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AUDIO TRANSCRIPTION OF THE PROBLEM SOLVING TASK FORCE  
COMMITTEE MEETING  
PRESENTATIONS BY AUSTINE LONG AND DOUG MARLOWE  
MARCH 21

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A P P E A R A N C E S

1  
2 Austine Long, Project Manager, National Association  
3 of Drug Court Professionals

4  
5 Doug Marlowe, Chief of Research, Law, and Policy,  
6 National Association of Drug Court Professionals

7  
8 Rick Jones, Co-Chair, Problem Solving Task Force  
9 Committee

10  
11 Marvin Schecter, Co-Chair, Problem Solving Task  
12 Force Committee

13  
14 Norman Reimer, NACDL Executive Director

15  
16 Vicky Young, Member, Problem Solving Task Force  
17 Committee

18  
19 Elizabeth Kelley, Member, Problem Solving Task Force  
20 Committee

21  
22 Gail Shifman, Member, Problem Solving Task Force  
23 Committee

24  
25

1                   MARVIN SCHECTER: (Unintelligible) drug court  
2 professionals (unintelligible). Thanks for coming.

3                   DOUG MARLOWE: Thank you.

4                   MARVIN SCHECTER: We certainly do see a, the,  
5 the interest and attention you've given to our work  
6 over the last few years and we invited you here as  
7 actually the last of the folks that we are going to  
8 hear from outside of our small group until we actually  
9 draft, and so what we would like to do for the hour is  
10 to give both of you five or ten minutes to give us the  
11 benefit of whatever your accumulated thoughts  
12 (unintelligible) attention to most of (unintelligible)  
13 speakers that we've heard around the country, and then  
14 I know that this group has a number of questions --

15                   FEMALE SPEAKER: (Unintelligible).

16                   MARVIN SCHECTER: -- that, that, that,  
17 obviously, (unintelligible) that we'd like to discuss  
18 and clarify with you, so I'm going to turn the floor  
19 over to you, let you guys talk for, like, ten or  
20 fifteen minutes, and then (unintelligible) with our  
21 questions.

22                   AUSTINE LONG: First --

23                   MALE SPEAKER: (Unintelligible).

24                   MARVIN SCHECTER: (Unintelligible).

25                   MALE SPEAKER: (Unintelligible).

1                   AUSTINE LONG: First of all, I want to say  
2 thank you very much for allowing us to come here  
3 because I know that your hearings are over and this is  
4 your personal meeting to go over everything that you've  
5 been listening to for the last two years, so we really  
6 appreciate you taking the time out to allow us to come  
7 here one final time and, you know, address any  
8 outstanding things that you want to address. From  
9 my perspective, I'm here to talk about the training,  
10 and I'm not going to belabor that, but I just want to  
11 give you some overview in terms of NDCI, the National  
12 Drug Court Institute, is the training arm under the  
13 National Association of Drug Court Professionals, and  
14 I am actually, as you probably already know, but I'm  
15 the Project Director for Training and Technical  
16 Assistance and, excuse me, I'm also in charge of the  
17 defense counsel training. As you know, we have certain  
18 tiered levels of training, the first level being we  
19 train new implementing adult drug courts. It's  
20 called our Drug Court Training Initiative. So that's  
21 sort of our first tier, first level of training, then  
22 our tier two training would be our Comprehensive  
23 Practitonal Training, where we draw on, where we train  
24 the specific disciplines, such as judges, prosecutors,  
25 defense counsel, treatment, community supervision

1 coordinators, and we're going start training case  
2 managers this year, 2009, and in 2010, we're going to  
3 start training child protective service workers, and  
4 then the tier three is our Advanced Subject Matter  
5 Trainings. We have three to four trainings we're going  
6 to do throughout the year for meth, also for the  
7 sentence cessations, as well as an operational tune up  
8 for drug courts who have already been operating, and  
9 that is a two day training, so we have those, as well.  
10 Then we have the statewide project that provides  
11 assistance to states who have their state drug court  
12 associations and leaders in conferences. Then last,  
13 we have our, the Training and Technical Assistance  
14 Program, which I oversee, which provides, it's usually  
15 one or two day trainings to individual drug court  
16 programs in, in any particular area that they may need  
17 assistance in. It may be drug testing, roles and  
18 responsibilities, team building, various types of  
19 things that they may ask for. To date, as of December  
20 31st, 2008, there are 2,302 drug courts, operational  
21 drug courts, and since the inception of the National  
22 Drug Court Institute in 1998, we have trained over  
23 36,000 drug court professionals. One thing I do want  
24 to stress to you that, since that I'm in, since I'm in  
25 charge of the defense counsel training which takes

1 place this year in August, and I know last year Marvin  
2 was going to attend, and originally it was in April,  
3 and then we had to postpone it until August, and so any  
4 ideas that you have, any suggestions you have, anything  
5 that you may want to see in that training, let me know.  
6 I have the opportunity to modify it, to make additions,  
7 deletions, to add whatever you think may need to be in  
8 there. I have sent two manuals to Rick's office. They  
9 should, maybe they got there maybe yesterday. They  
10 were Federal Expressed 'cause I know, Marvin, I think  
11 you had asked to see that manual, so you, I mean, it's  
12 the complete manual that our participants get. It, it  
13 has everything in there. It has learning objectives,  
14 it has all the Powerpoint slides, everything. All the  
15 topics that are targeted, and which is pharmacology  
16 treatment, drug testing, two key components as it  
17 relates to the defense counsel's role in drug courts.  
18 So take a look at that. If you have any questions, if  
19 you have any suggestions of any type of training, such  
20 as I know that you're interested in race or immigration  
21 and (unintelligible) disparity issues. That is not a  
22 topic right now that we have in there, but I do have a,  
23 a consultant, Bruce Addleson, that we're working with  
24 who used to work for the Department of Justice, and he  
25 trains in Title 6 issues, and we're working with him

1 now to develop a curriculum to include in our Technical  
2 Assistance and Training Programs, but he has definitely  
3 spoken at our conferences. In 2006 and 2007, that has  
4 been one of our sessions that we have included in our  
5 national conference that we usually have every year in  
6 either May or June, and, lastly, not to take up too  
7 much time, what I want to do is offer a, a free  
8 registration for one of the Task Force members, and I  
9 don't know if that would be Marvin or somebody else, to  
10 come. I believe it's still going to be in Reno this  
11 year. I'm still working on that. It may actually be  
12 in Alexandria, Virginia, but I definitely will keep you  
13 posted on that.

14 MALE SPEAKER: (Unintelligible).

15 MALE SPEAKER: I think it should be in San  
16 Francisco.

17 AUSTINE LONG: Right. So, but, yes, I  
18 definitely --

19 MARVIN SCHECTER: That's for the August  
20 training?

21 AUSTINE LONG: That's for the August  
22 training.

23 MARVIN SCHECTER: And that's a four day  
24 affair?

25 AUSTINE LONG: Yes, it's from Tuesday through

1 Friday, that's correct, and I believe that's the fourth  
2 through the eighth. It's the first week in, it's the  
3 first week in --

4 MARVIN SCHECTER: (Unintelligible).

5 VICKY YOUNG: Yeah, that's our  
6 (unintelligible).

7 MARVIN SCHECTER: (Unintelligible).

8 ELIZABETH KELLEY: Are there manuals  
9 available online or just hard copy?

10 AUSTINE LONG: Just hard copy. They're not  
11 online, yeah, so I have a third one that I can send to  
12 you, as well

13 MARVIN SCHECTER: Where, can you get those  
14 for, for me (unintelligible) --

15 AUSTINE LONG: They're pretty, they're pretty  
16 big, so --

17 MARVIN SCHECTER: -- (unintelligible) --

18 AUSTINE LONG: -- it's, it's, it would be a  
19 pretty --

20 MARVIN SCHECTER: -- (unintelligible).

21 AUSTINE LONG: -- big file to probably send  
22 via e-mail.

23 MARVIN SCHECTER: (Unintelligible).

24 VICKY YOUNG: Mm-hmm.

25 MARVIN SCHECTER: (Unintelligible).

1                   AUSTINE LONG:  Yeah, that's the only thing.  
2   It's probably, it's probably at least a three or four  
3   inch binder.  I would, it's more than, it's, it's a  
4   pretty big binder.

5                   MALE SPEAKER:  Well, maybe if you zipped it,  
6   at least.

7                   AUSTINE LONG:  Well, I was thinking about  
8   zipping it, yeah, that might --

9                   MARVIN SCHECTER:  Okay, you've got a new  
10  edition coming out?

11                  DOUG MARLOWE:  Somebody (unintelligible).

12                  AUSTINE LONG:  Yes.

13                  MARVIN SCHECTER:  Okay.

14                  AUSTINE LONG:  Yes.

15                  MARVIN SCHECTER:  (Unintelligible) --

16                  AUSTINE LONG:  I mean, if we have it, yeah,  
17  we have it saved on our, our --

18                  MARVIN SCHECTER:  -- (unintelligible).

19                  AUSTINE LONG:  -- drive.

20                  DOUG MARLOWE:  Yeah, we, we don't use  
21  typewriters anymore.

22                  AUSTINE LONG:  Yes.  I, I think --

23                  MARVIN SCHECTER:  All right.  Doug?

24                  DOUG MARLOWE:  Well, I won't take up a lot of  
25  time either.  I, I just want to say I, the first time I

1 heard what you guys were really up to and the content  
2 of your discussion was when I was in Washington the  
3 last time I spoke before you, and I heard, I, I, I  
4 spent the day there, which was very enlightening, and I  
5 had heard a lot of the speakers before, and a lot of  
6 the issues that were coming up for you, as I mentioned  
7 then, we share those concerns. Issues about  
8 credentialing, standards, work practices, due process.  
9 Those are really concerns of our organization, as well.  
10 So what I really want to do is find a way of going  
11 forward to work with you to address those problems,  
12 and you, and you kind of, and, you know, document them,  
13 identify them, reach whatever conclusions you want, but  
14 at the end of the day, drug courts are not going away.  
15 These issues are still going to be there, and so I  
16 think to the extent that we could partner and work to  
17 address issues, and I think the first issue is to  
18 really understand what the nature of some of these  
19 issues are because anecdotes take you just so far. We  
20 need to really know what practices are going on out  
21 there. We have the ability to poll all the drug courts  
22 in the country. We, you know, we're not going to do  
23 site visits to all the drug courts in the country, but  
24 we can collect data nationally. The problem is really  
25 the money for that, but we can seek funding, and do the

1 research, and identify what the problems are, and then  
2 develop remedies to deal with them, and, and I'm  
3 somebody, I'm an educator, and I think education takes  
4 you just so far. I think, as you know, I think training  
5 is a necessary but not sufficient step. I think we  
6 need more than that. So some of that might include  
7 practice standards, credentialing, joint amicus briefs  
8 when issues come up. I noticed that you submitted an  
9 amicus on this Title 6 case. As I recall, it was the  
10 same case, I think we were approached about being  
11 an amicus, as well. Couldn't get our Board to respond  
12 quickly enough to make a decision. One of the problems  
13 is we're not, we don't turn on a dime the way we, we  
14 would like to, but we do submit amicus briefs, and we  
15 do weigh in, and we don't always say that whatever the  
16 drug court judge did was right. We have criticized  
17 their practices, so I think there's a series of things  
18 that we could do going forward, and Wes Huddleston, our  
19 CEO, has made it very clear that our job is to partner  
20 and fix, identify what problems really are and fix  
21 them. So that's just my way of introduction. I think  
22 it's better, probably better for us to get down to the  
23 specific questions you're actually concerned with.

24 MALE SPEAKER: Okay, let's hear some. .

25 MALE SPEAKER: I have a lot of questions and

1 what one of them is is that (unintelligible) --

2 MALE SPEAKER: I was, I was fifteen  
3 (unintelligible) appearances (unintelligible) --

4 ELIZABETH KELLEY: Well, I was just skimming  
5 your, your court here, and I have, we, we had a lot of  
6 discussion yesterday. What's the breakdown nationwide  
7 in terms of what we would call a true diversionary  
8 pre-plea drug court versus however you call it, a  
9 sentencing court as opposed to --

10 DOUG MARLOWE: The, the data should, I, I  
11 don't have the figures off the top of my head, but they  
12 should be in there.

