everything else.

MS. KAPLAN: We have an interest in public safety and in making sure that the wrong people are not going into the program. So I think that's what our interest is, and you know, I think that that's a difficult decision to make also as to who is going to be in the program. But you know, the prosecutors who we have assigned to CARE—they can go if they want to. There's very little role for them if there's been compliance. And I don't see the need. It sounds to me like the program in Oregon where they have more of the team approach, it sounds like a much more informal program than what we have in Massachusetts. It sounds like the prosecutor is actually talking to the participants and doing much more of an attaboy than what we're doing in Massachusetts. It's a more formal program that we have. But I think that we still want to be able to retain some sort of say so as to who gets into the program to make sure that, you know, we're not missing the boat on who is participating and protecting the community.

COMMISSIONER HOROWITZ: Linda.

MS. HOFFA: Thanks. Hi, Michael.

COMMISSIONER HOROWITZ: Hello there.

MS. HOFFA: My name is Linda Hoffa. I'm criminal division chief in Philadelphia, so Ross and I are from the same district. I wanted to answer the magistrate judge's question with regard to how we started it. A name I want to give you is Maureen Barden, B-A-R-D-E-N. If you forget your notes and remember my last name, it's Hoffa, like Jimmy Hoffa, you'll probably find me in some—it's easy to remember.

I think there is an answer to the question, Judge, that you had about the prosecutor's involvement. In Philadelphia, our prosecutors go to each session. When we started planning this at the very beginning, we realized that we needed to have everybody buy in: probation, the court, the prosecutors and the defenders. And the first hurdle we had to get over is that we cannot play our traditional role of being an advocate. And it was hard to convince the defenders initially to do that because they wanted very much to be in there protecting their clients. And when we convinced them, we're not going to be in there jamming them up, so you don't need to defend them. And this whole business of this court is all about that individual taking responsibility for his or her actions and getting all the support that we can give with social services. And I think that was the key to our success, and I anticipate great success in Philadelphia.

To go to our court, if any of you were thinking about it, come to Philadelphia, go to New York. Come in and watch these courts because that's what we did. Maureen Barden from my office did that, to learn what worked and what didn't work. And then we went back and talked to the court. And the other key to the success is that in the end, we let the judges take full responsibility for this, and they got all the credit. So that also worked for us. We just gave it right back, and at the end of the day, it was their idea. And that worked out just great.

But the point I want to make is one of the most inspirational things I've ever seen: the six-month anniversary that we had for this court. Mayor Nutter, who is a new mayor in Philadelphia came. He came and spoke to each one of the participants, and he talked to them about this is their chance. They have paid their debt to society. And it is their moment now to turn their lives around, and we want them to make it. We want them to make it. And the U.S. Attorney came in and spoke. And the chief judge came in and spoke. And the prosecutors are there, and the defenders are there. We're all there speaking with the same voice which is this: we are your cheerleader; we want you to succeed.

It was a Judge Judy moment. If they could have made this a television program, it was one of the most inspirational things I have ever seen in the 27 years that I have been a prosecutor. Because when we convict people and when we sentence people, it is a sad day. But this was a joyous day, a joyful day. And I have never really experienced that in federal court where everyone was pulling toward—the family members were there. The mothers were there. The judge is talking about—and it was all about people succeeding.

So go watch a reentry court, and I think it will turn everybody around.

COMMISSIONER HOROWITZ: A couple other hands were up.

MS. NOONAN: Hi, I'm Sara Noonan from the Federal Public and Community Defenders, and I had just a policy question. Since you all have, as I understand, Ms. Martin and Mr. Thompson have mandatory participation?

MR. THOMPSON: No, ours is voluntary.

MS. NOONAN: Oh, it's all voluntary?

QUESTIONER: Voluntary.

MS. NOONAN: Okay.

QUESTIONER: Absolutely voluntary.

MS. NOONAN: But it's for high-risk offenders?

COMMISSIONER HOROWITZ: You have—

MR. THOMPSON: Yes.

COMMISSIONER HOROWITZ: You have mandatory.

MS. MARTIN: Western Michigan is mandatory.

COMMISSIONER HOROWITZ: Right, Western Michigan is mandatory.

