NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

(TASK FORCE ON PROBLEM SOLVING COURTS)

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Interviews of Jose Varela, Esq., Assistant Public Defender, Marin County; Peter Banys, M.D., MSc., Director, Substance Abuse Programs, VA Medical Center, Director, Substance Abuse Fellowship, UCSF/VA, Past President, California Society of Addiction Medicine, Executive Board, American Society of Addiction Medicine, Executive Board, American Society of Addiction Medicine, Health Sciences, Clinical Professor of Psychiatry, UCSF; Daniel N. Abrahamson, Director of Legal Affairs, Drug Policy Alliance; and Jeffrey Thoma, Public Defender, Solano County; taken on behalf of the National Association of Criminal Defense Lawyers (Task Force on Problem Solving Courts), at Westin - San Francisco, 50 Third Street, University Room, Second Level, San Francisco, California, commencing at 9:28 a.m., Friday, August 3, 2007, before Judith N. Thomsen, CSR No. 5591.

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I N D E X

Friday, August 3, 2007 9:28 a.m.

JOSE VARELA,

called as an interviewee, interviewed as follows:

MR. SCHECHTER: What we would like to do is have you start, talk for a couple of minutes about the things that you have observed, your familiarity with, your experience in the courts, and then we would like to ask you some questions.

The purpose of transcribing everything is if we ever have to quote you and put it into a report, we want to be accurate, and also we think that this report will be looked at by a lot of people. We want to make sure that everything we do is completely backed up.

And that's pretty much it. So whatever your experience is and how long you have been in -- a little bit about your background would be great, and then we will go from there.

MR. VARELA: Okay. My name is Jose Varela. I am the Assistant Public Defender in Marin County. I have been there for approximately seven years.

Prior to that I had been a criminal defense attorney in San Diego, working for the Alternate Public Defender, doing, basically, trial work, death penalty work.

I started my career in Los Angeles County. I have been a criminal defense attorney for approximately 20 years -- actually, 20 years this year.

And my familiarity with drug courts and other therapeutic courts and restorative justice movements started when I came to Marin County because my boss, Joe Spaeth, was a big proponent of the therapeutic court process in juvenile courts where he had done most of his work while he was in San Francisco and then when he took on the lead Public Defender in job in Marin County.

And it was there that I got involved in receiving the adult drug court training, going through participating on teams at both the juvenile drug court level and at the adult drug court level.

About two, three years ago California saw an emergence of treatment focused legislation, and at that point Proposition 36, which later became codified in Penal Code, Section 1210 here in California --

(Ms. Vicki Young entered the conference room.)

MR. SCHECHTER: Go ahead.

MR. VARELA: -- here in California, that we started seeing another sort of therapeutic focus in drug courts of sort, but these were far greater case loads because of the statutory eligibility rules that allowed many people to receive treatment, whereas in drug courts eligibility was often controlled by priorities. And in some counties they were limited in the type of folks that they would let in, and in other counties it was much more liberal.

I have also visited many of the adult drug court sites throughout California, Sonoma County, Santa Clara County, just in training and in trying to get our adult drug court going.

So that's my background in terms of knowing these therapeutic courts. And so I am happy to answer questions.

The one thing I would like to note is that because of the confidentiality aspects of adult drug courts, I will not be discussing specific cases. I will generally be speaking about policy. And similarly with Proposition 36. So my focus will be more on a larger scale and policy responses to you guys.

MR. SCHECHTER: We are not going to talk to you about specific cases. We are much more concerned about the issues you just raised.

Any questions?

MR. JONES: I just want to follow up on one of the things you said in the intro. You talked about adult drug court. Could you talk to us about the difference between adult and juvenile? Is there a juvenile drug court, as well?

MR. VARELA: Yes, there is. In fact, that was the first one that we started in Marin County. Juvenile drug court was really the groundswell for continuing our therapeutic court focus and now into our community justice strategic plan that we are trying to get started in Marin County.

The juvenile drug court, basically, was meant to

include juveniles up to the age of 18 in some instances and drug treatment, and it was juvenile focused drug treatment programs.

And when the RFP, the Request for Proposals, went out, there was a question as to how it was going to be set up. And one of the things that came out of it that was very good is that rather than have a single vendor, they actually chose two providers within Marin County to provide services.

What that did was it allowed the team in the juvenile drug court to assess what program would be best for that individual. Because some programs tended to have a focus that was -- that was stricter. Some programs, their focus was not so much that it wasn't strict, it was just different in tone and in presentation, and it seemed to work for a lot of the juveniles.

The teams were trained very much like all the drug court teams are trained. Everybody on the team went to either Williamsburg or they went to Miami or they went to other nationwide training programs for this.

When the team came back, it was a solidified team, and they were able then to start taking in youngsters and --

MR. SCHECHTER: When you say "the team," who is encompassed in the team?

MR. VARELA: The teams in the drug court, juvenile drug court, included a judge, a District Attorney, a probation

officer, and representatives of the individual programs that would be reporting at the team the progress on the individuals.

And so every week these teams would get together, and these juveniles would come in, and their parents would also be there. And oftentimes the -- it was a family focused treatment program. If the parents didn't attend, there could be, you know, consequences in terms of them being told you are not giving your child the support necessary to have him succeed in this program.

MR. SCHECHTER: And there was no -- I'm sorry to interrupt you.

MR. VARELA: That's okay.

MR. SCHECHTER: There was no representative from the defense bar present?

MR. VARELA: I'm sorry, Public Defender's.

MR. SCHECHTER: There was?

MR. VARELA: Yes, Public Defender that was part of the team and part of the training and every aspect.

MR. SCHECHTER: And who paid for that? Did the P.D.'s office pay for that?

MR. VARELA: Initially, there was a lot of federal funding that allowed us to get the initial startup going, and we continued to apply for federal grants to enhance the program.

But, as time has gone on, we have slowly made that a

county funded focus. Though there is still a search for grants, it is now coming under the basically public safety budgeting focus that the board of supervisors has in your county.

MR. JONES: Are those long-term contracts, or do they have to be re-upped every year annually?

MR. VARELA: It's not annually, but I think it's a three-year sort of reassessment, and you kind of look at it and see, you know, what is the positive nature of the contribution that the programs has put in.

MS. KELLEY: Good morning. I am Elizabeth Kelley from Cleveland. I apologize for being late.

MR. VARELA: That's all right.

MS. KELLEY: Could you give us a breakdown of the substance involved, that is to say between marijuana, crack, meth, et cetera, et cetera?

MR. VARELA: Most of the juveniles -- and I will discuss the juveniles, and I will also discuss the adults.

In terms of the juveniles, you are basically dealing with alcohol, marijuana and some sort of --

MS. KELLEY: So you encompass alcohol in a drug court?

MR. VARELA: Yeah.

MS. KELLEY: Interesting. Okay.

MR. VARELA: And a lot of times it's basically -- you know, invariably it's not just alcohol by itself. It's usually

alcohol, marijuana and some dabbling into methamphetamine primarily is what we see with the youth. Sometimes you will see, you know, ecstasy; you will see drugs that are, you know, socially available for youngsters. But you don't see the cocaine or the crack, or you don't see much of that because, first of all, it doesn't really fall into our suburban county, and we tend to be a suburban county. And so most of the drug use is drug use by availability. You know? And, for the most part, for youngsters it tends to be alcohol and marijuana.

Ironically, Marin County is one of the richest counties in the United States. It also has one of the highest teen alcohol rates of any county. It probably has among the highest alcohol rate of any county in California.

And so Health and Human Services has been very involved in that, and the drug courts have tried to deal with that.

And so I hope that answers your question with regard to the juveniles.

With regard to the adults, we are basically dealing with methamphetamine. Above and beyond anything else, we are dealing with methamphetamine in one way or another. Some sort of cocaine sort of thing, a little bit of heroin, but primarily we are dealing with methamphetamine addicts.

And so the treatment providers have different modalities to deal with it.

With the juveniles it's primarily abstinence is the focus. It's teaching abstinence, and it's teaching the steps. It's teaching the underlying trigger response to situations where they could be using.

Where with the adults there are different methodologies. And, in fact, one of the things that was controversial initially was methadone maintenance. There were people that just thought, no, you just can't allow that to happen.

But now we are finding that the reality is that if somebody is going to succeed in coming out of these adult drug courts with productive lives, many of them have to transition to sobriety if they ever get there through the use of some sort of methadone maintenance.

And now there are other drugs -- to be honest with you, off the top of my head, I don't know them. But there are some participants that are now using these much more sophisticated heroin sort of removal drugs, and they are very effective. They are just finding therapeutically a more positive response than they thought was possible. And so weaning away from heroin is sort of going that route with the adults.

So that's really the drug profile that we have in Marin County.

MS. KELLEY: Okay.

MS. YOUNG: But when you are talking about the methadone, does that go to -- or the substitute, the newer drug, does that also go to treatment for the methamphetamine? Or . . .

MR. VARELA: No, not necessarily. Most of those people that are on that tend to be primarily heroin.

MS. YOUNG: Okay.

MR. VARELA: The methamphetamine user tends to be primarily a methamphetamine user.

Sometimes you will see dual use because some people because of the roller coaster will use, you know, methamphetamine, but they may also use some sort of barbiturate to overcome the high sometimes in terms of the situation they get. So you deal with everything.

One of the things that happens before both the children and the adults go into adult drug court is that there is a pretty intensive assessment that's done of their drug use history, and I think it's called the SAMSHA test that's used. And they basically do a very long assessment to determine, you know, what is going to be the appropriate clinical response to this person's addiction.

MR. SCHECHTER: Can you take us through that, the process? In other words, let's say I get arrested tomorrow morning for robbery, a street mugging here in San Francisco. And what is the process? I am arraigned somewhere. Can you take us through that and tell us where does the assessment come in,

who is identifying the person, when does the defense get involved, who are the people in the system who will immediately impact, and how long does the process lay out for an individual? And what are the consequences? How do you -- once accepted after the assessment, do you sign a contract? Do you not? Do you have to report? Et cetera, et cetera.

MR. VARELA: Okay. I am going to answer that question in several ways.

MR. SCHECHTER: Okay.

MR. VARELA: Obviously, there is the juvenile component, there is the adult drug court component, and then there is also the Proposition 36 component here in California. And it's necessary to know those things because different things can happen according to the person.

The first thing that happens is somebody identifies -- whether it's the lawyer, the probation officer doing the O.R. report -- somebody identifies that the person has a drug dependency issue as far as --

MR. JONES: And what is the O.R. report?

MR. VARELA: The own recognizance report.

MS. KELLEY: I thought it was operating room, and it didn't make sense in that context.

MR. VARELA: In California when somebody is arrested, they can ask to be released on their own recognizance. And in Marin County normally within literally sometimes hours, if not

a day later, they are visited by the O.R. officer who does the assessment. And they can tell. Oftentimes they are sort of told by the jail staff this person is tweaking. This person is coming down. This person is going through withdrawals, all the symptoms that are there. And that then becomes known both to the Court, to the attorneys and things of that nature.

The first thing that people look at is to -- the person is then arraigned. The attorneys from the Public Defender's office will go visit the client, make the same sort of assessment, see that the person is tweaking. They have all the manifestations of somebody who is grinding their teeth, the sweatiness, all the drug recognition things, the impulsivity, the high pulse rate. You can just sort of see physically a lot of the signs that somebody is going through drug withdrawals or has a drug dependency problem.

Once that becomes apparent, the defense attorney -- and I speak about the Public Defender because we are the ones that are at that first level -- will then decide whether the person is eligible for many of the programs. There are drug diversion programs in California that you qualify for, you know, for the first time.

If you are under the influence for the first time, you can qualify for a Penal Code, Section 1000 program, and that tends to be the lowest level of outpatient treatment that you can do.

And those programs basically call for you to be released to the community, and then you just attend through probation direction these programs. And if you complete them successfully, you can then have your case dismissed.

MR. JONES: And that's with a person who has never been arrested before?

MR. VARELA: It sort of tends to be for the person who is not arrested.

MR. SCHECHTER: No plea is needed there initially?

MR. VARELA: Not in that PC 1000 program.

But most of the other programs in our county are post-plea programs. I know that in San Francisco, for example, there are a lot of pre-plea programs, but most counties are going to post-plea programs, simply because of the politics. You know, the D.A.s in a lot of other counties are just much more intense about maintaining control of these sort of entry gateways to these programs. So they set up eligibility criteria that can differ in different counties except for Proposition 36, which is statutorily sort of created to include all nonviolent offenders whose actions could be focused.

MS. KELLEY: So, in your opinion, the D.A.s are basically the gatekeepers to these programs versus the Courts or the defense attorneys?

MR. VARELA: I don't think it's in my opinion. I think

legally. Legally, it's statutorily set up, at least with Prop 36, that they make the determination as to whether somebody is eligible.

But because Prop 36 is so focused statutorily, they don't have as much power as they do in drug court.

MS. KELLEY: So is there an avenue for a defense attorney to appeal that decision or issue an objection?

MR. VARELA: It -- one of the things that we try to do is negotiate our way out of the limiters, the cases that limit.

For example, in Proposition 36 if you have a qualifying crime but you also have an attached nonqualifying crime, that may make you ineligible.

So what we will do is negotiate away the nonqualifying crime for the purpose of getting the person into Proposition 36 treatment.

And so can you appeal to the judge? In some cases you basically appeal to the judge, get denied, and there has started to become law from the appellate courts as to what qualifies and what doesn't qualify.

MS. YOUNG: Interesting.

MR. VARELA: And so you have that same sort of thing.

But, again, most of it is so clear that -- that you have a situation where statutorily you are getting in there.

In our county in particular, there was initially a big fear that the D.A.s were going to add cases in order to keep

people from qualifying. And it was more anecdotal, to be honest with you, than real. Because I at one point sent out a department-wide e-mail and said, "Look, give me the case -- any case in which the D.A. has filed something that keeps the person from becoming eligible for Prop 36."

Well, they really couldn't give me any. It was more one of these anecdotal sort of creations.

And if in fact the person really had a drug problem and just by the nature of the stop, the person had a nonqualifying crime, the D.A.s were actually dismissing stuff.

So we really weren't seeing somebody that was, you know, harshly attempting to keep people out of drug treatment. I think initially that was the fear, people rumored about the fear, but in reality we weren't finding that.

MS. YOUNG: So when you say the "nonqualifying," and you referenced that it had to be a nonviolent set of charges they were adding -- the fear was they were adding, let's say, an assault kind of conduct or --

MR. VARELA: No. Sometimes just having a DUI. You may have a possession case, but you have a DUI attached to it that would disqualify you. There are some other traffic type crimes that would potentially disqualify you.

And oftentimes, you know, we were finding in many instances that the D.A.s were in fact dismissing those cases or focusing on the drug treatment portion of it.

So we weren't running into the problem of not being allowed to enter the gateway. But we still have to go through that gateway. They still were the person that did something that allowed us in.

One thing that is very unique about Proposition 36 in California is there is no suitability requirement. When I spoke about the initial diversion program that's available to the first timers, there is a suitability requirement. That is to say, the Court can say, You know what? Yeah, he qualifies statutorily, but probation, myself and the D.A. don't believe that the person is suitable for treatment because they have failed the treatment before, excessive criminality -- whatever it is, they could actually find the person not suitable.

Proposition 36 when it was voted by the voters and the drug alliance that sort of supported the statute wanted to make clear that the D.A.s and the Courts couldn't have that suitability trump card. They wanted to ensure that as many people that wanted treatment could have treatment instead of custody.

MR. JONES: Is that because that there was some -- something more than anecdotal evidence that the suitability aspect was being used in a harmful, discriminatory some kind of way?

MR. VARELA: You know, I can't say -- point to a study that was done that showed that. But, anecdotally, that was a

concern. That was a concern that PC 1000 was limiting people, first of all, to first-time arrestees and arrestees with very little record. And then the suitability thing in many courts, you almost knew that the probation officers would not find a person suitable. I mean, that's just the way it went.

And the more conservative the county in California, the more you saw that.

In adult drug court you had the same sort of suitability opt-in, opt-out sort of thing. And -- but in Proposition 36 you didn't have that.

MR. SCHECHTER: And that basically impacted the prosecutors; right? Because once you take away law enforcement suitability requirement --

MR. VARELA: It did.

MR. SCHECHTER: -- it really forces everybody in; right?

MR. VARELA: That's right.

MR. SCHECHTER: And that was the idea?

MR. VARELA: That's right.

MR. SCHECHTER: So the concern may not have been totally political. It may also have been -- and you tell me if I am right or wrong -- that the voters wanted drug treatment in that state. So they wanted all these people with drug problems funneled into the system.

MR. VARELA: I think that's very clear. And in our county 67 percent of the citizens really wanted it. And I think

that's pretty much close to what the statewide average is. People wanted treatment. They realized -- and I think it's becoming much more apparent to more and more people -- that the drug laws were really a little bit more excessive, much more excessive than necessary, and that treatment is what they wanted.

And I think a lot of that came because family members of addicts were really in support of this. I think that addiction supposedly now affects one in four people in some way. And so people seeing that wanted to see this other alternative.

And so it passed overwhelmingly in terms of that. And I think they didn't want anybody, the courts or the D.A.s, to be able to keep people out. They wanted treatment. That's what they wanted to be able to do.

MR. SCHECHTER: So now you are in. Now you have passed -- you are eligible.

MR. VARELA: Well, they still have adult drug court.

MS. YOUNG: There are different courts.

MR. VARELA: And so you go through PC 1000, Prop 36, then adult drug court. Adult drug court has suitability gateways, and those are usually two-week, opt-in/opt-out options at both the team's discretion and the participant's discretion. The participant can choose to say, "No, I don't want this kind of, you know, 24-7 review of my life. I don't want to have to be

testing randomly. I don't want any of this. And so I want to opt out." But . . .

MS. YOUNG: Are the drug court requirements -- is that set forth in the Penal Code or --

MR. VARELA: No. Drug court requirements are actually adopted, often using the national drug court standards. They aren't part of --

MS. YOUNG: They are not codified in the --

MR. VARELA: They are not codified in the Penal Code. These are independent programs that a court can create and the community can create, but they are basically created outside of the Penal Code system.

MS. YOUNG: Okay. But once they are created -- let's say Marin County has a drug court. If someone wants to find out what are the rules for that drug court, is there somewhere --

MR. VARELA: Yes.

MS. YOUNG: -- that they can find the rules?

MR. VARELA: Yes. What happens with drug court is when a person says, "You know what, I don't qualify for PC 1000, I don't qualify for Prop 36, but I may qualify for adult drug court," what happens is an attorney then meets the person. And so does the adult drug court director and the assessment specialist.

And what they do is they go over the program rules, and there are participant handbooks with all of the rules.

Everything is laid out completely. So the person knows exactly what they are getting into, and they sign a contract. They actually sign a participant contract that says, "I agree to abide by all of these rules."

MR. SCHECHTER: Do you have these manuals, these handbooks and contracts?

MR. VARELA: Yes.

MR. SCHECHTER: Could you send those to us?

MR. VARELA: Yes.

MR. SCHECHTER: Could we make arrangements for that?

MR. VARELA: Yes.

MR. SCHECHTER: Great.

MR. VARELA: And it has -- because it's a voluntary program, you have that kind of situation.

In Prop 36 it's more statutorily enforced because it also has, as one of its criteria, due process guards that necessarily don't exist in adult drug court.

Under the Prop 36 regime and regulations, what you have is a person is allowed up to three violations, basically, of program rules or drug-related violations. Okay? And there is -- a person is entitled to basically the equivalent of a probation violation hearing. They are allowed a lot of things statutorily to protect themselves.

And that, to be honest with you, has led oftentimes to this conflict between the defense attorney and the other

members of the Prop 36 team. Because most courts have taken the adult drug court model and tried to impose it on Prop 36, using the same team approach, using the same sort of clinical approach, the same sort of team leaders -- you have an assessment specialist, you have a Public Defender, probation officer, very much the same sort of team concept.

And in drug court you are not entitled to all of these hearings. You know, the team decides -- you know, say we get around a table, and the person is charged with what is called a "dilute," that somehow their urine was diluted and couldn't therefore be tested. It's the equivalent of a positive test. It's sort of one of the rules that you agree to accept, that if you deliver a dilute test.

And dilutes happen for a bunch of reasons, and oftentimes, if not most of the time, is a sign of relapse activity. It's just the first sort of signs. People will drink a ton of water to try to hide from the program.

But it's -- but in those instances rather than be entitled to a hearing, the team will vote as to what should happen to the person. And you, as a defense attorney --

MR. SCHECHTER: You are on the team.

MR. VARELA: -- you are on the team. You are on the team. Very, very difficult.

MR. SCHECHTER: You have got to vote?

MR. VARELA: You have to vote, and you have to try to

persuade --

MS. YOUNG: Does your client sign a conflict waiver before --

MR. VARELA: They do. They do. They basically are told -- a defense attorney in the adult drug court realm --

MS. YOUNG: Is not your attorney?

MR. VARELA: -- is a very different -- they are a team member. They are a team member.

Let me tell you something. The face that you are showing, Vicki, is the face that a lot of attorneys have when they get placed in this position, and that is that notion of almost a dissidence. I am no longer an attorney.

And when you go to adult drug court training, you basically learn that there is a reason for it. The team concept actually is the best way to sort of -- to ensure that you have a unified response to addictive and relapse behavior such that the person is confronted more directly and is able to modify their behavior accordingly.

However, it becomes very difficult for defense attorneys.

MR. SCHECHTER: Could I ask you a direct question?

MS. YOUNG: One thing.

MR. SCHECHTER: Go ahead.

MS. YOUNG: One thing is that in the P.D.'s office, I am assuming, or even an alternate defender, they might have one

person or a group of attorneys that do drug court. So they are part of the model.