13 ELIZABETH KELLEY: Okay.

14 DOUG MARLOWE: Pre-plea, hybrid, and post-  
15 adjudication. Now, one of the issues is, it's, it's in  
16 there somewhere, I think.

17 ELIZABETH KELLEY: Yeah, this, so this says  
18 seventy-eight, so it's three-quarters are post-plea.  
19 They don't, they don't talk to you about which model  
20 they should adopt or --

21 DOUG MARLOWE: We, no, because which model --

22 ELIZABETH KELLEY: Okay.

23 DOUG MARLOWE: -- to adopt is based on  
24 eligibility issues in the jurisdiction of what they  
25 want to do. What the research is suggesting is that

1 the, the model that seems to be showing the greatest  
2 effects, and this is not controlled research, just  
3 correlational, but post-plea but pre-adjudications. So  
4 where, where the defendant enters a plea, the plea's  
5 held in abeyance while the defendant completes the  
6 program. If the defendant completes the program, the  
7 charges are dropped, and there's an expungement  
8 opportunity, but if they don't complete the program,  
9 the plea's already been entered, and there's a, an  
10 adjudication on the original charge. These seem to be  
11 having the strongest effects in those programs. For  
12 the post-adjudication programs, the, the issue is that  
13 there, there has to be something in it for the  
14 probationary. In other words, if there's, if they  
15 complete the program and there's some curtailment of  
16 their probation conditions, those programs have better  
17 outcomes than the ones that say, "Congratulations, you  
18 graduated drug court. You still have fourteen years of  
19 probation supervision left," you know, have very poor  
20 outcomes. That's the, that's the, that's what we know.  
21 Now, we don't recommend one model or the other. I can  
22 tell you that the, the clear direction that's going is,  
23 is more new programs are coming online are post-  
24 adjudication. There's, that is, that is the trend,  
25 that more of them are post-adjudication.

1 ELIZABETH KELLEY: So the post-adjudication  
2 means they've entered their plea, but if they complete  
3 it, it could be (unintelligible) --

4 DOUG MARLOWE: No, I, I'm, I'm sorry.  
5 (Unintelligible) probationary programs are the  
6 (unintelligible).

7 ELIZABETH KELLEY: So they're actually  
8 sentenced --

9 MALE SPEAKER: (Unintelligible).

10 DOUG MARLOWE: Sentenced.

11 MARVIN SCHECTER: They're sentenced.

12 ELIZABETH KELLEY: Mm-hmm, so then that,  
13 that --

14 MARVIN SCHECTER: Yeah.

15 ELIZABETH KELLEY: -- that, it couldn't be  
16 (unintelligible).

17 MARTIN SCHECTER: No, what happens, not  
18 unless you (unintelligible) as a procedure --

19 ELIZABETH KELLEY: Right.

20 MARVIN SCHECTER: -- because then, because  
21 what you, what you're talking about here is, is the  
22 vocational term (unintelligible) --

23 DOUG MARLOWE: That's correct. That's  
24 correct. Well, consolidated (unintelligible) --

25 MARVIN SCHECTER: -- and the judge says, you

1 got five years probation --

2 DOUG MARLOWE: That's right.

3 MARVIN SCHECTER: -- that's always in this  
4 program, and the judge has the right to take a year,  
5 three years out of this program.

6 AUSTINE LONG: Or, or they could have been  
7 headed to prison.

8 FEMALE SPEAKER: For the DUI court --

9 DOUG MARLOWE: Right.

10 FEMALE SPEAKER: -- let's say there was a  
11 mandatory x amount of time that they would have to  
12 serve, but if they complete it and that  
13 (unintelligible) --

14 MALE SPEAKER: (Unintelligible).

15 FEMALE SPEAKER: -- (unintelligible) stay  
16 that maybe that's either cut in half or taken out --

17 MALE SPEAKER: Right.

18 VICKY YOUNG: -- so --

19 DOUG MARLOWE: DWI courts, I think there's, I  
20 think there's only one or two (unintelligible) because  
21 they're all post-adjudication because the law doesn't  
22 permit, you know, the, I mean, for first time  
23 offenders, they could have some kind of diversion  
24 opportunity. They're going to get a diversion, and  
25 drug court's usually not worth it to them. It's more

1       onerous than what's otherwise available to them. Once  
2       you have recidivous defenders or high BAC offenders --

3               MALE SPEAKER: (Unintelligible).

4               DOUG MARLOWE: Right. You're not going to  
5       get a diversion. It's not going to be available in the  
6       jurisdiction, so if I had had to do a mandatory three  
7       months, I'd do a mandatory one month with the second  
8       two months, I'm, I'm in intermediate punishment where,  
9       where the judge says you can serve the rest of the  
10      community, and then the drug court has to meet  
11      whatever the conditions of the immediate restriction  
12      are in that state, so if they have to have an anklet  
13      monitor, if they have to have A phone monitor, whatever  
14      the state has as a requirement as a, as a substitute  
15      for detention, the drug court has to, has to apply.

16              MALE SPEAKER: You said that the  
17      post-adjudication courts had the strongest effect?  
18      What, what --

19              DOUG MARLOWE: Correlationally.

20              MALE SPEAKER: -- what does that mean?

21              DOUG MARLOWE: Highest graduation rates,  
22      lowest recidivism rates. Just better outcomes.

23              VICKY YOUNG: Okay, but, but what, what's  
24      the rationale for not letting people get rid of those  
25      convictions on the record? I mean, I can understand

1 the (unintelligible) nobody, you know, and the, they  
2 said, "Well, well, let me have the shortest period of  
3 probation that (unintelligible) available." Well,  
4 that's to avoid jail (unintelligible). What's the  
5 rationale for leaving everybody with criminal records?

6 DOUG MARLOWE: For, for which kind of program  
7 are we talking about now?

8 VICKY YOUNG: You said, you said the  
9 direction that we're going in is, is post-adjudication.

10 DOUG MARLOWE: Right, but it's --

11 VICKY YOUNG: That seems to have an effect,  
12 the correlation statistic says, and we're going in that  
13 direction --

14 DOUG MARLOWE: No, no, no.

15 MARVIN SCHECTER: No, no, no.

16 DOUG MARLOWE: No, no, no. That's not what  
17 it says.

18 MARVIN SCHECTER: The other way. It's the  
19 other way. It's the post-plea, pre-adjudication.  
20 Pre-sentence. In other words, you enter a plea, but  
21 you haven't been sentenced. That's the one that's  
22 caused the most --

23 VICKY YOUNG: That's the one, yes.

24 MARVIN SCHECTER: -- correlational  
25 (unintelligible).

1 VICKY YOUNG: Well, that's the one we like  
2 (unintelligible).

3 MARVIN SCHECTER: The, the, the one that, the  
4 ones that are coming online are the post-  
5 adjudication --

6 VICKY YOUNG: Right, I got that.

7 MARVIN SCHECTER: -- where somebody has a  
8 sentence.

9 DOUG MARLOWE: Correct.

10 MARVIN SCHECTER: Right.

11 VICKY YOUNG: If --

12 MARVIN SCHECTER: If a person's already been  
13 sentenced, they go in through some kind of drug  
14 court program --

15 VICKY YOUNG: Then that's just a, just a kind  
16 of sentence.

17 MARVIN SCHECTER: (Unintelligible) have one  
18 that's coming online.

19 VICKY YOUNG: (Unintelligible) is coming  
20 online, which means that more people will have criminal  
21 records.

22 MARVIN SCHECTER: Convictions. Right.

23 VICKY YOUNG: Right, as opposed to fewer  
24 criminal records.

25 DOUG MARLOWE: Well, we're, but they're

1 targeting different populations.

2 MARVIN SCHECTER: Right.

3 VICKY YOUNG: Right.

4 DOUG MARLOWE: They're targeting people who  
5 are going to be, who are otherwise prison-bound --

6 VICKY YOUNG: (Unintelligible).

7 DOUG MARLOWE: -- might even be convicted to  
8 have an opportunity --

9 VICKY YOUNG: I understand that.

10 DOUG MARLOWE: -- go ahead.

11 VICKY YOUNG: I understand that. These are,  
12 you know, they're, they're people we're having problems  
13 with, right, because --

14 DOUG MARLOWE: Right.

15 VICKY YOUNG: -- they're not getting their  
16 lives together and --

17 DOUG MARLOWE: Correct.

18 VICKY YOUNG: -- probably they have a  
19 criminal conviction already, I understand that --

20 DOUG MARLOWE: (Unintelligible).

21 MALE SPEAKER: (Unintelligible).

22 VICKY YOUNG: I'm sorry.

23 MARVIN SCHECTER: Is that the  
24 (unintelligible) to a minimum situation, too? Where  
25 you, where the mandatory minimum is set at two and the

1 max is five, and then they go through this post-  
2 adjudication program and the judge says, "Well, you did  
3 two of the four, (unintelligible) says you did two, and  
4 we let you go?"

5 DOUG MARLOWE: The answer is that, that  
6 varies greatly from jurisdiction to jurisdiction --

7 VICKY YOUNG: (Unintelligible).

8 DOUG MARLOWE: -- but the answer is yes.  
9 There, if you, if the legal, if there's a, if there's a  
10 prerogative for either a lower end of the guideline,  
11 lower end of the, of the thing, or if the legislature  
12 says even on a mandatory, part of that can be served  
13 on an ID, part of the term can be served in a  
14 community correctional or otherwise restricted setting,  
15 then the judges use that --

16 MARVIN SCHECTER: Right.

17 DOUG MARLOWE: -- as their leverage in the  
18 program.

19 MARVIN SCHECTER: Okay, just, just to be sure  
20 I understand this, the, the, the problem with post-  
21 adjudication --

22 DOUG MARLOWE: Mm-hmm.

23 MARVIN SCHECTER: -- is that legislatures  
24 have enacted laws, and once you've sentenced somebody,  
25 the number of options is limited --

1 DOUG MARLOWE: That's correct.

2 MARVIN SCHECTER: -- whereas pre-plea, post-  
3 plea, pre-adjudication, the law is wide open --

4 DOUG MARLOWE: That's right.

5 MARVIN SCHECTER: -- as to what the judge  
6 then can and can not do, or it's, it's way more  
7 elastic --

8 FEMALE SPEAKER: Mm-hmm.

9 DOUG MARLOWE: (Unintelligible).

10 MARVIN SCHECTER: -- in that light.

11 DOUG MARLOWE: Sure.

12 AUSTINE LONG: And, and what I, what I would  
13 like to add is that I believe that the reason that  
14 they're going there to post-adjudication is because a lot  
15 of jurisdictions are seeing that they have a, as Doug's  
16 research says, is that they have a population that is  
17 high-risk, high-needs, and those are the ones that they  
18 are targeting because they had the highest, you know,  
19 rate of possibly re-offending and also re-using, so  
20 they're going after that target population for that  
21 reason, to keep them from coming back, because like you  
22 said, they probably already have maybe two or three  
23 felonies, and so they, they, they're going to get --

24 VICKY YOUNG: Not two or three felonies.

25 AUSTINE LONG: Or just two or three

1 convictions --

2 VICKY YOUNG: Right.

3 AUSTINE LONG: -- already where they --

4 VICKY YOUNG: Two or three felonies is, from  
5 what we've heard, the two or three felony people aren't  
6 here at all, right?