MS. NOONAN: Michigan is mandatory, okay. I know in Massachusetts it's voluntary. My question, I guess, is specifically for you, Ms. Kaplan, but I'd be interested in hearing anybody's perspective. From a policy basis, what is the policy behind trying to exclude people with violent histories given that statistically supervised release as it's traditionally done hasn't been all that effective for the higher-risk violent offenders and that this at least appears to be somewhat more successful in helping high-risk people not recidivate? What's the policy reason then behind locking away those people who might be able to benefit the most and who will be of more danger to society if they didn't benefit?

MS. KAPLAN: Well, when we started this two years ago, there was no empirical data that showed that this was a success. And our feeling was then that we weren't willing to buy in yet to a year off of supervised release for violent felons, that, you know, we would take this in steps and so I mean—or the most violent felons. But you know, we have been doing it. I mean we've got bank robbers. We do have the most violent felons, but I think that that would be the reason for our concern for giving a year off of supervised release.

COMMISSIONER HOROWITZ: Judge?

JUDGE IRIZARRY: If I could respond to the policy question. I— first of all, I worked in [inaudible] Village for a couple of summers when I was in college, so I learned a little bit about drug treatment. Part of my job was evaluating the program and the success of the program. As a state court judge for seven years, I worked with the drug treatment courts and the DTAP programs and the task programs. None of those programs will take people with violence in their backgrounds. They are destructive to the groups. This has been studied for decades, and it has been found to be true. We do not have people with violence in my programs. They are screened for that. And in part for the same things that Ms. Kaplan is talking about. You want to be careful about shaving off a year of supervised release for someone who may be a danger to the society. But it's been proven that these people do not succeed very well in drug treatment programs.

COMMISSIONER HOROWITZ: Judge, did you want to add—

JUDGE SOROKIN: I just want to add in response to that, in fairness, first of all to the government of Massachusetts, the government has, in response to her question, reviewed everybody who has applied, but there hasn't been anybody who the government objected to as coming in. The only people the government objected to were people that everyone else, myself and— agreed weren't appropriate, often for reasons unrelated to their background. Again, they had a health issue. They might have been a sex offender, might have come by way of referral from somebody that we all looked and said you know what, that's not— this person is not who the program is about. I think from my own perspective it's important. One of the important roles for the government is to review, even though they haven't objected to anybody who—there hasn't been sort of a consensus—hasn't been a dispute about that. I think it's an important role for the government to play to review that, because the government is the player that's able, that's in the best position to make an evaluation of that, and all of this is sort of case by case. And there may be a person who either—the term “supervision” was carefully crafted by the district judge, and the government would know that more than any other player, and it wouldn't be

appropriate. Or if it were appropriate, it's something that the district judge gave it a chance to weigh in on, notwithstanding that the courts approve—in general.

My own view, we take violent people. That said, we don't take violent people who aren't substance abusers. Someone who is a violent person who is not a substance abuser doesn't belong in the program, shouldn't go to [this] treatment. But we do take people with violent records or histories, provided the person has had a serious substance abuse problem. And at least we're finding that those people, not all of them, but some of them, do succeed with the substance abuse treatment and then with the other parts of the program.

[Off topic.]

JUDGE ISCOE: I'm Craig Iscoe, a D.C. superior court judge, and I have a question for Mr. Thompson and then for anybody else. Many of our defense attorneys say they cannot allow their clients to go into any kind of team approach because they have to abandon their obligation of zealous advocacy if the judge is permitted to ask questions like: "Why did you use the drugs? What's the problem? Why are you violating certain conditions?" Anything that breaks down the traditional attorney-client roles. It's fine for the U.S. Attorney's Office to abandon those rules, but the defense bar shouldn't be permitted to. So I was just curious.

MR. THOMPSON: Well, one of the things that we've agreed to with respect to this approach is that any admissions or declarations against interest that a client will make during this proceeding where they are speaking before the group audience and before the judge would not be used in any subsequent violation proceedings. So should a client admit to some conduct, we've already made the decision that we're going to handle it at that level before the admission is made on the record.

JUDGE ISCOE: The judge is then to disregard it?

MR. THOMPSON: Well, we've already decided on what the potential sanction is. If it's going to be a grade C violation, we're going to deal with it. If it's a B or A or higher, we don't even reach the question because it's going to be referred to the district court judge for disposition.

JUDGE ISCOE: What if they blurt out a B or an A—

MR. THOMPSON: Well—

COMMISSIONER HOROWITZ: You tackle them.

