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WHAT DOES THE FUTURE HOLD FOR DRUG COURTS?**PANELISTS****Nahama Broner***New York University School of Social Work***Caroline S. Cooper***Drug Court Clearinghouse,
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Nahama Broner*New York University School of Social Work*

My talk today is going to focus on slightly different than I think the subject heading. I am going to really talk about the population, the crossroads population, that comes into arraignment.

Most of the work that has been done has been on community samples, on jail samples, on prison samples, but not that population, of which about sixty-some percent go back out to the community and become our community samples, and then a certain percentage go into jail and then on to prison.

Today I am going to just sort of focus on some of the population characteristics in order to make that relevant for our discussions about both drug courts and other problem-solving courts.

This work is done with Damon Merrill, who is going to help me with the overheads, and Stacy Leman.

The work I am going to present is based on a small sample of 307 pre-arraignment detainees, men and women who were randomly selected. They had been arrested, they had been brought into the pens, and they were awaiting their arraignment.

Basically, the procedure was sort of logging those that refused or were taken to court or who were ill at the time and having interviewers who were master's levels and Ph.D. levels spend about an hour with structured interviews.

The questions that I am going to focus on today are really about how do rates of mental health and substance abuse differ from rates in the comparable population. Again, the pie gets cut in a number of ways.

Why that is of interest is from a resource perspective, both in terms of thinking about court intervention, but also the multiple points within which people could intervene. And also, when you are talking about a substance abuse population, whether that is really the sort of classic substance-abusing population or it is much more of a mix of needs.

What are the service patterns of this pre-arraignment population? What do they talk about as their service needs? Do criminal justice outcomes for pre-arraignment detainees differ by problem category?

What I am going to do in this presentation is we have divided the sample up based on research diagnoses for those with mental health problems, those with substance abuse problems, those that

have co-occurring disorders, and those that did not reach a diagnosis.

And finally, do the criminal justice charges and severity of the charges, both in the lifetime retrospective collateral data collection we did and in fifteen-month follow-ups, provide a screen for mental health and substance abuse disorders? So if you sort of look at the charge, can you then really begin to address a substantial part of the population?

Just to give you a quick overview of the sample, it will be no surprise to any of you. It is an extremely needy sample. They are, on average, twenty-eight years old, with the substance-abusing and MICA populations. I am going to just refer to it as "MICA" today, just for ease, mentally ill chemical abusers.

The MICAs and the substance abusers, as has been known in the literature, are an older population by the time we get them.

This sample was about seventy percent male. The high-female sample had to do with, in the arraignment courts you see more females who are then released into the community.

And the ethnicity is comparable to the borough: 67 percent male, twenty-two percent Hispanic, et cetera.

The years of education: New York, in multiple studies, when you compare it to national data, is often an educated population, so this is about right, about eleven years of education.

And the majority are single.

Also, about half of this population have children, and where that becomes relevant is that as we went through the data, much of this population is also involved with child welfare.

And so, you already see, just even in this kind of very quick, gross, cross-sectional look at who is coming in, you already see the transmission of patterns from substance abusers, mentally ill, living with others that are incarcerated, mentally ill, substance abusing, having children, getting involved in the Family Court system, as well as being abusers and having been abused.

The homelessness in this population is, I think, low. I think we counted it low based on the way we were doing our measurement. It was about twenty-nine percent lifetime, and only 10 percent admitted to current. Their own view was that if they had a bed to sleep in, a friend, a relative, or a shelter, they were not homeless. So these are low numbers.

About half the sample was unemployed at arrest.

Over half the sample earned under \$10,000 a year. Much of that was government assistance; about 41 percent were on assistance.

Thirty-six percent overall were receiving Medicaid/Medicare. And even when you look at the more needy populations, the MICA populations, the mentally ill populations, those are low percentages that have any kind of benefits, which again becomes an issue if you are trying to link people into treatment.

And about a third of the population has serious physical disorders and had been hospitalized for medical problems, such as HIV, hypertension, diabetes, and TB.

So to pull this together just briefly, and some things that we haven't shown here, about ten percent were currently homeless; about half percent unemployed; in terms of social services, about forty-one percent receive government assistance; forty percent are uninsured.

In terms of treatment, about a third of those with mental health and substance abuse problems had a history of mental health service use, which included medication, counseling, and hospitalization.

As we look at it, there is this phenomenon again in terms of the mismatch between need and what people are given during the course of their illness. Those with MICA disorders are overwhelmingly treated with traditional substance abuse counseling, and those with severe mental illness only are under-treated.

Thirty-three percent of the sample self-reported a trauma history. Rates are wildly varied in the literature, from a couple of percent to ninety percent. But this was sort of a first take in terms of sexual abuse, physical abuse, and emotional abuse, with mentally ill chemical abusers again and substance abusers leading the way in having experienced abuse histories.

In terms of family support, about fifty-five percent, as I said, had children; seventeen percent of those who had children had ACS involvement; and thirty-eight percent of those with children reported serious childhood trauma themselves; fifty-seven percent of those that had children had mental health or substance abuse problems.

Eighteen percent lived with a substance abuser—that's for the MICAs; fifteen percent lived with somebody of a history of incarceration, particularly if you were mentally ill; and if you were also MICA, you had a fourteen percent chance of living with somebody with a history of mental health treatment.

In terms of first take of rates—and one of my discussions will be about how you can slice the pie just about any way—but when we looked at this, about twenty-five percent of the population had se-

rious mental health problems, meaning a diagnosis of schizophrenia, major depression, and bipolar disorder; twenty-two percent had some sort of co-occurring mental health and substance use disorder; twenty-three percent had only substance use problems; and forty-six percent of the population had no problems at all—again, keeping in mind that those with no problems had actually substance abuse, including crack and heavy use of marijuana; however, they did not reach diagnostic criteria. Similarly, many in the population that was diagnosed without a mental health disorder had been hospitalized for suicide attempts and had family histories of mental illness, so keeping that in mind.

Let's sort of move this on. This slide just sort of shows you the rates within those with serious mental disorders, the major depression as being the highest, bipolar, schizophrenia.

One thing that is also important is that people seem to talk about major depression often as either sort of it makes sense because of the substance abuse, or, of course, because they are getting arrested. I think that we need to keep this in the context that in the last ten years in the general population we have seen a doubling of numbers of major depression, and that and anxiety disorders are some of the most treatable of the disorders and cause very serious dysfunction. So again, when we are looking at these diagnoses, we need to sort of keep that in mind.