7 MALE SPEAKER: (Unintelligible).

8 VICKY YOUNG: No one's taking their chances  
9 on the two or three felony people. What, what we've  
10 heard, there's, there's a --

11 AUSTINE LONG: (Unintelligible).

12 VICKY YOUNG: -- there's a problem that  
13 the high-risk people who have two or three felonies --

14 AUSTINE LONG: Mm-hmm.

15 VICKY YOUNG: -- okay, are long-term drug  
16 abusers who everyone has the most trouble with.  
17 There's a tendency to want to avoid having those guys  
18 in your court, right, because they are the ones who are  
19 most likely not to do well, so, you know, it, there's  
20 this, there's this problem. We don't want to put the  
21 people who are going to succeed in the court because  
22 then we're wasting our money --

23 DOUG MARLOWE: Correct.

24 VICKY YOUNG: -- on them. They're eventually  
25 going to get the (unintelligible) anyway, but then we

1 got this really tough group out there, and there are  
2 a lot of these people, I mean, I'm not talking about  
3 (unintelligible) numbers, but there's a tendency not to  
4 want to deal with those guys, either. So we're getting  
5 somewhere it sounds like we're really getting some kind  
6 of in-between mix.

7 DOUG MARLOWE: I think we're, I think that's,  
8 I think we're moving towards the more severe  
9 offender --

10 AUSTINE LONG: I do, too.

11 DOUG MARLOWE: -- in the different models --

12 VICKY YOUNG: How would we know that?

13 DOUG MARLOWE: -- in the post-adjudication.

14 MALE SPEAKER: (Unintelligible).

15 DOUG MARLOWE: Well, those two things are  
16 correlated.

17 MALE SPEAKER: Right.

18 DOUG MARLOWE: The more serious you are,  
19 you're not going to be eligible for diversion --

20 AUSTINE LONG: Right.

21 MARVIN SCHECTER: Right.

22 DOUG MARLOWE: -- you know, you, there's not  
23 going to be an option --

24 AUSTINE LONG: Mm-hmm.

25 DOUG MARLOWE: -- and so it, you, you know,

1 and the other issue is that most drug courts are being  
2 told, "You need to be cost-effective" --

3 MARVIN SCHECTER: Right.

4 DOUG MARLOWE: -- "and you're not doing us  
5 any good by pumping services into a population that  
6 isn't going to prison, anyway" --

7 AUSTINE LONG: Right.

8 DOUG MARLOWE: -- "so you need to be taking  
9 the otherwise prison-bound population. Otherwise,  
10 you're not, in fact, saving any money  
11 (unintelligible)."

12 VICKY YOUNG: Where would we see the  
13 statistics that back up that?

14 DOUG MARLOWE: Back up what?

15 VICKY YOUNG: Your statement that we're going  
16 in that direction.

17 MARVIN SCHECTER: The, the, the, I believe  
18 you said --

19 VICKY YOUNG: Is it in here?

20 MARVIN SCHECTER: -- the last time you were  
21 here was that, that (unintelligible) the drug court  
22 system moves its (unintelligible) population to  
23 high-risk (unintelligible) --

24 DOUG MARLOWE: That's right.

25 MARVIN SCHECTER: -- what does that mean?

1 DOUG MARLOWE: High-risk, high-needs.

2 MARVIN SCHECTER: The, the, the, the problem  
3 that I see is that to the extent that this is, this is,  
4 this phenomenon of drug courts and the professional  
5 focus caught on, it's caught on because people have  
6 said, you know, (unintelligible), and the Obama  
7 administration has, you know, they've, they made their  
8 point, and the point to the criminal justice  
9 (unintelligible) how many --

10 DOUG MARLOWE: What, but what is --

11 MARVIN SCHECTER: -- how many low-level drug  
12 offenders, it's not, it's not moving in the direction  
13 that you think it ought to be moving in.

14 DOUG MARLOWE: Well, we think Obama's  
15 wrong.

16 MARVIN SCHECTER: Not for the money, but  
17 what, how do you, but, but, but the fact of the matter  
18 is --

19 DOUG MARLOWE: Well, we, we will say so.

20 MARVIN SCHECTER: You're going to say so?

21 DOUG MARLOWE: We will say so.

22 AUSTINE LONG: Mm-hmm.

23 MARVIN SCHECTER: Okay, well --

24 DOUG MARLOWE: Using drug court for the  
25 first-time offender is, is, is in some, there are some

1 first, every high-risk person has a first offense, so  
2 there are first-time offenders who should be in drug  
3 court, that's the right disposition, but many of them  
4 should not because about sixty percent of first-time  
5 offenders or seventy percent never re-attend anyway --

6 AUSTINE LONG: Right.

7 DOUG MARLOWE: -- so what's the point of  
8 putting them through drug court. So we didn't tell  
9 Obama, "We need more drug courts for first-time  
10 offenders."

11 AUSTINE LONG: Right.

12 DOUG MARLOWE: That is what he said, but our  
13 goal through ONDCP is going to be to advocate for drug  
14 courts taking high-risk population, not first-time  
15 populations, unless there are circumstances about this  
16 individual that we think this person should be in drug  
17 court because of the severity of their clinical history  
18 or something.

19 MALE SPEAKER: When you're done, can, can I  
20 ask you one short question?

21 DOUG MARLOWE: Sure;

22 MALE SPEAKER: In, in these post-adjudication  
23 situations, that's obviously, they're already sentenced,  
24 essentially, and they have this opportunity, do you  
25 still define that as a drug court?

1 DOUG MARLOWE: It's a post-adjudication drug  
2 court, yes.

3 AUSTINE LONG: Yes.

4 MALE SPEAKER: What is the definition of a  
5 drug court?

6 VICKY YOUNG: He's got a definition here on  
7 page twenty-one. Does this cover everything that's at  
8 a drug court?

9 DOUG MARLOWE: That, the, there, we have --

10 VICKY YOUNG: (Unintelligible).

11 DOUG MARLOWE: -- definitions in the --

12 MALE SPEAKER: (Unintelligible) --

13 VICKY YOUNG: (Unintelligible).

14 DOUG MARLOWE: -- taking a current picture  
15 of, that are one paragraph descriptions of each one,  
16 and then there's the Ten Key Components document --

17 MALE SPEAKER: -- (unintelligible).

18 DOUG MARLOWE: -- which goes into greater  
19 detail about all the components that you must have in  
20 order to be a drug court.

21 VICKY YOUNG: Correct.

22 DOUG MARLOWE: A drug court, first of all,  
23 the, the name's a misnomer. It's not court.

24 MALE SPEAKER: That's, that's, that's --

25 VICKY YOUNG: (Unintelligible).

1 MALE SPEAKER: -- that's what we're  
2 getting at.

3 DOUG MARLOWE: Well, this is --

4 MALE SPEAKER: Now it's making sense.

5 DOUG MARLOWE: Yeah, a drug court is, we are,  
6 we, we define a drug court as a separately designated  
7 calendar or docket within the criminal court, or, in  
8 the case of the juvenile, within a juvenile court. It  
9 is not a separate court, and we've never defined it to  
10 be a separate court.

11 MALE SPEAKER: But it's a very different  
12 animal to its pre-adjudication whether it's pre-plea  
13 or post-plea than if it's post-adjudication, am I  
14 right?

15 DOUG MARLOWE: I, I, well, you probably are,  
16 but I'm not sure what you're getting at.

17 MALE SPEAKER: I mean, what I'm getting at is  
18 that there's, it's, it's almost as though there's a  
19 form of probationary supervision with conditions for  
20 the post-adjudication (unintelligible) as opposed to a  
21 court which makes determinations about what's going to  
22 happen to something.

23 VICKY YOUNG: Right.

24 DOUG MARLOWE: Well, if the, if the major,  
25 about half the jurisdiction's probation is under the

1 court, you know, you have got the state --

2 DOUG MARLOWE: I'm, I'm (unintelligible) --

3 MALE SPEAKER: (Unintelligible).

4 VICKY YOUNG: (Unintelligible).

5 MALE SPEAKER: (Unintelligible).

6 MALE SPEAKER: I'm, I'm with you on that. I  
7 just, I --

8 MALE SPEAKER: Sorry about that.

9 MALE SPEAKER: -- I, I'm really trying to,  
10 we're trying to buzz out various phases on this thing,  
11 and obviously the defense function, and the defense  
12 function to start with is very different  
13 (unintelligible) --

14 DOUG MARLOWE: Sure, absolutely.

15 MALE SPEAKER: -- (unintelligible) already  
16 based on probation --

17 VICKY YOUNG: Mm-hmm.

18 MALE SPEAKER: -- than it is when sentence  
19 is still pending or the charge is his statement.

20 DOUG MARLOWE: Right.

21 MARVIN SCHECTER: So we need to be clear  
22 about what we're talking about when you define a drug  
23 court.

24 VICKY YOUNG: However, exactly  
25 (unintelligible) could do in different places. You

1 know, we're not already inspecting them, and we're  
2 not going to be, be, be holding out on the same kind of  
3 expectations of advocacy. Once you've already  
4 negotiated the plea and someone is now in the  
5 sentencing phase of their arrest --

6 DOUG MARLOWE: Oh, absolutely.

7 MALE SPEAKER: The, the initial sentence,  
8 this is what, what, this is what's wrong.

9 VICKY YOUNG: Because this is a wrong  
10 sentence.

11 MALE SPEAKER: Right. It's a wrong sentence  
12 with the chance to do better if certain things happen.

13 VICKY YOUNG: And it may be wrong for me to  
14 (unintelligible) anyone here being sanctioned or  
15 whatever..

16 MALE SPEAKER: Mm-hmm.

17 VICKY YOUNG: You know, (unintelligible)  
18 sanctioned.

19 MALE SPEAKER: Mm-hmm.

20 VICKY YOUNG: It may be wrong for the  
21 attorney just as, as it is from a probation officer of  
22 a violation of probation, but it's in that time  
23 (unintelligible) as opposed to having to figure out  
24 whether to accept the offer, litigate them, issues, all  
25 that kind of stuff.

1 DOUG MARLOWE: Oh, no, you, you actually, no,  
2 it's, it's different not just from you guys'  
3 perspective, but for all the actors' perspectives.  
4 There are, I mean, different models have different  
5 implications, as your --

6 VICKY YOUNG: It's not, it's not so different  
7 for the judge.

8 MALE SPEAKER: So you take the position --

9 DOUG MARLOWE: I'm not so sure about that.

10 MALE SPEAKER: So you take the formal  
11 position as to whether or not you favor the guilty  
12 plea as the price of admission?

13 DOUG MARLOWE: As opposed to?

14 MALE SPEAKER: As opposed to putting  
15 somebody through a program in the hope that they can  
16 succeed and therefore never face the charge? In  
17 other words, do you have a position on whether someone  
18 should have to give up their right to confess the  
19 charge as the ticket of admission to treatment?

20 DOUG MARLOWE: If I'm understanding your  
21 question, the answer is yes.

22 MALE SPEAKER: And your position is?

23 DOUG MARLOWE: The, the, if somebody, the  
24 pre-plea drug courts, and there aren't very many  
25 anymore, where the person doesn't even enter a plea,

1 you go through it, and if you don't succeed, then the  
2 process starts essentially over, don't work, and the  
3 research says they don't work because there's no  
4 coercive leverage over the individual, so, basically,  
5 yes, we're saying that there needs to be consequences  
6 both positive and negative that are substantial.

