

Federal Judicial Center
Off Paper Episode 2

Mark Sherman: From the FJC in Washington, D.C., I'm Mark Sherman and this is *Off Paper*. Today we talk with two federal public defenders about the evolving role of defenders in adjusting the human needs of clients and reducing recidivism. Our guests, Maureen Scott Franco and Kathy Nester, have spearheaded efforts in which defenders take a more holistic approach to working with clients at pretrial and during reentry. The purpose of holistic indigent defense is to solve underlying social and environmental problems that may have contributed to a client's involvement in crime. It does this by emphasizing interdisciplinary teamwork, partnership with other criminal justice stakeholders, and identification and mitigation of collateral consequences.

Maureen Scott Franco has been a public defender in the Western District of Texas for 24 years. She became the federal defender in 2013 and has been deeply involved in developing the El Paso Division's Project Sendero Reentry Court and its newer Adelante Diversion Court.

Kathy Nester has been federal defender for the District of Utah since 2011. Before that, she was an assistant federal defender for several years in the Southern District of Mississippi. In 2013 Kathy and her Utah counterparts in the

federal district court created a collaborative district-wide standing committee called Assisting Reentry to our Communities, or ARC, to facilitate reentry planning and policymaking. ARC has been key to the district's successful reentry efforts.

We've got a couple of disruptor defenders in the house today, people. So keep yourselves right here. You won't want to miss it. Maureen Franco, welcome to the program.

Maureen Scott Franco: Thank you, Mark.

Mark Sherman: Kathy, welcome to the program.

Kathy Nester: Thanks, Mark. Glad to be here.

Mark Sherman: I'd like to start our conversation by reading you both a description of holistic indigent criminal defense and then having each of you react to it. The description comes from an article written by Robin Steinberg who's the executive director of the Bronx Defenders, which is a public defender organization in New York City and a pioneer of this approach to practice. For folks in the audience who might be interested in reading the article, it's available on the Bronx Defenders website.

According to Ms. Steinberg: What has become clear is that the traditional model of indigent defense representation has become complicit in the broken machinery that is the criminal justice system. Even when we zealously fight the government and argue passionately and persuasively for our clients, at the end

of the day we do nothing to alleviate the crushing circumstances from which they have come and to which they return. There is, I now believe, a better way. Working compassionately with indigent clients requires a firsthand understanding that the problems and challenges they face stretch further than the confines of the criminal cases before them. Indeed working compassionately means knowing that clients come with a host of unaddressed social problems - poverty, mental illness, alcoholism, substance abuse, posttraumatic stress disorder, and family dysfunction. Quite simply, the criminal justice system is the last stop for many clients. End of quote.

So Maureen, when you think about this, what's your reaction to it and how does your work in the Western District of Texas reflect this perspective?

Maureen Scott Franco: When I hear that, I think amen. Because, as you mentioned, I've been doing this for a long time. I started out as an assistant defender and I had success in the courtroom, but then you would see clients come back. You would - quote/unquote - win but yet you didn't really solve the underlying problem, the behavior that led to the criminality in the first place. So that was one of the aha moments I had when we first started the reentry court, which is Project Sendero. It was how can we help people reintegrate. We could change their mindset. But if we don't address what the environmental

forces are behind them, then it's going to be for naught because it will take an extremely strong individual. Even if they become strong mentally and they make better choices, if they are released back into an environment that's not supported, if they are released back into an alcoholic situation or in poverty or in homelessness or in a neighborhood that is eaten up with drug addiction. So it became very clear after starting this that a holistic approach is the only way we can solve the problem and with the hopes that it will trickle down to other members of the client's family.

Mark Sherman: Kathy Nester, same question. How does your work in Utah reflect Robin Steinberg's perspective? What's your reaction to the quote from our article? Talk a little bit about that.

Kathy Nester: It brings to mind an analogy, if you'll permit me. For example, if you were a medical physician and a patient came to you. You're an orthopedic doctor, say, and they had a broken right leg. As you were setting their broken right leg, you noticed a terribly inflamed and infected rash on their left leg. To not do holistic criminal defense is somewhat akin to the physician just not commenting on the leg and sending him off with his right leg fixed up knowing that the left leg is going to send him right into the hospital any day.

I think that kind of puts a little bit of perspective on how difficult it is as criminal defense lawyers to simply focus on one proponent of the criminal justice system without even acknowledging that there's serious issues that need to be addressed or this person is going to be right back in the same situation. I mean we're basically setting them up to fail, and wasting resources, and definitely harming our communities when people go in and out of prison like that.