But let's say someone else -- so they're -- you know. What happens if someone -- you know, their family has retained counsel, but that person then wants to do drug court? So the retained attorney is then assumed to become part of the team even though they didn't receive the same training that, let's say, the drug court P.D. assigned to the Court would have received?

MR. VARELA: We are addressing this issue now in Marin County because it has become an issue.

MS. YOUNG: Because they have money.

MR. VARELA: One of the things that happened is that it was understood that if you went into adult drug court, even if you have retained counsel, retained counsel gave you over to the Public Defender; okay?

MS. KELLEY: That's interesting.

MR. VARELA: So people basically saw that as the victory. Many private attorneys say, well, okay, that's it. You sort of take over with regard to that.

However, one of the things that we have found was -- and we have just recently, as Public Defenders, told the adult drug court team that if somebody has retained counsel, we are not going to represent them because the reality is that they have the money to hire counsel, and the time that we spend

with them, we are not spending with indigent clients who don't have the money to afford counsel. And, you are right, in Marin County we have people that do have that type of wealth.

We also have attorneys who have been trained in sort of adult drug court therapeutic court models because we have done training with the private bar in our county so they are aware of what these situations are.

And in fact we recently said this person does not qualify, and the private attorney who had it before had the sensitivities and the background and training to work with the team. And so now she is being represented by private counsel on a team. No reason that the private attorneys who are interested in doing that shouldn't be allowed to do that.

There was a concern that private attorneys would not have that team sort of focus that Public Defenders do because they are sort of part of the team.

Personally, I think that it's important that private attorneys be there, if for no other reason than we are allowed a second voice in the room.

MS. KELLEY: So they are allowed to advocate?

MR. VARELA: They are allowed to advocate.

MS. KELLEY: Okay.

MR. VARELA: The private bar people are allowed to come in and advocate, which I think is fine.

MR. JONES: But wait a minute. Let me understand. When

you say a second voice in the room, does that mean that the private lawyer is there in addition to the Public Defender?

MR. VARELA: But the Public Defender doesn't really do anything for the client. They sort of sit back and let the person advocate. But it's always nice just to have a second person in the room.

MR. JONES: But if the Public Defender is in the room, then they are not servicing the indigent defense client in the room next door. Whether they are effectively participating and voting and doing all the other things that -- if their time is spent in that room in conjunction with a private lawyer, isn't it sort of the same thing at the end of the day?

MR. VARELA: Well, let me -- let me explain to you that the time that I am speaking about is the time in adult drug court that is called a staffing. And a staffing is what happens before we go talk to our clients. It's the round table.

MR. JONES: To run through all the clients?

MR. VARELA: To run through all the cases and things of that nature.

MR. SCHECHTER: Right.

MR. VARELA: And one of the things that is really important is that whatever sanction is given to a particular client is in keeping with the sanctions that are given to everybody else.

And so the Public Defender has to be there just to

ensure that the indigent defendant's sanction isn't somehow harsher than somebody else. So in that regard you are going to see that.

MR. JONES: Let me ask you another question. This is a philosophical question. It's an ethical question, I think.

Is the -- is the mind-set of the Public Defender that while I am participating in drug court and while I am part of the team, I am suspending my, you know, ethical obligation to be a zealous advocate for my client, and I am participating in this group collective sort of thing, or is the mind-set that I am not suspending my obligation to be a zealous advocate but in fact by voting to, you know, sanction my client in some way for a diluted urine sample, what I am really doing is being a zealous advocate for him because -- because I am doing what's in his best interests in the long run and helping him to successfully complete this program? What is the mind-set?

MR. VARELA: It's the latter. It's the latter.

MR. SCHECHTER: And that's how you get around the ethical program; right?

MS. KELLEY: Wow.

MR. VARELA: The focus is that what can best be done to ensure that this person basically reaches the level of sobriety and gets to the point of being able to get off their dependence on drugs and be able to lead a productive life.

And so the mind-set and the focus really is on that

latter thing. It's a -- what some people refer to as a holistic sort of approach in addressing the client, does that mean that you aren't becoming a zealous advocate for your client when what we by nature would see as a due process violation of a client.

No. Attorneys, basically, if they see that the program rules are being used to unfairly target a client or to unfairly treat somebody, we basically go back into zealous mode, litigation mode. We do all the stuff that's necessary with regard to that.

And, you know, a lot of times a person can just opt out, say, "I want out."

MR. JONES: At any point?

MR. VARELA: Yes. At most any point, they can just say, "I want out."

MR. JONES: Even when they have already pled guilty?

MR. VARELA: Yeah. But then, as a result of that pleading guilty, they go back to the sentencing court.

MR. JONES: To be sentenced?

MR. VARELA: To be sentenced.

MR. JONES: It's not that they can vacate the plea. They have to go back and get sentenced.

MR. VARELA: Yeah.

MS. KELLEY: Even if --

MR. VARELA: That's the advantage that the prosecutor and

the courts want in a post-plea program.

MR. JONES: I understand. Right.

MS. KELLEY: Even if the person does want to stay in the program, depending upon the nature of the sanction, is there a possibility of going back in front of the judge or appearing in open court, or is the Court completely out of the process now except if a client wants, or a defendant, an accused or whatever wants to go back through the regular system?

MR. VARELA: An accused can always opt out and say, "You know what? I don't want anything to do with this." And they can go back to a home court to get sentenced.

In a lot of drug courts, however, if it's a post-plea court, the drug court judge will sentence them and so they don't go. But in Marin County we have a unique situation now where we have a commissioner that is doing drug court, and, as a result of that, they -- the people do go back to a sentencing judge. We are trying to change that a little bit. But at this point they do go back to a sentencing judge.

MR. JONES: Is the judge part of these staffing meetings?

MR. VARELA: Yes, the judge is part of the staffing meeting.

And one of the things that -- if you think it's tough for us, oftentimes it's very tough for the judges.

MR. JONES: Sure.

MR. VARELA: Because they have to maintain this true

impartiality. And the very good drug court judges are as wise as Solomon. I mean, they are very good at it. And that's why when you look at very successful programs and you see the results they have, it tends to be because you have a very strong, fair-minded judicial officer that is trusted by everybody.

I mean, and those of us that have worked in front of really good judges, you know what that means. I mean, you can do an open plea with a judge, and everybody says, "Are you crazy?" And you say, "No, I am not crazy because I know this judge will do the right thing."

And so it's that dynamic that works in the criminal justice system works best in adult drug court. And that's why oftentimes it's very particular judges that will take on drug court assignments.

MR. SCHECHTER: Can you tell us a little bit about that system, about the judges? How do they get into the drug court? Who picks them? How long do they stay?

MS. KELLEY: How many do you have in each court?

MR. VARELA: I am going to answer that case broadly with discussing different counties in California. Because most people that are involved in adult drug court sort of self-select. They are interested in the way the court works. They are interested in the fact that it's a therapeutic court with restorative justice principles. It's just part of their

makeup.

Many of them belong to problem-solving academies that the judges have. I know there is one in Williamsburg, Virginia. And many of them belong to those things. And for them, you know, philosophy-wise and career-wise, this is what they became judges for. They wanted to have hands-on work with people where they could assist them in really getting to the root causes of crime. That was very essential to them. So a lot of them self-select.

In some instances the courts has a, you know, a meeting of the judges, and the presiding judge will appoint somebody is another way of doing it. But for most people they self-select.

And the very successful programs around the state really are very connected to the personality of that particular judge. You know, you go to Santa Clara and you speak about drug court, you speak with Judge Manley. You go to other places in California, it's this particular judge. Monterey County does some great work in both Prop 36 and adult drug court, and they will speak about a particular judge. So it's very personality driven in terms of the way these courts are run and created. And that also lends to stability. It lends to stability of the Court overall.

In drug courts where you have seen sort of problems, it's where nobody really wants to do it. You know, and you

don't have somebody who has committed to it in terms of the process.

And so that's the way that the judges --

MR. JONES: You see, I would think just the opposite. I would think that being so dependent on a particular personality would lead to instability in that -- in that once that particular personality is no longer there, the Court could sort of, you know, implode or -- or that, you know, from county to county to county to county, from state to state to state across the country, you are going to find sort of a range of horrible situations to very good situations based on the fact that it's so personality driven.

MR. VARELA: And that is the problem in those areas where you don't have long-sitting judges. In the areas where through health and career longevity the judges stay for a period of time -- like, Judge Manley, he has been there probably 15 years doing adult drug court. You're right, in those instances it's very stable.

But in those areas where it isn't, where judges are shifting, where, you know, they are assigning it to a commissioner for six months and then to another commissioner for six months, tremendous instability in these programs.

MR. JONES: So in your opinion, in your expert opinion for this committee who is looking at this question nationally, what is the answer to that problem?

MR. VARELA: The answer to that problem is to do exactly what I think a lot of these judges are trying to do, and that is create career opportunities for a judge who really wants to do this type of assignment, to become an expert at this type of assignment, to actually sit down there and say, "Yes, I see therapeutic courts as my career focus," and that it's okay for a judge to not do a rotation through civil and then criminal and the other rotations but, in other words, to say, "This can be done."

I also think it has to be done in a way where the training is such that the expert trainers can say, "You know what? This guy may want to do it, or this person may want to do it. They are not qualified to do it." That there be certification to have that kind of training because it does call for somebody who is patient, impartial, professional, and is able to maintain the trust of all the participants on the table to know that nobody is going to be treated unfairly.

Because the sanctions are delivered in this sort of back room staffing sort of reality, I think that the importance of impartiality of the judicial officer is incredibly important.

MS. YOUNG: I just have -- because we didn't get through what the time line was. And, as you said on two of the courts, you have -- to get into the program you have entered a guilty plea.

So if, in fact -- how much window of time is an attorney, especially in the P.D.'s office that is going to have a larger caseload -- how much time do they have to review, investigate, you know, a case and decide whether there may be any meritorious motions to be litigated? How much time are they allowed to do that before they decide, oh, we are going to go to drug court?

MR. VARELA: In Marin County -- and I can only speak for Marin County -- as much time as they need, to be real honest with you.

MS. YOUNG: So you go through prelim and then go to drug court?

MR. VARELA: Our focus is that you look at the legal issues first. There is no reason for an innocent person to go into drug court, into any of these programs, okay, unless they are adamant and they choose to waive whatever rights they have legally.

Our focus is to first and foremost be criminal defense attorneys. And it's only when we see that there are no meritorious motions, that the client wants to do this, there is no reason to go to trial, that this will ensure they get out of jail very quickly, that those are the things that go on.

Now, you bring up a point, especially as to Prop 36, that oftentimes will truncate the time period that you spend

on them. Because Prop 36 -- once a person sort of says, "I want Prop 36," they get out of jail (indicating). They get out of jail immediately; okay?

And so for a lot of people, you know, you will tell the client, "You have a great search-and-seizure motion."

"No, I want out of jail."

And that's normally what you get when you are dealing with people that are in the midst of addiction. They just want to get out of jail. They don't have, you know, oftentimes the wherewithal to be bailed out. They don't have the record of stability of showing up to court such that they would be released on their own recognizance. But if they qualify for Prop 36, they get out.

MS. YOUNG: Now, do they get out to go to a program, or do they get out to go home?

MR. VARELA: They get out to meet with the assessment specialist and go home for the most part. They go home. In some rare instances where the addictive -- the behavior is so over the top, there may be a situation where everybody agrees that it's better for them to transition first to a detox and then out to the community. And normally it's where we know that if the person goes out, they basically are going to die. I mean, their health is just that intense. And you can oftentimes see that. But that's a rare, rare, rare situation.

Most people, literally, the moment they qualify for

Prop 36, they -- we make the motion that they be released, the assessment specialist will set up an appointment for them, and they get out. They meet the assessment specialist. They then go to the court the very next week. And when they attend the court, they are then given this bridge program that says, "You have got to attend meetings until you are placed into your drug treatment program with the probation department." They will be having these meetings, and they are not with the probation department, per se. They are also facilitated by the drug court assessment specialist. And they start doing a lot of things. And they start doing a lot of community building in those courts. They do a newsletter together, you know, and they do a lot of things together as they sort of are working towards sobriety. So that's the route they go to until they are referred to one of 78 programs.

And that is the one advantage that is very important in Prop 36, is that we have all kinds of programs available. We have gender specific programs. For example, if it's necessary that -- that the assessment specialist believes that the -- say, for example, a woman would be better served by going to a gender specific detox -- drug treatment program. Marin Services for Women, we have that.

One of the things that we have found has been quite helpful, especially with younger women, is when they go to gender specific programs, they are also mentored by wiser

women and mentored in an environment where they -- their needs are dealt with in such a way that they come out stronger, and they come out better.

We also have Marin Services for Men because there are some instances where they can just tell by the person's temperament that they would be better served by being in a gender specific environment.

And then we have other programs.

One of the things that sometimes happens -- and I caution anybody involved in these things -- is you have to be very careful of creating a single vendor adult drug court or Prop 36 system. Single vendors basically are you either work on our program or you fail.

The one thing about having numerous vendors -- we have seen it both in the adult -- in juvenile drug court and in Prop 36 -- is a person may fail in one program because it wasn't the right program for them. But you put them in another program, the dynamic is different and they succeed.

MR. JONES: That was one of the questions I was going to ask you. Is it your sense that drug court, wherever it is, is to some greater or lesser degree at the mercy of the quality of the programs available in that community?

MR. VARELA: Absolutely.

MS. YOUNG: And then Marin County being a richer county has more programs. So if we look at another county that doesn't

have -- I mean, let's just take Modoc, for example, you know, wherever that -- we are probably lucky if they even have one vendor. So I am just saying if it . . .

MR. VARELA: All true. All true.

And in fact one of the things that you start seeing outside of Marin County and when you go to other places is you start seeing many faith-based treatment programs. In Los Angeles County you have Victory Outreach, you have House of Metamorphosis, and all of -- many of those places tend to be faith-based treatment initiatives.

And I leave it to you as you do your research to determine, you know, which are the most effective programs. Because in some instances people that have been sent to faith-based programs do very well because they come from a faith-based family and culture. But others that don't come from that culture say, "Get me the heck out of here. They've got me kneeling and praying all day long. This ain't going to help me for nothing."

So it's knowing that you have to have a balance because the more qualified providers you have, the greater chance you have of actually getting this person through treatment.

And all the studies have shown that if a person gets treatment, they can reduce their harm to the community and lead productive lives. So every dollar spent in treatment

does have qualitative responses both to the individual defendant in a positive way and to their families.

And to me I think that whether it's drug courts, whether it's Prop 36, we need to get as many clients into treatment so that they get both the medical attention that they need and that they get the conflict resolution skills and life, you know, preparation skills that will allow them to become productive citizens.

MR. JONES: I know that -- I'm sorry. Go ahead.

MS. KELLEY: A few minutes ago you mentioned problem-solving court academies for judges, and you cited one in Williamsburg. Do you know anything about that? Are there other academies throughout the country?

MR. VARELA: I believe that problem-solving courts -- I call them "academies," but I think they may be called something else -- also exist in Reno, Nevada. They have conferences yearly, and they oftentimes work quite a bit with -- with drug courts.

MS. KELLEY: Okay.

MR. VARELA: And drug court professionals.

But the therapeutic movement is going into many other different areas.

MS. YOUNG: I saw it in domestic, too.

MR. VARELA: Yes. We are seeing family violence courts. And before it used to just be domestic violence. And now what

we are starting to see is that we need wrap-around services. And that is to say if we are really going to solve the problem, we have to make certain that parenting skills are involved in that, that if the children are involved, in schooling issues, that those things get brought into it.

We are in Marin County in the process of trying to create a family violence court. Our focus is actually, as Public Defenders, to ensure that the services that our clients receive are therapeutic in nature, that is to say that they are getting the family counseling, that they are going through the couples counseling necessary.

And we are running into some statutory schemes and some domestic violence advocacy groups that really don't want that. You know? In California we have a rule that says that couples -- a person who is convicted of domestic violence can't be involved in couples counseling with the alleged victim for 52 weeks, for a year.

MR. JONES: Wow.

MR. VARELA: And how are you going to --

MR. SCHECHTER: They are counterproductive.

MR. VARELA: Yeah, counterproductive.

And one of the things we are finding culturally is that in, for example, the Latino community, you know, most of these families just want to get back together. They are so dependent on each other financially that they want to get back

together. They have ties in their home countries that call for them to get back together, and yet we have models of response that are basically arrest and separate. Arrest and separate.

And so what we want to do is look at these therapeutic courts so that they really do give the therapeutic conflict resolution skills that many populations need.

One thing I hope that in my comments you understand is that I do believe in drug courts. I do believe in Prop 36. I do believe in treatment.

Are the issues that you bring up about what is the role of the defense attorney -- not just the Public Defender -- an issue that definitely has to be discussed to ensure that we not only are there but that we matter in a qualitatively zealous representation sort of way? I think those are incredibly good questions to ask, and I am glad you are asking.

MR. SCHECHTER: You think in your situation, your experience here in your county, that you are following that zealous advocacy?

MR. VARELA: I believe so. We may be driving some people crazy, but we are doing that.

MR. SCHECHTER: Okay.

MR. VARELA: And I can tell you that one of the initial responses is get us somebody else. This person isn't a team

player.

And what people don't understand is that you just can't do that. You know, because the next person will come in, and if they actually expect the second person to then back stab their colleague and say, "This person was terrible," that's not going to happen. The reality is by our nature, as criminal defense attorneys, we are taught to zealously represent people, and we are not going to sit at a table and see somebody beat up their client. And that dynamic will always exist.

MR. JONES: We are running out of time.

I just wanted to ask you one last thing in terms of trends in drug courts -- because I do think you speak very passionately about the possibilities. If you have in the domestic violence stuff and all that stuff -- if you have a person who successfully made it through drug court and has kicked their addiction, and you feel good about the possibility of that person's life back out in society, and they are headed towards graduation, is there anything that the drug court or that the team is doing or can do or drug courts are training towards doing to help this person become employable, to get job readiness skills, to get a job, to get their education, those sort of collateral types of things that ultimately ensure success out in the world?

MR. VARELA: Well, in order to participate in drug court,

you have to have a job. That's one of the first things. One of the first things that you are assigned is filling out job applications and getting a job. You know? And some people work for Goodwill Industries. They work for, you know, Starbucks. They work -- and, believe it or not, some of these larger corporations are -- know that these people are going through addiction and everything else, and they are actually happy to have these people because they know they are going to be drug tested. They know a lot of stuff like that. And they are actually very supportive of the people in these programs. So they are getting those skills.

But you bring up a very important point that we are dealing with in Marin County. And we just changed our -- what's called phase four. Because drug courts are basically phase one, phase two, phase three, phase four graduation. And one of the things we started seeing with a lot of people is they were about to phase four. They relapsed and relapsed horribly.

And one of the conjectures that many of us had was that people saw they were about to lose all the support, and so they were just scared to death. And, yes, they had had a job, you know, working at Jiffy Lube. I mean, they had some good solid jobs, but they were just so scared to lose this community.

And so we have changed our phase four to be able

address this situation, to make more of mentors of all of these people and giving them a collection of it.

And one of the things that many other groups have done around the state is they have created alumni groups, and they do alumni group activities. They go to baseball games. Have picnics. They go to movies together. And so a lot of that is going on in other places.

To give you an example, in Sacramento the Proposition 36 alumni group is called 36 Years to Life, to sort of say 36 got us to where we are going to have a lifelong program, and they do a lot of this kind of stuff.

So there is a lot of community building going on, and so it's really good for our clients.

MR. SCHECHTER: Okay. Thank you.

MR. JONES: Great. This has been fantastic. Thank you very much.

MR. SCHECHTER: If you could get me those manuals, that would be great.

MR. VARELA: All right. Thanks.

(Recess taken at 10:22 A.M.)

(Proceedings resumed at 10:29 A.M.)

PETER BANYS, M.D., MSC.,

called as an interviewee, interviewed as follows:

MR. SCHECHTER: I think the forum is very open and easy to do. We would like to hear from you, a little bit about your

knowledge and background, and what you know about problem-solving courts and how you have been involved with them, what observations you have made, what things you think are really bad, what are really good, what solutions you propose, or things you would like to have done. And then we would like to ask you some questions --

DR. BANYS: Okay.

MR. SCHECHTER: -- that go along with some of the ideas that we have.

DR. BANYS: Good.

MR. SCHECHTER: Shoot.

DR. BANYS: Well, why don't I just say a couple of things that I would expand on.

In talking about drug courts, I would say that the first problem -- well, let's not start with the problems. Let's start with saying that I am a board member of the American Society of Addiction Medicine and a past president of the California Society of Addiction Medicine, and so I have a lot of contact with physicians who work in addiction.

And for the most part physicians who work in addiction have a generally positive impression of drug courts because they see them, as you said, trying to solve problems rather than just punish.

Having said that, we do see some problems. The first problem we see is very inconsistent standards. We think there

is a kind of cultive personality. We see judges who literally are proud of saying, "My way or the highway."

At the other end of the spectrum, we see judges that we consider as thoughtful and as compassionate as anybody we know and enormously effective.

And I think that we are not clear whether there are national or even state standards for a number of things.

Now, the issue that most concerns addiction physicians is the issue of methadone. There are both jurisdictions and courts, let alone counties, that will not permit methadone as a legitimate treatment for heroin addiction.

From a research point of view, methadone maintenance is the gold standard of treatment for heroin addiction. Nothing begins to compare with it for efficacy or effectiveness.

Having said that, many places simply will not permit it on ideological grounds. In California small counties can't afford sophisticated methadone clinics. In other counties they oppose it on the grounds that methadone is, quote, "just another addiction," end quote.

And some courts basically will not consider an arrestee to be making progress if he is on maintenance, if he is on methadone maintenance. And so we have situations where previously stable people have been ordered off of methadone and have relapsed.

Well, why do people relapse when they stop methadone maintenance? Because over 90 percent of them will. That's the nature of heroin addiction. The relapse is almost guaranteed when you stop methadone maintenance.