7 MALE SPEAKER: What's, and what, and on  
8 this third example would have would demonstrate that  
9 they don't work?

10 DOUG MARLOWE: Yeah, the ones I've already  
11 alluded to. There's, yes, I can get them for you.

12 VICKY YOUNG: And we need to have them.

13 MARVIN SCHECTER: That's a big hole in your  
14 theory, right?

15 DOUG MARLOWE: Yeah, no, I, I think that we,  
16 well, I don't want to give you the, the idea that the  
17 research has been totally (unintelligible). We've  
18 never randomly assigned somebody --

19 MALE SPEAKER: What I, what I, what I'd  
20 also like to know is whether there's research that  
21 follows people who, who didn't accept or weren't  
22 accepted into a program --

23 DOUG MARLOWE: Right.

24 MALE SPEAKER: -- in a pre, in a pre-  
25 adjudication situation.

1 DOUG MARLOWE: I'm sure the answer is yes,  
2 but there's probably, I mean, there aren't a lot of  
3 those programs --

4 MALE SPEAKER: (Unintelligible) programs --

5 DOUG MARLOWE: -- especially anymore.  
6 Research has (unintelligible) always followed the  
7 programs, and, you know, so the, I mean,  
8 (unintelligible) --

9 MALE SPEAKER: Actually, there's actually a  
10 study that followed people who didn't go into the  
11 program.

12 AUSTINE LONG: Mm-hmm. Tried to get in, and  
13 then were denied --

14 MALE SPEAKER: Right.

15 AUSTINE LONG: -- or just, or --

16 MALE SPEAKER: Right. You told us --

17 AUSTINE LONG: -- (unintelligible)  
18 permanently.

19 MALE SPEAKER: -- specifically in a  
20 pre-plea drug court, yeah.

21 ELIZABETH KELLEY: Yeah, I mean we're  
22 interested in people not getting more and more and  
23 more of these criminal convictions on their record.  
24 I mean, that's, that's very important because, yeah,  
25 you can get people off the drugs, but especially in

1           today's climate where it's hard enough for anybody,  
2           people with all kinds of professional fancy degrees to  
3           get jobs, so what's it going to be like for the two-  
4           time felon, okay, who's going to have to go into the  
5           employment office with a record that shows his,  
6           his felony convictions? So I'm actually concerned  
7           about keeping people's records as clean as possible.  
8           I mean, I actually think if you get through these  
9           things, you ought to not be able, not just have no  
10          record for this charge, but you ought to be able to  
11          go back and wipe the damn thing clean period and start  
12          over. What does starting over mean? I mean, a fresh  
13          slate is a fresh slate. Now, we're not moving in that  
14          direction at all, and apparently there's research  
15          saying, "Well, we're not moving in that direction  
16          'cause it actually doesn't work 'cause there isn't a  
17          coercive enough thingamahooey," so, I mean, I'd like  
18          to know that so, you know, I have to deal with that as  
19          opposed to just me saying, you know, "This is the  
20          wrong, we're heading in the wrong direction here  
21          (unintelligible) --

22                         DOUG MARLOWE: What I can hear, what I can  
23          hear that --

24                         MARVIN SCHECTER: What does, what does that  
25          mean when you say what, what, which is the wrong

1 direction? That we should be heading towards pre-plea  
2 models or we should be heading towards expungement of  
3 their convictions?

4 ELIZABETH KELLEY: Well, we say --

5 MARVIN SCHECTER: Which is the one that  
6 you're talking about?

7 ELIZABETH KELLEY: Well, we, well, you know,  
8 I think that the way we're going now that I hear the  
9 way Doug puts it is we're going off in a different  
10 direction from the way the drug court movement is going  
11 in terms of our thinking 'cause we were going to say we  
12 like the pre-plea model, right, which we like the  
13 idea --

14 VICKY YOUNG: Yeah.

15 MARVIN SCHECTER: Yeah --

16 ELIZABETH KELLEY: -- but, you know --

17 MARVIN SCHECTER: -- as we always did.

18 ELIZABETH KELLEY: -- I, I, I, I, that would  
19 be mine, too, but, you know, then we have, at the same  
20 time, we take a different position from what the  
21 research shows and they're, like, why?

22 MARVIN SCHECTER: We can't just do that.

23 ELIZABETH KELLEY: We can't just avoid, you  
24 know, dealing with the research. We have to, to find  
25 (unintelligible) --

1                   MARVIN SCHECTER: Right, but you, you, you  
2 have to research, I mean, okay, my, my inclination is  
3 to believe that the mere fact that somebody knows, "I'm  
4 going to get, I'm going to get my case dismissed, I'm  
5 not going to get charged with anything, and I'm not  
6 going to go to jail," is, is coercive enough. You  
7 don't actually have to have to have, have said the  
8 words, "I plead guilty," and then with the hope that  
9 you're going to get your case dismissed. I mean, the  
10 mere fact that you're in the criminal justice system  
11 and the possibility of you being found guilty at some  
12 point and then going to jail at some point is coercion  
13 and you, and you got this judge that you're seeing  
14 every two weeks. I bet you if you did this study, you  
15 would find that the mere fact of being in the criminal  
16 justice system with a judge is coercion enough, and the  
17 fact that you actually take a plea for thirty, for,  
18 for, for thirty-five seconds in the courtroom and then  
19 proceed really doesn't have that much of an impact. I  
20 don't know if you've done those studies, but I'd be  
21 willing to bet you it doesn't.

22                   DOUG MARLOWE: I'll take your bet.

23                   MALE SPEAKER: You're going to lose.

24                   DOUG MARLOWE: I'll take the bet.

25                   MALE SPEAKER: Just shave two points

1 (unintelligible).

2 ELIZABETH KELLEY: That's right.

3 DOUG MARLOWE: Okay.

4 ELIZABETH KELLEY: (Unintelligible).

5 MARVIN SCHECTER: No, but, you know --

6 ELIZABETH KELLEY (Unintelligible).

7 MARVIN SCHECTER: -- you know, the Brooklyn  
8 D.A. tells me it has the most expensive program in New  
9 York state --

10 DOUG MARLOWE: Mm-hmm.

11 MARVIN SCHECTER: -- and (unintelligible)  
12 heading up that and showed me the weight of the  
13 research. They tried a program for that. The first  
14 model in the 1990's that they set up was in conjunction  
15 with Legal Aid, and I was one of the two guys along  
16 with a guy named Karl Mathers negotiated  
17 (unintelligible) and the D.A., against the advice of  
18 these people, went to the pre-plea model, okay? Now,  
19 you, you don't have to plead, you go two years to a  
20 drug program, Phoenix House, whatever, you come out,  
21 you, that's it, it's done.

22 ELIZABETH KELLEY: Mm-hmm.

23 MARVIN SCHECTER: You fail any time in the  
24 two years, then you (unintelligible) course everyone  
25 in the room will agree that there's going to be an

1 indictment and then pick up two years later --

2 DOUG MARLOWE: Exactly, right.

3 MARVIN SCHECTER: -- (unintelligible), so it  
4 was a pretty big deal. It failed. It failed. It  
5 didn't work.

6 DOUG MARLOWE: Mm-hmm.

7 MARVIN SCHECTER: Their, their, their rates  
8 of, of failure was gigantic. They said, they took a  
9 look at what they were doing versus what Phoenix  
10 House and, and everybody else was doing and it was the  
11 same result. So they switched, and they went to a  
12 post-plea, pre-adjudication model, and their, their  
13 records show, you know, a forty-two percent success  
14 rate. Not spectacular, but --

15 DOUG MARLOWE: Better than usual.

16 VICKY YOUNG: Right.

17 MARVIN SCHECTER: Better than usual.

18 FEMALE SPEAKER: Right. Right.

19 MARVIN SCHECTER: I mean, they, they reject  
20 almost half the people who apply. I happen to think  
21 you're right about, about that. I've studied enough  
22 D.A.'s, and, and, and I --

23 DOUG MARLOWE: Yeah, but our studies conclude  
24 that that's (unintelligible) --

25 VICKY YOUNG: Well, that's wrong.

1                   MARVIN SCHECTER:  -- I don't know, I don't  
2 know how conclusive their evidence is (unintelligible).

3                   DOUG MARLOWE:  The, the kind of  
4 evidence you're going to get is what was just, it's  
5 going to be based --

6                   MARVIN SCHECTER:  Right.

7                   DOUG MARLOWE:  -- on, and look at programs  
8 following one model and look at how successful they're  
9 going to be.  Look at programs following a different  
10 model and look how successful they tend to be.  They're  
11 more successful on the post-plea, pre-adjudication.  I  
12 can give you the studies (unintelligible).  We've  
13 never --

14                  MARTIN SCHECTER:  (Unintelligible) a similar  
15 population?

16                  DOUG MARLOWE:  They, they matched, they,  
17 they match on demographics and drug severity.  No, the  
18 right way to do it, which could never be done probably,  
19 would be a randomized trial where somebody's  
20 (unintelligible) either they have to give a plea as a  
21 condition of their treatment or randomly they don't  
22 have to give a plea --

23                  MARTIN SCHECTER:  Mm-hmm.

24                  DOUG MARLOWE:  -- as a condition of their  
25 treatment, and then you, if it's done, that's the right

1 way, if you don't even know what they answer.

2 MARTIN SCHECTER: Right.

3 DOUG MARLOWE: It would be hard to get, it  
4 would be hard, not impossible, hard to do it, but that  
5 would, (unintelligible) would be able to answer the  
6 question you're raising. I don't think we'd be able to  
7 pull it off. I think the issue about trying to go to  
8 pre-plea, even if the research stated that it was  
9 acceptable, I think, I, I don't see it, I don't see  
10 politically and practically getting, you know, the  
11 attorneys general and district attorneys who are always  
12 the, the gatekeepers to these programs to sort of agree  
13 to them.

14 MALE SPEAKER: Totally.

15 DOUG MARLOWE: I mean, he's totally not going  
16 to do it, and so even if they're, you know, certainly  
17 there's some, there's practical reality of it, and I  
18 also think that you, you guys have expressed concern  
19 about the creaming issue. This would, this would  
20 create cream, creaming writ large because the only  
21 people who would ever be eligible for a program where  
22 the D.A. would ever agree to --

23 MARVIN SCHECTER: (Unintelligible).

24 DOUG MARLOWE: -- are going to be the lowest  
25 risk offenders.

1 FEMALE SPEAKER: Right.

2 DOUG MARLOWE: So you can, you can do what  
3 you want to do, but then you create essentially a pre-  
4 trial diversion program.

5 MALE SPEAKER: Okay, let me ask you, so, so  
6 let me ask you one, to one other issue then in your  
7 definitions and stuff. I, I, I appreciate the  
8 difference between high-risk and (unintelligible) in  
9 the (unintelligible) --

10 DOUG MARLOWE: They're not the same thing,  
11 that's right.

12 MALE SPEAKER: -- (unintelligible) and, and,  
13 and, hopefully, that message will get, you know,  
14 proselytized (unintelligible), but I'm troubled by your,  
15 definition that there is a bar to, the defendant has to  
16 be only done by (unintelligible) and that, and that I  
17 think that, that, that there ought to be some  
18 relaxation on that --

19 DOUG MARLOWE: I agree.

20 MALE SPEAKER: -- and that, and that you  
21 could figure out a way that you could be high-risk and  
22 have some violence and still be eligible --

23 DOUG MARLOWE: I agree.

24 MALE SPEAKER: -- to get treated  
25 (unintelligible) --

1 VICKY YOUNG: I agree. We struggled with  
2 that in our drug court (unintelligible).

3 MALE SPEAKER: -- (unintelligible).

4 DOUG MARLOWE: Because, well --

5 VICKY YOUNG: (Unintelligible).

6 DOUG MARLOWE: -- it's not our  
7 definition.

8 VICKY YOUNG: That's, it's the federal law.

9 DOUG MARLOWE: Right. That's the --

10 MALE SPEAKER: Are, are you moving towards --

11 DOUG MARLOWE: Right.

12 MALE SPEAKER: -- relaxing that?

13 DOUG MARLOWE: If we can get Joe Biden --

14 MALE SPEAKER: Right.

15 DOUG MARLOWE: -- to agree to relax it, we  
16 will. What we've managed to get it relaxed is now  
17 it's, it has to be a conviction where it used to be  
18 more broadly defined, so we're definitely moving in  
19 that direction, and also it's only a, it's only a  
20 restriction to use federal dollars --

21 MALE SPEAKER: Right.

22 MARVIN SCHECTER: Right.

23 DOUG MARLOWE: -- so a lot of drug courts  
24 just keep their, their so-called violence, their  
25 domestic violence offenders, people with prior assault

1 charges who are not going to be incarcerated, are in  
2 the programs and they just can't be paid for with, with  
3 the --

4 VICKY YOUNG: Federal dollars, right.

5 DOUG MARLOWE: -- federal dollars. We, my  
6 position has always been, and I talk about this all the  
7 time, we train on this. What we've done is we've  
8 outfoxed ourselves. We are keeping these violent  
9 people out of the drug courts, so I always ask the  
10 audience, I ask the judges and the, you know, "Where do  
11 you think they go when you screen them out of drug  
12 court? Where do you think they go? They go to  
13 probation." So you've basically got a weird, a  
14 situation where people who are tried with drug  
15 possession offenses are appealing for status hearings  
16 before the judge, giving random weekly urines, ninety  
17 meetings in ninety days, and you've got the domestic  
18 violence offender who gets drunk and beats his wife up  
19 checking in with his probation officer once every six  
20 weeks.