MR. THOMPSON: But there's never really that great surprise. As you know, Judge, when we have our meetings at three o'clock in Judge Rice's chambers, we know, because the probation office does an excellent job of briefing us as to what the potential issues are. I can't imagine as savvy a group as we have here, anybody blurting out a B or an A. But we sort of know going into it whether there have been any new arrests or any potential criminal exposure that we have to be concerned about.

JUDGE ISCOE: Thank you. I mean, I think it's quite workable. We just get a lot of resistance to that approach.

MR. THOMPSON: Well, I think it makes sense when you know that the client has basically use and transactional immunity during that proceeding, so it would not be able to be used in any subsequent violations.

JUDGE ISCOE: Thanks.

COMMISSIONER HOROWITZ: Saw a couple other hands. Let me just go to the back and come up—

QUESTIONER: Hi [inaudible]. District of Minnesota. How do you deal with client confidentiality? Are all the offenders in the room together when issues are being addressed, or is it individual cases?

MR. THOMPSON: It's just the team. What we do is we start at three o'clock in Judge Rice's chambers with Maureen Barden, who I think Linda spoke of earlier. She was a former assistant U.S. attorney who was a part of the Department of Justice, and I forgot to mention her. I apologize, but she was very instrumental in putting this together. Myself, the assistant U.S. attorney, Judge Rice, and we are meeting there to review the case studies and case files. And then we go out at about four o'clock to 4:15 where we have our group of 26 in the courtroom. So we're pretty much prepped before we get out into the courtroom. The U.S. Attorney does not have much of a role once we get into the courtroom because the judge will identify issues that he thinks I should handle, and I will go out and handle them during the proceedings. But we've already decided upon the sanction or decided if it's not something we can deal with at any rate. And we have had to arrest individuals in the courtroom. We've had to deal with that particular issue. The judge has up to seven days of incarceration that he can impose as a sanction, community confinement. We have a full panoply of sanctions that we can impose. I think the reality is that, you know, we're not talking about a group of 26 offenders who everyone is going to skate through, and we're going to have violent individuals hitting the streets of Philadelphia. We only have two persons who are on track to graduate. Most of what we're dealing with is taking credit away from clients and putting them in sanction centers. They're not getting any different treatment than the other offenders under general supervision because many of the responses that the probation department has taken in Pennsylvania are to provide for initial sanctions of home-community confinement or home detention for the first violation. So that would be the ordinary approach for the general supervised releasee. So in that regard, we pretty much are out meeting in private, and then we have an open courtroom session on the record to address those issues.

MS. KHOGALI: My name is Loren Khogali. I'm with the federal defender in Detroit, Michigan. I have a quick question about resources, and I don't know if this is true in every court, but our court contracts with specific treaters to provide mental health and substance abuse treatment. In setting up the reentry programs, did you go outside of those specific treatment facilities or treatment providers? Because sometimes those treaters seem somewhat overwhelmed. And so I guess I'm wondering how it is that you're having people, treaters come into court every week and participate and how that's going. And sometimes I also think there are treatment facilities outside of the ones that the court contracts with that may, for a specific person, provide better resources. Are you able to use those in the course of the reentry program?

MS. MARTIN: I can just speak from our experience with the treatment providers that we use; they are no different than the treatment providers we use for the regular population. It's the same. I think

in the instances we have going on right now, these treatment providers are involving themselves in the court processes out of their own interest in the program. Now we're going through a contracting cycle where we may have to pay them a little extra because we're getting a lot of their time that's outside of a treatment setting to come and report and be—essentially they're case planning with us so I'm not sure how that will iron out in the contracting cycle. But they were heavily involved in the planning of this program. They were very invested. They show up all the time. They're very vocal in the involvement of sanctioning and rewards and providing information. So they're very committed players in the whole process.

Does that answer your question?

MS. KHOGALI: Yes, it does. Thank you.

COMMISSIONER HOROWITZ: Just on that point, Valerie, in terms of resources, we heard a little bit about the intensive workload that goes in for each of the players in the system. I'm wondering from a probation officer's standpoint, are the probation officers who are participants in your program taking [these] as supplemental cases, or are they releasing their caseload and you're having to find other people to handle them?