Today we have a new drug called buprenorphine, B-U-P-R-E-N-O-R-P-H-I-N-E, which is what we call a partial agonist. It has very interesting properties and in many ways is more attractive than methadone.

Let's start with the properties. The first property is that it is much more safe in an overdose. It binds very tightly to opiate receptors but does not stimulate them as effectively as heroin or morphine or even methadone. And so it takes care of some of the opiate business in the brain but makes it much harder to stop breathing or kill yourself in an accidental overdose.

The second great feature of this medication is that it doesn't require a methadone clinic. It can be prescribed from a physician office if that physician has taken eight hours of special training. And this makes it available in rural counties, for example, which is where we think we need to see more of it, particularly now that Oxycontin, O-X-Y-C-O-N-T-I-N, a prescription narcotic, is being misused in such epidemic proportions, not only in California but the rest of the country.

So to sum that up, I would say that the -- the issue

is that we have a very effective treatment that many counties, many courts, refuse to consider effective and in fact order stable people to go off of it.

Now, some of my friends have called that "practicing medicine without a license," because it's actually quite dangerous. In fact, we have one celebrated case, probably about five years ago now -- I don't think it was a drug court -- in Sacramento where a very stable individual with children was ordered off of methadone, relapsed and died.

MS. YOUNG: And if it wasn't drug court, a condition of probation or something?

DR. BANYS: Yes, something like that. I don't know the details of that. I can tell you who to contact to get those details.

MS. YOUNG: Oh.

DR. BANYS: That would be Jack McCarthy. Jack McCarthy is an addiction psychiatrist in Sacramento. And I think it was one of his patients. I am not even sure about that.

So that's a brief synopsis of the problem around methadone, which is that the idealogues tend to prevail over the empirical data. And that's true in politics as well as in the courts.

The second issue that has come up for our organization is that much to our disappointment, drug courts organize to oppose Proposition 36. Proposition 36 is a public initiative

that passed by 61 percent of the California voters in the year 2000.

It is known officially as the Substance Abuse and Crime Prevention Act of 2000, unofficially as the Treatment Rather Than Incarceration initiative.

$120 million per year were allocated for the next five years to divert drug possession cases. There were all kinds of exclusion criteria about who would not qualify, prior arrests and --

MS. KELLEY: Trafficking?

DR. BANYS: I'm sorry?

MS. KELLEY: Trafficking?

DR. BANYS: Yes. Trafficking is not allowed.

MS. KELLEY: Okay.

DR. BANYS: Violence related, not allowed. Lots of things are not allowed. It's basically meant for the possession of drugs.

And so this passed overwhelmingly. But the drug court judges organized under the leadership of Judge Steven Manley from San Jose, who I know and like, to fight this quite vigorously.

Then after it passed, Steven and I and Judge Anna Marie Luna were appointed to the Proposition 36 advisory board for the Department of Alcohol and Drugs. This was the department running Prop 36. So we were all sitting in a large

room with maybe 25 other committee members for the next six years, trying to make Prop 36 work and work better.

What happened over time is that criminal justice lobby -- the spokesperson was -- I am trying to think of his name. Well, it will come back to me. But, basically, the person representing sheriffs, prosecutors, narcotics officers and so forth, took a very hard position that they would oppose Proposition 36 at every turn and that they resisted working a compromise that many of us, including me, worked very hard on.

So let's take a side trip into the compromise.

MS. YOUNG: Excuse me. Is this after Prop 36 passed?

DR. BANYS: Yes, after it passed.

MS. YOUNG: You are not talking about they are trying to defeat it. You are saying once it's in place, they are trying to subvert it or something.

DR. BANYS: They have always been trying to defeat it.

MR. SCHECHTER: But that didn't work. It didn't pass by the voters, and now it's underway.

DR. BANYS: Yes. But they haven't stopped their efforts to undermine it and put it out of business. And how they do that -- and I can go into how that's being done.

But what we decided, a number of us who were proponents who decided this was a useful and valuable thing to do, we decided that we would try to have a collaboration so we wouldn't be at odds.

Because, basically, what you have is you have one side saying, "Treatment works," and the other side saying, No, we don't think so. And, besides, we have to put people in jail to make them, quote, 'accountable.'"

So the notion -- I would say the single and tractable dispute between criminal justice and treatment became flash incarceration, the concept of putting somebody in jail to get his attention for two to 45 days.

Our position, as treaters, was that when we went to the literature looking for support for flash incarceration as a robust intervention tool, we couldn't find it.

We found support for many kinds of judicial sanctions, including positive sanctions, rewards and benefits, but we really could find no meaningful literature to speak of about so-called "flash incarceration."

So we thought, let's -- let's not be at odds about this endlessly year after year, because that's really what it was turning out to look like. Why don't we try to build compromise that both sides agree to and float all the boats? We need more money for this initiative. Let's do the following.

And what we offered was what we called the California Treatment Grid. What we wanted was a crosshatch grid in which we assessed on one axis criminal recidivism, in other words, the intensity of criminal justice needs. These are the

recidivists, the career criminals, the particularly difficult offenders. And we wanted them, you know -- how to put it -- assessed in terms of how much supervision and how much intensity of judicial work they needed.

Then on the other axis we wanted a similar assessment of severity of psychiatric addiction disorder, everything from the he can get by without patient treatment to the higher level where he needs to be in residential.

The trouble, I think, is on both sides on the judicial side, as well as the treatment side. There is a tendency to say that one size fits all. There is a tendency for the courts to say, "Well, we -- we will hit you with a stick." And there is a tendency for the treaters to say, "We will put in you a group."

And we thought that that's not really fine enough, that we could do this crosshatch, and we could put people in the right location on the grid in terms of how much intensity and supervision they would need. So we thought we had a winner.

We spent then about ten months negotiating, in meetings and in various places, L.A. and so on, and we thought they were negotiating in good-faith.

And what happened was really they weren't. They were writing a bill that we did not know about called SB 803. And this was a bill that would functionally gut Proposition 36 by

returning incarceration to the judges.

And the Trojan horse for this was that the return of incarceration for these possession offenders was allegedly going to turn all of California's courts into the drug court model.

We disputed that. We felt the drug courts have a great deal more resources than merely putting people in jail for the weekend. So we felt that the drug court model was expensive; we thought it had more resources; we thought it had more accesses to psychosocial services, assessments, and many other sanctions.

But the pitch that was made across California was that allowing judges, all judges, to do flash incarceration would improve accountability and motivation and would import the drug court model into California's courts. So that's the bill they wrote.

And they had no interest in getting signed on to a grid where we would sort of sort sheep from goats, where we would literally try to figure out who needed more and who needed less and do it in kind of a responsible way with both sides doing an assessment.

MR. SCHECHTER: Did the bill pass?

DR. BANYS: The bill changed. It morphed overnight because of our opposition and other opposition. It became SB 1137. And that was a rider bill. It was meant to go through as a

rider.

It then actually went through, and we took it to court. So it got an injunction in court. We felt that it was unconstitutional.

MS. KELLEY: And who was the "we" at this point?

DR. BANYS: "We" was the original proponents, Drug Policy Alliance, with support of the California Society of Addiction Medicine, the California Medical Association, and the California Psychiatric Association.

We felt that this was undermining the public's intent for a public health model by essentially returning all incarceration powers back to the judges, which was the essence of the proposition.

So we -- that is now tied up in an injunction in, I think, Alameda count.

MR. SCHECHTER: So, in other words --

MS. YOUNG: So who issued the injunction, Alameda County?

DR. BANYS: I think it's Alameda County.

MR. SCHECHTER: So the injunction is in effect preventing SB 1137 from taking effect?

DR. BANYS: Right.

MR. SCHECHTER: Which in effect leaves Proposition 36 in place?

DR. BANYS: Yes.

So now the strategy is to defund it. So what's

happening --

MR. SCHECHTER: Defund Proposition 36?

DR. BANYS: Yes.

So now what's happening while this rests, waiting for whatever happens in court, is that the Governor's office and others are looking for ways to realign the budget, take money out of Prop 36, put it into offender treatment and so forth.

What we feel is happening is slow strangulation of Prop 36, that it will simply be -- the oxygen supply will be cut off to Prop 36 within a few years. That's pretty clear.

(Telephone interruption in the proceedings.)

DR. BANYS: Excuse me. Can we just stop for a second? I actually have a day job.

(Pause in the proceedings.)

MR. SCHECHTER: Let me ask you some questions.

One question is you started out by saying that you were disturbed by the lack of national standards. How did that come about?

DR. BANYS: I don't know.

MR. SCHECHTER: You just --

DR. BANYS: I don't know enough about drug courts so I don't want to pretend to be a drug court expert. I am not.

MR. SCHECHTER: Right. That's a problem that has been discussed, however, in the Association?

DR. BANYS: Among doctors. I don't know. For all I know,

there are national standards, but it's not what we see operationalized.

MR. SCHECHTER: Okay.

DR. BANYS: And it's certainly not around methadone or buprenorphine, which is where the rubber meets the road often.

There is a tendency to treat methadone as an addiction rather than as a treatment.

MR. SCHECHTER: Okay.

DR. BANYS: Now, a side bar on this is that in February the inspector general of the State of California published a report on the dismal state of in-custody treatment in California. He basically said -- he all -- he virtually called it a billion dollar boondoggle.

The data that was assembled showed that in-custody treatment for substance abuse produced worse results than no treatment at all.

MS. KELLEY: Wow.

DR. BANYS: And wrote this scathing report.

This report follows on the back of other reports that have essentially castigated the healthcare system in the prisons in California so much so that I think they are in federal receivership.

MS. YOUNG: Yes. There is a federal case on that.

DR. BANYS: This became a scandal for the Governor's office. Now you have got all the treatments, all so-called

rehab and treatments in California prisons being declared by blue ribbon panels to be a joke.

MS. KELLEY: So who is the -- who benefits from the boondoggle?

DR. BANYS: I will come back to that --

MS. KELLEY: Okay.

DR. BANYS: -- if I may. Be sure to ask me about that.

MS. KELLEY: I will.

DR. BANYS: So, literally, in the middle of the night, the top people in the Senate and the Assembly got together and wrote a bill and passed a bill in May. And I am not kidding when I say "middle of the night." This bill put $7.3 billion back into the prison system in California.

MR. SCHECHTER: Wow.

DR. BANYS: It will add 53,000 prison beds to a system that currently has 172,000 people in prison that was meant to hold about 85. So literally, the overcrowding, is a factor, too.

Where is most of the overcrowding coming from? Drug arrests. We are incarcerating tens of thousands of people for drug possession this year compared to hundreds back in the 1980s before the war on drugs really took off. And there are graphs and charts to show you all of this.

So what we have now is we have a booming prison industry that is going to get 55,000 -- 53,000 more beds.

Well, how much of the 7.3 billion is going to go to

rehab services, mental health, substance abuse and so forth? The best estimate is around 50 million.

And the person who has been assigned to take that over is Kathy Jett, the former director of the Drug and Alcohol Department. Kathy comes out of incarcerations, took over Department of Alcohol and Drugs, probably the best director they have had in 20 years in very difficult times. And now she is the rescue wagon for the Governor for the prison rehabilitation system. They are hoping Kathy can whip it into shape. And she is solid. She is good.

MS. YOUNG: Is she on this panel you said back here?

DR. BANYS: Well, she is the director of that panel.

MS. YOUNG: Oh, okay.

DR. BANYS: Yeah.

So that's the state in California. We have Prop 36 is on the books. It's going to have the oxygen turned off little by little over the next few years.

The prison industry is booming, and we have the highest incarceration rate for anything but also the highest incarceration rate in the country for drug possession.

So what's in it for the boondoggle?

We have a system in California where the prison guards, probation officers, parole officers are all in the same union. This union is extremely powerful. It tithes its members. You have to surrender a part of your paycheck every

paycheck to the union. They donate huge sums of money to both political parties, particularly the Governor's campaigns.

MS. KELLEY: So this would be, what, ASME, SEIU?

DR. BANYS: No, it's CCHO or something like that.

MS. YOUNG: It's their own.

DR. BANYS: Correction officers -- I don't know.

MR. SCHECHTER: Who is in that union, correction officers?

DR. BANYS: Basically, the prison people, the parole people and the probation people.

California has the highest return to prison rate in the country of 70 percent for violating parole or probation, 70 percent.

Many of us feel that this is an industry that needs arrestees and prisoners as raw material for its work.

MS. KELLEY: Employment.

DR. BANYS: Yeah. It's a full employment package. They get tremendous overtime. These prison guards often average over 100,000 in income.

MS. YOUNG: We have read these newspaper articles that say who were the highest paid people, you know, and they always --

DR. BANYS: They get paid much more than school teachers.

Now, you could say -- you could argue if you were a Marxist that there are two industries competing for the same raw material, the treatment industry and the prison industry. They -- one side wants to treat. The other sides wants to

incarcerate.

The flaw in that, I think, is that the treatment that is being delivered is community treatment. It's not docs like me. It's not private practitioners. It's really not even Kaiser so much. It's community mental health, community substance abuse treatment programs, which are underfunded, understaffed and down to the bone anyway.

But these are the systems that have been treating these people for the most part. And, you know, they got a substantial amount of that 120 million.

There is also data, which I didn't bring because I wasn't sure I would go on to the Prop 36 sidetrack here so much, but there is lots of data about the effectiveness of Prop 36, although what you have is you have improvement rather than cure. You know, the criminal justice people run around saying, you know, they are not being cured. Well, big surprise. That's not what treatment is all about.

Still about 30 -- 30-plus percent stick it through treatment and do -- and do much better, and the data -- the data is analyzed in several reports out of UCLA. UCLA has been hired to do the reporting and reviewing of Prop 36, and they have done a really -- with actually wobbly data -- or not wobbly, with data that is not consistent across counties. They have done a wonderful job in assembling meaningful data into reports that are well worth reading.

MS. YOUNG: Are they on the internet, or are they . . .

DR. BANYS: They are on the internet. They come out of UCLA's ISAP, Integrated Substance Abuse Programs, ISAP.

And the person who has now died, unfortunately, who was the lead on this research was Douglas Longshore. And I would think that at least the first few reports have his name on them.

Maybe just to get away from Prop 36, I have had contact with the drug court in San Francisco when Harold Kahn was the drug court judge. I think he rotated off. But for about a year me and David Kahn, a forensic psychiatrist, consulted to the drug court in San Francisco.

So we had actually quite a wonderful experience in San Francisco with a group of judges meeting over lunch for the better part of a year talking about the problems they encountered. And we felt that they were thoughtful, wanted to learn, capable of learning, frustrated. They felt that they just didn't have enough resources to go around.

And like the people I have talked to in Alaska where I have also done a lot of consulting, they keep searching for what they call creative sentencing. And I have to tell you, we are not very good at offering them any creative sentencing as psychiatrists or addiction docs. But that's the search. They are looking for kind of something that works better because what they will tell you behind closed doors is that

what they are doing isn't working very well.

MS. YOUNG: For the drug court model?

DR. BANYS: Yeah.

MS. YOUNG: As opposed to the -- these are drug court judges, not Prop 36 judges?

DR. BANYS: No. But they are very frustrated about their effectiveness because they are up against chronic relapsing disorders.

MS. KELLEY: It sounds to me, then, like the medical community would define success not in terms of an absolute cure, but, rather, in terms of improvement?

DR. BANYS: Well, we think that being sober is a good thing, and we measure that. But we also look at things like did you get a job? Did your family situation improve? Have you not been rearrested for criminal charges? So we think those are improvements, as well.

MS. KELLEY: Okay.

DR. BANYS: Now, when you get to things that are really dangerous, like heroin, then you have to ask even bigger public health questions, are they sharing needles? 90-plus percent of needle-using addicts are hepatitis C injected. Hepatitis C is a ruthless infection. It spreads very quickly through needles.

The amount of time it takes to start using needles in the street before you are infected looks to be two to three

months. It's amazing. Much easier to infect with hepatitis C than AIDS, than HIV.

So particularly for needle-using addicts there is a lot of public safety issues in terms of improvement, another reason why methadone becomes such a powerful intervention tool.

MR. SCHECHTER: You say that you for a year met with the judges, was it, in the courts?

DR. BANYS: I'm sorry?

MR. SCHECHTER: You met for a year with judges?

DR. BANYS: Yes.

MR. SCHECHTER: In the --

DR. BANYS: Yes, with Harold Kahn and several judges in the San Francisco drug court.

MR. SCHECHTER: What role, if any, should doctors have or do they have from the medical community in the drug court system that you have seen?

DR. BANYS: As far as I can tell, they don't have any role at all.

MR. SCHECHTER: Why is that?

DR. BANYS: Well --

MR. SCHECHTER: One of the things we have read about and we have heard --

DR. BANYS: They are probably too busy and too expensive.

MR. SCHECHTER: Right.

DR. BANYS: My sense is they turn up in court mainly on one side or the other as expert witnesses but that my colleagues really are not consulting with the drug courts.

MR. SCHECHTER: I mean, one thing we have heard about --

DR. BANYS: We did it -- we did it -- I don't know, because it just happened.

MR. SCHECHTER: Right.

DR. BANYS: Somehow we got together and we liked each other and we just did this for a while.

MR. SCHECHTER: Was that viable? Should we be -- should we be going to the medical community, to doctors' organizations and saying, "You ought to be more aggressive and go to the drug court system and say that in addition to the counselors that you have who are dealing with" --

DR. BANYS: I am not sure that I would recommend that.

MR. SCHECHTER: You would not?

DR. BANYS: No, I probably wouldn't, because I think in some ways we really don't have the magic bullet for them. You know, they keep saying creative sentencing, creative sentencing, and we are sitting there like guppies with our mouths open because we don't have the solution that they are looking for.

You know, they are talking about enormously complex cases. These are people who have family problems, often homeless. Sometimes they are the kinds of people who, you

know, get arrested to get out of the rain. And all of these things are piling on as issues -- social services issues, income issues.

I mean, if you really want to make a huge difference for a lot of the population in San Francisco, manage their county, state and federal benefits, their GA and their welfare benefits.

We have two days every month that the addicts call Mother's Day and Father's Day. Those are the two days every month when the checks arrive. Those checks get immediately converted into drugs.

So that if you want to have a simple system, the first thing is convert all of those people who seem appropriate to what we call a payee system, where they have a payee receiving their benefits, and the payee then pays for housing and food and other services first, and the recipient only gets what is left over. This keeps them out of hospitals. This keeps them out of the back seat of patrol cars because they aren't sitting in doorways and, you know, creating mischief.

So the payee system is kind of a generic system that would help us, as treaters, and I think it would help the court system, as well.

And I -- I mean, it's embarrassing, but the largest purchaser of illicit drugs in America appears to be -- I don't want to go on the record on this. Let me --

MR. SCHECHTER: Let it go.

So a third-party payee system would be some governmental system where the benefits go to sort of an escrow account; right?

MS. YOUNG: That's sort of like a conservatorship.

DR. BANYS: In San Francisco it goes to a social worker.

MR. SCHECHTER: But you are advocating something beyond that.

DR. BANYS: Butted problem is they don't have near enough staff to have do it.

MR. SCHECHTER: So you would set up this payee system. That would cut down on the ability of addicts to use the money for drugs because they wouldn't have as much money.

DR. BANYS: Even if they continued to use what they got for drugs, they would at least have more stability.

MR. SCHECHTER: Because somebody would pay the rent, and somebody would pay the food bills and stuff?

DR. BANYS: Right. So you would reduce the pressure on San Francisco General Hospital, you would reduce the pressure on my emergency room, you would reduce the use of hospitals for, you know, Motel 6 purposes.

I mean, the way you get into a hospital is you walk in the door and you say, "I am suicidal." And if you say it three times and click your heels, you're in. And it's not real psychiatry. It's social welfare.

MR. SCHECHTER: Uh-huh.

DR. BANYS: I am not saying that everybody is that, but there is a cadre of these people.

MS. YOUNG: I am just wondering, when you say that the drug court judges are saying, you know, they see the same people and everything, do you think San Francisco would see more of that because are they more liberal in having people go to diversion programs or Prop 36 or drug court, and people are coming -- as opposed to other counties where after a certain point they are just going to get locked up, or do you know --

DR. BANYS: Well, San Francisco -- San Francisco has, I think, close to the lowest possession arrests -- not -- well, I don't know if it's arrests or conviction rate. San Francisco is not in the business of chasing possession, like other counties are. And so San Francisco's regular courts look a bit more like drug courts than they might in other counties. And I no longer have --

MS. YOUNG: You mean, in order to get arrested for possession, you would have to be a lot worse than another county?

DR. BANYS: Yes. So the people who end up in a San Francisco drug court tend to be, you know, complicated.

Now, our view is precisely that, that drug courts should be the intensive care units wherein regular courts should be the emergency rooms.

That's not what is happening. What is happening is that many drug courts skim. They pick good candidates. So they have exclusion criteria to pick people who are more likely to do well.

Well, actually, that's not what we think. We think that they should take the people who are the criminal recidivists who are the most complicated and let regular courts use Prop 36 or what is it, PC 1000, diversion or whatever, to handling the people who are more routine.

But I think that's not exactly what we see happening. It varies. It varies.

For example, let's take Prop 36. In Prop 36 UCLA has identified a subgroup of 1.6 percent of arrestees who cost ten times more than everybody else and who have horrid outcomes.

How are they defined? They are defined by five convictions in the prior 30 months to their Prop 36 arrest, five convictions in the prior 30 months. These criminal recidivists cost ten times what everybody else costs, and their outcomes are terrible.

Our view is that those people should go directly to -- do not pass go. Go to drug court. Why? More supervision. More sanctions. More structure. And that's what they need.

MS. YOUNG: And these are the ones that they said for Prop 36 do the worst, and so you are saying move them to the other system?