21 MALE SPEAKER: That's what I mean.

22 AUSTINE LONG: Right.

23 DOUG MARLOWE: He's going to anger management  
24 classes.

25 AUSTINE LONG: His anger management classes

1 (unintelligible).

2 DOUG MARLOWE: So we are, we are in full  
3 agreement with you, but it's a funding issue and  
4 nothing more --

5 MALE SPEAKER: Sure.

6 DOUG MARLOWE: -- and it's also a political  
7 issue. You, you got to, the prosecution is the  
8 gatekeeper. They decide who, they're the first person  
9 who decides somebody's eligible. They're not, if  
10 they're not willing to take a chance with violence  
11 offenders, it never gets further down the line.

12 MALE SPEAKER: And another, is that another  
13 issue that you're working to relax, the prosecution --

14 DOUG MARLOWE: Yes.

15 MALE SPEAKER: -- of (unintelligible).

16 DOUG MARLOWE: Yes.

17 AUSTINE LONG: Mm-hmm.

18 DOUG MARLOWE: We're trying to convince  
19 prosecutors that it's actually more in the interest of  
20 public safety to let violent offenders who are going to  
21 be in the community anyway --

22 FEMALE SPEAKER: Mm-hmm.

23 DOUG MARLOWE: -- be in drug court rather  
24 than the alternative because the alternative means  
25 they're going to actually be monitored less, less

1 sometimes. I'm sorry, I cut you off.

2 FEMALE SPEAKER: That's okay.

3 DOUG MARLOWE: Go ahead.

4 FEMALE SPEAKER: We had a couple issues  
5 yesterday that we could only address anecdotally  
6 (unintelligible). One was we had a person testify that  
7 still approximately forty percent of these screening  
8 programs in New York City were unconstitutional, and  
9 secondly that there are judges out there who try to use  
10 the drug court and now the problem solving court as  
11 their personal soapbox. I think that would go under  
12 what you called (unintelligible) practices. Could you  
13 talk a little bit more about those two issues?

14 DOUG MARLOWE: I'm, I'm going, let me take  
15 the second one first because I'm not sure what you were  
16 getting on the first one. I have no doubt in my mind  
17 that there are judges out there behaving  
18 inappropriately in drug courts, treating them as their  
19 own personal fiefdoms, engaging in practices in, in  
20 other, either too punitive or they, they want to be  
21 friends with everybody --

22 FEMALE SPEAKER: Right.

23 DOUG MARLOWE: -- they're, they're getting in  
24 touch with their softer sides and, and running these  
25 programs, and either way, they're not doing their job,

1 and there's no question in our mind that there are  
2 judges out there that are (unintelligible) --

3 FEMALE SPEAKER: Has there, has there ever  
4 been a study (unintelligible)?

5 DOUG MARLOWE: No. I mean, it, you know, we  
6 would love to study it.

7 MARVIN SCHECTER: It puts your  
8 (unintelligible) anecdotally.

9 DOUG MARLOWE: Well, you know, yes, well,  
10 well, what I've witnessed, anecdotally, I mean,  
11 I've seen --

12 MARVIN SCHECTER: No, (unintelligible).

13 DOUG MARLOWE: I've seen (unintelligible) --

14 MARVIN SCHECTER: (Unintelligible).

15 DOUG MARLOWE: What's that?

16 MARVIN SCHECTER: What did I just say?

17 DOUG MARLOWE: With what?

18 AUSTINE LONG: When some of the other people  
19 in the team call and tell us, you know, that's going  
20 on.

21 MARVIN SCHECTER: I just, we had, we had  
22 testimony from the judges.

23 AUSTINE LONG: Mm-hmm.

24 MARVIN SCHECTER: Okay?

25 AUSTINE LONG: Mm-hmm.

1                   MARVIN SCHECTER: I had a judge from Miami tell  
2 me right to my face in chambers, you know? He goes  
3 down and, you know, to arraignments at two o'clock in  
4 the morning or to the local police, police station and  
5 when a guy calls him and says, "Judge, I've been  
6 arrested." That's a pretty amazing, that's a pretty  
7 amazing statement. If you did that in New York City,  
8 it would make the front page of the Daily News.

9                   DOUG MARLOWE: Well, sure, you know, but,  
10 yeah, I mean, that's not what they're supposed to do --

11                   MARVIN SCHECTER: Right.

12                   DOUG MARLOWE: -- you know?

13                   AUSTINE LONG: That's not what we advocate.

14                   DOUG MARLOWE: (Unintelligible).

15                   AUSTINE LONG: That's not, that not, not in  
16 our training.

17                   MALE SPEAKER: (Unintelligible) how do you  
18 (unintelligible)?

19                   DOUG MARLOWE: Well, I wasn't sure what you  
20 were getting at with that one.

21                   VICKY YOUNG: That was one, it was the  
22 statement right after the, the comment.

23                   MALE SPEAKER: The, the issue, the issue  
24 around that is that is a there is a study that suggests  
25 that as much as, as much as forty percent of all the

1 street stops in New York are illegal and they're not  
2 based on any Constitutional validity, but because the  
3 (unintelligible) is involved with these stops, the  
4 thought being that drug courts provide cover for police  
5 officers to make bad stops because they know they're  
6 never going to be scrutinized because they're going to  
7 go into these non-adversarial proceedings --

8 DOUG MARLOWE: That's right.

9 MALE SPEAKER: -- and that people are going  
10 to get lost, and so cops understand that, that the  
11 difference --

12 VICKY YOUNG: Mm-mmm.

13 MALE SPEAKER: -- sure, there would be no  
14 disregard, Constitutional scrutiny because there's,  
15 nobody, nobody ever calls them.

16 DOUG MARLOWE: I'm not aware of any research  
17 to support that, but it, it, that sounds like a  
18 reasonable hypothesis. It may be true. I, I don't  
19 know. I mean, we need to study that. I mean, part of  
20 the problem is studying what the police do. It's, it's  
21 very difficult out here and, and it's, it's outside of  
22 our rubric, but --

23 ELIZABETH KELLEY: So the trouble is you've  
24 never heard that proposition before?

25 DOUG MARLOWE: No, I, I, I, I've heard it

1       stated somewhat differently that --

2               MALE SPEAKER:   That or a variation.

3               DOUG MARLOWE:   I've heard, you know, the idea  
4       that the fact that when you, you know, if you have a  
5       hammer, all of a sudden you start looking for nails,  
6       and so if you've got these drug courts, you got to fill  
7       the drug court with bodies, and the police know there's  
8       a place to put these people that are out there doing  
9       more arrests.  Whether the arrests are, you know,  
10      violate TERI or whatever, I don't know, but the idea  
11      that it encourages more aggressive police practices  
12      because there's a program, I've heard that argument  
13      made.  It may be true.  I don't know.  You know, I, you  
14      know, it's, we could look at that.  I mean, there are  
15      ways to look at those data and, and --

16              MALE SPEAKER:   (Unintelligible).

17              DOUG MARLOWE:   -- I'm not sure we'd ever know  
18      for sure, but --

19              ELIZABETH KELLEY:  I know, because --

20              MARVIN SCHECTER:  Doug, Rick  
21      (unintelligible).

22              RICK JONES:   Misdemeanor drug courts, do you  
23      think those are being used the way they're supposed to  
24      be used (unintelligible)?  Are they really being,  
25      because I think your position would be they should only

1 exist for certain people, high-risk offenders, even  
2 though it's a low stakes thing.

3 DOUG MARLOWE: That's right.

4 RICK JONES: Is that what's really happening  
5 now?

6 DOUG MARLOWE: It's supposed to be, the, some  
7 of the research I've actually done is in misdemeanor  
8 drug courts. I've actually worked in some of those  
9 programs, and, you know, just because someone's got  
10 their first offense doesn't mean that they're a low-  
11 risk, low-needs defendant. There are some very serious  
12 offenders that are brought in on their first charges,  
13 and that is appropriate for a misdemeanor drug court.  
14 The problem is that, you know, they're, you know, if,  
15 if, if the criteria for a misdemeanor program is, say,  
16 marijuana possession, paraphernalia, you know, that  
17 kind of thing, you're going to get a lot of people in  
18 there that just don't have a drug problem. They smoke  
19 marijuana, they had marijuana on them, but they're not  
20 addicted, they don't, they're not going to re-offend  
21 anyway, and so part of the issue is, it's not whether  
22 it's a misdemeanor or a felony. The, the issue is what  
23 the current charge is is relevant, but it shouldn't be  
24 (unintelligible). The issue is what is the clinical  
25 severity and the risk severity, the prognostics

1 regarding this case, and so, yeah, there are  
2 misdemeanor programs that are effective and that,  
3 you know, and they are targeting the  
4 (unintelligible) --

5 RICK JONES: Can you give a specific example  
6 of one that you think is effective and then --

7 DOUG MARLOWE: Just one?

8 RICK JONES: -- (unintelligible)?

9 DOUG MARLOWE: Yeah, I, I mean, I do, I'm  
10 doing research on one in Delaware right now, in  
11 Wilmington, Delaware.

12 RICK JONES: And --

13 DOUG MARLOWE: It's a misdemeanor program.

14 RICK JONES: And one that's not? I mean, I  
15 think in Miami, one of the courts there is a  
16 disaster --

17 DOUG MARLOWE: Yeah, in misdemeanor drug  
18 courts (unintelligible) --

19 RICK JONES: -- (unintelligible) drug courts  
20 and I think --

21 MALE SPEAKER: (Unintelligible).

22 FEMALE SPEAKER: (Unintelligible).

23 RICK JONES: -- (unintelligible) was stupid,  
24 it was a waste of time, that it was taking people who  
25 should not --

1                   DOUG MARLOWE: I don't have data on that. I,  
2                   anecdotally, I can tell you that, but I, I, I, I sort  
3                   of, if I had some data that showed you there was a  
4                   program that was doing that, I would feel more  
5                   comfortable, you know? I have no doubt that there are  
6                   programs out there that, that boast their ninety  
7                   percent success rate, and the reason their success rate  
8                   is ninety percent is because they're taking people that  
9                   aren't going to re-offend anyway, so, you know, they're  
10                  just, you know, skimming a low-risk population.

11                  RICK JONES: And then a question about  
12                  private counsel, and it's for both of you. Isn't it  
13                  sort of apparent in the key concept, the idea of a  
14                  team, the idea that you have the same defense lawyer  
15                  there all the time, and if that's the case, what role  
16                  if any can private counsel ever have in the court?

17                  DOUG MARLOWE: Well, I, I, so I wanted to,  
18                  yeah, you should have defense representation at all  
19                  times. If, depending on how big the program is and  
20                  how many private counsel, it may be that there's one  
21                  dedicated Public Defender who represents the Public  
22                  Defender's Office for all those cases. There are some  
23                  courts where the Public Defender, just by agreement  
24                  with private, private counsel says, you know, "I'll  
25                  take care of the cases during status reviews and let

1 you know what's going on." I'm aware that that  
2 happens. I'm not saying it should or shouldn't.