In terms of what we called "moderate mental health problems," are actually serious from a person's life and how they can cause dysfunction and recidivism. Those were post-traumatic stress disorder, generalized anxiety, and dysthymia, chronic depression lasting two years or later. There were overlapping diagnoses, so many of the people in the "severe" category has post-traumatic stress disorder and anxiety disorders as well, but an additional seven percent of the population just sort of came up with these disorders.

Also, in terms of prevalence—so the literature in jails and prisons talks about a six-to-fifteen percent rate. Again, we found higher, close to twenty-five percent. Community samples are about 5.4 percent for the severely mentally ill. It drops down to 2.4 percent for SPIMIs.

When we looked at this in different ways to try to understand it from the literature, the co-occurring part of the mentally ill sample, the sixty-seven percent which goes with the Linda Taplin [phonetic] literature, when we looked at symptomatology that in other studies of pre-arraignment samples would lead to acute psychiatric hospi-

talizations, then we had an overall rate of about thirteen percent of the sample.

Let's go on. Substance abuse: sixty-eight percent of the sample was using drugs or alcohol, and this sort of just gives you a range of the kinds of drugs that were used. Forty-five percent of the sample had a probable substance abuse or dependence diagnosis.

When we first showed this, people said to me, "Yeah, but eighty percent of the people that come in, we know this, have substance abuse." And so what we did—I will not sort of bore you with the details—is we deconstructed how other studies were creating those eighty percents. And so, if you just like to look at drug offense, you are getting at it about thirty-five percent, all the way up to combining drug, diagnosis, and use, and then you start hitting those eighty percent numbers. So as you see, both with the mental health and the substance abuse, we can kind of move up and down, depending on how you are cutting this.

Quickly into criminal justice, index charge—this is what was beginning to be discussed in the last panel, in terms of sort of who is felony and who is misdemeanor. My pet peeve is you cannot cut the population that way because it is all the same population, and that you should cut it that way if for a cost perspective or a funder perspective or you have a court that is only willing to work with one or the other, but there is no practical, clinical, or real policy purpose, public health purpose, to do it that way.

Twenty-one percent of the population had violent offenses, with another four percent having other offenses against a person; thirty-five percent had drug offenses; eleven percent had property; three percent had procedural violations; twenty-seven percent had minor—that's like fare beating, which is about eighteen percent of that; prostitution charges about three percent of that.

Overall, no surprise, sixty-two percent in Brooklyn were misdemeanors, an additional two percent violators, thirty-six percent were felonies.

Severity of the charge: Again, we just sort of divided it here by felony and misdemeanor: thirty-six percent felony, sixty-two percent misdemeanor. And then, we look at violent by statute, which was fourteen percent; and then we look at violent by practice, because again people are not diverted by statutes, they are diverted by practice, so we added in stalking and other kinds of things that may not have been, after interviewing a series of judges, how they would divert or not.

In terms of outcomes with arraignment—and these, again, are just gross; we will have more details in our paper: seventy-two percent were released to the community from arraignment and twenty-eight percent went on to the jail.

In terms of the index charge and arrest outcomes, the MICA clients were much more likely to be convicted on their original arrest, and this lays out the mean days.

When we looked at what happened in a fifteen-month follow-up, it was primarily the substance abusers that were getting re-arrested. And again, as we went through all this data, it was substance abuse that was driving both with the co-occurring population and the substance-abusing population the high recidivism rates.

To summarize the criminal justice, there was nothing significant among groups with respect to arrest charge, type of severity, violent crime. So neither violence charge nor type of charge is really a screen for either substance abuse or mental health.

And again, when we looked back at their histories, this was also similar. Many of them had violent histories, and there is no difference between groups.

Criminal justice: MICA group and substance abuse had higher prior drug arrests and prior misdemeanors, and it was what you all know, the foreshadowing of the prospective data, which is that those were the groups that were most recidivating over fifteen months, and where, again from a cost perspective, one's interventions need to go in order to try to bring that down.

Some thoughts, and conclusions.

Criminal justice—and these are broad, and I am putting my neck out here—but again, sort of this cross-sectional intervention strategy, looking at just felonies and misdemeanors, I don't think is particularly useful.

Using mental health as a criteria for a court creates issues of stigma and justice with respect to length of incarceration. However, it can also provide the linkage that is needed.

Drug courts, while effective in the literature, only forty-three percent of the substance-abusing population sample had a drug charge and would potentially be eligible.

So again, I think that these are very interesting kinds of solutions that have been attempting to be creative, but you are only slicing a piece of the population. And then, if you look back and you think that half of those are having serious co-occurring disorders—I am not talking about a little anxiety; I am talking about schizophrenia,

major depression, bipolar disorder—and that they are going through into traditional treatments, into traditional therapeutic communities, and we all know from the literature again, and from all of Drake's work, that they have very high failure rates.

Again, it is important, even when we are talking about drug courts versus other kinds of interventions for the mentally ill, we are really talking about similar populations or the same population that is sliced in different ways, and our interventions have to be integrated.

The other thing that we can talk about is that certain populations are more likely to be detained. The mentally ill were more likely to be kept in jail longer, were more likely to be convicted on other kinds of charges, and substance abusers were also more likely to be held in.

In terms of policy, the high recidivism rates for substance abuse and MICA indicate a need to target those populations.

Wrap-around service models are needed to address multiple problems. Some of these things are really going on well in New York City, but they have not been mandated.

The wrap-around service models, as you see, are essential if you are not going to deal with the family problems, if you are not going to deal with the HIV, if you are not going to deal with the mental illness, if you are not going—I mean, you are not going to succeed because you are dealing with a whole person who is having all of these issues simultaneously.

Discharge planning and diversion identification are necessary as we look at the population that goes on to jail. So we clearly need an intervention there as well, so that jails for those who are going on, that have more serious charges, can stabilize, they can identify, and then we can link, if we have a comprehensive system.

And finally, from a practice perspective, the multiple population needs require probably the case management models that, indeed, have been proliferating. It seems like the data supports the idea of that kind of model. But it has to be linked to evidence-based treatment, because if the linkages, again, are to these traditional community treatments, or what people call the “broken system,” you are not going to have success on the front in intervention.

Implications for community mental health outreach is that if you have seventy-some percent going into the community, directly into the community, that means that arrest involvement is not just an issue of racial disparity in arrest charges. It can be used also as a

flag. It can be used as a flag to screen for substance abuse and mental health. That is really for the community providers.

And we need integrated substance abuse, mental health, and trauma treatment in the community and jails, and front-load the system through screening, which will save in terms of both detention and recycling time. So if we really start at the arraignment level with all of these kinds of interventions, I think that we will see some advantages down the road.