MR. SCHECHTER: The adult drug court.
DR. BANYS: Yes.
MS. YOUNG: Okay.
DR. BANYS: In fact, that's one of the California Society of Addiction Medicine recommendations for Prop 36 improvement is to move -- move this highly recidivistic group a more intense setting.
MS. YOUNG: Is there -- when you say "recommendations," is that written down somewhere or just . . .
DR. BANYS: Yes. It's -- I am going to present this to the Little Hoover Commission on August 23rd.
MS. YOUNG: Okay.
MR. SCHECHTER: Can we get a copy of that.
DR. BANYS: You can. Give me a card where to mail it to.
MR. SCHECHTER: Okay.
DR. BANYS: So we will give you the summary of my organization's recommendations for improvement.
MR. SCHECHTER: Vicki, do you have a card?
MS. YOUNG: I have a card.
DR. BANYS: Are you getting what you need?
MS. KELLEY: Oh, yeah.
MR. SCHECHTER: Yes. It's very interesting. It's fascinating.
MS. KELLEY: Oh, yeah.
DR. BANYS: I think I am in the middle. I never thought --

you know, I am an academic. I do research and I teach, and I never thought I would be able to spout these kinds of statistics because I kind of wandered into this.

And then I discovered that there were things going on that I never paid attention to. I mean, I really think that what is going on in California, as in the rest of America, is a large ideological struggle. And it's a struggle over how to deal with certain kinds of chronic conditions, and there is a kind of hard approach and what's, I think, misrepresented as a soft approach but, basically, treatment versus incarceration.

MR. SCHECHTER: In your travels have you seen any evidence of faith-based treatment as having any efficacy, or you haven't run into that at all?

DR. BANYS: I have seen some evidence of it. It goes back to when I was in medical school, actually. I was part of a group that tried to work with heroin addicts using psychotherapy. And we delivered the best we knew how with the best supervision we had, and we got zero results, zero.

MR. SCHECHTER: Wow.

DR. BANYS: And I watched these guys go off to a Bible camp in Ohio and come back clean and sober.

MS. KELLEY: There you have it.

MR. SCHECHTER: That's it, Ohio.

MS. KELLEY: Cleveland.

MR. SCHECHTER: That's an example. You see, that's the

example of Ohio right there (indicating).

DR. BANYS: I think there are a lot of ways to get and stay -- let's say no more. It's easy to get sober. It's very difficult to stay that way. Anybody can get sober any time. Put them in jail. Run out of money.

MS. KELLEY: Detox them.

DR. BANYS: There are lots of ways to get sober. But staying that way is really the trick and the treatment.

There are faith-based ways that work if you are accommodating to that.

Having said that, there are also people who can't stand AA because there is the Lord's prayer. And so it depends on the person. And so -- and kind of what you grew up with and what you can take and not take.

I don't personally think there is a place for faith-based treatment in professional treatment. I wouldn't begin to introduce it to the VA Medical Center where I work, despite the President's fondness for it. I think it mixes up apples and oranges. And I think the problem is that in many of those cases, sobriety is a secondary purpose, and conversion to Jesus is the primary purpose. So I don't like mixing those two things up.

And some of them are very good at concealing the religious, what would you call it, promotion.

MS. KELLEY: Agenda.

MS. YOUNG: One question that I was just thinking in terms of all of these meetings and all the treatment -- and I don't know where you would see it or where we would send the question is -- because certainly in California and other places, clearly, I would think, you know, for Hispanic speakers there is a large number of treatment programs where they would speak Spanish.

But how about people -- you know, so many people are coming in that speak so many different languages. What happens to them? Can they -- I mean . . .

DR. BANYS: Well, I will tell you, in -- I can only talk about San Francisco and a little bit about Los Angeles. What happens is that the community mental health or community substance abuse services begin to look for native speakers.

For example, at San Francisco General Hospital we have an Asian focus unit with a Vietnamese psychiatrist who is a native Vietnamese speaker. So a lot of cultural elements are being brought to bear when there is enough of a need.

But still you are at the mercy of underfunded county systems.

MR. SCHECHTER: Right.

DR. BANYS: Whether that's L.A. County.

MS. YOUNG: So my client comes in speaking Burmese. I mean, you know, it's one thing to be Vietnamese.

DR. BANYS: Well, in San Francisco you could probably find

somebody.

MR. SCHECHTER: Right.

DR. BANYS: Whether you could in Orange County -- well, even in Orange County you might. But I don't know about San Diego.

MR. SCHECHTER: But you can't do it in rural counties in Pennsylvania, and in New York City you can get anything, any language, 24-7, no problem. The court can actually make that quote. It just depends on where you are.

DR. BANYS: Asian ethnic groups tend to avoid addiction treatment like the plague, and they avoid mental health treatment. So typically when Asians come to treatment, they are much further along in trouble. The families have tried to handle them privately, quietly at home. And so when we see them, they are usually pretty far along. Either they very psychotic or their addictions are pretty massive. We just don't see the kind of run-of-the-mill entry into treatment in Asian groups.

MR. SCHECHTER: Is that true of any other ethnic groups that you have observed in San Francisco?

DR. BANYS: No, I would -- no.

MR. SCHECHTER: That's the one that stands out?

DR. BANYS: Yeah.

MS. YOUNG: And is that -- in terms of the Asian groups, is that across the board as opposed to the more immigrant

community versus, you know, people that are second, third generation or . . .

DR. BANYS: Well, we know for sure that the immigrant community is very weary of all of this. I mean, they don't even have a very good concept of mental health treatment, let alone addiction treatment.

And this is coming second-hand from my colleagues at San Francisco General, but they would say that the more -- the longer you are here, the more you behave like the rest of the country. But there are still different traditions.

MS. YOUNG: I was just thinking.

DR. BANYS: This is of no great import to this talk, but there is -- the wealthy Japanese send their very disturbed children to San Francisco for treatment, and they tell everybody at home that they are in college. So you export the problem if you have enough money in order to keep the secret back home in Japan.

MS. KELLEY: Wow.

MR. SCHECHTER: That's very similar to some of my criminal defense clients who have to explain long periods of absence in prison to their children who will often say that daddy has been away at a job overseas or on vacation.

If you -- if you had to recommend to us the one biggest problem you see with drug courts and the best solution for that problem, what would it be?

DR. BANYS: I would say the biggest problem is the ideological opposition to methadone. And, as I said, it's spotty. It will depend on the place.

Probably it needs national guidelines. And I shouldn't just say "methadone" now. I think buprenorphine is a real -- a real viable alternative. So probably you need some kind of national guideline, you know, that is worked out, not by us but by you guys.

MR. SCHECHTER: The lawyers?

DR. BANYS: Yeah.

MR. SCHECHTER: You said before that you met judges and that you not that the judges you met were pretty good.

DR. BANYS: Yes.

MR. SCHECHTER: What was the basis for that? Did they have the right personalities? Did they seem caring? What was it that impressed you?

DR. BANYS: They struck me as smart.

MR. SCHECHTER: The judges?

DR. BANYS: The drug court judges.

MR. SCHECHTER: Uh-huh.

DR. BANYS: The two that come to mind are Manley, who I oppose politically. I mean, he and I are at loggerheads about what should be done with Prop 36, but he is a good judge, and he runs a good drug court.

MS. KELLEY: And he is San Jose?

DR. BANYS: San Jose. He looks like the Hathaway man. He has an eye patch.

Peggy Hora in Alameda, a terrific judge.

MS. KELLEY: Hora?

DR. BANYS: H-O-R-A.

She is now, I think, semi-retired, but she has done a lot of national training for drug courts and is a fine teacher and knows -- knows her stuff.

I think it's -- the difference is that some -- the good ones go into the literature and they read. They actually try to see what the science says and what the outcomes research in my field looks like, and they can talk to you intelligently about it.

MR. SCHECHTER: And the not so good ones?

DR. BANYS: The not so good ones, my way or the highway. They sort of think that their person, you know, and their approval and their punishment is all it takes.

MR. SCHECHTER: Someone suggested to us that there be certification for judges because not all judges are suitable for this kind of work. Would you agree with that or disagree with that.

DR. BANYS: I would probably disagree because it would be a little bit like saying you should certify psychiatrists. You know, don't let the geek in but let the good, wholesome guys in. And you really can't sort them out.

You can -- once they are doing the work, you can tell whether they are doing it well or not. But I don't know how you would sort -- presort them.

I think that not everybody is attracted to drug court. It's more complicated. But I think that's part of what they like. They can bring people back more often. They can see people. They -- the judges I have talked to like doing things like praising people for doing well. They like that. That becomes a part of their shtick.

And I actually think it's a sanction. It just happens to be a positive sanction.

MR. SCHECHTER: Right.

DR. BANYS: So I have enjoyed most of the ones that I have talked to.

And I have spent a lot of time up in Alaska where, you know, it's a fairly small community of judges and lawyers, and they are up to their eyebrows in alcoholism in the native communities and drunk driving and domestic violence and all of this. And they are trying all kinds of things. They have got ankle bracelets that -- not GPS but ankle bracelets that --

MR. SCHECHTER: Measure the sweat?

MS. KELLEY: Scram.

DR. BANYS: Measure alcohol and transmit it back by phone or something.

MR. SCHECHTER: By phone at the end of every 24 hours.

DR. BANYS: They try everything.

MS. KELLEY: Yes. Those are good.

DR. BANYS: And, you know, as I have sat and talked to them for hours, I have really enjoyed the quality of their concern. They're -- they will tell you openly that, "Well, I have been doing this for years. I don't think it's very good. I have really got to find something better." And then they look at me, and I don't have the answer.

MR. SCHECHTER: Right.

MS. KELLEY: But it sounds like there is a relatively small universe of, if you will, proven cures or means for improvement.

DR. BANYS: For drug abuse?

MS. KELLEY: Yes. I mean, it's --

DR. BANYS: Well, let's talk about that.

MR. SCHECHTER: In two minutes. I am sure you can do that.

DR. BANYS: Of Course.

(Laughter.)

MS. YOUNG: Going back to that methadone.

DR. BANYS: Let's stay away from methadone for a minute.

I would say that the way to understand addictions is that they are much like other chronic relapsing disorders in which lifestyle change is important to management.

What am I thinking of? High blood pressure, diabetes, obesity.

What we get in medicine is we get relatively poor compliance with medications, extremely poor compliance with lifestyle changes. Still, people do better. My wife has had high blood pressure since she was 22 years old and managing it is very good for her health.

What we see in addiction treatment is that people will have multiple relapses before they fly stably clean and sober.

So the natural history of addiction is that going to treatment for the first time typically leads to a relapse, period. It takes multiple failures to get it.

So that if you can open the span -- instead of looking for the cure, if you say what happens over a five-year to ten-year period, the answer is after people fail X number of times, they have much higher odds of staying clean and sober permanently. So you need to eat the relapses in treatment.

MS. YOUNG: So -- but the criminal -- but the drug court system is booting them out after -- well, they said for three?

MS. KELLEY: That's Prop 36, though.

MR. SCHECHTER: Right.

MS. YOUNG: In drug court, do they boot them out sooner than three? I mean, I am just saying in terms of -- you are saying that you need to expect or anticipate over time, let's say, you know, five.

DR. BANYS: Well, I would say that you shouldn't throw somebody out of treatment because they have a relapse on a

Sunday.

MS. YOUNG: But that happens all the time.

DR. BANYS: I understand.

MS. YOUNG: Yes.

DR. BANYS: But that's -- are you saying it's happening in treatment or in court?

MS. YOUNG: I am just saying in court when someone comes, they say a dirty --

DR. BANYS: In treatment you try to make a distinction that's very hard to make, between a slip and a relapse, between that and noncompliance.

In my program I will throw people out for noncompliance.

MR. SCHECHTER: Meaning?

DR. BANYS: They don't show up.

MR. SCHECHTER: Okay.

DR. BANYS: Out (indicating).

If they relapse we will intensify the treatment. We see that as a symptom of a disease.

MR. SCHECHTER: And the noncompliance you see as?

DR. BANYS: As --

MR. SCHECHTER: An attitudinal problem?

DR. BANYS: As an attack on the treatment alliance.

MR. SCHECHTER: Got it.

DR. BANYS: Okay. So you can relapse, and I won't throw

you out. I will give you more treatment. I may put in you residential treatment. I may add a medication. I may say, Look, you are going to have to go on this medication, Naltrexone or whatever.

However, if you steal from the store at the VA Hospital, I will throw you out. As far as I am concerned, that's an attack on the treatment alliance. You are stealing from me and you are gone.

Now, if you steal from Nordstrom's downtown, I treat that as addictive behavior.

MR. SCHECHTER: If you -- that's a very interesting point. If you steal from Nordstrom's downtown to get money, like, a Coach pocketbook that you can sell to get drugs, you treat that as a relapse.

DR. BANYS: I treat that as addictive behavior.

MR. SCHECHTER: Okay.

DR. BANYS: I treat that as part of the addictive lifestyle. But if you steal from the hospital, you are history; you are gone; I throw you out.

I also throw you out if you threaten another patient or if you threaten the staff.

MR. SCHECHTER: The staff.

DR. BANYS: You threaten us, you are gone.

But relapses are really part of what you get in chronic relapsing disorders.

MR. SCHECHTER: Right. Got it.

DR. BANYS: You know, look at Dick Chaney. He has got a chronic relapsing heart disorder. We should throw him out of treatment because he had another heart attack?

Maybe he is a bad example.

MR. SCHECHTER: I am not going there on the record.

(Laughter.)

DR. BANYS: I think I have used my two minutes.

MR. SCHECHTER: You have.

MS. YOUNG: I do have one question, though, because you had said that Steve Manley had worked very hard to defeat Prop 36 because, I guess, he thought it was counter to the drug court model. That I didn't understand. And then you told me, but he was put on the same committee you were to make Prop 36 work.

DR. BANYS: Well, they put people who were proponents and opponents on this committee.

MS. YOUNG: Okay.

DR. BANYS: They had D.A.s and narcs. I was the only doctor. They had residential treatment people.

So Kathy put together people who had agendas, and she put them in the room to bark at each other and to try to collaborate with each other. It was a good idea.

MS. YOUNG: Did -- was any report or anything generated out of that committee, or it was just --

DR. BANYS: Well, no. We met about once a month for six years, and we worked on a lot of different things but, you know, no final report.

MS. YOUNG: Okay.

DR. BANYS: Parenthetically, you would be interested that California Society of Addiction Medicine and the Drug Policy Alliance were functionally thrown off when we sued.

MS. YOUNG: That was the suit on that other SV I think 1137 you were talking about?

DR. BANYS: What they did was they put that committee out of business, reconstituted under a new name.

MS. YOUNG: And you weren't part of it?

DR. BANYS: And we weren't part of it. That was our punishment for going off the reservation.

Interesting politics; isn't it?

MS. KELLEY: Oh, yes. Oh, yes.

DR. BANYS: I will tell you, I went in naive. I like to tell people I lost my political virginity in Sacramento. I really didn't understand how this game was played or how deep the pockets were on the incarceration side. It's really amazing.

MS. YOUNG: Well, that Corrections lobby is really -- you know, you see a lot of stories about it.

And even supposedly Arnold, when he came in, he was going to try to be above it or whatever, and he has gotten

dragged right in.

DR. BANYS: They got him. I don't know how exactly.

MS. YOUNG: Yes. But he came in, and people really thought -- this was maybe, what, a couple years, whenever he first came, people were thinking that he would be able to stay above it, and you just sort of watch -- watch everybody get dragged in.

MS. KELLEY: Yes, succumb.

MS. YOUNG: Yes.

DR. BANYS: Our view is that there are many sanctions that are effective. We don't like a single instrument called "flash incarceration" being touted as effective without research and as a kind of single bullet tool. You know, we think there are lots of sanctions that help.

There is no question that leverage helps people in treatment, no question.

You know, often the problem you have is that the leverage isn't sufficient. The probation officer doesn't know where his probationers are. They don't care. They are not tracking them. They are not consulting with us to see how they are doing. And so they give up the leverage.

Why do they give it up? Well, in San Francisco I think the average caseload for probation is something like 600. It's enormous. In Maricopa County in Arizona, the average caseload is something like 110. And, you know, they

have a fighting chance to know where their puppies are. But not here.

So often our patients will tell us that their probation is a joke. And what they mean is nobody cares and nobody is watching. But when they are watching, it helps. It keeps them in treatment.

MR. SCHECHTER: Time is up.

DR. BANYS: Well, have you got what you needed or . . .

MR. SCHECHTER: We did.

DR. BANYS: And does this surprise you or -- give me a little feedback; will you?

MR. SCHECHTER: No. It's very, very interesting to hear the view of a doctor. We are really trying to get all of the players in the system and possibly players who are not really part of the system and to sort of see you in that way. You sort of by your own admission -- you said you sort of wandered into this, and it's very interesting to see an outsider who was not aware that this was all going on, and now you are in it, and your views of it give a very fresh and different approach than some of the other things we are hearing, which is fine. It was very illuminating.

DR. BANYS: And I will tell you, my bottom line is we are going to lose. I am pretty sure that we are going to lose Prop 36 in California. I am going to do the good fight, but I actually have no illusions. I think by five years from now it

will be an historical footnote.

MS. YOUNG: But they still would have the drug court, you think, or that goes, too?

DR. BANYS: Yeah, I think the drug court will continue. But, you know, in 1999 do you know what percentage of drug arrests the drug courts handled in California? Three percent. They handle hundreds of people. Prop 36 has handled tens of thousands.

MS. YOUNG: It's because of who can get into the program or not?

DR. BANYS: There are just not enough drug courts.

MR. SCHECHTER: In enough counties.

DR. BANYS: And they were cherry picking anyway.

MR. SCHECHTER: Right.

Okay. I think that's great. Thank you very, very much for coming down today.

MS. YOUNG: If you could take my card, and in terms of that report, that Little Hoover --

DR. BANYS: You want that report?

MS. YOUNG: Yes. You could just e-mail it; right?

DR. BANYS: Yes.

MS. YOUNG: So I will just write my e-mail on the back.

MR. SCHECHTER: I think we are finished, right, for you?

(Off the record discussion.)

(Recess taken at 11:27 A.M.)

(The proceedings resumed at 12:07 P.M.)

DANIEL ABRAHAMSON,

called as an interviewee, interviewed as follows:

MS. SHIFMAN: I am Gayle Shifman. I am an attorney here in San Francisco. I practice criminal defense. I do both federal work and state work. My emphasis is really mostly in Federal Court. But I happen to also practice in Detroit, where I am originally from, at the beginning of my career.

This is part of the NACDL drug court task force, and this is a special task force whose job it is to gather up information from as many resources and sources that will allow to us interview them or to testify publicly at a hearing so that we can assemble varying viewpoints and make a definitive report, hopefully, at the end of a one-year process, that will allow to us make some recommendations or just make comment, depending on what we learn during the course of the year on the status of drug courts in America and some other problem-solving courts. We will be looking at other community courts, as well. And we are going to try to get comments from a wide range of policy makers and opinion holders and practitioners and also try to cover as much geographic ground as we can because, as you know, even here in the Bay Area from county to county, drug courts can mean different things.

And we have learned through some informal interviews that the state of drug courts in America is all over the

place, and we thought, given your particular expertise, you could certainly lend an important viewpoint about the state of drug courts here in California in general, sort of a bigger picture view, and then, hopefully, also do a smaller picture view as to what you see going on county to county and to give us your thoughts on Prop 36, which I am going to ask you to explain for purposes of the record --

MR. ABRAHAMSON: Sure. Absolutely.

MS. SHIFMAN: -- versus county-wide drug diversion drug courts, which are a little bit different, as you know.

MR. ABRAHAMSON: Uh-huh.

MS. SHIFMAN: So I thought -- and I would like Jay to introduce himself so that you know who is asking you questions.

MR. CLARK: I am Jay Clark. I practice in Cincinnati, Ohio. I have been practicing almost for 18 or 19 years. It's about even now, federal and state work. And we have got a drug court in Hamilton County in Cincinnati that I practice in.

But from being involved in this task force, it's obvious to me that there are dramatic differences from court to court, in every aspect of it, how you get in the program, what success is defined as, recidivism and all of that.

And it's just an effort to try to get an understanding of where the problems might be, the good things in drug courts

that are doing positive, as I am sure you are, because you don't want to change those, as well.

So I think that's kind of what our goal is today.

MR. ABRAHAMSON: Terrific. Welcome to the Bay Area.

MR. CLARK: Thank you.

MS. SHIFMAN: So I thought it would be easiest if you -- if we allowed you to first please tell us who you are and what you do.

MR. ABRAHAMSON: Sure.

MS. SHIFMAN: And something about your background and if you have a C.V. or anything else. You may not have brought one, but maybe you can --

MR. ABRAHAMSON: I can certainly e-mail it.

MS. SHIFMAN: That would be fabulous. I appreciate it. I'm sorry we forgot to ask for it in advance.

MR. ABRAHAMSON: Sure.

MS. SHIFMAN: And sort of just give us your general overview of drug courts. I know you have participated in a panel and to some extent --

MR. ABRAHAMSON: Right. I just spoke on it right now, and you have pretty much taken some of my best lines from it already in your introduction on what you have discovered about drug courts, but I could expand upon it.

MS. SHIFMAN: Yes. I am not the expert. I am merely a practitioner.

So why don't you go ahead, and then we will interject somewhere 15 -- 10, 15 minutes into it with some questions.

MR. ABRAHAMSON: Certainly.

I am Daniel Abrahamson, and I am Director of Legal Affairs from the Drug Policy Alliance. And the Drug Policy Alliance is the nation's leading organization devoted to ending the war on drugs and promoting alternatives to the war on drugs that are based on medicine, public health, compassion, rationality, rather than just a punitive criminal justice approach which has defined our drug policy for the last 30 years.