3 RICK JONES: Right.

4 DOUG MARLOWE: I just know that it does, but  
5 a private counsel, if, if I'm represented by private  
6 counsel, then my defense attorney should have the,  
7 essentially, part of the team for those cases. They're  
8 not going to sit in on the review of every single case  
9 on the docket, but they'll at least be there for the  
10 reviews of their clients, get reports, be there for any  
11 sanctioning. So they're, they're, they're not to be  
12 excluded. What I find is the defense, this is again  
13 anecdotal, but I think what's common is that a lot of  
14 private defense counsel don't like to take a lot of  
15 drug court cases because of the model, which requires  
16 such regular involvement, so there have, there very  
17 often have to be some deal with the early, the entry  
18 stuff, the pleas --

19 RICK JONES: Right.

20 DOUG MARLOWE: -- and then transfer them to  
21 the Public Defender --

22 FEMALE SPEAKER: (Unintelligible).

23 DOUG MARLOWE: -- and, you know, that's not  
24 a, that's not a model decision. That's the way they  
25 operate.

1 FEMALE SPEAKER: (Unintelligible).

2 RICK JONES: Well, and it's, we heard  
3 repeatedly the vast majority just don't come --

4 FEMALE SPEAKER: Mm-hmm.

5 RICK JONES: -- or feel like it's a --

6 DOUG MARLOWE: Sure, that's true.

7 RICK JONES: -- day care center where the  
8 private bar drops off the clients and I never see them  
9 again. Private counsel really don't know what they're  
10 getting into, but the problem, I think, part of the  
11 problem is the key concepts say, "The judge, prosecutor,  
12 and court-appointed defense counsel should be assigned  
13 to drug court for a sufficient period of time to build  
14 a sense of teamwork and reinforce the non-adversarial  
15 atmosphere."

16 FEMALE SPEAKER: Mm-hmm.

17 RICK JONES: I mean, here it is that, is  
18 you're not supposed to be here --

19 FEMALE SPEAKER: Mm-hmm.

20 RICK JONES: -- if you're a private lawyer  
21 because you're not a part of the team.

22 AUSTINE LONG: Well, the, and I don't think  
23 when they said court-appointed, they necessarily mean  
24 that it has to be a Public Defender. They just mean  
25 that it needs to be one regular attorney that's

1 appearing in staffings all the time, and like in my  
2 courts, I routinely invited their attorneys to come  
3 and kept them updated, so they could come to staffing  
4 to hear about what was going on with that particular  
5 client if they wanted to. The private counsel or their  
6 court-appointed counsel could come to staffing, and  
7 they could even come to court during the court session,  
8 and we would handle that person, and then that, that  
9 attorney would leave. So they were welcome to come.  
10 It really depends on the individual private counsel and  
11 how it's set up in terms of, if they're court-appointed,  
12 whether or not they're going to continue to get paid by  
13 coming and making those appearances.

14 VICKY YOUNG: But what I was going to say is  
15 that what that sounds kind of like is coming to the, a  
16 nice observer while the court goes and deals with your  
17 client. Like, "You, you represent this person. You're  
18 welcome to come and see how the court-appointed team  
19 player is going to be handling your client." Now,  
20 maybe that's fine, if the lawyer talks to the permanent  
21 Public Defender who's there ahead of time and says,  
22 "You know, I got some problems with, you know, Joe, and  
23 I want to raise this in the staffing."

24 MARVIN SCHECTER: I don't think it works that  
25 way.

1 VICKY YOUNG: Yeah, I, you know, it, it --

2 MARVIN SCHECTER: I've seen how it is.

3 VICKY YOUNG: -- the problem for us, I think,  
4 in terms of writing between courts because are we going  
5 to be advocating that everybody should go to each and  
6 every one of this endless number of staffings that go  
7 on in drug courts --

8 MARVIN SCHECTER: It's two different issues.

9 VICKY YOUNG: No, but it's, it's --

10 RICK JONES: If I represent a client in a, in  
11 a drug court, then, you know, and it was, it's, the  
12 defense counsel should make a determination that I'm  
13 going drug court cases, and if I do, then this is where  
14 you're wrong.

15 VICKY YOUNG: Well, but that's saying there's  
16 one person who's going to be in drug court for the next  
17 foreseeable two years of their lives and, and then  
18 they're going to have a staffing about your client  
19 every two weeks. I mean, are we going to, to --

20 MARVIN SCHECTER: They're two different issues.

21 VICKY YOUNG: -- to recommend that the lawyer  
22 go every two weeks to drug court? I, I don't --

23 MARVIN SCHECTER: I need to --

24 VICKY YOUNG: -- I'm not going to do it.

25 MARVIN SCHECTER: I need on two different,

1 first, any drug court, any problem solving court where  
2 you say you'll retain counsel, and you want to sit in  
3 on a staffing, you have a right to sit in on the  
4 staffing.

5 AUSTINE YOUNG: That's right.

6 MARVIN SCHECTER: (Unintelligible) --

7 VICKY YOUNG: There's no question with that.

8 AUSTINE LONG: Your client --

9 MARVIN SCHECTER: Let me, let me tell you  
10 what it is --

11 AUSTINE LONG: -- your client has the right to  
12 have you there.

13 MARVIN SCHECTER: -- and it does not, it does  
14 not sound like to me that if you're retained counsel  
15 and you want to go in that I have to sit there while  
16 you, the Public Defender, does their thing.

17 DOUG MARLOWE: Well --

18 MARVIN SCHECTER: First of all, you can't do  
19 your thing if you're the Public Defender.

20 DOUG MARLOWE: That's right. That's right.

21 MARVIN SCHECTER: My client. Who are you?

22 VICKY YOUNG: Right.

23 ELIZABETH KELLEY: Mm-hmm.

24 MARVIN SCHECTER: That's, that's just a  
25 violation of canons of ethics.

1 VICKY YOUNG: I was just (unintelligible) --

2 MARVIN SCHECTER: (Unintelligible).

3 VICKY YOUNG: -- when it sounds like she was  
4 saying --

5 MARVIN SCHECTER: No, that, that doesn't  
6 say --

7 VICKY YOUNG: Okay.

8 MARVIN SCHECTER: -- it's not so. I, I never  
9 saw --

10 DOUG MARLOWE: No.

11 MARVIN SCHECTER: -- that in any drug court I  
12 went into where private counsel showed up.

13 VICKY YOUNG: Okay.

14 MARVIN SCHECTER: That's number one. If  
15 private counsel showed up in court for the conference,  
16 the legal aid attorney or Public Defender sat down --

17 VICKY YOUNG: Sat down --

18 MARVIN SCHECTER: -- and they, the attorney  
19 started, and, in fact, on one occasion, and I think it  
20 was in Miami, there was a big fight that broke out  
21 between private attorney and the judge right in  
22 open court about it. So that --

23 VICKY YOUNG: Okay.

24 MARVIN SCHECTER: -- that's not a problem.  
25 The, the second issue, and, and I think what, what

1 we've heard from our Board members when this was first  
2 started is, is maybe we need to change languages. I  
3 mean, it's a funny thing to say. As Joe has pointed  
4 out, court-appointed in court. You know, I mean,  
5 you're a private lawyer.

6 MALE SPEAKER: Right.

7 MARVIN SCHECTER: You don't so much like  
8 that.

9 DOUG MARLOWE: Right.

10 MARVIN SCHECTER: I mean, you're the private  
11 bar. You're the court-appointed guy. So maybe we need  
12 to change languages and say --

13 DOUG MARLOWE: And I didn't say --

14 MARVIN SCHECTER: -- you know, court-  
15 appointed and private counsel.

16 VICKY YOUNG: Agreed.

17 MARVIN SCHECTER: That would go a long way to --

18 DOUG MARLOWE: Mm-hmm.

19 MARVIN SCHECTER: -- to dispel that.

20 DOUG MARLOWE: Mm-hmm.

21 End of recording.

22 (End of Side A)

23

24 (Side B)

25 Start of recording:

1 MARVIN SCHECTER: -- you've got a drug  
2 problem, you know what I'm saying? (Unintelligible)  
3 did he tell you what he told me? But that's the truth.  
4 Now, the guy goes into drug court. I got ten thousand  
5 bucks to be there. Is, is it over? Do I, do, I'm  
6 going to have to go to conferences? I don't think so.  
7 I mean, most of my retained cases, if there's conflict,  
8 even a status conflict --

9 VICKY YOUNG: Yeah, no.

10 MARVIN SCHECTER: -- I'm supposed to show up.  
11 I couldn't say to a retained client, "Excuse me, it's  
12 just a status conference. I'm not there." First of  
13 all, no judges would tolerate it. I do think there's a  
14 bit too much toleration --

15 DOUG MARLOWE: I agree. You're right.

16 MARVIN SCHECTER: -- with judges, and we  
17 ought to talk about that maybe in the judicial role.  
18 Number two, I don't know how it's going to shake out on  
19 that recommendation about staff --

20 VICKY YOUNG: Mm-hmm.

21 MARVIN SCHECTER: -- but it does seem to me  
22 if, if you have a practice, and in your office visit,  
23 you were told by (unintelligible) sometimes --

24 VICKY YOUNG: (Unintelligible).  
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responsibility --

VICKY YOUNG: Okay, okay.

MARVIN SCHECTER: -- which seems to be from what I (unintelligible) --

VICKY YOUNG: Okay, I hear what you're saying.

MARVIN SCHECTER: -- and I've, I've read it. It was careful. He, he delineated what the canons of ethics were. I have to show up at staffings. If, if Judge Vazquez --

VICKY YOUNG: Right.

MARVIN SCHECTER: -- says, "Mr. Schecter, there's a staffing two weeks from now. That's your client. You have an obligation to show up." "I have other clients." (Unintelligible).

GAIL SHIFMAN: I, I disagree because if it's a post-plea drug court, and on post-plea probation hearings, my retainer agreement won't talk about anything post-plea --

MARVIN SCHECTER: Maybe they should.

GAIL SHIFMAN: -- (unintelligible).

MARVIN SCHECTER: (Unintelligible) --

GAIL SHIFMAN: That, and, and that's --

MALE SPEAKER: I think this is, this

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(unintelligible) --

VICKY YOUNG: I just wanted to know if there were any (unintelligible) --

MARVIN SCHECTER: -- (unintelligible), all right, all right, all right, all right, all right. (Unintelligible) --

GAIL SHIFMAN: (Unintelligible).

MARVIN SCHECTER: -- (unintelligible) please, yes, thank you (unintelligible).

DOUG MARLOWE: In Delaware, what they've done in Delaware is they have the Delaware Association of Criminal Defense Lawyers, and the representative from that criminal defense bar --

FEMALE SPEAKER: Right.

DOUG MARLOWE: -- is sort of, so it's not the Public Defender who's a designate, but it's this guy, Andrew Ahern, who is the (unintelligible) the president of their thing, and he fills in when private counsel can't be there as the (unintelligible) --

MARVIN SCHECTER: Like the counsel (unintelligible) private counsel.

DOUG MARLOWE: -- now, but he is the, that's, now I'm not, not, Delaware, Delaware's different from the rest of the world 'cause --

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VICKY YOUNG: In, in (unintelligible) --

MALE SPEAKER: (Unintelligible).

VICKY YOUNG: -- post-adjudication  
(unintelligible) --

DOUG MARLOWE: Ahern, A-H-E-R-N.

VICKY YOUNG: (Unintelligible), that's --

MARVIN SCHECTER: I want to move on to a  
different area.

VICKY YOUNG: Okay.

MARVIN SCHECTER: One, one of the things that  
we are, are very concerned about (unintelligible) one  
of the things that we were concerned about is, is, is  
disparities in these courts. Racial disparities, and  
disparities with respect to immigrant defendants, and  
disparities with respect to the (unintelligible). One  
of the things that, that, that, that, that, that could  
really be a problem is that, and, and he's also told  
me that there's not been any training about, about  
sort of these, I think he said there's no training  
lines on the disparity issues in your, in your August  
training.