MS. MARTIN: The numbers that we're dealing with, we have two reentry courts in progress right now, and the numbers are small in each of them. We never want to have more than a dozen active at one time. So these probation officers, two probation officers that are involved in these reentry courts have regular caseloads in addition to the caseload that's involved in the reentry court.

What I've tried to do resource-wise is lessen that regular caseload for them as much as I can. As I'm starting to look at using these practices that we're using in the reentry court in the broad—using those same practices in the broad supervision of all offenders, there has to be a mechanism where all of those low-risk cases that we really shouldn't be intervening in need to come off of those supervision officers' caseloads. So that would lessen the number significantly for almost every officer, so that their attention will be focused on the high-risk offenders whether they're in a reentry court or not. So that's the strategy we're looking at now.

COMMISSIONER HOROWITZ: Kelli.

MS. FERRY: Kelli Ferry, with the Department of Justice. I just had a question for either the panelists or anyone else in the audience who is operating these types of programs. What role, if any, is there for private defense attorneys? I recognize that the odds of having someone who qualifies for these programs while still being able to pay for retained counsel is probably fairly low, but it seems that all the discussions we've had have been about the federal public defender's role. Have you encountered a circumstance where there's a private attorney involved, and if so, how do you handle that?

JUDGE SOROKIN: We had in Massachusetts—this is Magistrate Judge Sorokin.

COMMISSIONER HOROWITZ: Sorokin.

JUDGE SOROKIN: We had close to that situation arise once, somebody who was interested in participating, and the federal defender's office had a conflict, because this woman had just pled guilty and

had been sentenced. Her co-defendant, against whom my understanding was she had entered into some sort of cooperation agreement with the government was awaiting trial and was represented by the defender. So they couldn't represent this woman. And what we did in that circumstance was, we had to see. We looked around for a CJA attorney who would be interested and identified a CJA attorney who was appointed as counsel. It ended up that this particular person didn't choose to join the drug court. But what we worked out was he would represent her. He would come to the staff meeting just for her so we would discuss her either first or last at the meeting to accommodate his schedule. He would then leave the meeting. We'd talk about everybody. While he was in the meeting for that person, the federal defender would step out for confidentiality purposes. Then in the court session he would be there—he would be able to be there for the court session for everyone because that's okay.

I think that we would handle a private lawyer in the same way, although I find I just think it exceedingly unlikely that in any given city even if there is a defendant who has money at that stage of the process, I think they probably don't have any—

MS. KAPLAN: Although if I could just—

COMMISSIONER HOROWITZ: Sure.

MS. KAPLAN: —you know, another role that we see some private defense attorneys having is before they get into the reentry program. We see some of them advocating for their client at the time of sentencing and that seems to be more frequently happening. That's a little worrisome to me that some of our district judges are, you know, starting to send their defendants over to the CARE program or order that the probation take a look at this offender or, you know. Since we're trying to keep the numbers down, we certainly can't accommodate all of them. But we see private defense attorneys showing up and requesting to make a pitch to the CARE team to let this client in or not so—

COMMISSIONER HOROWITZ: Judge, did you want to say—

JUDGE IRIZARRY: Yes, I have not encountered yet the situation where there's a private counsel. And far from what the magistrate judge has said, if we're working with people who are on supervised release, they don't have the money. They have been incarcerated. A lot of— half of my participants are reassigned from sentences that they got outside of the state so they would have needed new counsel to be assigned anyway. And the CJA attorneys who did have the cases for my defendants who are in the program just basically said let the federal defender take charge.

But [inaudible] it's not really all that time consuming. We meet once a month for about an hour, maybe an hour and a half court time, so it really doesn't take up that much of their time.

COMMISSIONER HOROWITZ: Okay, we're just about out of time. I had a question though for each of the panelists. We've heard anecdotally in the last day and a half about the various programs. I gather there are, according to the AUSA, about 22 districts now that are conducting programs. I'm wondering, other than making contacts with one another as you're trying to set them up, is there any effort within the probation office, the U.S. probation office, the federal defenders, the AUSA, to evaluate these programs on a nationwide basis? What analysis or review is being done, if you know, within your organizations? Or is it too early, or you just don't know? Maybe— probation, Valerie.