Before becoming legal director of Drug Policy Alliance back in 1996, I was a criminal defense lawyer where I practiced death penalty defense work in San Francisco for the California Appellate Project, and I practiced both in state court and in federal court around the country, and to this day I retain a capital case that I am direct -- appointed as both appellate and habeas counsel of California Supreme Court where I have connections to the practice, as well as my full-time job of being a drug policy lawyer where I work on both legislation, as well as litigation in state and federal courts around the country on issues impacting drug policy.

I think it's quite relevant that I was a criminal defense attorney and a capital attorney before I became a drug policy attorney because, as part of my work as a death penalty

attorney, almost every client I had on death row in whatever state they were, had, as we discovered through doing very complex multigenerational life histories -- most every client had been impacted by drugs.

And it wasn't always drugs themselves that got my clients into trouble. It was the drug policies that got them into trouble by incarcerating their parents and letting them grow up without parents, incarcerating their siblings or incarcerating themselves for low-level drug offenses. And inevitably whoever in the family or my client was incarcerated, they came out worse than what they went in.

So it was the whole drug policies and the drug war and the punitive aspects in treating drug abuse and drug use in such a fashion that destroyed families and was one of many factors that led people to a life that got them in the end on death row.

So in sort of moving and shifting my focus of practice from death penalty defense work to drug policy, I really felt I was getting out ahead of the issue in order to try to change policies that could perhaps keep people from entering the criminal justice system and coming out worse than they went in, including contacts with death row inmates, as well.

Much of my work for the last ten years in the drug policy field has been to look at what alternatives are there to the mandatory minimum sentences and the harsh sentences

that are levied upon drug users and drug sellers.

That is a main focus because when we look at the primary engine for who is filling up our jails and state prisons around the country, it's primarily low-level drug users, and they are responsible for filling up the jails in the prisons and increasing sentences, meaning they are being warehoused longer and longer.

And so to the extent, as an organization, we can advocate a change in those policies, we would be impacting not just how drug users are treated, but we would impact the entire budgets of the state's systems, which are predominantly disproportionately focused on prison spending, which is at crisis point in California specifically.

So between 1998 and 2000, I spent a lot of time traveling around the country and traveling around California, looking at drug courts, which were at that point perhaps some of the leading alternatives within the criminal justice system of how to treat low-level drug offenders, by saying we are going to divert these people from incarceration into community-based treatment, give them a shot at treatment, and, if they succeed, maybe we can even get their record expunged and they can regroup and carry on life.

So I sat in various drug courts, attended drug court conferences around the country, spoke to lots of stakeholders in drug courts, and got quite enamored with the potential for

drug courts but also became aware of a lot of potential shortcomings of drug courts, in part because my organization, we are devoted to evidence-based practices and practices that are focused and derive from public health principles and medical principles.

And so when I looked at what a lot of drug courts are doing around the country and in California, I saw there being a disconnect between what a lot of the courts establish themselves and proclaim themselves to be versus the actual ways in which they operated.

For example, I saw a disconnect between the claim that the drug courts were providing quality treatment to individuals and the reality that many drug courts were funneling all of their clients into one treatment program with which they had contracted in the community, and some communities, frankly, only have one treatment program with which to contract.

And yet we know from addiction, we know from the client population that these courts serve, that one size does not fit all, and that drug courts were often using, especially in their earlier days, a one-size-fits-all approach to treating substance abuse.

I also saw that drug courts were calling 12 step programs, such as Narcotics Anonymous and Alcoholics Anonymous, treatment. Those programs are not treatment. They

are important adjuncts to treatment. But providing and forcing someone to go to just an AA program and expecting them to resolve their serious addiction problems was neither reasonable nor fair. It was cheap. Those programs are cheap. And so if the Court wants to save their precious resources, they can get a lot of people into NA and AA programs for the money that they have, but it's not providing treatment.

Thirdly, I saw that the vast majority of drug courts around the country, and particularly in California, were prohibiting clients from accessing methadone, buprenorphine, other narcotic replacement therapies, even though those therapies are considered and have been long studied and proven to be the most successful medical interventions for the problem of opioid dependence.

And opioids are a broad category, including heroin and Oxycontin or whatever. Methadone is the bestest treatment for the mostest people. And yet for ideological reasons or just sheer ignorance or just sheer stereotypes, most drug court or judges around the country were prohibiting any contracts or any provision of methadone services for clients because it was not, quote, "drug free."

In our mind that's like saying to some -- to a diabetic, "You shall not have insulin because otherwise you will not be drug free." Or any other sort of analogy to that.

And yet it's -- when we look in the substance abuse

field, again, methadone is the best treatment for heroin addicted people, and that's sort of the end of discussion, and yet it was not being used.

And so that sort of suggested to us that there is a lot more going on with how drug courts operate than just science, just evidence and just good intentions.

We are also concerned about who got into drug court. We saw that drug courts, especially in their earlier days, especially in states where there are not many of them and they are new or considered pilot projects, that drug courts were cherry picking the clientele who they admitted with certainly the understandable notion that if we admit those people who are most likely to succeed, our success numbers are going to be higher, and we can prove success, and we can get funding next year to keep and expand our program.

And so in some sense it's understandable, and at the same time it is sad. Because for all the resources that you have gathered in a courtroom and a drug court, a judge, a dedicated calendar, a probation officer, a prosecutor, the defense attorney are all on this team and hopefully a substance abuse expert, as well, those tremendous resources and oversight potential were being squandered on people who needed perhaps the least oversight and the least assistance to succeed in treatment. They needed treatment, but they didn't need all of that oversight to go with it.

And the harder cases, people who are going to be recidivists because of their drug problems and who did pose a legitimate danger to themselves or others, were being left out of the option for getting treatment by drug courts because the drug courts were cherry picking and excluding them.

MS. SHIFMAN: By "drug courts," as you are talking about them now, you sort of mean the diversionary drug courts; right?

MR. ABRAHAMSON: As opposed to drug courts who just have a speedy calendar to convict people? That's the other type of drug court.

MS. SHIFMAN: I am not sure of really what you mean by saying "drug courts."

MR. ABRAHAMSON: By "drug courts," I mean drug courts that seek to provide treatment services in order to divert people from jail and prison sentences.

MS. SHIFMAN: Okay.

MR. ABRAHAMSON: They might use jail as part of the program but to otherwise divert.

There are obviously drug courts that are courts that only handle drug cases in order to quickly process people through and give people sentences within jail and prisons, but I am talking about diversionary drug courts.

And they're -- again, you said it so clearly to begin with, there is no such thing as a drug court. You have to

talk about what is the Court in front of you that calls itself a drug court because there is no standardization between courts about who they accept, how they operate and rules by which they have to play. It's all an agreement based on the judge, the prosecutor and the defense community of what they can get to work and what political buy in.

And we saw that to be a shortcoming. I mean, when you think of justice, you don't think of, well, does it matter where I got popped or where I happen to live if I get access to or I am denied access to an important service? You know, it shouldn't be this checkerboard pattern.

And yet even within the same county, you could have two different drug courts that operate by two very different rules, and it's by the luck of the draw of which one you might have access to that determines your future.

And then in California there are seven counties right now that have no drug courts, and so if you are popped for an offense in those counties, you don't have access to anything, and this checkerboard pattern justice.

MR. CLARK: In the counties where you don't have access to any specialized drug court, I guess, if I am a first-time low-level possessor, what are my options going to be, just your traditional facts, assuming I plead guilty and get probation and some type of treatment?

MR. ABRAHAMSON: Probably not some type of treatment.

MR. CLARK: Really?

MR. ABRAHAMSON: There is a law in California called PC 1000, which is a deferred entry of judgment law, which says that if you are a first-time drug offender, in theory, you can have access to this deferred entry of judgment program and enter a treatment program, which if you complete your deferred entry of judgment will -- you know, the judgment will be wiped out.

MR. CLARK: So at the end of the day, you are never officially convicted?

MR. ABRAHAMSON: At the end of the day, you are not convicted.

If problem is it's not funded in California.

MR. CLARK: Which part is not funded?

MR. ABRAHAMSON: The treatment part.

MR. CLARK: The treatment part of it? Okay.

MR. ABRAHAMSON: So there is no guarantee that you are going to have access to PC 1000 services if the county does not want to put out the money.

In San Francisco and other counties, they put up a lot of money for that because they realize the importance of doing that.

MR. CLARK: Okay.

MR. ABRAHAMSON: But in many outlying counties, PC 1000, for all practical purposes, doesn't exist.

So your question of how is that person going to be treated, he will probably have a conviction on the record of some sort, and it's up to the judge of how they want to sentence that person, between probation or a one- to three-year prison sentence, or jail sentence.

MR. CLARK: Okay.

MR. ABRAHAMSON: And so it's really very arbitrary of the sentence that they will receive.

Before proposition 36, which I haven't even gotten to yet, got passed, you know, we had drug courts in California that serviced at best three percent of the eligible population playing by their rules of eligibility. So 97 percent of the people who would otherwise qualify for drug court in California didn't have access to a drug court. And, as a result -- and I can give you the numbers through reports, but I don't have them in my head --

MR. CLARK: Right.

MR. ABRAHAMSON: -- we were funneling tens of thousands of people into California jails and prisons for nonviolent, low-level drug offenses. And our prison system was actually looking like a jail system because people would get out on parole after a year, after two years for a drug offense, but they would have these parole conditions attached to them, including, you know, don't use drugs, and they would get popped for dirty urine while on parole, and they get sent back

for a period of months, but our prison system had this resolving door, and so the drug offenders were really clogging up the reception centers.

MR. CLARK: Why the 97 percent? Is it just because --

MR. ABRAHAMSON: Funding. There is just not enough funding to run drug courts in California to bring it up to scale.

MR. CLARK: Okay.

MR. ABRAHAMSON: Because drug courts are rather a boutique institution, and it costs quite a bit to dedicate an entire courtroom and an entire courtroom's personnel to this. And there wasn't enough political buy in, and there still isn't probably enough political buy in in Sacramento to raise enough money for drug courts to accommodate more than three to five percent, and that was one of the reasons we wrote Proposition 36.

MR. CLARK: The cherry picking, has that changed as the courts have --

MR. ABRAHAMSON: Proposition -- in California the cherry picking has changed almost by necessity because in Prop 36 we defined a class of offenders who were automatically eligible --

MR. CLARK: Okay.

MR. ABRAHAMSON: -- for diversion, which forced drug courts then to be displaced somewhat and to take the more serious offenders because the less serious offenders were

automatically getting access to Prop 36.

So now there is less cherry picking taking place in California because Prop 36 is taking up the mainstay of the population that the drug courts used to accept into their program.

MR. CLARK: Okay.

MS. SHIFMAN: Maybe now would be a good time for you to explain what Prop 36 is.

MR. ABRAHAMSON: Sure. I can certainly go into a long laundry list of other shortcomings of other drug courts, but I can talk about Prop 36 and use that as a counterpoint.

Proposition 36 is a voter-enacted initiative in California, California being one of those states that have the initiative process. Many states do not. Ohio does.

And Prop 36 was a sentencing reform initiative focused on nonviolent, low-level drug possession offenders. Drug sellers didn't get the benefit of this law. Drug possession offenders did.

It was focused on that class of offenders for a couple of reasons. One, our data showed, and the prison data showed, that that class of offenders represented tens of thousands of people in our jails and in our prisons, costing billions of dollars per year to warehouse.

We knew that they came out worse than they went in and that our incarceration policies did not reduce recidivism

among that population in drug use.

And when you are running an initiative, you always want to win an initiative, and our polling suggested that the public was well primed to offer diversion and treatment to this class of offenders but was not as willing to go and extend diversion to drug sellers as a political matter.

We did polling --

MR. CLARK: What about people that are motivated by an addiction, like, low-level thefts and that type of stuff?

MR. ABRAHAMSON: By its term Proposition 36 doesn't cover that.

MR. CLARK: Okay.

MR. ABRAHAMSON: Because our polling and our focus groups suggested that a campaign would be run against us by the District Attorneys that would focus exactly on that population of people who are going to go into your house and rip you off and that we would use a campaign based on that.

MR. CLARK: Okay.

MS. SHIFMAN: I forget, what year was Prop 36 enacted?

MR. ABRAHAMSON: It was put on the ballot in 2000, passed in the general election of 2000, the same Presidential election that, you know, Bush and Gore came out of.

MS. SHIFMAN: Right.

MR. ABRAHAMSON: It -- the way the law was written, it allowed a wrap-up time for treatment to be funded. So for the

first six months there was no sentencing change. So between January and July of 2001, the only thing that was happening was $60 million of funding for drug treatment was being pumped into the system to increase treatment capacity in California, and then on July 1st of 2001, the sentencing part kicked in.

And so let me explain that sentencing part. Under Prop 36 people who fit this definition of nonviolent drug possession offenders who have a criminal history such that they have not been incarcerated in the previous five years for a serious or violent felony, which is a term of art under California law, those people are eligible. They don't -- to receive drug treatment in community-based settings, instead of jail or prison.

They can choose to refuse Prop 36 and take their luck in front of a judge who says, "I am going to sentence you to 45 days of jail."

And low-level offenders might say, "I would rather do 45 days of jail than a year of treatment." And they might well be making a rationale choice with that. But it gives the option to these offenders to choose treatment instead of incarceration or whatever the judge might throw at them.

It also funds treatment to the tune of $120 million a year, or at least it did for the first five years of the law. That $120 million a year goes into state treatment to be then divvied up by the state and sent to each of the counties based

on a complex calculus of population and offenders and stuff like that, and each county gets a chunk of money.

It then chooses how it wants to invest in treatment based on a coalition of stakeholders at the table.

MR. CLARK: Okay.

MS. SHIFMAN: Did the money go to every county?

MR. ABRAHAMSON: Yes.

MS. SHIFMAN: And then the county got to decide how to use it?

MR. ABRAHAMSON: That's right.

We had a choice in crafting Prop 36, do we want to micromanage exactly how every county needs to spends it? And we decided we didn't know enough about counties, counties' needs, especially in a state as large and diverse as California.

And we played a hands-off roll and said, "We are going to let the counties and the stakeholders decide how to spend the money." We are going to give them the money, and we are going to set some parameters about how the money is to be divvied up between the counties, but we are not going to micromanage. So we let each county decide this.

We felt -- and to some extent this has played out. We felt that there might be 57, 58 different models arising about how to provide drug treatment services, and that over time those models would be studied. They would be shared.

I mean, there are two conferences around the year where people from around the state who work in Prop 36 come and discuss the strengths and shortcomings of their models. And we hoped that over time those models that did great would float to the top and be expanded, and those models that were not doing as successful a job providing treatment would disappear and be revised.

And so there is some of that going on. So that was part of our goal, as well. We didn't know what was going to be best. We felt that was best decided at the local level.

MS. SHIFMAN: And in Prop 36 for purposes of the record, it would be helpful for you to explain what happens when an individual -- how that individual is -- what type of individual is picked to participate in Prop 36 court and sort of the process for how that individual goes through the courtroom and what happens when they are placed into . . .

MR. ABRAHAMSON: Sure. I can speak on a general level.

MS. SHIFMAN: Yes. I understand.

MR. ABRAHAMSON: Because there is some differences between counties.

But, again, we wrote Prop 36 such that there was no judicial discretion or prosecutorial discretion regarding who gets into the program. We did not want cherry picking to take place. We thought it was unfair, and we had looked at studies that showed that while most people -- or a disproportionate

number of people in California who are popped for these low-level drug offenses are black or brown. California's drug courts were predominantly white. We wanted to prohibit subjectivity entering into who got access to this treatment and was treated.

So, unlike drug courts, where judges and prosecutors are a team that's set up, drug court determines eligibility on a case-by-case basis.

We said, "You commit this type of crime" -- excuse me. "You commit this type of offense and your criminal history fits this type of profile, you are automatically eligible."

MS. SHIFMAN: And why don't you tell us what the profile is and what type of offense is eligible. Is there a weight limit as far as the amount of possession of drugs, for purposes of the record?

MR. ABRAHAMSON: Absolutely. For purposes of the record, we did not specify weight limits. If a prosecutor felt they could prove a sales offense based on weight limits or other indicia, then they should go ahead and prove it and render that person ineligible for Prop 36. If they can prove it, then the person should be prosecuted as a possessor and should be eligible for Prop 36.

And so in that sense the discretionary means about how to charge a case hasn't changed under Prop 36.

One of the important things of Prop 36 that we did is

we dedicated .5 percent of the annual funding to studying Prop 36, which UCLA was appointed to be the main institution to undertake the analysis of how Prop 36 is being implemented.

That stands, I think, in stark contrast to drug courts, where the government accountability offices found that data regarding drug courts is little -- few and far between, and the data that's collected is pretty crappy.

So we really don't know how well drug courts are working. So we pretty much said we wanted to know as much as we can about Prop 36, and it turned out to be the largest source of diversion treatment data anywhere in the country, and we have more research done on Prop 36 than any other diversion treatment program anywhere in the country.

And UCLA has published a series of studies, and there is more coming, and research has also published studies with their own finding about Prop 36. There is an enormous amount of data about how well Prop 36 is or is not working.

One of the questions we asked is, are prosecutors going to change the way they make their charging decisions based on the fact that people could be eligible for treatment? Are they going to charge more harshly in order to screw people out of getting treatment?

And the answer, thankfully, has been, no, there is no evidence that prosecutors are adding on superfluous charges -- you know, fleeing arrest or whatever it might be -- any other

charge that would render somebody ineligible for Prop 36.

Because, again, eligibility for Prop 36 is a simple drug possession offense. Drug possession plus gets you disqualified, and the plus could be anything else, like, fleeing arrest, resistance to arrest, theft, whatever.

MS. SHIFMAN: What about drug possession in a prior record?

MR. ABRAHAMSON: Drug possession in a prior record, we said your prior record doesn't matter unless there is basically an indicia that you present a danger to public safety.

And we made that by saying if you have a series -- or if you have been convicted of a serious or violent felony within the last five years, you are not ineligible for Prop 36, or if you have been incarcerated for a serious or violent felony within the last five years, you are not eligible. So if you were let out of prison six years ago for a serious or violent felony, and then all of a sudden you come along six years later and have a drug possession offense, you would be eligible.

It's a little more nuance than that. But without the actual text of the statute in front of me, I don't feel comfortable going forward in more detail.

There is one other thing that Prop 36 did which is significant in terms of California's sentencing scheme. California has a very rigid, and perhaps one of the most rigid in the country, three strikes laws. Prop 36 is the only piece

of legislation to be passed since three strikes was passed that takes a chunk out of three strikes.

And the way it takes a chunk out of three strikes is that if you are a third striker and your third strike is a nonviolent drug possession offense that would otherwise render you eligible for Prop 36, if you meet those conditions in terms of not having previously committed a serious or violent felony within the five-year wash-out period, three strikes does not apply to you. You get treatment over incarceration.

And what that means on a practical level is over a thousand people who would otherwise be serving life sentences in California prisons were instead diverted to community-based drug treatment.

And that's a pretty dramatic difference, life in prison versus community-based treatment. And we think a couple hundred people a year on average get the benefit of that small retraction of the three strikes law.

MR. CLARK: I don't want to spend a whole lot of time on this. This is more out of my own curiosity.

If you would otherwise qualify as a three strikes defendant and become a Prop 36 defendant, and you don't successfully complete the treatment for whatever reasons, you can't do it, in terms of a violation or a revocation, does that get you back into the three strikes, or how do they --

MR. ABRAHAMSON: That's an excellent question. I don't

know if that issue has been raised in the courts. I don't know if that has been litigated so I don't know the exact answer to the question.

I can tell you that if you fail out of Prop 36 and commit another violation, under Prop 36 if you are not a three striker, then, again, background law applies so you could be sentenced up to what you would have been.

MR. CLARK: Okay.

MR. ABRAHAMSON: Whether that applies for three strikes, I have not heard of instances where people have failed out and then got life.

MR. CLARK: Okay.

MR. ABRAHAMSON: I just have not heard that.

MR. CLARK: You have some serious incentive to succeed at that point.

MR. ABRAHAMSON: I think so. If you are talking about hammers over your head, that's a pretty big incentive.

MR. CLARK: Right. That's a pretty significant hammer.

MS. SHIFMAN: Should I be in treatment, or should I be in prison for the rest of my life?

Let me ask you for purposes -- and, again, tell us what the treatment entails under Prop 36 and also under Prop 36 whether an individual is in a position where they have to enter pleas of guilty, et cetera.

MR. ABRAHAMSON: Excellent questions, both of them.

We define "treatment" broadly under Prop 36 to try to overcome some of the shortcomings we saw with drug courts' rather narrow definitions of treatment -- again, not all drug courts but some drug courts.

So we define treatment to be not just straightforward substance abuse programs. We also include vocational training, literacy programs, mental health assessments and access to mental health services because addiction is closely related to mental health issues in so many instances.

And so we really approach treatment from a whole list of perspective understanding that some people who come into Prop 36 would be rather low-level offenders who didn't need much traditional treatment but could benefit from getting a GED, could benefit from getting some vocational training but additional drug treatment, this is what they needed.

Other people need a lot of residential drug treatment and maybe family counseling, as well, for family reunification issues.

So we drafted treatment, the term "treatment," to be broad. We then left it up to the counties to wrangle about how they actually wanted to spend their money.

MR. CLARK: And that goes back to what you said before about on the local level allocating the resources.

MR. ABRAHAMSON: Exactly.

MR. CLARK: Okay.

MR. ABRAHAMSON: So we have seen counties spend those resources on an amazing diversity of programs.

MS. SHIFMAN: A lot of counties are spending it on a wide --

MR. ABRAHAMSON: No. We have seen some. And then we have seen other counties just take a very narrow view and choose one or two treatment providers and not offer a lot of diversity.