AUSTINE LONG: No, sir. I could put it in  
there. I mean, it --

MARVIN SCHECTER: Well, it's not  
(unintelligible) --

1           AUSTINE LONG:  -- we haven't, we haven't done  
2 it in the past.

3           MARVIN SCHECTER:  Right.

4           AUSTINE LONG:  Right.

5           MARVIN SCHECTER:  And that's --

6           AUSTINE LONG:  Yeah.

7           MARVIN SCHECTER:  -- and for that I'm sorry.  
8 I strongly urge you to think about (unintelligible) a  
9 training --

10          AUSTINE LONG:  We will.

11          MARVIN SCHECTER:  -- (unintelligible)  
12 impact --

13          AUSTINE LONG:  Mm-hmm.

14          MARVIN SCHECTER:  -- and there's also been,  
15 one of the things that, that Doug said a lot of times  
16 (unintelligible) there's no real study, and so I would  
17 also encourage you to (unintelligible), particularly  
18 around the issue of race because all we have is that  
19 you really have nothing other than anecdotal, you  
20 know?  So there's race in particular, but, but one  
21 of the other concerns that we've, we've, we've found  
22 is that, is that if, if you move this towards  
23 everything being post-plea, then you, you effectively  
24 or, or really in the largely stymied, the immigrant  
25 defendants who ever enter into these courts because

1 any (unintelligible) plea, you're going to vacated or,  
2 and, and (unintelligible) at the end of the road,  
3 you'll seal the need for an intermission judge for a  
4 deportation. So, so what do you think about, how do,  
5 how do we deal with that (unintelligible) plea in all  
6 the studies said it would be coercive, effectively  
7 coercive, you, you rule it out before the immigrant  
8 defendant population (unintelligible)?

9 DOUG MARLOWE: You just raised an issue that  
10 I hadn't thought about, frankly. That's a good point,  
11 and I think, that's why I'm curious about the amicus  
12 that you wrote, because one of the (unintelligible)  
13 that have that not defined --

14 MARVIN SCHECTER: Right.

15 DOUG MARLOWE: -- as a conviction for, for  
16 (unintelligible) --

17 MARVIN SCHECTER: Well, it depends on, it's  
18 how it's written, how it, how I used to do that, how I  
19 used to define (unintelligible) that Second Circuit,  
20 I mean, Second Circuit brief, they're trying to get the  
21 courts to say that's not what Congress intended --

22 DOUG MARLOWE: No, I understand that, but,  
23 but the --

24 MARVIN SCHECTER: -- but, but they, if they  
25 can see what you're describing as a post-adjudication

1 court --

2 ELIZABETH KELLEY: Right.

3 MARVIN SCHECTER: -- forget about it.

4 There's nothing.

5 DOUG MARLOWE: Understood.

6 MARVIN SCHECTER: There's no argument.

7 There's, there's, the Second Circuit

8 (unintelligible) --

9 DOUG MARLOWE: Right. Just keep in mind, you

10 know, when I say that there's this movement in this

11 direction, it's not like it's some intended movement

12 (unintelligible) --

13 MARVIN SCHECTER: I understand that.

14 (Unintelligible) interpreted.

15 DOUG MARLOWE: Right, but I --

16 VICKY YOUNG: Right.

17 MARVIN SCHECTER: I got that.

18 VICKY YOUNG: Right.

19 MALE SPEAKER: It's just that's the way it

20 sounds (unintelligible).

21 AUSTINE LONG: Right, because of --

22 MALE SPEAKER: (Unintelligible).

23 AUSTINE LONG: -- because of the research,

24 the cost-effectiveness and --

25 MARVIN SCHECTER: But isn't it also partly

1 driven by the cost of incarceration in the states --

2 AUSTINE LONG: Yes, right, of course,  
3 exactly, exactly.

4 MARVIN SCHECTER: -- and, you know, the  
5 states are, are saying this is cheaper.

6 DOUG MARLOWE: Right (unintelligible).

7 MARVIN SCHECTER: Let's get them out sooner.

8 DOUG MARLOWE: Absolutely.

9 MARVIN SCHECTER: Austine, let me ask one  
10 question about, about training those judges.  
11 (Unintelligible) the, the, the third (unintelligible)  
12 impact (unintelligible) a plea and folks talking about  
13 inabilities to make all the court appearances,  
14 transportational issues, commuting issues. I don't  
15 know whether you've thought about these things at all  
16 or (unintelligible) these things, but one of the value  
17 here to it as well is that there's the bar for some  
18 people to these courts because of the, the costs of,  
19 of, of participation, they're so high, fees and other  
20 things that they just can't, they can't participate.

21 DOUG MARLOWE: The, the, the little  
22 research we have suggests that actually lower income  
23 generally predicts poor outcomes regardless of what  
24 program somebody's in or not, and there's some  
25 suggestion, and I don't want to state this as a

1 finding, some suggestion that the more indigent people  
2 do better in drug courts than on sort of standard  
3 probation. There, there are more services to get them  
4 where they need to be.

5 FEMALE SPEAKER: (Unintelligible).

6 DOUG MARLOWE: I don't have any proof of  
7 that other than to tell you that there are these, when  
8 you look at income as a predictor of outcomes, it's  
9 always the poorer you are, the worse you do, and  
10 there's an interaction effect where poor people  
11 generally have a, do better in drug courts than the  
12 alternative, and as far as the racial disparities issue  
13 which we, it's the same issue except that when you take  
14 out income, drug of choice, or those things, the racial  
15 disparities falls out, so it sounds like it may not be,  
16 we don't know this. I'm not claiming this is something  
17 that you need to know, is a racial issue per se, or is  
18 it a, in a community where Caucasians are all  
19 methamphetamine, are primarily methamphetamine users,  
20 and so they have more severe drug problems.  
21 Caucasians do worse than African-Americans because  
22 their drug of choice is more severe, and there's  
23 evidence of that.

24 MALE SPEAKER: (Unintelligible).

25 DOUG MARLOWE: In other programs where the

1 African-Americans had more likely been using crack  
2 cocaine, there's been some findings of if you adjust  
3 for the drug of choice, it's not the race issue. It's  
4 the fact that race is correlated with the drug of  
5 choice or whatever. There is, the, the only good  
6 study, it's not, I'm going to say the only adequate  
7 study on that question suggests that it's these other  
8 factors that are, that are primarily affecting them. I  
9 don't think, we have tried to get money to study this  
10 issue. We were begging the Jet Foundation, I mean  
11 begging them, and they were, they were  
12 (unintelligible) --

13 MALE SPEAKER: (Unintelligible).

14 DOUG MARLOWE: Well, no, let me say  
15 something. I, I feel a little bit, almost a little  
16 happy, I'd have to say --

17 MALE SPEAKER: (Unintelligible).

18 DOUG MARLOWE: -- you know, the way they  
19 just, they led us by the nose for so long, and then  
20 they refused to fund it, but I, and I'm kidding, I'm  
21 (unintelligible). We have been trying to get the  
22 funding to, to get at this issue, and there has been  
23 an extraordinarily surprising lack of interest, or a  
24 lack of willingness to find it that has been hard to  
25 understand. Now, maybe in the new administration, that

1 might be different.

2 MARVIN SCHECTER: Right, (unintelligible).

3 MALE SPEAKER: (Unintelligible).

4 MARVIN SCHECTER: I take it this business of  
5 rotating judges every six months is not good enough.

6 DOUG MARLOWE: No.

7 AUSTINE LONG: No.

8 DOUG MARLOWE: The evidence suggests not.

9 AUSTINE LONG: Absolutely not.

10 MARVIN SCHECTER: That's number, number two.  
11 Does it take a long time for the judge to figure out  
12 their goals? We, we have had testimony, one guy said  
13 the first year, and they're, like, the second year  
14 (unintelligible) --

15 AUSTINE LONG: (Unintelligible).

16 MARVIN SCHECTER: third year  
17 (unintelligible) --

18 AUSTINE LONG: Mm-hmm.

19 MARVIN SCHECTER: -- (unintelligible) from  
20 there.

21 DOUG MARLOWE: There's some evidence that  
22 suggests that.

23 MARVIN SCHECTER: Okay. So, longer-term  
24 appointed, regardless of the culture of that court  
25 system --

1 DOUG MARLOWE: Right.

2 FEMALE SPEAKER: Could be --

3 MARVIN SCHECTER: -- drug court

4 (unintelligible) --

5 AUSTINE LONG: Mm-hmm.

6 MARVIN SCHECTER: -- (unintelligible) this

7 judge is going to be there for a while.

8 AUSTINE LONG: Yes.

9 MARVIN SCHECTER: Number two. If we cut down

10 the learning curve for the judge, if we had better

11 training for the judges --

12 AUSTINE LONG: Yes.

13 MARVIN SCHECTER: -- yes or no?

14 AUSTINE LONG: I mean, I, I think --

15 DOUG MARLOWE: We think yes.

16 MARVIN SCHECTER: Yes?

17 AUSTINE LONG: Mm-hmm.

18 MARVIN SCHECTER: Okay.

19 DOUG MARLOWE: And part of that would be

20 mentoring, and so the first judge --

21 AUSTINE LONG: Right, not just --

22 DOUG MARLOWE: -- who's breaking off --

23 AUSTINE LONG: Exactly.

24 DOUG MARLOWE: -- mentors this, the other

25 judge (unintelligible) here.

1           AUSTINE LONG: Not just sitting in a  
2 classroom --

3           MARVIN SCHECTER: Okay.

4           AUSTINE LONG: -- and training, but --

5           DOUG MARLOWE: That's right.

6           AUSTINE LONG: Right.

7           MARVIN SCHECTER: Okay. Now, we had a  
8 question yesterday about what happens if you flunk out  
9 of drug court? Is it true or not true that the  
10 sentence you get is worse than if you had not gone to  
11 drug court?

12          DOUG MARLOWE: We don't know.

13          AUSTINE LONG: I think it varies 'cause I've  
14 seen, you know, I've seen both, and it depends on how  
15 the system is set up. For instance, I went to a  
16 court - I don't know, was I in Baltimore? - not too  
17 long ago, and this particular judge, she was pretty  
18 lenient. If they dropped out or if they had to go back  
19 to court, she would give them a, a lesser sentence.

20          FEMALE SPEAKER: Lesser than what they would  
21 have gotten if they pled (unintelligible) initially?

22          AUSTINE LONG: Yes, mm-hmm.

23          FEMALE SPEAKER: Okay.

24          MARVIN SCHECTER: But we don't know, we don't  
25 have nationwide (unintelligible) --

1 DOUG MARLOWE: We need to.

2 AUSTINE LONG: Right, no.

3 MARVIN SCHECTER: -- but we need to know.

4 DOUG MARLOWE: We need to know that.

5 AUSTINE LONG: Right.

6 MARVIN SCHECTER: Finally, Jay was asked  
7 this, many of these things, and the question is what  
8 defines success in these courts? What is it?

9 MALE SPEAKER: (Unintelligible)?

10 DOUG MARLOWE: The primary variables that  
11 people look at are issues of the court's, of the  
12 program, and there are criteria for graduation, so  
13 there's a certain --

14 FEMALE SPEAKER: Right.

15 DOUG MARLOWE: -- period of abstinence,  
16 whatever, and recidivism. Those have been the primary  
17 outcomes. Now, I'm not saying the program is saying  
18 that's what they mean by success. I'm just saying that  
19 when you look at studies, that's what we're able to  
20 measure those easily.

21 MARVIN SCHECTER: It looks like the studies  
22 say what the recidivism two years out and then they  
23 sort of cut off.

24 DOUG MARLOWE: Yeah.

25 MARVIN SCHECTER: Two years out

1 (unintelligible).

2 DOUG MARLOWE: There, well, there's two  
3 reasons, but one is that group studies only came online  
4 a few years ago, and so there's only that amount of  
5 time and plus money, but, you know, there are some  
6 studies now that are three and five years out, but  
7 there aren't, you know, we're trying, the, the general,  
8 what the research suggests is that if you raise your  
9 outcomes between three and five years out, you're going  
10 to get a staple of your, if somebody has not  
11 recidivated in three years or five years, they're not  
12 going to most likely, so if we can take it out that  
13 long, we have a better outcome, and that's, and the  
14 other problem is that that's all we have is recidivism  
15 post-program and it's not enough for (unintelligible).

16 MARVIN SCHECTER: My last question. As both  
17 of you look out today at these thousands of courts,  
18 drug courts, the people you work with --

19 DOUG MARLOWE: Sure.

20 MARVIN SCHECTER: -- the ones that are really  
21 problem solvers, not (unintelligible), have they hit  
22 the target population of the hardcore offenders? Have  
23 they hit the target population of the hardcore, really  
24 seriously mentally ill spouse who's abusing his or her  
25 partner? Is, is that the case or it's not?