Caroline S. Cooper

*Drug Court Clearinghouse,
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I think I should just note that a lot of the issues that are being discussed today—the evaluation, the training, the expansion of the type of application of drug court concepts—is under way, thanks to the initiatives that the Drug Court Program Office has initiated.

I am going to just provide an historical perspective, a national perspective, from the work at the Clearinghouse, which has basically been charged with trying to compile and continually update information on drug court activity around the country.

You have heard a lot of innovative programs described, particularly in New York City, and a lot of really very innovative approaches are being attempted here. But my perspective is just from what is going on nationally.

I think what we are learning, and as been clear here, is that drug courts are very complex and they are increasingly complex, and the populations are complicated, the needs are complicated, and the more we get involved, the more complicated the problem is.

But I think I speak for almost everyone who has been involved with drug court programs when I say that they have represented a major breakthrough in terms of the function of the judicial process, the way cases are and can be handled, and the positive and therapeutic impact that the court system can bring about in our communities, particularly a court system that relies on precedent and one which was heavily driven by mandatory sentencing and related provisions.

We have now had over a dozen years of experience with drug court programs with activity under way in every state and hundreds of programs operating and being planned. We have drug courts dealing with not only adult criminal matters, but with juvenile delinquency, dependency, and tribal court matters as well.

We have legislatures in a number of states appropriating funds for drug court programs. We also see the drug court concept being extended to other types of cases warranting ongoing judicial supervision and management.

So what does the future hold? I believe we are at a crossroads in terms of laying the future course for drug courts.

The past dozen years have witnessed truly a revolution in appreciating the role which the judicial system can play in the justice system continuum. Drug courts have generated a wave of excite-

ment among judges that has not previously been seen in recent memory—not all judges, but a growing number.

We have a wide range of data and anecdotal information from a variety of sources that touts the benefits of drug courts and what they have achieved—retention rates, recidivism reductions, employment and educational development of participants, the birth of drug-free babies, cost savings, to name a few.

So what more do we need?

Well, as Marilyn Roberts pointed out in her presentation this morning, we have been very fortunate because the people who have been involved with drug courts have been some of the most exciting and committed leaders that I have ever encountered, and I have been working in this field for well over twenty years.

Recognizing that the mantle in many jurisdictions is being passed to new generations and new cadres of people involved with all of the elements that drug courts are touching, I am going to suggest that the future of drug courts and their long-term viability as truly a regular component of our judicial process will depend upon development in a number of areas. I have identified eleven, which I will just briefly summarize.

The first four relate to program evaluation, many of which have been touched upon by some of the other speakers.

But I think, first, we have to develop consensus on what drug courts are expected to achieve and what they are not. We have heard mentioned that they were established to deal with the revolving door, the recycling of defendants over and over again who come into the system, particularly drug-addicted defendants.

Drug courts have come to be all things to all people—crime-reduction programs, intensive community-based supervision programs, diversion programs, drug treatment programs, public safety programs, holistic rehabilitation programs, jail system cost-saving entities, mechanisms for coordinating social service delivery, to name a few.

Until we clearly define what drug courts are designed to achieve, there will always be persons taking pot shots at these programs—“So sixty percent graduated; but what about the forty percent who didn’t?” “So eighty percent of the participants stopped using drugs; but what about the twenty percent who didn’t?” “So you say the program saved jail costs of X dollars a day; but that is just cost avoidance, not any savings.” “You say recidivism among participants was ten percent after the first year; but what about after that?”

We need to develop consensus on what drug courts are expected to achieve and what additional incidental benefits many programs may also achieve.

We also need to clearly recognize that drug courts are not a panacea to cure all of the ills of the traditional process and achieve a 100 percent turnaround from what has not been achieved through traditional treatment, probation, and incarceration approaches.

I think the experience of most programs, as well as the intent of the 1994 Crime Act, indicates that reductions in recidivism, reductions in drug use, and retention in treatment are three of the primary goals of drug court programs. Hopefully, through the combined synergy of the judicial oversight, treatment retention and many other aspects of the defendant's life can be affected for the better, and so we will therefore note many other outcomes that might not likely have been achieved through traditional probation and/or incarceration—employment, education, family reunification.

We also need to develop consensus on the period of time in which achievement of these goals is to be measured. I would suggest that it be the period of the court's supervision plus a reasonable follow-up period, one or two years perhaps. Certainly we would like to see the defendant remain crime-free and drug-free for the rest of his or her life, but it is unreasonable to hold our determination as to whether or not the drug court is effective on the court's ability to impact the defendant for the rest of his or her life. We do not hold any other justice system program to this level of accountability.

Second, developing a base line for drug court evaluation that provides a foundation for meaningfully assessing the impact of drug court programs. This base line must necessarily include documenting the outcome characteristics of the traditional justice system and treatment process in the local jurisdiction.

Related to the first area, I noted that we have a great deal of data and anecdotal information relating to drug court activity and impacts. But the common question asked, and the issue which John Goldkamp, who I believe is on the program tomorrow, has frequently raised is "compared to what?"

Despite the number of years drug court programs have been operating and the number of drug courts that have been implemented, we still do not have a clear base line describing the pre-drug court situation against which to assess their impact.

What has been the background of defendants coming into the criminal justice system for drug-related offenses? What treatment services have they been referred to; have they in fact received? What has been the record of treatment program success with them? What has been the incidence of new crimes committed? What is the impact on the judicial system, both criminal and civil, resulting from the drug caseload? And the cost to the justice system and the community of this recycling of the defendants through the system? And how have these been affected by the development of drug courts?

I think we have also heard about the importance of the coordination and accountability of services that the drug courts have achieved. What we need to describe, as a speaker this morning did, is: what was the coordination and accountability situation prior to the drug courts?

Until we have a picture of the pre-drug court experience, how can we assess the impact of the drug court? How can we convince others that it should be a program for the future?

Developments in these two areas, I believe, will also be important to juxtaposing drug courts against recent legislative and reform initiatives that appear to capitalize on the treatment aspect of drug courts without the judicial oversight component, including Proposition thirty-six in California, 200 in Arizona, and others currently being proposed in Florida, Michigan, Ohio, and Missouri. If the sole referral of a defendant to treatment without judicial oversight has been effective in the past, drug courts, I submit, would never have developed.

Third, producing meaningful evaluative reports on drug court programs that document the benefits that drug courts are achieving in a context that policymakers and practitioners can understand and which address the issues they need answered.

Achieving the first two tasks is a necessary prerequisite to achieving the third critical area, providing policymakers and practitioners, those in a position to determine the future of drug courts, information that is relevant to their concerns and in a context that they can readily understand.