And, again, we are hoping that best practices would spread and poor practices would retract and that -- it was our hope and perhaps our greatest failing is we had hoped and we had expected that the state agency in charge of overseeing a program, the Department of Alcohol and Drug Programs, in California would care about these issues, would care about counties doing a good job and counties not doing a good job in allocating their resources and would come up with regulations, which we gave them room to do, to come up with regulations that would incentify counties on how to spend their money and would maybe even punish counties by withholding funds if those counties were not doing a good job in investing in programs that worked.

Unfortunately, five years later, we found that the Department of Alcohol and Drug Programs was absolutely toothless, was a bureaucracy that was largely beholden to the Governor in office, and was not going to stick their neck out

and flex the muscle that we gave it. So that has been very disappointing.

MS. SHIFMAN: So how many counties are offering services other than substance abuse treatment in California?

MR. ABRAHAMSON: You know, I don't -- if we look through the records of the counties reporting to the drug -- to the alcohol and drug programs, there is an answer. I don't know that answer.

MS. SHIFMAN: Okay.

MR. ABRAHAMSON: You would -- each -- what we do require by law and what the county -- what the state program does is it requires each county to submit on an annual basis a plan of what they are going to spend their Prop 36 monies on.

And those plans have to say, "This is what we did last year. This is who we contracted with. This is where our money went." And it would lay out in detail the types and diversity of services.

Unfortunately, my nonprofit doesn't have the ability to track that. We just don't have the resources and personnel to look at all of those plans and answer those questions. It was our hope so, but we haven't been able to do that in the end.

MR. CLARK: As part of that, is there some kind of uniform definition of, I guess, "success," that they would have to meet under that thought of using the money effectively so you

are comparing apples to apples, county to county?

MR. ABRAHAMSON: In terms of success of how to run a program, the answer is no.

MR. CLARK: Okay.

MR. ABRAHAMSON: In terms of success of what it means or an individual to go through the program and complete successfully, again, that's -- we define it in such a way that it's rather malleable.

MR. CLARK: Okay.

MR. ABRAHAMSON: And different counties can have different definitions of when somebody succeeds. In San Francisco somebody might succeed in Prop 36 if they complete their treatment program and --

MS. SHIFMAN: Don't get rearrested while they are out.

MR. ABRAHAMSON: And don't get rearrested, that's that.

MS. SHIFMAN: Yes.

MR. ABRAHAMSON: And it might come into the equation that in San Francisco someone who started out as a crack addict and who stopped using crack but does have a marijuana positive drug test at the end but before was unemployed and now is employed, before was homeless and now has shelter, before had lost his family and now had his family together, and so on -- so many important indicia of success. Even if they tested positive for marijuana, in San Francisco they might be a success, but in another county --

MS. SHIFMAN: They would be incarcerated.

MR. ABRAHAMSON: -- they would be incarcerated because they tested positive for a drug test even though they did everything else right.

And so for a variety of political reasons and legislative drafting reasons we let counties have some flexibility of how they define "success."

MR. CLARK: I guess I want to ask to maybe not unfairly put you in a box or to commit, but how would you define "success"?

MR. ABRAHAMSON: I would define success -- I would love the opportunity to sit down and write a definition for you.

MR. CLARK: Right.

MR. ABRAHAMSON: But off the top of my -- off the cuff would be that "success" is a substantial reduction of the problem with which the person presented with when they first came to court such that the person is less likely to be committing a crime in the future, like the one they committed, is more likely to lead a healthier lifestyle, and become a productive citizen and be a productive citizen.

And that success in some ways is almost easier to define in the negative. Success should not be defined solely -- success should not solely be defined by a drug test of negative or positive, and that success is much more broader and should really encompass elements that are really core to what it means to be a productive citizen in the community.

MR. CLARK: Is there --

MR. ABRAHAMSON: And I need to get back to you and this committee with a better definition.

MR. CLARK: That's all right. That I understand. But is there a time limit? I mean, I am sure there are people that go through and never get arrested again.

MR. ABRAHAMSON: Right.

MR. CLARK: They make very positive strides. They get job training and maybe get treatment for their low-grade medical issues.

MR. ABRAHAMSON: A time element is a critical question, and this is where it's an uneasy marriage between the criminal justice system and medical public health thinking. But it's a marriage that has to be done if you are talking about drug courts or Prop 36.

And the first question of time lines is a question of just sheer resources. How long can you afford, as a criminal justice practitioner, to keep someone under your supervision? How much time does it make sense to keep someone under your supervision? So you have to impose limits that might not perfectly dovetail with what a doctor would do --

MR. CLARK: Right.

MR. ABRAHAMSON: -- if they were walking into a doctor's office and say, "Doctor, I need drug treatment." So there is a potential disconnect there, and there is a tension there.

And, likewise, from a civil liberties point of view, we recognize that severe addiction can take years to treat.

MR. CLARK: Right.

MR. ABRAHAMSON: And under -- relapse will occur often. And so we, as a civil libertarian, you would not say, as a result of that fact, you want somebody to be under criminal justice supervision for ten years.

I mean, just set aside the resources that would include, there is just real problems with using our criminal justice system in that supervisory manner.

So in Prop 36 the best we could do is to come up with basic proxies where we said treatment -- we funded treatment under Prop 36 to be a year. And that within a year most people would be able to show some success or would have dropped out such that the majority of the people coming through the system, you would know one way or the other are they succeeding or not succeeding.

And so we provided resources for people to be in the program for a year with six months of aftercare. And we didn't define "aftercare." We left that to be loose so that it could be really adopted and adapted by the counties to address whatever the needs were.

One of the interesting things is we have sort of looked at is a year enough. a year plus six months' aftercare. And it's not really one of the big issues that have arisen

under people's radar screens.

Some people yeah, say, "We want access to services longer than a year," but nobody is arguing for two or three years. They are arguing it would be nice just to have funding solidified for service for another six months, eight months, on a case-by-case basis, keep some people in longer.

But that has not been one of the big criticisms, that the year is just way too short. We might need further discussion about that, but it's not considered to be incredibly low on a scale of time.

MR. CLARK: I think I might not have asked this clearly. The program is basically funded for a year and a half.

MR. ABRAHAMSON: For an individual, correct.

MR. CLARK: For a person who is an individual.

MR. ABRAHAMSON: Right.

MR. CLARK: You have got a five-year lump back period if a person has got no prior to get in to be eligible.

So would you say that it's fair that if they go five years from the date they are arrested and not get any more arrests that they have been a successful Prop 36 defendant?

MR. ABRAHAMSON: Right.

MR. CLARK: I am not necessarily saying give them services for the five years, but I guess success or the reverse, recidivism.

MR. ABRAHAMSON: That's an excellent question, and I don't

know the answer to it. I am not sure I have formulated an opinion of how long you have to be free from another criminal justice conviction to be deemed a success.

If you came into the program deeply addicted to crack, committing all sorts of violations, but you only got popped for the possession even though you have got other things out there --

MR. CLARK: Right.

MR. ABRAHAMSON: -- and you have tremendously reduced or eliminated your crack use, but you are popped later on for something that is not drug related, I don't know whether one can fairly say anything positive or negative about Prop 36 in light of that experience. So I think you have to ask sort of more specific questions of --

MR. CLARK: So the funding -- and I think the way you have put it before, maybe reducing funding, is right now not tied to any set definition of a given recidivism rate or success rate -- I guess that politicians with the purse strings can hang their hat on. Do you understand what I am trying to express to you?

MR. ABRAHAMSON: That is actually wrong, and I will tell you why.

MR. CLARK: Okay.

MR. ABRAHAMSON: We funded Prop 36 -- I will say it and explain why we shouldn't have done this.

MR. CLARK: Okay.

MR. ABRAHAMSON: We funded Prop 36 for five years. After five years, we said there is no more mandatory funding for Prop 36. It rests within the California legislature to decide that based on five years of data how viable is this program and at what level does it need funding.

MS. SHIFMAN: And what has happened?

MR. ABRAHAMSON: What has happened is the legislature has totally punted on any responsibility of looking at the data. The data just doesn't matter.

And all that has happened is that the cops and the prosecutors to some extent but largely -- you know, law enforcement, but largely the cops, have said we have never liked this program, we opposed this program when it was on the ballot, and they have largely formed coalitions with their legislative representatives to try to cut funding for the program.

And, again, it's not based on data of success or lack of success. It's just based on ideology that we don't think drug offenders should be copped.

MS. SHIFMAN: So funding has diminished post five years?

MR. ABRAHAMSON: Funding -- actually, funding -- we funded it for $120 million a year for five years.

In the last two years where funding has been forthcoming from the legislature -- for the last year, I

should say -- it was kept at $120 million. But that's an overall net decrease when you think of inflation. I mean, if you are to keep up with inflation, it should be --

MR. CLARK: Funding at five years later at the same rate.

MR. ABRAHAMSON: That's correct. When you are funding at the same rate, you have lost.

MR. CLARK: It's like working for five years without ever getting a raise, actually.

MR. ABRAHAMSON: Exactly.

So we were hoping that when the data was presented and hearings were held that there would be rationality in terms of discussions about how much should be funded.

UCLA -- again, the organization devoted to studying this -- said after looking at all the data, Prop 36 saves $2.50 for every dollar invested.

They further said we believe that the proper funding level should be roughly $230 million to meet the county's needs.

All of that was ignored, and we don't have a state budget. We are 31 days behind having a state budget. But it's pretty clear at this point that Prop 36 is not going to get any more money than $120 million. And it could be substantially cut if -- if certain legislators had their way. So . . .

MR. SCHECHTER: UCLA's materials are on their web site.

Those reports, we are getting those?

MR. ABRAHAMSON: Yes.

MS. SHIFMAN: Let me backtrack a little bit because we have skipped over it.

For purposes of Prop 36, does a defendant have to plead guilty in order to take advantage of that?

MR. ABRAHAMSON: Yes. I skipped over that. This is a post-conviction statute, and I understand that. Some drug courts in some places are pre-plea, and some diversionary programs, like PC 1000 and California deferred entry of judgment, are, for practical purposes, pre-plea programs. Prop 36 is not.

The only reason it's not is because based on focus groups and polling, we did not think we could win an initiative that was pre-plea. Should it have been as a matter of principle pre-plea? Absolutely.

If you just look at the collateral consequences of having a drug conviction on your record that is going to screw you out of a job, housing. You know, you could be convicted of killing and raping someone tomorrow and still get a federal loan to go to college, but if you have a felony drug conviction in your background, you are precluded from a federal Pell grant to go to college. If your immigration is undefined, you have real problems with a drug conviction on your background in terms of eligibility for deportation.

There are an enormous number of reasons why this should be a pre-plea program and the only reason it's not is politics. We did not think we could pass something of this stature and this size if it was pre-plea.

We won by 61 percent. We wish we could have, you know, had Monday morning quarterbacking because if we knew we had 11 points to play with at the polls, we would have gone back and made it pre-plea and made it even broader than it was.

But, you know, as it is, it is now the largest sentencing reform ever in terms of the United States in terms of the number of people it affects and diverting people, but at the time we did not think we could do it politically.

MS. SHIFMAN: A couple of other specific questions.

As envisioned, a Prop 36 court, as you see it, what is the function of a defense lawyer, if any?

MR. ABRAHAMSON: Prop 36 provides more due process to defendants than almost any other drug court that I have seen.

One of our beefs with drug courts was that there were sort of agreed-upon rules upfront about what defendants could request going through the drug court system and what rights they had, and oftentimes by virtue of agreements just to establish a drug court, defense attorneys' hands were tied in terms of the rights of their clients within the drug court setting.

We wanted to provide some more due process to defendants, and so I think a defense attorney plays a larger role in a Prop 36 court, much to the chagrin of prosecutors and maybe judges do maybe in a typical drug court.

For example, we said if you are undergoing treatment and you are in a treatment program and you commit a violation of the program rules, or you are arrested or have a violation of your probation, you get a hearing on whether that actually occurred.

And that hearing has to have all of the elements of due process attached to it, including, you know, attorney, et cetera. And so you have a right as a defendant going through Prop 36 to challenge something that might otherwise have you excluded or rendered ineligible from continued treatment.

And that's often not the case in drug court where if a client gets popped for a violation, it's the judge and the prosecutor with very little input from the defense attorney with very little input on whether that person gets to continue in treatment as sort of the majority vote as opposed to a real due process hearing.

Hi, Jeff.

MS. SHIFMAN: Come on in.

And how many times is a defendant eligible for a Prop 36?

MR. ABRAHAMSON: There are two ways of thinking about

eligibility. Defendants who are in the program receiving treatment are allowed to have up to two drug-related violations.

MS. SHIFMAN: While they are in the program?

MR. ABRAHAMSON: And still stay in treatment and stay in program.

That is, again, the marriage of criminal justice and medical professions and medical practices. That was an easy one. That was our political recognition, that relapse is a fundamental part of addiction, that people are going to relapse and people should not be punished for their relapses or should not be excluded from continuing treatment, that you relapse.

The politics side of it was that the voters are only going to accept X number of strikes or relapses before they get pissed about why is this person still getting treatment as opposed to incarceration or something more punitive.

And I wish that I could say that we were principal in this. If you look at studies of addiction, most studies will show that there are on an average seven relapses before treatment sticks.

We have a two-strike policy, and that's governed more by a focus group and a poll than it was by medical literature and medical practice.

MR. SCHECHTER: Is that strictly enforced?

MR. ABRAHAMSON: It -- and Jeff can speak to this as a practitioner when he testifies. It is enforced differently by the counties, depending on the players in the courtroom. And if everybody is rooting for that client to make it and they understand it, they have given them discretion. In other counties where they don't like this program, they will enforce it quickly.

MR. SCHECHTER: If you had your druthers, as a policy maker --

MR. ABRAHAMSON: Yes.

MR. SCHECHTER: -- it would be not to have such a stricture?

MR. ABRAHAMSON: Absolutely, and drafted in a little more nuance way to give people more discretion to exercise against pulling the trigger.

MR. CLARK: When you say "violations," you mean, like, dirty urine or not a new crime?

MR. ABRAHAMSON: No. It could be a new drug-related crime.

MR. CLARK: Okay.

MS. SHIFMAN: Not an armed robbery?

MR. ABRAHAMSON: Right. If you commit a nondrug-related crime, you are ineligible. But, again, discretion can take place.

If you commit a crime that's a theft -- and everybody in that courtroom understands that was just drug motivated.

They were stealing something in order to get their next hit, and what they need is treatment, not . . .

MR. CLARK: Right.

MR. ABRAHAMSON: -- there can be an informal agreement to let that pass.

The other type of eligibility is what about the person who completes Prop 36? They go through a year of treatment. They complete it. Two years later they commit another nonviolent drug possession offense. Are they eligible again for Prop 36? We said, "Yes."

What if that same person two years later after completing another three months, six months, nine months, 12 months of treatment commits a nonviolent drug possession offense. Are they eligible for Prop 36? We said, "Yes."

Third time, what if they keep on committing the stupid, nonviolent drug possession offenses, are they eligible?

We said, "No." And the maximum penalty that can be inflicted on them is 30 days of jail.

Is that correct?

MR. THOMA: Uh-huh.

MR. ABRAHAMSON: And so why would we allow -- so we said, "Okay, this person hasn't learned after several tries of Prop 36 treatment. They haven't amended their ways. But all they are doing is committing nonviolent drug offenses.

Otherwise, they would be prosecuted for something else."

We said there is going to be a certain small population of offenders that treatment just will not stick for them. And so, as a matter of rational policy, we should not be wasting our criminal justice resources on these folks. They are not doing anything more serious than a possession offense. So let's limit their exposure and limit the criminal justice resources being thrown at them by saying no more than 30 days in jail.

So we don't give them treatment, but we don't give them life in prison, either, or three years of prison.

And that was our policy approach to that category of eligibility.

MR. CLARK: I have two pages of questions, but we are out of time.

MS. SHIFMAN: I think we are done.

MR. ABRAHAMSON: Okay.

MS. SHIFMAN: Thank you very much.

MR. ABRAHAMSON: Absolutely. My pleasure.

If there is anything I can provide the committee, I am happy to do so.

MS. SHIFMAN: If you would e-mail me your C.V., and I will make sure it becomes a part of the record.

MR. ABRAHAMSON: Okay.

MS. SHIFMAN: And anything else that you -- any other

comments you think you would like to make.

MR. ABRAHAMSON: I have got the topic points from earlier.

MR. CLARK: That was very helpful.

MR. ABRAHAMSON: Thank you.

(Pause in the proceedings.)

JEFFREY THOMA,

called as an interviewee, interviewed as follows:

MS. SHIFMAN: Welcome. I am Gayle Shifman. I am a member of the Drug Court Task Force. This task force's purpose this year is to gather up as much information as we can from as many resources as possible of people who participate in drug courts and other problem-solving courts around the U.S.

Being here in the Bay Area, we are really grateful that you have come to give us your expertise and your opinions about the effectiveness, if any, of drug courts here in California and in particular in the Bay Area to the extent that you are knowledgeable and the differences between, perhaps, a Prop 36 style drug court and a drug diversion, non-Prop 36 style drug court.

And in gathering up the information from a wide geographic area and from as many perspectives as we are able to gather, what we intend to do is to draft a report up at the end of our information-gathering process and hopefully some recommendations so that we can take steps forward to try to gather both uniformity in drug courts across America, point

out the benefits, the detriments and any other sort of responsive sources that we can gather up to go forward.

MR. THOMA: Okay.

MS. SHIFMAN: And so we are appreciative that you are here.

What we would like you to do is to introduce yourself, give us some of your background for purposes of the record.

We didn't ask -- I don't know if you brought -- a C.V. or a resumT with you but, if not, if you can e-mail it --

MR. THOMA: I can e-mail it to you.

MS. SHIFMAN: -- that would be great.

And then maybe you can give us some introductory remarks along the lines of what I have outlined, and then we have a series of questions we may ask and/or we may interject along the way.

MR. THOMA: Okay.

MS. SHIFMAN: And I want to make sure that Jay introduces himself, as well.

MR. CLARK: We met before. My name is Jay Clark. I am in Cincinnati, and everything I have learned today about California drug courts is very different than what my experience is with the way the courts run in Hamilton County in Cincinnati so I am sure I will have some questions, as well.

MS. SHIFMAN: And there is also Vicki Young and Rick Jones. Vicki is a practitioner here in the Bay Area from San Jose and

up here in San Francisco, and Rick is from New York City.

MS. YOUNG: And we are also on the committee, but they have got the assignment this afternoon.

MR. THOMA: My name is Jeffrey Thoma. I am the Public Defender for Solano County, California. Solano County is -- the county seat is Fairfield, which is about 15 minutes from Napa, halfway between San Francisco and Sacramento.

Our county has about 450,000 people. My office has 52 attorneys. We do an annual practice of about 30,000 criminal cases, criminal juvenile and LVS conservatorship cases.

I have been the Public Defender of Solano County since July 2004. Previous to that and a lot of my personal experience in drug court occurred when I was the Public Defender of Mendocino County, California. Mendocino is a coastal, rural county in Northern California about two hours north of San Francisco. And I was the Public Defender there from the beginning of 1997 until I was appointed in 2004, mid-2004, in Solano County.

Previous to that I have been a Deputy Public Defender in San Diego; Orange County; Clark County, Nevada; Santa Cruz County, California; and for a very short time a Deputy District Attorney in Humboldt County, California.

From that experience, obviously, I have done drug cases for a fair amount of time, over 25 years. I first became interested and involved in drug court just before I

received the position in Mendocino County. I did what research I could with regard to the county I was about to go to work for, and they had just started a drug court, literally, within a couple of months before I got there.

And they were very dedicated to drug court in Mendocino County. We did a lot of training. We were under a federal grant to innovate that drug court.

We expanded while I was there, basically, to quadruple the size of that drug court, to institute a juvenile component of that drug court and move it to the coast, as well, as Fort Bragg is a small courthouse in Mendocino County and had not had drug court immediately.

In 2001 I had already attended some significant training with regard to drug court, and, obviously, we had been very involved in drug court. But I attended the National Defense Drug Court training, and, as the head of an office, the National Drug Court Institute, I think, appreciated my participation while I was -- I was the head of an office with only 13 attorneys in it at that time. So I was participating, as well as heading the office in the drug court.

They asked me to consider becoming a speaker and becoming a fellow and a consultant for the National Drug Court Institute.

I went through a program of indoctrination on how to present in a drug court setting.

And then ever since then I have been involved each and every year for the National Drug Court Institute, helping drug courts throughout the country learn how to work effectively as a team, how -- you know, how to learn about addiction and treatment, what to do with regard to their particular problem and their jurisdiction, that is, you know, rather than me just have a blanket approach, the National Drug Court Institute tries to have each of these drug courts work with the population that can make the largest change in the addiction in their specific community. That is, if meth is the drug of choice in a given community, there is more training and more focus on that, though, obviously, they do overall as well.

In, let's see, it must have been -- let me think of this -- 2002 the National Drug Court Institute brought together 14 of we practitioners. They had done a series of treatises on different obligations or considerations with regard to drug court. They had done one for the judiciary, they had done one for treatment, and they wanted to do one for defense.

And they asked me to lead that meeting and that group, and we did that, and we came out with -- it's actually available online through the National Association of Drug Court Professionals, the treatise on what our positions were with regard to specific issues, the ethics of representation of drug court clients, the -- the whole manner in which you

approach somebody that might be offered and are eligible for it all the way through what your obligations continue to be, whether they terminate from the program, graduate, et cetera. So we did that in 2002.

And, again, since then I have continued to -- and in fact this year, as well, I was at the defense training in April at the National Judicial College, which is where we now do the defense training. We have about 60 practitioners throughout the country and went through a week of training for them on drug court training.

And I am -- in fact right now, as we speak, I am about to do peer review for about 28 different applications for funding for drug courts and therapeutic courts from different entities throughout the country. I am still involved in it.

I am obviously -- as the Solano County Public Defender, it's a little different. Solano County is a bit more conservative than Mendocino County. Solano County had had a drug court before I got there. They also had had a mental health court.