So for all the same reasons that Maureen just discussed, Utah as well has really taken a serious look at how do we approach the infected leg. If we're not the person that can treat it, how do we connect our patients or our clients with the person that can help them, that can treat the underlying symptoms and causes of criminality and why this person was in our system to begin with. I just think it's very forward-thinking. I think we're all evolving. It's definitely a massive culture shift from how it's been for years and years and years. Massive culture shifts don't happen quickly, but it's really powerful when it does happen.

We have several programs here in Utah. We have drug courts and behavioral health courts for people that suffer with mental illness. We have two tribal reentry courts for our tribal communities. We have a veterans court that addresses the particular needs of veterans. We also have a pretrial diversion

court that tries to steer people out of the criminal system before they take on all the collateral consequences of a felony. So we're trying lots of different things and for all the reasons that Robin mentioned in her article. I could not agree more with what she said in the article or with what Maureen just said.

Mark Sherman: So Maureen, Kathy just mentioned this culture shift that's taking place. I want to sort of drill down on that a little bit with you and with Kathy because I imagine that this culture shift is really something that strikes at the heart of the traditional approach to indigent criminal defense work, especially in the work of public defenders. I just sort of wonder what reactions you've gotten - if any, Maureen - from either assistant defenders in your own office or other defenders across the country when they hear about the work of defenders taking a more holistic approach to the work that you're doing in the Western District of Texas. And it's also taking place obviously in other parts of the country as well. What kinds of reactions do you get? For example, do you get reactions like that's not what public defenders are supposed to do? Talk a little bit about that.

Maureen Scott Franco: I would say that, yes, that's exactly -- even people within my own office. It's not the people that are on the teams. That's why I make them voluntary,

that they have to be interested in doing it and participate in it. Because there is a thought out there that that's not the work of a public defender. That they're supposed to represent the client in court and try to secure a good result for them, and that's where it ends. It ends right there. So it really requires a cultural shift in our thinking.

As to what Kathy mentioned, you know, we may be able to set the leg. But if there's a festering wound that we have not addressed or at least talked about, that it can lead to problems and this person coming right back into the criminal justice system which of course no one wants. No federal defender out there or a public defender out there wants to have a client come back into the justice system. But there's a certain amount of uncomfortableness of getting to know your client that deeply, and this does require an attachment to the client to a certain degree. You have to be invested because people can smell if you're a fraud.

If you're just putting on a show that you really care about what's going on in their lives and what's going on at home and how they're addressing their problems, most people, especially people who's been around a little bit, are going to be able to sniff that out - the phoniness of it. It does require you dropping down your guard that in a lot of ways we've been trained to put up so that we don't get too emotionally attached

to our clients. And so it's a delicate balancing act, but it certainly is worth it.

When you see someone that you helped through resources that you have in your office or outside your office, parlaying that into their success, it's definitely worth it. As the article pointed out, there is a tremendous amount of personal satisfaction when you see someone who is able to change their lives and the lives of their family. I would say defenders in general, outside of our office doing this, a lot of them will -- I wouldn't say a lot, but some will shake their heads and say, oh, I don't have time to do that. But really it's worthy of a cause enough to make time to do it.

Mark Sherman: Kathy, same question for you. What's been the reaction of assistant defenders in your office? What kinds of reactions have you gotten from other federal defenders who might take umbrage at the sort of broadened role envisioned by holistic indigent defense?

Kathy Nester: Sure. Well, like I stated, the downside of a culture shift is that people who are very steeped in the former culture have a hard time looking at it a new way. You hear the infamous I'm not a social worker comment, and I tend to question back that response. But also, in addition to what Maureen has talked about in terms of the new way that we work with our clients, it also really, really is difficult for

defenders to collaborate sometimes with other agencies that are involved in the process who we have formerly perceived more in an adversarial way. So some of the issues we have had in the office, in addition to the issues with new types of relationships with our clients, is new relationships with other people in the court system.

The other people in the court system as well have had some pushback about this idea of all of us working together for a positive goal rather than working in the traditional adversarial mode. It's a shift. You're really changing hats. We are so focused on being an advocate and being us and our client against the world, and this is a very different approach and did give some of us pause. We are in the job we're in because we tend to be antiauthority to some degree, that's why we were drawn to his profession. And all of a sudden in some way we kind of become a part of the authority, and that's challenging for defenders. I also think it's challenging for other people in the court system to take their hats off and link arms with the federal public defender. That's not something they normally do either.