Sound evaluations of drug court programs are a prerequisite for their future survival, not simply reports to be put on a shelf somewhere for academics to read.

Fourth, determining actual program costs. A question frequently asked is: How much does a drug court program cost? We still do not know. We have cost information on some drug court

components, such as drug testing, but we do not have a meaningful grasp of what costs a drug court entails, particularly in terms of additional costs, which is usually the question.

Many of the drug court services really entail a reorganization of existing services, so that, in terms of costs, there really should not be an added cost. But in some instances, there are added costs, and some of them are directly related to the court functions that are being provided—such as supervision, case management; and in other cases, they are related to the additional services that have come to be needed for the drug court populations—just housing, public health, and related services.

The task is complicated because there are also offsets that need to be calculated and there is income that is being received from both participant fees as well as some of the treatment service providers, Medicaid, insurance carriers, and other service resources.

The next two tasks address the operational aspects of drug court programs.

First is creating an administrative infrastructure to foster efficient and stable management of drug court programs. This infrastructure needs to include having the drug court fiscal need incorporated into an annual budget or budgets, and the drug court judicial assignment as part of the regular judicial assignment rotation process.

Most drug court programs have been the brainchild of one or two people in the jurisdictions, most often a judge from either the justice or treatment systems. Very few have developed as an integral part of the local court administrative structure.

For drug court programs to survive in the future, I believe they must become a component of the local court process, with organizational, administrative, and budgetary support from the court system as a whole. Drug courts will never survive if the drug court judge needs to be continually seeking funding for the program separately from, and potentially in competition with, the rest of the court system.

Drug courts also entail considerable interagency collaborations. For most programs, these are voluntary and based on the policies and goodwill of current leadership. An infrastructure that can transcend current personalities in the jurisdiction can begin to institutionalize the interagency collaboration needed and the accountability functions of the services provided.

Perhaps two of the most important operational needs drug court programs have encountered is the lack of a stable funding base for

drug court services and the lack of a cadre of judges willing to assume oversight of the program.

So part of the infrastructure of a drug court must necessarily entail the provision of resources from multiple sectors—treatment, social services, mental health, and others. The important task will be to assure that drug court program needs draw upon mainstream funding sources, and not be served primarily by special periodic supplementary grants or other appropriations, as is presently the case in many situations.

The judicial support issue will require education both within the court and within other judicial education bodies. The drug court judge function, therefore, needs to be part of national and state and local education activities and part of special segments, as well as new judge orientation.

Sixth, articulate general operational policies and procedures that highlight required procedural elements, keeping in mind that drug court participation does not eliminate the adversarial process for the participant; it merely suspends it.

Drug courts are frequently referred to as “non-adversarial.” This reference has always bothered me. As a former public defender attorney, my orientation to drug courts is necessarily from the perspective of the protection of defendant rights and the maintenance of the integrity of the judicial process. While the adversarial system may be suspended when the defendant participates in a drug court program, it is by no means eliminated. In fact, it is the pressure, the leverage, that has been so critical to achieving the impact that drug courts have had.

So it is important that operating policies and procedures be developed that ensure that drug courts operate along consistent, objective procedures, consistent with constitutional guarantees, and that the element of subjectivity is removed to the extent possible from the screening, assessment, and sanctioning process, while at the same time maintaining the important role of discretion in individual cases and situations.

Programs also need to be sure that the development of a drug court does not result in widening the net of those arrested and prosecuted.

I am going to quickly sum up, because I see time is drawing to a close. I just want to highlight a few other areas.

One is reaching the defendants who need the drug court. There is always a temptation when one starts a new program that will be

scrutinized for impact to take those who appear to be likely to be successful.

I don't believe this has been true in many drug courts, but it is easy to miss the defendant who does not express willingness to enter or remain in the program, who does not appear "motivated," a factor frequently cited by treatment providers for either rejecting or dismissing a potential defendant from treatment services.

So we need to remember that persons who most need the drug court program may not readily jump into it, for many reasons—the panoply of personal problems that have been referenced by many of the earlier speakers—and they may also just distrust the system and feel that the less contact, the better, particularly with a court program that is so intrusive.

They may also have very low confidence in themselves and their ability to take on such a program.

Services to persons with mental health conditions—this has been referenced by many speakers, and so I will not belabor the point, but I think it is very important for drug courts to have a consistent policy that attempts to embrace participants that have mental health conditions coexisting with their substance abuse problems if they can function in a drug court setting.

Developing a system of aftercare that can support drug court participants after their period of program participation has ended and the jurisdiction of the court is terminated.

Should treatment end when justice system supervision ends? I think that is pretty much the case currently with drug court programs. But the research of the past decade has stressed the chronic relapsing nature of drug addiction in which the brain's chemistry changes, and even stopping the use of drugs does not automatically repair the brain damage caused by the drug use. The drug addict is, therefore, indefinitely vulnerable to relapse. So the length of treatment services may rightly be longer than the reasonable period for justice system intervention, and I believe these services have got to be provided to the persons who have completed a drug court.

My last two areas are ancillary but, I believe, important to program operations.

The tenth is developing and maintaining a broad base of community support to augment drug court programs. That is key component number ten, if you have gotten the "Key Component" publication that is outside.

Many of the early drug courts developed as grassroots programs closely tied with a broad array of community support organizations, but I believe that, looking at the characteristics of programs currently, many of these community partnerships have dropped off. These need to be revitalized for many reasons, in addition to the support these entities provide, because in the long run the best advocate for the drug court, apart from the participant, is the community the program serves.

Finally, self-help training resources that can be easily accessed by all persons involved with drug courts, including persons who are both new to the program as well as need more background in substance addiction and recovery.

As I mentioned, the Drug Court Program Office has sponsored some very excellent training programs for many, many programs. But I think there needs to be continuing access to training resources both for people who have gone to those programs as well as the tremendous turnover in staff and the line staff that are involved with these programs.

Michael Jacobson*John Jay College of Criminal Justice*

I just want to really make two or three points—and I assume for the most part they will be self-evident—about drug courts. I want to talk about them from a system point of view, and I will use the New York City/New York State experience as an example, but really everything I am saying can be translated to national numbers.

For me, the big issue with drug courts, in terms of their success or not success, is whether or not they can be taken up to scale. The current size of drug courts, the current volume that drug courts handle, for me means they cannot possibly be a success. They are successful certainly in their own terms. The literature is replete with really good measures of treatment effects, outcome measures, recidivism, cost savings.