They -- when funding was pulled back on the mental health court, they stopped doing it. When they ran out of grant funds for drug court, they stopped doing it.

But when I first got there, we started a juvenile drug court which has continued and is fairly successful, though small scale. It's 30 or less participants right now. And we

are in the planning stages of starting an adult drug court where we are reinstituting an adult drug court, which will be on a small scale as a pilot program. We expect to begin that in January of 2008.

So with regard to my actual participation in drug court, I would say in Mendocino County I have probably been involved in maybe 30 to 40 court sessions, been involved in probably 10 to 15 graduations of drug court participants, either as a speaker or just, you know, there in kind of a cheerleader role.

And with regard to Solano County, I have staffed the juvenile drug court and the dependency drug court but very rarely -- and, that's right, we have a dependency drug court as well, which actually is thriving pretty well, that is, a family reunification drug court. Generally, the adult has the drug addiction, but you actually engage the entire family. And it's something that the National Drug Court Institute is actually getting more and more involved in with these -- with these courts, as well.

I have staffed it, as I said, rarely, but I at least have staffed it, and I have watched it function. And with regard to Prop 36, I have staffed that a little bit more often in Solano County, and I have staffed it in Mendocino County, as well.

I just happened to walk in during the end of the prior

testimony, and I will say Proposition 36 is treated very disparately in this state. It depends on the jurisdiction. In Mendocino County it is extremely rare to use one of what you call a strike, that is, either a new arrest or anything else, to do anything other than use it as a sanction within the ambits of Prop 36. That is, for example, somebody gets arrested for a new under-the-influence charge, Health and Safety Code 11550. What will happen is that person might rather than go to two treatment programs a week for the next four months or so, that might be four treatment meetings or counseling per week.

Mendocino recognizes, I think, a little better than most that more treatment is always better than less treatment, that the -- a sanction of anything other than further understanding or more involvement by the individual and insight into their addiction and their problems is probably not very -- very effective.

I have seen other jurisdictions, and I have heard of many other jurisdictions -- and Solano County, unfortunately, is one of them -- where the prosecution tries to -- every possible violation, they try to utilize that.

And at one time in Solano County we had a judicial officer that really would accept that, and that basically would have been literally the end of Prop 36 and a shame at that.

But, actually, we have had a couple of judicial officers within the last year or year and a half that have been just basically terrific, that they actually understand judicial independence. They have gone out of their way to try to understand addiction and treatment. And when the prosecution brings the violation, they are willing to do things like take it under submission, hold it in abeyance and do things outside the ambit. But they recognize that there is literally a distinction between the executive branch and the judicial branch of government. So . . .

MS. SHIFMAN: On a Prop 36 disposition in Solano County, is that randomly assigned, the case randomly assigned, to whatever judge is doing arraignments that day, or is there a specific judge that handles those cases?

MR. THOMA: There is a specific judge, and it's on Fridays. In fact, Friday mornings, I have the same deputy that staffs our Proposition 36 court. So every Friday morning the Proposition 36 calendar is heard in Fairfield, and every Friday afternoon it's heard in Vallejo so . . .

MS. SHIFMAN: And is it an automatic -- no cherry picking, and you are automatically admitted to Prop 36 drug court if you meet the qualifications?

MR. THOMA: You are given an opportunity. If -- if the ultimate conviction does not include -- say, the prosecution does what they can and tries to add additional charges and

were not able to -- were not successful, or we are successful in either getting those other charges dismissed or bifurcated or whatever.

Then as long as you are otherwise eligible and you suffer the conviction, which is either accepting it or going to trial, then you are automatically put into Proposition 36 treatment. So -- and you literally -- you will come in on a Friday. You will -- either that Monday or a week from Monday you will actually start -- start in on Proposition 36 treatment.

MS. SHIFMAN: And what is the role of your Public Defender as a defense lawyer in the Prop 36 court?

MR. THOMA: In Prop 36 court Ms. Berliner is an advocate, a person to relay positive information, to -- to make explanations.

Generally speaking, though, it's easier. The way it works, literally, is there is a chief -- not chief probation officer but a probation officer that's tasked with Proposition 36. And her relationship -- and Prop 36 -- we are the only county in the state where probation runs are Prop 36 program. Health and social services, mental health, substance abuse does not run it, though they are a component of it. So probation runs it.

So what we -- we normally do -- what Ms. Berliner will do is discuss it with probation and literally try to work

whatever she can out with probation with regard to the individual client, whatever reason is given, whatever, before calendar.

And she, you know, is pretty good. We see each of our clients that are taken into custody or are in custody and -- pending Prop 36 before court. It's not a matter of them meeting her in court. And I don't believe in any fly-by-night representation of criminal defendants. They actually know what it's about. They will know what Proposition 36 is about from Ms. Berliner before they get involved in it. They will know that it's a fairly strict program, and that's kind of our involvement.

We would -- we -- I actually am involved in the task force for Prop 36 in our jurisdiction, and I am on the committee with regard to it. We have some input in it, but it is limited. But we -- we work as best we can with probation.

We do have somebody, a Deputy District Attorney who is the supervisor of misdemeanors and juvenile who is rabid. And if she had her way, Ms. Strickland would make sure that there was no Prop 36, or if there was, that there is no efficacy to it, that literally every single possible violation would go to the nth degree.

And when she had her way for about a year in Prop 36, that's kind of the direction it was going. But I think the judiciary and probation, even, recognized that was no way to

get anywhere.

And, actually, probation has -- some of the people from probation have actually gone to training and gone a little bit out of their way to learn addiction and treatment a lot better than they did before.

MS. SHIFMAN: And is the treatment that's available in the Prop 36 courts just substance abuse treatment, or does it include the other ancillary services that Prop 36 might allow for?

MR. THOMA: It does not. It's just substance abuse treatment. It is different from the global kind of drug court therapy, and, you know, it is what it is. It's what they have got.

MS. SHIFMAN: Is it inpatient, outpatient? I mean, what kind of treatment?

MR. THOMA: Limited inpatient, but they do have some -- there it's a fair waiting list for the inpatient treatment, but most of it is outpatient. Most of it's, you know, general counseling with -- you know, one aspect of it that I genuinely disagree is this approach that NA and AA can really be some part of treatment.

I recognize that it's a -- that it's a great part of recovery for a lot of people once they've matured in the process and really have stemmed the addiction.

But at the place that they are doing it in Solano

County, it's way too soon, and they are putting too high a priority on it. In fact, they use it as one of the main sanctions is the -- you know, if you have had dirty tests, you may do 30 NA meetings in 30 days or whatever. I mean, it's -- it's abused. It's -- and, really, I think what ends up happening is people get the wrong idea of what it's about, and then when they do need it, which may be three, six, nine months later, they don't engage in it, or they don't look at it correctly.

MR. CLARK: I wanted to ask you about something and kind of put two things together.

MR. THOMA: Sure.

MR. CLARK: You have talked a lot about training that you have gone through, and you teach for, I am assuming, defense counsel.

MR. THOMA: No.

MR. CLARK: Okay. That's what I want to ask.

MR. THOMA: Yeah.

MR. CLARK: Combined with, you said, you are starting up, I guess, or reinstituting the pilot drug court program.

MR. THOMA: Yeah.

MR. CLARK: Where do the judges come from for the program, and then what kind of training do they get and do the other players in the court get and what is that designed for?

MR. THOMA: Well, the National Drug Court Institute, the

way they approach training -- now, I mentioned the separate defense training, and that's an annual event. That's a one time a year training.

MR. CLARK: Okay.

MR. THOMA: But the training that I am mostly involved in is the entire team, and it's cross-training of everybody on the treatment. That's prosecution, treatment provider, defense, the judge --

MR. CLARK: Okay.

MR. THOMA: -- probation, law enforcement. Everybody attends. And you have to. You can't get funding. You can't attend the training unless the entire team goes and the entire team at least says that they are willing to undergo complete and full continuing training.

So with regard to our jurisdiction, our drug court judge is going to be the same drug court judge that's presently doing juvenile. And over the last couple of years, I have personally made certain that he went to the national drug court training. Actually, it was -- he didn't go to the most recent, but he has been to a couple in the last couple of years. He also went to some training that NDCI offered back this last year down in Orange County and in San Francisco.

So he actually has been involved in the -- I watch him run it. He is willing to accept input. He understands the premises of drug court.

That being said, he is not involved in Proposition 36. He does juvenile drug court. He is going to take on adult drug court. We are going to have mental health court. He is going to do that, as well. But he is a juvenile judge. He is not in the rest of the adult system. So they are having the judges that are now doing Prop 36 continue to do it. Two separate things.

MS. SHIFMAN: The fact that Solano County in addition to having Prop 36 courts is now looking to do its own adult drug court, tell us the difference in your mind between Prop 36 and the Solano County drug court.

MR. THOMA: Okay. Well, I am going to have, Gayle, look into the future because we haven't done it for a while.

MS. SHIFMAN: Right.

MR. THOMA: The difference between Proposition 36 and drug court in Solano County is going to be significant in one way. Pretty much unless you have either not been eligible for Proposition 36 or you have already failed Proposition 36, you are not going to be in the adult drug court in Solano County.

MR. CLARK: Say that again?

MR. THOMA: You are not going to enter.

MR. CLARK: If you are not --

MR. THOMA: If you were not eligible for Prop 36, you might be considered for drug court, or if you failed Proposition 36, you might be --

MR. CLARK: Okay.

MR. THOMA: -- you might be admitted into drug court.

It's going to be a program for ten people. It's going to be those individuals that are a bit beyond what we normally deal with with Prop 36.

And I am going to talk with you about kind of my view of the triumvirate between PC 1000, Proposition 36, and adult drug court in a minute.

But, basically, those people that have severe addiction beyond the capabilities of at least our Prop 36 program -- and I know that there are Prop 36 programs that are more evolved and actually could treat these people, but we don't have that -- and those people that are under the -- the suspended sentence of a state prison term.

So it's going to be reserved for those individuals who kind of have the court of last resort, so to speak. So that's going to be the major difference.

And let me just go through that triumvirate. PC 1000 in Solano County and pretty much -- I mean, I have practiced in seven different counties, as I just mentioned. Pretty much across the board PC 1000 is -- these days it's just the person that kind of incidentally gets caught up in the criminal justice system, may have been at a party where something else was going on or whatever, but really a bare brush recreational, you know, isolated use or maybe using a little

more than that but not really very involved in their life.

Proposition 36, on the other hand, is somebody that is getting arrested for either the drug use or something related to it and included with it and has had a significant -- a little more significant problem with it. But really that's pretty much their main thrust in the criminal justice system is drugs, that there is no really other nexus.

You know, there -- we know that. I mean, we are criminal defense lawyers. Traffic offenses are very related to anybody with drug use. And certain people with drug use and drug addictions end up in the theft arena, et cetera, and I am going to talk about that in a second because that's really where drug court in my view comes in.

Drug court actually when designed in Miami was really only for drugs originally. But within about 18 months of Miami doing the first drug court in the country, they came to the realization that these individuals were feeding their habits by theft offenses and really was the same population, and you had to treat them, and you had to treat the addiction before you could get to the thefts.

So over the last, I would say, 15 years all of the -- all of the drug courts in this country have appreciated that and have allowed people to enter drug court with the promise of those cases being dismissed in their entirety upon successful completion of drug court.

But if you think about it, it does make some sense that it's -- all three of these have a real -- in California have a real important role to play. If PC 1000 can stop somebody where -- but, you know, it really isn't doing it by itself, it's just waking the person up and giving them an opportunity to get the case dismissed upon successful completion of treatment.

But if you look at PC 1000 in this state, there are jurisdictions where six hours of classes are enough. There are jurisdictions where 48 hours aren't enough or 80 hours aren't enough.

So it really -- it's such a -- you know, and there is no -- it's a statutory scheme, but it doesn't say what the -- what the -- what the treatment has to be.

With Prop 36 at least there is at least some commonalty as to what makes somebody eligible for it, what the target population is, the "target population" being the majority of all people that are addicted in this state.

We looked at -- before Proposition 36 came along, we looked at the incredible amount of people that are in state prison in the State of California on drug offenses, and it is an amazing number.

I actually just served the last year and a half on what's called the Little Hoover Commission. I don't know if you are involved with it or understand it. It's a state

watchdog agency that each year takes on different areas of the state, problems or concerns.

And this last 18 months we did sentencing and prison reform and actually came up with some very serious recommendations. One is that the State of California needs a sentencing commission.

But one of the great things about the Little Hoover Commission is it has academians that have done a tremendous amount of research.

And we have come to find out that even in spite of Prop 36, the way it continues to work in this state is that law enforcement is so involved in trying to do what they can with the drug population is they are just burying the system with numbers. And the people are still eventually going to state prison despite Prop 36, despite drug court, in alarming numbers, such that it's about 10 to 15 percent of the population in the state prison merely drug possession offense convictions.

MS. SHIFMAN: And is that because they are charging them with additional offenses?

MR. THOMA: Uh-huh. Uh-huh.

MS. SHIFMAN: Okay.

And also because the counties have different policies about violations?

MR. THOMA: And some of them are very -- yes, very

seriously consider the violations and three strikes, sometimes in two days and you are out and you are on your way to state prison.

MS. SHIFMAN: Right.

MR. THOMA: So, anyway, I think I got a bit afar from my -- from the point I was trying to make.

But, really, it's a serious problem, and the one -- there are a couple of things. You asked about Prop 36 doing, you know, the global job on somebody's life, and it really, I don't think, has the capability of doing that to the entire population of Prop 36. But, on the other hand -- because it's just too many numbers -- too big of numbers, vis-a-vis drug court. That's what I am trying to talk about. Because drug court has occupational therapy, has job assistance, has educational, has community involvement at every level, you know, religious and nonreligious. It's got mental health aspects of it and as long as -- as well as substance abuse. And Prop 36 is pretty much relegated to the substance abuse aspect of it statewide.

San Francisco is a little different. I mean, there is some great work being done. In fact, I know of a personal friend of mine who was working at the state level with regards to substance abuse and is now actually working in San Francisco, and she has done some phenomenal things in the couple of years that she has been here working on the Prop 36

issue.

Anyway, so there is a place, I think, for all three of them. I think that it just depends on how soon the person is brought into the criminal justice system, how severe their addiction is, how motivated they are to do something about it.

Unfortunately, there aren't drug courts everywhere. PC 1000 isn't funded everywhere. So the one entity that is statewide is Proposition 36.

And Proposition 36 for the uninitiated or uninformed has major opponents. When it went on the ballot, judges came out against it, probation came out against it, law enforcement came out against it, the District Attorney's association came out against it. And none of these entities want it to succeed. None of them have changed their perspective and now want to embrace it.

What they want to do is they gravitate a little more to drug court because of Prop 36, because with regard to drug court, there is the alternative of what Mr. Abrahamson said in leaving, this flash incarceration issue, that they can use jail as a sanction.

And, unfortunately, the sanction that they all embrace is not embraced by the treatment community or the medical community because all of this jail sanction is done without treatment. All the jails -- almost all the jails in this state don't have treatment available.

I mean, you may -- you may in about half of them attend NA or AA meetings. But, again, let me reemphasize that's not treatment. It's -- it doesn't have anything to do with treatment.

So -- and it's the power of being able to incarcerate somebody that drives a lot of people in our criminal justice system. I mean, I think I am preaching to the choir. And they're not going to embrace a system that doesn't give them this ultimate power. Or, if it does, it reserves it to a time that they are not patient enough to wait.

So, anyway.

MS. SHIFMAN: So is the drug court, as envisioned, a diversionary court, or it's not?

MR. THOMA: No.

MS. SHIFMAN: Okay. So it's a conviction but a drug court?

MR. THOMA: It will be a conviction, but it will -- it will allow for termination of probation upon completion of it. So it won't --

MS. YOUNG: With the hammer of state prison if you don't make it.

MR. THOMA: Correct. Correct. Yeah. I mean, it's not a perfect world, but I will take whatever I can get. If I can keep people out of state prison and perhaps improve their life or enhance their possibility of living outside of addiction and out of state prison, I will take it, yes.

MR. CLARK: And the drug court the way you have it envisioned, would the defendant be able to litigate anything?

MR. THOMA: Yes.

MR. CLARK: If he has a motion to suppress or he wants to go to trial?

MR. THOMA: Oh, yeah.

There are two competing aspects, and we do talk about this in the treatise, and you can review it.

Obviously, we want to get the person into drug court as early as possible. That is a key component. There are ten key components to drug court. And probably, if you don't, you can get the -- access that at the same place.

But we cannot and would never do that at the expense of a good motion to suppress or, you know, a motion to dismiss or something of that nature.

MR. CLARK: I didn't mean to imply that the defense would do it, but would the judge let you litigate?

MR. THOMA: No.

MS. YOUNG: At the same time that you are in drug court?

MR. THOMA: No. I mean, it's before you enter. You either -- you know, generally, outside of Los Angeles, most of the drug courts in this state are postconviction drug courts.

MS. SHIFMAN: San Francisco, as well.

MR. THOMA: With diversion.

San Francisco, as well?

MS. SHIFMAN: Yes.

MR. THOMA: But you get the case dismissed when you complete it, but you plead or are convicted before you go into it. So before that time would come, you would litigate whatever issues you have.

MR. CLARK: Okay.

MS. YOUNG: And that also applies to the Prop 36 court, as well?

MR. THOMA: Oh, yeah. Well, Prop 36, actually, there is nothing -- I mean, drug court can at least put some guidelines or some rules that keep you from being able to enter it but, obviously, not to that extent.

But Proposition 36, as it was designed, as it was implemented, as it was passed in the law, you go through jury trial, and if you lose, then you go into Prop 36 treatment.

MS. YOUNG: Okay. So you were talking about, I forgot, your deputy that is assigned to the Prop 36 court?

MR. THOMA: Yes, Ms. Berliner.

MS. YOUNG: So Ms. Berliner, at that point -- all motions or whatever are done before she gets the case?

MR. THOMA: Right.

MS. YOUNG: Unless she also handles other cases.

MR. THOMA: She does handle other cases, but she wouldn't handle cases like that wouldn't come to her.

MS. YOUNG: So the Prop 36 assignment, at least in your

county, is more of a therapeutic assignment --

MR. THOMA: It is.

MS. YOUNG: -- rather than a litigation position?

MR. THOMA: It absolutely is.

The only other cases she does are violations of probation, and we try to minimize any nondrug-related offenses for her. Because I really want that niche. I want somebody -- kind of like if somebody is hiring a criminal defense attorney, you want to hire that attorney that is specialized and really keeps up with that specific aspect of whatever you are charged with.

That's what we are trying to do with Ms. Berliner. And Ms. Berliner has been doing this for a long time. So I want her to spend 100 percent of her time understanding treatment, dealing with addiction, dealing with cases.

MS. YOUNG: So is the Prop 36 calendar really just a continuing violation calendar or status or here is how we are going?

MR. THOMA: Well, originally when I got there, when I got to Solano County, it was every two weeks, every single person on Proposition 36 came to court.

MS. SHIFMAN: That's ridiculous.

MR. THOMA: Yes. It was grind them down and eventually they don't come.

MR. CLARK: For reports or status?

MR. THOMA: Just for status, just to see how they are doing, to make sure they passed all of their tests and didn't have any positive tests.

Now there is a -- you know, statutorily, we are doing it the way it should be done, which is the quarterly reports, if there is a significant problem -- even if there is a problem and we can address it kind of off the record with further treatment, the person isn't brought in. But there are quarterly reports, which are mandated by the statute. But beyond that the person really comes to court, enters Proposition 36 and may not come back to court until the year is completed and they successfully complete it.

Now, obviously, if they -- if they are failing along the way and there is some violation alleged, then we have to bring them in and litigate that or either stipulate to it or have a violation hearing regarding the alleged drug-related offense or nondrug-related offense.

And, obviously, if it's a nondrug-related offense and it's found to be a violation, then they are out of the program.

MS. SHIFMAN: Now, I wanted to shift a little bit into -- you were talking about the training being done by the National Drug Court Institute.

MR. THOMA: Uh-huh.

MS. SHIFMAN: The teams that come for that training that

include the prosecutor, the judge, the probation officer, the treatment person and defense -- and I am assuming also the defense.

MR. THOMA: Oh, sure, yes, yeah.

MS. SHIFMAN: I mean, from where are you drawing these people? I mean, is it all over the country? How do people gather access to it?

MR. THOMA: All over the country.

Generally, the training is people -- are teams. Say, you are in a jurisdiction, and you want to start a drug court. You do an application to the National Drug Court Institute for funding to go -- to start your drug court.

As a component of the funding, you have to not only attend training together -- and it's done in two parts. The judge does some training with the treatment -- with the drug court coordinator, and then the entire team does a second part, and then the team does yet a third part after they have done some work. But it's self-selected within the jurisdiction.

For example, say, you have a judge that really sees this as a great opportunity, wants to bring, you know -- may call the Public Defender and the District Attorney and the various heads of the agencies and their jurisdiction, say, can we do this? Who would you think would be most suited for it? And then we do that.

But the same team attends a training at both instances; that is, the judge is supposed to attend all three, the drug court coordinator, all three, and defense and everybody else, the two final ones. And they are both three-day -- the final two are both three-day programs.

MS. SHIFMAN: And what kind of money is coming from the institute to these counties?

MR. THOMA: To the national -- from the National Drug Court Institute?

MS. SHIFMAN: Yes.

MR. THOMA: It depends on the size of the jurisdiction. Some jurisdictions are vying for as little as, you know, 50 or $100,000 up to millions of dollars in drug court funding. Sometimes, you know, a county like Los Angeles has received a substantial amount of money for drug court.

MS. SHIFMAN: And this is so that they can establish in California -- so that they can establish courts outside of the Prop 36 courts?

MR. THOMA: Right.

And, interesting enough, the National Drug Court Institute is not in favor of Proposition 36, never was, actually tried to marshal efforts against it.