1                   AUSTINE LONG: I think they're leading  
2 towards that and some are because I think I see where  
3 a lot of drug courts are changing their target  
4 population --

5                   MARVIN SCHECTER: When, when did that change  
6 start?

7                   DOUG MARLOWE: In the last, last three years  
8 or so, I would say. A lot of it's based on research  
9 that's come out --

10                  MARVIN SCHECTER: (Unintelligible).

11                  DOUG MARLOWE: -- that's been very powerful.  
12 You can't argue with this research. Drug courts did  
13 their best planning. But when you say target, I mean,  
14 drug courts are (unintelligible), you know, five  
15 percent of the drug offender population. I mean, you  
16 know, you know, so I mean there's no way we can be  
17 servicing the target population. We're not, we're not  
18 big enough. We need to get big enough and we need to  
19 service, we need to move to a higher list. I mean, we  
20 need to have domestic violence offenders in true drug  
21 courts. One of the problems is that the DV courts very  
22 often are, are, are so watered down or changed --

23                  MARVIN SCHECTER: Right.

24                  DOUG MARLOWE: -- they're not functioning as,  
25 as well as (unintelligible) --

1                   MARVIN SCHECTER:  As the (unintelligible),  
2                   right.

3                   DOUG MARLOWE:  -- which is not because we've  
4                   said they shouldn't.  There are other reasons for that  
5                   or other issues (unintelligible).

6                   MARVIN SCHECTER:  So the answer to the  
7                   question of hitting a bigger target population is,  
8                   instead of all these cities we went to where we found a  
9                   part-time problem solving court, or one really good  
10                  problem solving court in Miami where the judge has nine  
11                  hundred cases on file, what you're really telling us is  
12                  we should have a recommendation that says we're going  
13                  to have these courts and we're going to try to target  
14                  the population that's really important that we, we need  
15                  to have three drug courts.

16                  AUSTINE LONG:  We did.  One in every county  
17                  in the country.

18                  MARVIN SCHECTER:  Right.

19                  DOUG MARLOWE:  And, and, and, and, well,  
20                  now --

21                  MARVIN SCHECTER:  And that would be a proper  
22                  allocation of resources, in your opinion?

23                  AUSTINE LONG:  And that's what we promote.

24                  DOUG MARLOWE:  Absolutely.

25                  MARVIN SCHECTER:  Multiple --

1                   AUSTINE LONG: That's what, that's our goal.

2                   DOUG MARLOWE: Multiple, yes, and, and,  
3 ideally, in, in a place like Manhattan --

4                   MARVIN SCHECTER: Right.

5                   DOUG MARLOWE: -- there would be multiple  
6 dockets, and ideally some of those dockets would have  
7 different characteristics based on the clinical needs  
8 of the population --

9                   MARVIN SCHECTER: Right.

10                  DOUG MARLOWE: -- so one would be a  
11 co-occurring docket. There might be some that weren't  
12 in for, for lower-risk, lower-needs offenders who just  
13 need some court supervision, urine monitoring,  
14 they were being, yeah --

15                  MARVIN SCHECTER: Yeah, (unintelligible).

16                  DOUG MARLOWE: -- but we don't, at this  
17 point, the criticism that we're a boutique, although  
18 they're, it's, they're occurring less and less now, it's  
19 still a legitimate criticism. I mean, we're not the  
20 way of doing business, we're the exception --

21                  MARVIN SCHECTER: Right.

22                  DOUG MARLOWE: -- to the way of doing  
23 business.

24                  MARVIN SCHECTER: That. that's really, that,  
25 that's really what, what the problem with our

1 discussions have been is that we are, we are so caught  
2 up in trying to figure out about drug courts that we've  
3 seen is that what we really should be (unintelligible)  
4 should be five of them --

5 DOUG MARLOWE: That's right.

6 MARVIN SCHECTER: -- six of these --

7 AUSTINE LONG: (Unintelligible), yes.

8 MARVIN SCHECTER: -- seven of these.

9 AUSTINE LONG: Yes.

10 MARVIN SCHECTER: There should be as many  
11 as, as (unintelligible) --

12 VICKY YOUNG: Maybe we should say that or  
13 maybe we shouldn't say that.

14 MALE SPEAKER: (Unintelligible).

15 MARVIN SCHECTER: We, we, we  
16 (unintelligible).

17 GAIL SHIFMAN: (Unintelligible) good job.

18 DOUG MARLOWE: I don't know (unintelligible).

19 RICK JONES: We are, we are, unfortunately,  
20 we are (unintelligible) we are unfortunately out of  
21 time. We've got time for one last (unintelligible)  
22 question.

23 FEMALE SPEAKER: It's Gail, I think she's  
24 trying to say something.

25 RICK JONES: Gail, are you trying to get in?

1 Gail?

2 GAIL SHIFMAN: No, I just said thank you  
3 (unintelligible).

4 RICK JONES: Oh, yes. Norman is going to get  
5 our last question.

6 NORMAN REIMER: I just wanted, I understand  
7 as the, the, the representative of the Drug Court  
8 Initiative, do you have any position at all as to  
9 whether or not public funds should be allocated to  
10 establish non-criminal charge-based drug treatment  
11 programs? Drug treatment options (unintelligible)?  
12 Do you see any evidence of that on his  
13 (unintelligible)?

14 DOUG MARLOWE: I don't, I don't know what you  
15 mean.

16 NORMAN REIMER: Setting up, you know, a  
17 (unintelligible) clinic in every, every county for  
18 anybody who wants it.

19 DOUG MARLOWE: Do I think that's happening?  
20 No, that's not happening.

21 MALE SPEAKER: No.

22 DOUG MARLOWE: Do we think it should be  
23 happening? Absolutely. We, we, it is not our position  
24 that everybody needs to be in drug court. It's not  
25 our, it's never been our position.

1                   AUSTINE LONG: Oh, no.

2                   DOUG MARLOWE: It's not our position, but,  
3 but, but, you know, I just, I was just taking to the  
4 National Advisory Counsel at SAMSA two days ago  
5 talking about the terrible state of treatment in this  
6 country, and it's like, you know, drug courts rely on a  
7 treatment system. The treatment system is broken.  
8 It's terrible. So, Betty Ford? I mean, I mean, to get  
9 Betty Ford, you, you know, the typical counselor in a  
10 drug treatment clinic has an associate's degree, if  
11 that, is not certified, there's no medications  
12 available for what is clearly a, a brain disorder.  
13 Treatment is terrible, and we need a lot more, so we  
14 need (unintelligible), we need residential services in  
15 the community and in incarceration, we need re-entry  
16 programming. The, you know, the list goes on and on,  
17 so, yeah, we need that.

18                   NORMAN REIMER: So when it comes to the  
19 funding, if, if, if, if the county is (unintelligible),  
20 how does this work? Is, are they, is there money  
21 that's coming forth that pays for the treatment as well  
22 or is this basically the court's function?

23                   DOUG MARLOWE: Both.

24                   AUSTINE LONG: Both.

25                   DOUG MARLOWE: It, it varies.

1                   AUSTINE LONG:   Mm-hmm.

2                   DOUG MARLOWE:   You know, (unintelligible)  
3                   treatment dollars are usually paid for by block grant  
4                   funding.  There might be some special services that  
5                   come through, you know, law enforcement grant funding,  
6                   but usually it's, they're basically just going to the  
7                   treatment system and taking, you know, slots, taking  
8                   services that are there in the treatment system.

9                   NORMAN REIMER:   Just, just, just one last  
10                   thing.  If I'm a, if I'm a person with very limited  
11                   means, you know, here somewhere in one of the five  
12                   boroughs, and, and I know I've got an addiction  
13                   problem, but I haven't been arrested, where do I go if  
14                   I want to try to get clear of that?

15                   DOUG MARLOWE:   Well, I, I can't answer the  
16                   question here from New York.  I'm a (unintelligible) --

17                   NORMAN REIMER:   (Unintelligible).

18                   DOUG MARLOWE:   -- there's central, I mean,  
19                   there are hotlines to central intakes that you call,  
20                   you get an assessment, and you get services.  Are the  
21                   services any good?  Is there a waiting list for the  
22                   services is a whole other question, but you are  
23                   eligible for publicly funded services.  They are of, in  
24                   fact --

25                   FEMALE SPEAKER:   (Unintelligible).

1 DOUG MARLOWE: -- the vast majority of, of  
2 substance abuse services in this country are, they're  
3 publicly funded.

4 NORMAN REIMER: Is that Medicaid, Medicaid  
5 coverage?

6 DOUG MARLOWE: If you're eligible, or there's  
7 also indigent services for people who are not Medicaid  
8 eligible, but I don't want to give you the idea that  
9 there's a lot of service out there, but if you, there,  
10 there, you know, the federal government distributes  
11 block grant fundings, and then there are single state  
12 agencies and county agencies that get that money and  
13 they use it to contract services, and they, and they  
14 have priority populations for indigent. There, there's  
15 certain requirements they have, and New York I think  
16 has, you know, at least at one time had this sort of,  
17 you know, right to treatment kind of initiative so  
18 that, you know, if you want, if you were requesting a  
19 service, you were, you were entitled to get it.

20 FEMALE SPEAKER: Mm-hmm.

21 DOUG MARLOWE: What that actually was is a  
22 whole other story, but you had a right to treatment.

23 MALE SPEAKER: We, we appreciate you guys  
24 coming and spending your Saturday morning like this.  
25 One of the things that I would just, just leave you

1 with is, in terms of the training --

2 AUSTINE LONG: Mm-hmm.

3 MALE SPEAKER: -- one of the things that you  
4 talked about in multiple (unintelligible) is that you  
5 need for there to be defense counsel training  
6 defense counsel, and then you, then you train judges  
7 training judges, and those are broad  
8 (unintelligible) --

9 AUSTINE LONG: Like mentoring?

10 MALE SPEAKER: -- yeah, and, yeah, and, and  
11 so one of the things that have proven to be I think  
12 successful in the, in both the indigent defense  
13 community and in the (unintelligible) community is  
14 organizations doing training to trainers and then  
15 just sending people out, so I don't know if you've,  
16 have you, have you thought about training the trainers  
17 and then you send people out into the world to do the  
18 trainings so that you don't have to just rely on one or  
19 two, basically, trainings a year.

20 AUSTINE LONG: We do that, too.

21 MALE SPEAKER: (Unintelligible) --

22 AUSTINE LONG: We actually did that in  
23 February --

24 MALE SPEAKER: Okay.

25 AUSTINE LONG: -- in Michigan --

1 MALE SPEAKER: Right.

2 AUSTINE LONG: -- where we trained because,  
3 because of limited, limited funds --

4 MALE SPEAKER: Right.

5 AUSTINE LONG: -- and they can't send --

6 MALE SPEAKER: Right.

7 AUSTINE LONG: -- their drug court people in  
8 Michigan out somewhere else to get trained, we did a  
9 training the trainers, trainers in Michigan so they  
10 can, you know, send their people out in, in the state,  
11 so we do that, too.

12 MALE SPEAKER: Well, listen, thank you for  
13 your time, and your attention, and your interest. We  
14 appreciate it, and you will be among the first to get  
15 a, a, a signed copy from us (unintelligible) eventually  
16 rolls out.

17 AUSTINE LONG: In the, in the meantime, if  
18 you have any questions, e-mail me. Benjamin has my  
19 contact information.

20 MALE SPEAKER: And I will make sure that  
21 information is sitting on my (unintelligible)  
22 somewhere.

23 AUSTINE LONG: Yeah, yeah, yeah, and I'll see  
24 if like Doug says, we can zip that and send it to  
25 Angela or we could send it to all of you, so

1 (unintelligible).

2 MALE SPEAKER: Thank you.

3 MALE SPEAKER: Thank you.

4 FEMALE SPEAKER: Thank you.

5 FEMALE SPEAKER: Good-bye.

6 AUSTINE LONG: Okay, (unintelligible).

7 MALE SPEAKER: Let's take a five minute break.

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