Cost savings I actually think is the weakest part of the literature on drug courts. I actually don't believe they save any money. I actually don't believe they avoid any costs either. The definition of both of them would be that if drug courts ended in New York City today, that either you could reduce the budgets of the New York City Department of Corrections and the New York State prison system; or if they ended today, you would have to increase the New York State prison system or the New York City jail system. I don't believe either of those things are true. But that is not really a criticism of drug courts, because with the volume they handle, it is really not a fair onus to put on drug courts.

For the 500 or 600 cases that I believe pass through successfully in the Brooklyn Drug Treatment Court, for you either to save money, or even to avoid cost, you either have to have such huge potential length of stays in prison or tremendous volume of lower potential length of stay, and you have neither.

It is not really a big issue for me, although I focus a lot on cost savings in criminal justice, but again, because at the volume that drug courts operate, putting the onus on them to save money at the current level, the current volume they have, is not really fair.

But certainly in their own terms, I think people would say they are successful. The reason I think in order for them to have to be a success they have to go up the scale—and by “scale,” let me give you just a couple of examples of what I am talking about.

The Brooklyn Drug Treatment Court, again—people know the numbers better than me—but several hundred cases a year. If you combine all the drug treatment courts in New York City, maybe it

is a couple of thousand. According to the most recent ADAM [phonetic] data, of the 300,000 or so people who are arrested in New York City, seventy-nine percent test positive for any drug; forty-six percent for cocaine; twenty-two percent for opiates, primarily heroin; and fifty-three percent have heavy drug use. That is well over 100,000 people—probably more, probably closer to 150,000.

Let's spend a minute on probation, which is really what I want to concentrate my attention on here.

Probation, which has over the course of a year about 90,000 people on probation in New York City, four million people nationally, but of probations 90,000 people, even conservative estimates are that 50 percent of them, or about 45,000-to-50,000, have drug use problems, and a fairly large percent of that are significant drug use problems.

The Department now estimates that about fifty percent of all new cases coming into probation, around 17,000 a year, are positive for drugs.

My point in giving these two statistics, both the police and the probation statistics, is that especially on probation, that is where these cases are, cases that cry out desperately for treatment and need treatment. It's not that they are not in drug courts—they obviously are—but primarily they are not, they are on probation.

In order from a system perspective for drug courts to really make a mark, especially in terms of cost savings, but ultimately in terms of large-scale reduction in crime and recidivism, those cases that are now on probation have to find some way to either make their way into drug courts or be treated in some similar manner.

As one of the issues, one of the sort of unintended consequences of drug courts is that drug courts receive a tremendous amount of—in a lot of ways deserved—attention, sort of public and academic attention, money, but far disproportionate attention and resources than probation. So for all the attention that drug courts get in New York City, deservedly so, again not only are there tens of thousands of cases on probation that need what people in drug courts are getting, but probation is being decimated at the same time.

Probation just took a \$10 million cut in New York City. Caseloads are already 240-to-one. They will increase more than that.

And it is hard, at least for me, to separate the issue of drug courts and drug treatment and the measurement of cost savings

and recidivism outside those kinds of cases. The distinction between the cases in drug court and probation, while in some ways understandable, is really sort of a false distinction for me. There are just too many cases out there that should have the kinds of treatment and attention that drug courts provide.

I think that the real value of drug courts is that they show that there are a number of things you can do to be successful, certainly in terms of treatment outcomes and recidivism.

You really have to do, in my opinion, very little, almost marginal things, to get those rates down. If drug courts could somehow find their way to capture those cases, I think that is, at the end of the day, what will show drug court success, because again, even marginal changes in the cases that are now on probation, in terms of re-arrest and recidivism, will make a huge difference both in terms of cost and public safety.

And, while at one level you could say that will be net widening because they are cases that are going to probation, they are not going to prison or jail directly, it is not net widening ultimately, if you do a program evaluation correctly, because so many of those cases are working their way back very, very quickly into prison and jail. And if you can keep that reentry—the reentry back to prison, not to the community—if you can keep those rates down lower than they are—and they are staggeringly high now—then I think drug courts can really show their success.

The one practical issue, or suggestion, I have is that courts when they are looking at drug courts, when they are looking at making them permanent as part of court systems, you find some way to create either a way to get probation cases in them in numbers that you are not remotely getting now, or make separate probation parts within courts that do similar things that drug courts do, because probation is simply deteriorating as drug courts thrive, and that distinction makes no sense from a public safety or a policy point of view.

Juanita Bing-Newton*New York State Office of Court Administration*

The answer to the question “what does the future hold for drug courts?” I would like to amend to add the caveat “in New York State,” because, quite frankly, that is where I am and that is my concern and that is where I think my answer will be most meaningful.

Quite frankly, I do not think we are at a crossroads. I think it is not gloom and doom. I think that the future for drug courts in New York State is quite sunny, bright, and clear, that drug treatment courts in New York State will become a positive fixture, permanent in every court, not only in New York City but throughout the State of New York.

There are three reasons for this opinion, and then I will give you four caveats about the danger that lurks. Even in sunny skies, there are problems of dark clouds.

My perspective also, I think, should be shared with you. I have had fifteen years of experience as a trial judge and an administrator of Manhattan Supreme Court. I first became interested in these issues of sentencing—and, after all, drug court and placing people in drug treatment courts is a product of that function of the courts where we sentence people—back in 1985, when I was involved in an endeavor to reshape the New York State sentencing system with a committee called the Sentencing Guidelines Committee.

And lastly, I had the great pleasure of being on the recent New York State Commission on Drugs and the Court, chaired by Mr. Fisk.

My first reason for believing that drug courts are here to stay is because at the root of it, the judiciary as a whole and many judges individually view this as an option for increasing the discretion that has been taken away from them so many years in the making, or the last twenty-five years. In response to the executive and legislative belief that the only viable punishment for criminals was jail, more jail, mandatory jail, for more people, for more types of crimes, judges found themselves, particularly on the felony side, almost impotent about what to do with people. And my friend Michael is correct, we did not rely on probation as we should.

So to the extent that judges now have recaptured that ability to make sense in this resolution of cases and controversies and the outcomes, I think the judiciary is embracing it. It is an opportunity once again for making a change.

And, quite frankly, judges have become tired of the recycling, of the manufacturing of felons, by having people just come in and out, without any kind of positive disposition at the end which would clear the calendar in a positive way.

Let me just say this. I think that our legislative leaders and our governors, by increasing sentencing in the form of jail and mandatory sentencing, thought that this was a good strategy, much the way many of us today think that drug courts are a good strategy. But I think judges now realize, and many of us realize, now there are other options that should be invoked.