However -- and also remember that Prop 36 was kind of a mirror of Prop 200 in Arizona. And in Arizona since Prop 200 and in California since Prop 36, more drug courts

have been started in both of these jurisdictions since these propositions went into effect than all the time before the propositions occurred.

So they -- they really do coexist. They coexist well. But there is sort of a turf war about it, and they -- I think each would rather do without the other, or at least drug court would rather do without the other propositions because they think that they are the most effective and they are the only answer.

MS. YOUNG: So was this team training really for courts that are starting up, or is there, you know, some either renewal or new people are coming into the team or whatever? Is there that, as well?

MR. THOMA: There's both.

MS. YOUNG: It's sounding mainly like startup.

MR. THOMA: Most of it is startup, but there are enhancement grants that are available for jurisdictions that either want to extend it, like we did in Mendocino. We had it in Ukiah, and we wanted an enhancement to extend it to Fort Bragg.

And there was training like this last year -- in four different locations there was training on incentives and sanctions by the National Drug Court Institute, and they offer free of charge for any drug courts in operation, whether you received initial funding or not -- there is technical

assistance, and they will send somebody to your jurisdiction.

MR. CLARK: What do you mean, "technical assistance"?

MR. THOMA: For example, in Mendocino County we had a prosecutor -- may he rest in peace -- that actually did some time in a federal penitentiary before he was elected.

MS. YOUNG: It was only a tax matter.

MR. CLARK: As only a tax matter.

MR. THOMA: What he calls "boutique courts." And he really did not want to involve. So what we did was ask for technical assistance from Washington -- from Virginia, actually -- and NDCI sent somebody to mediate and to facilitate a meeting of all the agencies and everything.

And it actually did some good. I mean, Mendocino really didn't have as big a problem as I have seen other jurisdictions do just because you can always threaten in Mendocino County the prosecution with going to jury trial. You know, that's something that really strikes fear into their hearts.

MS. SHIFMAN: Only the Californians know what you are talking about right now.

MR. THOMA: No. I recognize that.

But really I was fortunate enough in almost eight years there we -- I think we are somewhere at about 70 percent jury trial victories in Mendocino County. And I don't blame that on the facts. I blame that on the jurors. They are

wonderful people that --

MR. CLARK: I have got to move out here.

MR. THOMA: -- that have a genuine cynicism of law enforcement. It is beautiful.

MS. YOUNG: So would the drug court institute run out of that state court judge center that's in Williamsburg or something like that, or is that different?

MR. THOMA: It's different. Let me think. It's not Williamsburg. Though we used to do training in Williamsburg. In fact, that's where I was at 9/11. God, what -- Alexandria.

MS. YOUNG: Alexandria, Virginia.

MS. SHIFMAN: So what is the training and what does it entail and what is being taught, all the functioning parts?

MR. THOMA: What addiction is and what cultural competency is, what a lot of aspects of what drug court experts have to know, people that practice in drug court should know -- and it's really -- I mean, for some people -- and, obviously, the defense has a genuine interest in treatment and understanding it, but a lot of the other agencies, it's the first time they have ever even thought about, you know, relapse and all of these other aspects that they have never considered.

So it's -- it's pretty -- I mean, I dare say that I have attended a lot of them. I have probably been to at least 50 or 60 of these three-day sessions over the years, and I still take notes at it. I still -- you know, this one that we

did in April in Reno, I -- I was leading the training. I was still, I mean, fascinated by some of the information.

For example, just this last year there is a lot of new literature on fetal alcohol syndrome that we really missed over the years, and I have been following that.

I have you studied meth addiction quite a bit.

But this thing about alcohol, where you get to a certain point of taking alcohol -- if you drink a bottle of wine, you know, in one -- during one certain period -- a certain amount of days during a four- to six-month period, your brain is genuinely affected, and it really changes your ability to not drink alcohol or do a lot of other cognitive functions.

MS. YOUNG: Are you talking about the person or the baby? You switched.

MR. THOMA: I am talking about the person.

MS. YOUNG: Okay.

MR. THOMA: Though the baby, the fetal alcohol part of that, is that we have misdiagnosed a lot of people along the way. And that's the reason I went into the training, why I was interested in it at first. I have got a two year-old. And then I come to find oust a lot of other aspects. And that actually was presented in Reno by an expert in that area.

But, yeah, mostly addiction experts from all over -- I mean, Ken Robinson is from Tennessee. We have got -- I mean,

there are some pretty high-quality individuals giving this training so . . .

MS. YOUNG: And do you have any sense of how the different counties end up assigning or self-selecting the defense counsel that are part of drug court or Prop 36?

MR. THOMA: It really depends on whether there is a Public Defender office or not. Public Defender offices -- generally speaking, the chief defender, the director of the office, usually selects that person, and sometimes it's self-selected, somebody that has a genuine interest in it or whatever.

Boy, when there is not a Public Defender office, it's all over the board. Sometimes --

MS. YOUNG: Like one of those places with contract counties?

MR. THOMA: Yeah. Sometimes it's somebody that has a genuine interest in it. Sometimes it's just a friend of the judge that gets a lot appointments, who has no interest in it but just is along for the ride, so to speak. It's everything in between. It's kind of a hodgepodge.

I actually have been very distressed at a couple of occasions at these trainings where the defense counsel is genuinely not really too interested in it and is just kind of along because they have to have -- you know, it's one of the key components. They have to have defense involved in the team.

MR. CLARK: What happens when a private practitioner, somebody who is not a part of the Public Defender staff or had the training, gets hired by some of these folks, they have money and will hire a private attorney or they are not qualified for a Public Defender representation? How does that fit in with not having had the training?

MR. THOMA: In any drug court that I know of -- and I do follow up pretty well -- any privately retained attorney can represent somebody to have the person enter, to represent them during a violation hearing, whatever.

But what happens usually is somebody will retain private counsel. Ultimately, the person will be admitted into drug court, and that's it for private counsel, and the Public Defender's office, which staffs the drug court, represents the person from then on. And that's almost universal. And . . .

MR. CLARK: Why do you think that is?

MS. YOUNG: You mean, there is not a finding of indigency, they just sort of assume it as part of their caseload?

MR. THOMA: Right.

MR. CLARK: Why do you think that is?

MR. THOMA: Either the person runs out of money, or the private attorney is no longer interested in doing it. I mean, there is no -- let me -- I am trying to make my point is that there is nothing in the drug court rules or anything that says, "No, you can't have a private attorney."

MR. CLARK: Right.

MR. THOMA: And they are welcome, and they can be there and do it, but I almost never see it, just as a practical matter.

MS. SHIFMAN: Well, it's a free service that they can -- that the defendant can obtain just by virtue of being there.

MR. CLARK: Okay.

MS. YOUNG: But let's say if there were people in the private bar that, you know, wanted to get training, say, in -- you know, that clients are going to go into drug court, is there -- you know, they are not going to be part of some team of the, you know, county going to training.

Is there any kind of training for these separate attorneys, wherever they may be, if they wanted to say, how do I learn this stuff? How do I learn about addiction?

MR. THOMA: Oh, yeah.

MS. YOUNG: Where would you go to?

MR. THOMA: SAMSHA has training.

MS. YOUNG: What's that?

MR. THOMA: It's the National Substance Abuse --

MS. YOUNG: Is that where they are having a conference in Sacramento?

MR. THOMA: It's the Department of Health, basically, is what it is.

They do training. My own office -- in fact, Laurie Berliner is going to do training August 11th. And we always

invite the private bar, obviously, to any of our office trainings, but we are also this time inviting the Court, the District Attorney's office, probation. Because we want everybody to learn a little bit more about addiction and treatment. So we are actually reaching out and offering it.

But training -- I mean, training in this area is getting better that -- but the National Drug Court Institute doesn't do this team training, but they do do trainings throughout the country. I mean, they have their national symposium that's once a year that is huge. They have -- I think we probably have between three and four thousand people that attend it every year. And everybody can send themselves to it, to go to whatever it's -- I think it's three or four days of training.

And, really, if you go to that annual event, you can pretty much in three or four days get the whole gamut because -- like, Dr. Stalcup always speaks at it with regard to meth. I mean, they have some genuinely -- some of the real leaders in the area from throughout the country are there, and if you want to avail yourself of it, it's pretty easy to do.

MS. YOUNG: Oh, and, actually, I was here when you were speaking to the earlier speaker. I forgot his name.

MR. THOMA: Dan Abrahamson.

MS. YOUNG: Yes.

And did you say you were going to videotape your

training?

MR. THOMA: Yeah.

MS. YOUNG: The one that you are doing?

MR. THOMA: Yeah, we do it.

MS. YOUNG: Would it be possible to get a copy of the videotape or the CD?

MR. THOMA: Yes. And in fact what I could do, as kind of an addition to my testimony, I have the CD of the most recent criminal defense training from Reno, and I could bring a copy of that so that you can see --

MR. CLARK: That would be very helpful.

MR. THOMA: -- the different people that are presenting and the information that they are presenting. And it's -- believe me, I know, it may seem weird because it's just the defense. The drug court people do not give -- okay, we will give the defense this; we will give the prosecution this. I mean, they are literally -- you know, they are giving the same to everybody. But it just so happens I have the disk because I was leading the training for this so . . .

MS. SHIFMAN: That would be great.

MR. CLARK: That would be wonderful.

MS. YOUNG: And that one was only for defense counsel. That wasn't --

MR. THOMA: That was a week long at the National Judicial College in Reno, and it's given once a year every year.

MS. YOUNG: And how do people attend that? Are they sent by their office or --

MR. THOMA: You can be sent by the office. I think the tuition is, like, $700 for the week or something like that. It's not an astounding amount of money. And I think they have got a great deal at the hotel. I think it's, like, $29 a night, a federal rate at the hotel in Reno. It's John Ascuagas Nugget, and they have been doing it at the National Judicial College and at that hotel for quite a long time.

MS. YOUNG: So you got the rate frozen from 1962.

MR. THOMA: For quite a while.

(Laughter.)

MR. JONES: Going back to this notion of the retained counsel --

MR. THOMA: Uh-huh.

MR. JONES: -- when the client goes into the drug court that they sort of, you know, hand it off to the Public Defenders office, is there any push back from the Public Defender's office such that, you know, I have got a whole caseload of indigent folks who are eligible for my services, and this guy is not, but I have got to take him on, too? Is there any push back, too?

MR. THOMA: Not that I have ever heard of, no. I think it's just genuinely a function of being in the team and being involved in drug court, and Public Defenders are used to

picking up another case here and there. It's not a huge amount of cases where this scenario plays itself out.

MR. JONES: Right.

The reason I ask is that I sat in this morning on an interview of a guy from Marin, and he suggested that that was beginning to happen, that the Public Defenders were saying and the drug courts that, you know, we have our own indigent clients to represent, and this guy is giving me one more person to deal with. He ought so sit and handle himself.

MR. THOMA: I could tell you something off the record, and it would have to do with the relative case loads of the 31 Public Defender offices in the State of California and where Marin County per attorney falls, and it isn't in the top 30.

MR. JONES: Okay. Got you.

MR. THOMA: So it's a unique -- it's interesting that of all the offices that that would be --

MS. SHIFMAN: It may be more personality driven than anything else.

MR. CLARK: It might very well be.

MR. JONES: It could be.

MR. THOMA: So I didn't say it off the record. I said it on the record. It's not a secret in at least the Public Defenders' community.

MS. SHIFMAN: Or in the private bar.

MR. JONES: One other interesting that came out of that

conversation this morning that I wanted to ask you about was this notion that -- I don't know if you guys have talked about these briefings that happen --

MS. YOUNG: The staffings --

MR. JONES: The staffings.

MR. THOMA: No, we haven't.

MR. JONES: Yeah, the staffings that happen.

MR. THOMA: That's a huge distinction between PC 1000, Prop 36, and it's very unique to drug courts.

MR. JONES: I don't know if you want to just tell these guys what "staffing" is.

MR. THOMA: Sure. A staffing is a meeting before court in, you know, whatever, in a meeting room, in a jury room or sometimes even in chambers, where the entire team comes to discuss whoever is going to be on the Court calendar for that day. And you may have 20 people on a given day, and really the staffing may only have to do with maybe half of those people. And you may talk about three of those people needing sanctions or somebody recommends sanctions, and you discuss what those sanctions should be, if anything. And then seven of them might have incentives, movie passes or things like that. So you all the discuss how well they are doing, if it's either a dirty test or being late for counseling sessions or whatever it is.

And then it's interesting because treatment, generally

speaking, has a better -- the most up-to-date, day-to-day information about the individual. But sometimes, obviously, defense knows the person better, may know their mother who just passed away or some aspect of their life. So you bring all of that to bear.

And the whole idea within drug court that I genuinely agree with, that you can have the most animated, knock-down, drag-out fight in the staffing that you could possibly have -- and I have had them. I mean, I have literally wanted to ring the neck of a prosecutor that didn't get it, ever.

And the idea in drug court that you go off to court and you don't have that knock-down, drag-out. It's just discussed -- the judge just says what the situation is and what he or she is going to do as a result of whatever the individual's conduct is. There is no advocacy in the courtroom.

But it doesn't mean that there is an advocacy within the program. I mean, we really genuinely believe we have all the ethical duties. But it really -- what we are trying to do -- or what drug court is trying to do is make the client aware that it's a team situation that everybody is on their side, literally, that it isn't the D.A. in treatment, you know, that's out to get you, and only your defense attorney is helping you, which in a given instance might be true. But there may be another instance where actually the prosecutor

knows this person well enough and may stick up for them and recognize something. It does happen. And usually the prosecutors that are involved in drug court are a little more sympathetic than the average.

But staffing is very unique to drug court, and what you are able to do at the staffing is bring everything to bear. If that person gets a dirty test yet you want to bring in, okay, but, look, they just got their GED, and they were celebrating or whatever. Look what they have done. Look at the last six months, and look at the job they have done and everything, and you try to bring whatever positive you can, and that's what the staffing is all about.

MS. YOUNG: So staffing, however, is not recorded?

MR. THOMA: No.

MS. YOUNG: There is not a court reporter in the back?

MR. THOMA: Uh-huh.

MS. YOUNG: So all of this animation goes on, you know, in chambers or wherever, and then you come out to the court, and let's say the person is, you know, found in violation, and he is going to go to prison or something. I mean, I guess, if you fail on some of these, maybe that's what happens. Or are kicked out of Prop 36.

MR. THOMA: No. The staffing has to do with either incentives or sanctions.

MS. YOUNG: Okay. Something greater than that is out on

the record?

MR. THOMA: Yeah. If it's a violation such that termination is possible, then you are entitled to a hearing, and you actually do litigate whether somebody should be expelled, and you often will bring up other instances where other people suffer --

MS. YOUNG: Okay. So this is more how they are doing in their treatment, and do we need to do things kind of discussion versus actual plea bargaining on violations or something?

MR. THOMA: Yes. And I am not trying to hold myself out as a treatment expert, but I have learned some things from treatment, that they believe this is a beneficial way to do treatment, that is, to make it seem that the team is all with one fixed purpose when the person is in front of them, you know, so that there isn't this advocacy where there is this pull and tug, that it's actually more beneficial to the individual's recovery to do it as kind of a one -- one group, without -- without advocacy.

MS. YOUNG: No. I would -- just somewhere along the line we were talking about, you know, how would we reach out to find people who have been through drug court and what their experiences are? I mean, it's kind of difficult because it's also confidential. But, I mean, we are trying to get perspectives of, you know, the different --

MR. THOMA: Yeah. Treatment itself is confidential and the components of treatment. But it's a matter of public record --

MS. YOUNG: If someone is in drug court.

MR. THOMA: -- if somebody is in drug court, whether they have been terminated from drug court and whether they have completed drug court. I mean, you just go to the court records.

MS. YOUNG: Now, someone -- I forget, whether it was the doctor or something -- said that there were some associations of people that have, like, graduated from drug court or Prop 36.

MR. THOMA: Yeah.

MS. YOUNG: And they keep in touch with each other or something?

MR. THOMA: Alumni. And that's an important component.

MS. YOUNG: Is there a way to get a list? Is there anyplace that compiles where those associations may be?

MR. THOMA: Interestingly enough, I mean, individual jurisdictions do that. And they enlist and ask for the help of people that have successfully completed drug court to mentor some of their younger participants and everything.

So you would generally go to -- there are 58 counties. There are 51 of them, I think, right now that have a drug court or therapeutic court at one level of another. Alpine is

one of the very few up in Northern California that does not.

But, yeah, I think you would go to the --

MS. YOUNG: To the county and see what they offer?

MR. THOMA: Yeah.

Generally speaking, these are people that really put themselves out there. I attended last year Mendocino's ten-year anniversary, and a lot of people that have graduated came to that and spoke at it and were really outspoken. I mean, once they have successfully completed it, they really do go out of their way to try to help others, as a general rule. Some people are very secretive about it and very kind of embarrassed that they had to go through it.

MR. JONES: Time for one more?

MS. SHIFMAN: One more question.

MR. JONES: All right.

This is going back to this morning, as well, and your experience may be different than the person we spoke to from Marin.

But one of the ethical questions that interested me about being a defense attorney operating in drug court at these staffings was that -- and you can tell me if your experience differs. There are occasions, I guess, when you are talking about a particular client and sanctions where the defense attorney votes in favor of sanctions, thinks that sanctions is best.

MR. THOMA: Uh-huh.

MR. JONES: And my two-part question really is at that -- during those times when you are the defense attorney and you are going to sanction your client because of a dirty urine or whatever in the group and you think that's best, is it that you have suspended your zealous advocacy obligations for the client, or is it that you believe that you are by recommending sanctions for your client being a zealous advocate because in the grand scheme of things you think that that's how you are going to best help your client graduate from the program?

And the second part of that question is if it's the latter, I suspect that nine times out of ten when the defense attorney is voting to sanction the client, were the client in the room and had the client had an opportunity to say anything, they would say, "I don't need to be sanctioned. Don't sanction me." How do you deal with the tag of paternalism as a defense attorney for making that recommendation?

MR. THOMA: Well, it's a long question, but it's a great question. It's the latter.

And, clearly, there are a couple of things that you need to keep in mind to rationalize that.

First and foremost is that it's a voluntary program. It is actually the client saying that they are opting for trying to beat this addiction and abuse, and they need help.

They have other options. The criminal justice system treats everybody else that isn't in drug court a certain way.

You can always discuss with a client and the client doesn't have to take a sanction or take anything. They can opt out of drug court at any time. They can quit, and they can be sentenced, you know, traditionally.

My own feeling in this is that, no, I don't think I am abandoning them. And, granted, in a given instance, yeah, they would rather probably not have a sanction as opposed to a sanction.

I will never rationalize opting for or requesting a sanction that is a jail. And the reason for that is that treatment, which is almost -- San Francisco being the exception -- almost never offered in jails, and, if it is, it's usually poor or almost nonexistent.

And my understanding of addiction and treatment is that it's just the opposite. It's that the person is crying out for needing more treatment, not more incarceration, not help of some weird other nature that isn't treatment oriented.

So, yeah, I may -- I may say, "You know what? In this instance the person is going through a rough time. Yeah, they had a couple of bad tests. I think a sanction is in order."

And the prosecutor may want 30 days or a weekend or whatever.

And I may say, "How about additional treatment," or

"meetings," or something of that nature, or even -- if it's a last gas effort and people are trying to push the person out, I will even opt for the lesser of moving them back a stage. You know, drug court generally is done in four or five different stages of an 18-month program. And I will do whatever I can do.

Like we do in advocacy. I mean, if your client is dead to rights on a violation of probation, believe it or not, sometimes a defense attorney will go, "How about five days," or, you know, whatever, because it's the lesser of whatever evil will befall them.

I don't know if you want to call that paternalistic. I guess it might be. I guess we are all paternalistic at one level or another. But I think I am trying to look out for the best interests of the client and keep drug court going and being beneficial to clients of ours in the future, as well. So that --

MR. JONES: So you are balancing that, then. You are balancing individual clients with --

MR. THOMA: No, I am not balancing the individual clients. But I think from my perspective the -- I could take the position, you know what? We won't take any position in sanctions whatsoever. It's unethical of me to do that.

But at that level then I am actually, I believe -- for our agency and for our clients, I am less effective overall

than I would be in at least them understanding that I consider myself part of the team. And I would rather have drug court as an option than not have it, because I know judges well enough to know that the judges outside of drug court are less interested in my client's well-being.

So, anyway.

MR. JONES: That's great.

MR. THOMA: Long winded, long testimony, but thanks for the opportunity.

MS. SHIFMAN: No. That's great. Thank you so much. We really appreciate it.

MR. JONES: You have been very, very helpful.

MS.SHIFMAN: And if you would send your C.V. and the disk.

MR. THOMA: I will, and I will send the disk, as well.

MS. SHIFMAN: That would be great.

MR. THOMA: And if you can give me your card, I will send you the August 11th training, which I will send to you also.

MS. SHIFMAN: Okay.

MR. THOMA: But I will send that just specifically to Ms. Young.

MS. SHIFMAN: Thank you.

(Whereupon, proceedings adjourned at 2:17 P.M.)

CERTIFICATE OF REPORTER

I, JUDITH N. THOMSEN, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 21st day of August, 2007.

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JUDITH N. THOMSEN, CSR 5591, RMR, CRR

Transcript Edits of Daniel Abrahamson

San Francisco Hearing
Friday August 3, 2007

Page 100, Line 13: Replace “If” with “The”

Page 108, Line 3: Replace “predominantly” with “disproportionately”

Page 108, Line 20: Replace “can” with “cannot”

Page 110, line 10: Replace “series” with “serious”

Page 111, line 11: Replace “life” with “25-to-life”

Page 113, line 10: Replace “whole list” with “holistic”

Page 115, line 21: Replace “so” with “to”

Page 127, line 18: Replace “principal” with “principled”