MS. MARTIN: I guess from a national perspective, the answer is, "I don't know." I do know that individually courts have tried to reach out to evaluators most often at local universities, and we're no exception. We're trying to use Grand Valley State University to do some evaluative components. Actually we finished a process evaluation last year. Just starting now to get some numbers. We do not quite have enough numbers to say it's statistically significant, but enough numbers to start to feed back to the practitioners so that we can, you know, see what it looks like in quantitative numbers. So Mark Sherman would—

MR. SHERMAN: Yes. Mark Sherman from the Federal Judicial Center, to answer your question, the Research Division in the Federal Judicial Center is going to be conducting a study of the federal programs that are [inaudible] and that ball is just starting to roll. So that's maybe an outgrowth of the Criminal Law Committee's recent [inaudible].

COMMISSIONER HOROWITZ: Okay. Carmen, did you want to speak on this?

MS. HERNANDEZ: Carmen Hernandez. I'm a criminal defense lawyer. You know, I actually was at a hearing on state reentry courts or state returning courts where the judge from Philadelphia said one of the things they found during the court—he said the people who participate in these programs —whether they're probation officers particularly and judge personnel—go to training sessions through the years. It's a special sort of class of qualities that are required to participate in these programs. And there really is a benefit on a yearly or biannual within two years to continue to train on these issues and it makes the programs work better.

MS. KAPLAN: I would echo that. I mean your question before about, you know, what suggestions do we have for starting up these programs, I think we did that. There was a conference out in—it was out west somewhere in Seattle that was training. You know, I myself could have benefited from some of this training because again, the prosecutors are not clinicians, are not substance abuse treatment providers. So I think training is very, very useful.

COMMISSIONER HOROWITZ: Indeed, was the EOUSA doing an overall review of the programs—

MS. KAPLAN: Kelli, do you know? I don't know.

COMMISSIONER HOROWITZ: —across districts?

MS. FERRY: They had done a survey overall of them but not terms of, "Is this working, is this not working," but rather, "Who has them, how do the U.S. Attorneys feel about the use of the time? Are they supportive of them?" We've done that type of survey but not as in, "Is this working to reduce recidivism at this time?"

COMMISSIONER HOROWITZ: As we finish up, someone mentioned earlier dos and don'ts being useful. Do any of you want to finish on any dos and don'ts from what you've seen from your programs?

MS. KAPLAN: I think I covered mine so—

COMMISSIONER HOROWITZ: Any last words?

MR. THOMPSON: I guess one thing that—to echo Linda Hoffa's sentiments, I think that you are not going to be able to just pull any magistrate judge or district court judge or any probation officer or any federal defender or AUSA to make this work. One of the unique things about the Eastern District of Pennsylvania is historically my office has enjoyed a very good relationship with the U.S. Attorney's Office. Linda was correct that it took a while to get the federal defender to basically understand that to make this work, we're going to have to change our role somewhat. And we were prepared to do that, because I think looking at the bigger picture, we see the upside with this program.

But I think in choosing your magistrate judge or your district court judge or your personnel, you've got to find personalities that are going to work. Because it's counterproductive and counterintuitive to have the sessions right before you enter into the courtroom if you can't reach a consensus. You've got the public defender fighting for a walk when the U.S. attorney wants to see some custodial jail time because the person has been charged with a DUI. It's just not going to work unless you can reach some agreement because you're going to effectively be, "We're not litigating it here." We're going to go—it's going to be counterproductive to the program because as a defense attorney I would have the right in that instance to say, "If I can't agree with this, I'll take my chances at the district court level," but that would be foolhardy to do. So I think in terms of selecting, or if you're going to start a new court, I think you want to try to identify persons who will have the right temperament just to make it work.

COMMISSIONER HOROWITZ: Valerie?

MS. MARTIN: Yes. I had a similar discussion with Faye Taxman yesterday about what organizations—what successful organizations look like when they have successfully implemented evidence-based practices. And she said one of the primary indicators was culture. If the culture was such that it allowed folks to try things, to try new things and maybe fail, that piece of the culture, if that was existing, the organization was more likely to be successful. So I don't know if you can look at yourself objectively enough to say in my district, "Is that culture existing," not just in a probation office but in a court, in a bench, within the relationships between prosecutors and defense counsels, *etcetera, etcetera*. So I thought that rang true from my experience when she told me that, and evidently it's coming out in her research, so that can't be too bad.

COMMISSIONER HOROWITZ: Thank you.