Some say and some think that this is too much micro-managing. In my brief time here today, I have heard phrases of "paternalism," "coercion," but the process of judging, where judges use their authority to form an informed response to social problems, is simply not new, it is not unusual. It is what we do. *Brown v. The Board of Education*, for example, comes to my immediate mind.

And so, just as it is appropriate for judges to have informed responses to public macro issues, I think it is similarly appropriate for us to have those informed responses to micro personal issues, such as drug addiction for individuals, particularly when we know that it has effect in the public milieu.

Second, I believe that the future for drug treatment courts in New York State is bright because nothing, of course, succeeds like success. The public, which clamored not so long ago for jail and more jail, is now embracing treatment. Rightly or wrongly, whether they know what they are embracing or not, they like it. That response is positive because our partners in government are increasingly open to treatment as an important option and complement to incarceration.

In my current work of justice initiatives, I am involved in a significant amount of community outreach and education, and in every venue and in every part of the state the topic of drug treatment courts comes up. Why is this so? For a couple of reasons.

As one of the speakers on the previous panel talked, public trust and confidence in our judiciary is so-so. He noted that African-Americans and Latinos particularly believe that the system is unfair. What he did not say, and I will say it, is that white people also believe in the majority that the system is unfair to black people and to Latinos. So this notion that we can stop sending poor people and brown people to jail for everything and solve the problems with treatment resonates with the public, white and black, rich and

poor. So to improve grades and to improve outcomes is a good thing for the public as well.

I think the other reason that the public has embraced the drug treatment courts is because we no longer view addicts as dangerous and we view addiction as a disease.

I grew up in a South Bronx housing project when the heroin epidemic captured our community and when crime was so horrible and so awful that it changed the whole component of the neighborhood. There developed in our community and other communities a hard line towards addicts and the crimes that they commit.

Now that crime is down, violent crime is down, people are more willing to accept addiction as a treatment, also with the possibility that it is a better outcome. And, of course, this resonates with legislators and other elected officials because they also see, as well as a positive response from their community, from their constituents, the potential for dollar savings. But I don't know that that is as important as the other factors.

We have a day when drug treatment judges have become celebrities in the community. The judge may write a brilliant, Cardoza-like decision that gets you published, but fine work in saving lives in drug treatment courts gets you invited to programs to speak and receive thunderous applause.

Third, the future of drug treatment courts in New York State is secure because of Chief Judge Judith Kaye's response to the Fisk Commission's Report, where it said that every court, every judge, of family and criminal jurisdiction should become a drug court; and, in fact, the drug court model that we see now and that we are talking about today should be obsolete and the drug court model that Professor Jacobson has referred to, the model that is systemic, that every judge has as his or her resource, that is done in conjunction with its partners—prosecutors, defense attorneys, probation, and other players—will become the way we do business, just as we used to say “time served” or “sixty days on probation,” or the other language that we all know from being in these courts.

Judge Trafficant [phonetic] has been given the awesome responsibility of implementing this program, which he has tackled in an amazing way. Not only do we have the beginnings, the outline of that ultimate goal, but we now have drug courts in places where no one thought there would be drug courts in New York State, almost every county. The number is staggering. And he believes he is going to implement this recommendation by the year 2003.

So what are the dark clouds?

First, you know, the public is fickle. Someone mentioned the *Post*. You could be in the “ten worst judges” today and the “ten best judges tomorrow.” It doesn’t really matter. But the public is fickle. If we have another round of severe violence or adverse responses or increased rate of violent crime linked to drug addicts or linked to people who fail, using a public definition as opposed to a drug court definition, there may be problems.

So what is the response? As everyone has noted, we have to keep better and more honest record-keeping and reporting, education about this, and quality control. Screening is essential as well, and that is one of the things Judge Trafficant’s committee is doing, is improved screening.

Second, I think there is always a concern about Fourth Amendment rights in a world where almost you assume guilt in order to get into the program. Once I had a trial where we had difficulty in picking the jurors. It was the sale of a small amount of drugs. Several jurors said, “We don’t want to do this trial. Let’s put him in treatment.” I said, “There is a presumption of innocence, not a presumption of guilt.” That is how strong the community feels about drug treatment.

We have to be concerned. A defense attorney from an upstate small city told me that he thought that the police were, if not trampling, certainly tiptoeing on Fourth Amendment rights in drug sweeps and rationalizing the same because they were “helping addicts.” Of course, that is not acceptable.

So here is an appropriate point for a pitch that I always make, and I will until it is done, for increased funding for indigent criminal defense and for 18(b).

Competent and well-trained counsel for the accused is critical, regardless of the environment, treatment or otherwise. And they must continue to safeguard fundamental rights, to be the guardian of those accused, and challenge the judiciary if we become like those jurors of mine.

Two last observations.

I heard many comments about this notion of net widening. I find it interesting. There are some people who complain to me, and I guess to others privately, that have we gone too far, where we have more and more young, poor children of color, in programs for smoking a marijuana cigarette, but that is not true. And you fill in the blank of whatever community you think is appropriate—not poor, not brown, not white. That is a very serious concern.

And lastly, I think that this whole issue of treatment cannot become linked, inextricably so or not, with the issue of other sentence reform. The Fisk Committee in its majority rejected the idea.

There is no one who feels more passionately about the need for having a critical look at our current mandatory sentencing structure, but I think it would be a mistake if drug treatment courts and the good that they do are affected by a different discussion.

Deborah P. Small*The Lindesmith Center*

I want to have a conversation about the future of drug courts or drug treatment courts that looks at redefining the problem, because I think that the ultimate success of this experiment that we have been talking about today is directly linked to whether or not as a society we are willing to really engage in a conversation about redefining the problem that problem-solving courts are seeking to address.

I would like to talk about the problem in two ways.

One is an individual problem: What are the problems of some of the individuals that are coming in to the court, that the court is trying to address? I want to assert for purposes of this discussion, which I am happy to debate with people about later on, that a lot of the problems that we have been talking about today are not the real problems, that they are symptoms of problems, and that because of our inability to deal with the real problems—having to do with lack of employment options for people, inadequate housing, failing schools, neighborhoods that do not nurture people—that we have treated some of the symptoms of those problems—drug addiction, alcoholism, violent behavior—as being the problems, as opposed to being symptomatic.

I think that that is an issue that needs to be revisited. It is beyond the scope of the conversation that we are having today, but I think to continue on this vein, where we are defining as problems things that are behaviors that are actually symptomatic of bigger problems, keeps us in a place that is not ultimately that productive.

The second has to do with a different definition of the problem, as being a societal problem. I believe that the development of drug courts comes from an inability to really deal with the contradiction that is posed by our attitude to what we call “illegal substances” and how we deal with them in society.

I do not want to spend a lot of time getting into a discussion about the disease model or addiction, but I just want to point out that substance abuse is not the only area where people engage in behavior that is negative, that has negative consequences for them as an individual and as a society, and where the public has to expend money in order to address those problems that people have.

I come from a family and community in which one of the highest causes of death is hypertension and diabetes. Many people would argue that people who develop those problems develop them, in

part, because of negative behaviors that they bring to themselves by the way they eat, through their living habits, et cetera. And yet, as a society, we would never think of denying a person access to medical care because they ate the wrong foods or because they didn't listen to their doctor when he told them to cut down on the amount of salt or sugar that was in their intake.

And so to me, regardless of whether or not you buy into the notion that substance abuse is primarily a disease or that it is driven in part by voluntary behavior, there is no reason, given the science of what we know about addiction today, that we should be treating people who have substance abuse problems any differently than we treat people who have other serious health problems.

Drug courts represent the compromise that we have made because we are unwilling to deal with that, because of the fact that we live in a country that says that it is okay to smoke cigarettes and to drink alcohol and for people to use Viagra recreationally, but it is not okay for people to smoke marijuana, take a little cocaine, because they do not have access to Valium or any of those other kinds of drugs that have the same psychoactive properties. We are not willing to address that.

And so we have taken on this approach as being a compromise for the fact that we are using our criminal justice system to deal with problems that are ultimately social problems, health problems, societal problems. And it is the wrong venue, and it will ultimately never be successful in addressing those problems.

The other part about that compromise—which I think I said before, and I will continue to repeat it, because I don't think people deal with this—is that it is a compromise that we have made where only certain people actually have to bear the cost and the brunt of it. You know, New York State to me is a classic example of the racist nature of the way in which our justice system works.

How else can you explain an outcome that has 94 percent of all of the people who are incarcerated for drug offenses being members of a racial minority? I have yet to hear anyone ever say to me that 94 percent of the people who buy, use, or sell drugs in this state are black or brown.

All of those people that you see going into private treatment clinics, et cetera, are, by definition, drug offenders, but we do not treat them that way, and they do not have to deal with the sanctions of the criminal justice system, and they do not have to deal with a treatment program that requires them to judge success

based on their ability to have clean urine, where the punishment if you do not do that is a deprivation of freedom.

When you are talking about coercion, I think it is very important to make a distinction between individual, family, circumstantial coercion and the coercion by the state. The reason that we have a Bill of Rights, the reason that as lawyers we are taught that it is our responsibility to protect people and to use the Bill of Rights to protect them, is because our system is based on the notion that there is a limit to how far the state can go to try to exercise its will on individuals, that we have a contract, a social contract, between the individual and the government.

So when we are talking about coercion here today, let's be clear that we are not talking about the kind of coercion that comes from family members, from employers, from friends, et cetera. I have been part of those types of interventions. But the result of that is not somebody's deprivation of their liberty for long periods of time.

I think we have forgotten about the seriousness of jail and prison and the seriousness of depriving people of their individual liberty. It is the most important sanction that we have in this society short of killing people. Short of killing people, the most serious thing we can do to you is deprive you of your freedom. And yet, we give out sentences to people like we were giving out candy. We think nothing of making a person go to jail for three to five years because he had a \$5.00 bag of drugs.

What happened to the idea of proportionality? I think that we cannot lose that, particularly since the way in which these courts are set up right now, those people who are deemed to fail—and failure is almost always defined by the ability to attain and retain abstinence—that the consequence for failure is deprivation of freedom.

And not only that, but there has been no discussion today of any of the collateral consequences of people having felony convictions, or even misdemeanor convictions, like the loss to the right to public housing or to financial aid for school or to civil service jobs, or the most fundamental right in any democracy, which is the right to political participation, your right to vote, to be part of the body politic.

We have in this state 200,000 people who are not part of the body politic because they lost their right to vote as a result of their being convicted of a crime. And it shouldn't be surprising to people that most of those people are people of color and, not unsur-

prisingly, they come from pretty much seven of the poorest communities in this City. So it is not only a loss to that individual, but it is a loss to those communities that they come from, the families that they are part of, and the representatives, the elected officials, who represent those communities.

So these are all costs that are not being factored in by the current way in which we are dealing with things.

So when I, as a person who is an advocate for drug policy reform, defend drug courts to my colleagues, who think basically that they are indefensible, but the way that I defend them is because I see these courts as being harm reduction for the criminal justice system. I want us to really look at the fact that we have a system that hurts people.

When you look at and you visit prisons and you talk to the tens of thousands of young men and women who are spending and languishing long years in prison because they had the misfortune of getting caught up in one of the numerous drug sweeps that take place primarily in their communities, and are now having to spend five/ten/fifteen/twenty years, the best years of their lives, behind bars, you realize that the harm that they may cause to themselves as a result of their substance abuse pales in comparison to the harm that our criminal justice system visits on people regularly, daily.

So I look at this as harm reduction for the criminal justice system. And if you apply harm reduction principles to our system, then to me it would bring a different form, a different way, of evaluating success. We would look at—because, you know, I look at our system as being addicted to punishment, and so I see what we are doing now with drug courts as a way of trying to diminish and reduce that addiction.

So coming from that perspective, I say that any positive change, anything that we can do to get each actor, each stakeholder in the system, to look at how they can reduce the harm that we are actually doing to the individual who is coming through there, as opposed to only looking at what happens to that particular individual and what they do to themselves, then that would have us have a criteria for success that is not totally relying on abstinence, but is really looking at whether or not that person is reducing their drug abuse, improving their life functioning, and reducing some of both the individual and societal harms that come about as a result of this system that we have in place right now.

And secondly, it means that we would be looking at ways to educate the players in the system to get them to realize that they in

fact need to reorient their thinking about the way in which we are addressing these problems and what their appropriate responses are.

So while I think that it is wonderful to have judges get acknowledged for the positive role that they have played in the lives of the people who have benefitted from being participants in drug treatment courts, we want to caution them that being in that role also has the effect of reinforcing what has become a historically both paternalistic and racist way in which people of color look to authority figures, also who happen to be primarily white, for giving them approval as to whether or not the way in which they are living is good, appropriate.

It is not surprising to me that you have statistics that show that people who participate in these courts give a lot of credit to the judges. They have been programmed in their communities over time to believe that when you get positive reinforcement, that when you get positive acknowledgment from an authority figure, that that's a good thing and that that's something that you should be grateful for. And that goes back to several hundred years of the way in which our society has dealt with people of color.

I think that is something that we should be thinking about. I think it is something that we should be trying to change. We want people to see that their success is based on their own, what they have drawn up out of themselves, not because they had this judge, this treatment counselor, or whatever, because ultimately they have to go back into their communities on their own, navigate the same life situations that they had before they came into the system on their own, and ultimately determine whether or not their lives are going to be productive on their own.

So whatever we can do that is going to actually empower people to become self-conscious, self-reliant, and self-empowered actors is basically what we should be doing.

Now my time is up and I am going to stop.

I just want to leave people with one thing, which is I agree with Judge Newton that we should not be having this conversation contingent on what we do in other aspects of the criminal justice system, but I think that we should use the fact that as a society we see that there are benefits from having a more public health-oriented way of dealing with these problems, to be something that informs our overall criminal justice system, so that we do not write people off because they have had a prior violent felony conviction, that we do not think that it is appropriate to give people what amounts to

life sentences for a simple mistake that they may have made at the age of sixteen, seventeen, or eighteen, and that we do not continue to allow our politicians to use the issue of crime as a scapegoat and as a proxy for dealing with issues around race, income distribution, and power.

Questions and Answers

I was wondering if there was some way, if Deborah Small or Michael Jacobson had thoughts about how their presentations, which at first sight might seem very different, could be integrated, because as I was listening to Mike's presentation, I thought: Well, is it just an accident that drug courts deal with really a minuscule amount of the population, or does this have something to do with the functions they may serve, functions that I think Judge Hoffman may have alluded to? Is there a symbolic political function, if you like, so that we can say that we recognize it as a disease, but nonetheless have the Rockefeller drug laws at the same time?

If you think of that, I think you say: Well, look, there is really no way within the current structure of fears of crime, of non-acknowledgment of drug use as sort of a symptom of the problem, where we are ever going to have this kind of therapeutic drug court as the mainstream.

I was wondering if you had thoughts about that?

MR. JACOBSON: Well, as I mentioned quickly, one of my concerns about drug courts is not drug courts sort of qua drug courts, but this sort of incredible amount of attention, deservedly so in a lot of ways, that almost by definition takes away attention from a variety of other parts of the system, not only things like equal treatment or racial disparity, but just simply ignoring where the bulk of the people in the criminal justice system are who need treatment or provider things, and that is in probation. You know, it has been the stepchild of this system forever, but it is by far, in terms of the people it controls, in terms of the people under criminal justice supervision in this country, it is probation.

You know, probation has always been in this tautological position where they have too many people and not enough money, and as a result they can't do anything, and because they don't do anything, then they get even less money. You know, the average cost of being on general-supervision probation in New York City today is a dollar a day. That is what we spend. When you spend a dollar a day, you get a dollar-a-day's worth of service.

The disproportionate—understandable, but disproportionate—attention on drug courts is, I think, an easy way to satisfy a variety of issues by concentrating on something that in statistical terms handles almost no cases, but allows you to say that you are doing a variety of really good things—which you are. You know, I am not criticizing drug courts in that, but it does leave a big yawning gap that still has to be dealt with.

MS. SMALL: I just want to say one of the main reasons why there is such a small number of people who go through the drug court experience is because it is still basically up to the prosecutors to decide who they will allow. We have replaced judicial discretion with prosecutorial discretion, and we have said that it is okay for prosecutors to do with defendants what—forgive me for saying this—what affirmative action did twenty years ago, which was cherry-pick people, cherry-pick the people who you think will be most successful, who have the greatest possibility of having the outcome that you want, with the least amount of effort and resources on your part, such that you can claim to be successful by dealing with people who may have been successful without your intervention in the first place.

So, as we could see from the charts, the people who go to drug courts are usually people who are considered first- or second-time felony or misdemeanor defendants. Most of the time, their previous charge was a drug charge. A lot of times they are not people who have serious drug involvement, so their likelihood for success in treatment is much higher.

I think for these courts to really demonstrate effectiveness, they should be dealing with the hard cases. They should be dealing with people who, without anything else, would ultimately end up in prison.

And it has to be done in a system where you do not put the discretion solely in the hands of prosecutors whose principal goal is to have high conviction rates so that they can get reelected, and have them be the ones who determine who should have the option to go into these courts and who should not.

QUESTION: A few of you touched on the numbers of people who actually need drug treatment when they are being sentenced. I have read that only a small percentage of drug users actually need addiction treatment. And I think, Judge Newton, you talked about the fact that people who have been arrested for smoking a joint are sent into treatment in drug courts. It seems like there is a potential for a really large percentage of people who do not need treatment to be forced into treatment and that it would probably take those resources away from actual addicts, and somebody who was perhaps experimenting is then subjugated to this treatment, because it seems like judges do not necessarily have a way to evaluate whether a person needs addiction treatment at that point, but it is merely handed out because it is better than a criminal sentence.

So how would you change the screening process to correct that problem?

JUDGE NEWTON: I guess, since my name was mentioned, that was for me. Is that right? Or did I have that look that I had in first-year law school, that “don’t call on me” look?

You know, the whole issue of screening is one that will be a factor to decide how successful the programs are. One of the things that we say is early screening.

Did any of you read *The New York Times* today? We had the story of Nando. I think the Nando story for me raised as many questions as this conference could ever raise, because I asked: Where did Nando get arrested that he is out of jail after eight months with clearly substance abuse problem, no skills, the things that Deborah talked about? It would seem that he may have a marijuana problem, or some kind of substance abuse problem. And he may have been screened out, because he didn’t go into a drug treatment program, although we know there are drug treatment programs in all of the counties.

So I guess the question I don’t know—and judges rely on experts in other fields. You know, one of the people in the previous panel talked about how judges are now relying on social scientists and others, doctors, because we do not know.

So I have to assume that someone said that this person was not eligible for screening, or that the person did not want to, or for a lot of reasons.

I think my concern, which is as much a political or practical concern, is that in the effort to improve numbers, we reach out to people for whom a lesser intervention would be equally satisfactory.

You know, frequently we don’t have the prescience to really know what is going to happen in someone’s life down the road. I think that is where the judicial discretion to fashion a remedy that is more helpful than cut in stone is good. So, for example, in Manhattan Criminal Court they now have treatment readiness programs. Maybe that is what a person needs, is a treatment readiness program, as opposed to a full-blown program.

But I think that the development of the model as to what is the appropriate level of sanction is one of the real tasks for drug courts, as we hope to have them in every courtroom.