To quote Secretary Clinton, it does take a village for this to work. All of the agencies have to get together to make an initiative like this actually work. It is difficult and there are pushbacks. But I will tell you that I've seen hardcore

skeptics, once they got involved, completely changed their perspective about the importance of this work.

Mark Sherman: We're talking with Maureen Scott Franco and Kathy Nester, federal public defenders on the Western District of Texas and Utah, about holistic indigent criminal defense and the role of the defender at pretrial and reentry. We'll be back to talk some more with Maureen and Kathy after a short break. This is *Off Paper*.

Female Voice: The FJC's program Quality Improvement in Federal Problem-Solving Courts is a year-long blended learning experience designed to help courts improve participant outcomes by improving their processes. Courts learn to use the plan-do-study-act model for continuous quality improvement, an approach that was developed by Dr. W. Edwards Deming for manufacturing in the middle of the 20th century, and that more recently has been applied in human services context.

Since 2011 teams from 25 judicial districts have participated in this FJC program. During an initial two-day seminar, court teams practice using the PDSA model to develop ideas for improving processes over the next year. Then during that year each team engages in a monthly one-hour phone consultation with faculty to obtain guidance on using the PDSA model to address the improvements they have chosen to work on. Sometimes the improvements are fairly simple and are

accomplished quickly. Sometimes they are larger and take more time. These can range from the team's data analysis and business practices to the ways in which the team interacts with participants in the problem-solving court environment.

Applicants for the next program beginning in early FY 2018 will be available soon. To learn more about the program, visit probation and pretrial services education's page at fjc.dcn.

Mark Sherman: We're back with federal defenders Maureen Scott Franco and Kathy Nester. So I want to ask you both about holistic indigent defense at pretrial specifically. As you know, a significant number of federal defendants nationally are detained pending trial even though many have been assessed as being low risk. This is a particularly interesting phenomenon because the federal judiciary, as you know, has pretrial services so there's opportunities available for alternatives to detention. The national data indicate that the vast majority of defendants released on bond complete their pretrial release successfully.

So first could you talk about what your experiences have been in your districts with regard to detention and release, and whether you think that taking a more holistic approach to representation by defenders could have an impact not just on detection and release rates but on the disposition of cases where defendants have a lot of challenges that make it difficult

for them to stay out of the criminal justice system? Maureen, what are your reactions to that?

Maureen Scott Franco: Well, as you probably know, Mark, we have a very high detention rate in the Western District of Texas. A lot of that is because of people who don't have the proper papers or status to be released on bond. But the other part is that the location close to the border, so there is a lot of inter border families and living arrangements and things like that. So that's part of the problem. And a lot of it is it's - quote/unquote - easier for the court to just allow people or detain people and keep them locked up because then they don't have to worry about their flight. That's usually more the problem as opposed to dangerousness. So there's somewhat of a kneejerk reaction just to detain them without bond because of the possibility that they may vote for an acquittal with their feet by going across the border.

Because of the fact that some people who live in [indiscernible] even though they're a U.S. citizen and they work over here and they go to school here but they live in Mexico, that is a challenge because a lot of times we may have a distant relative that the client could reside with or we have to resort to the halfway house which is probably not the best place to put someone who has pending case because now you perhaps are locking them up with other people that might get them involved in

further problems. So the holistic approach is very important in a situation like this because we really need to hit the ground running and just don't do the kneejerk reaction of locking somebody up just because it's, quote/unquote, easier. That would ensure their appearance in future court hearings because you have the marshals there to transport them.

I find that if we are able to get especially a client that has issues, if we work on getting them out and getting them services or working with pretrial - which, you know, pretrial is amazing in the sense that they really care about what happens to the client and they want the client to be successful - I think that that's why when people are released on bond, that it's normally a successful situation. It's really good to have a success record when you then go before the district court for sentencing because you can really advocate for an alternative than incarceration because this person has now hit the reset on their life. They were able to address the problems that led them into their criminality in the first place, so it's extremely important.

It does require a lot of legwork by an assistant defender who gets the case, that the person is bondable and to try to find living arrangements, to try to wrap up the social services that they're going to need. But nine times out of ten it's a successful result because the person obviously has gotten these

services that they need and, secondly, you're able to show to the district court that locking this person up and making them restart again after getting out of jail is not beneficial to our community as a whole or to that individual.

Mark Sherman: Maureen, it's very helpful and interesting to hear you raise issues that are sort of unique to border courts in terms of immigration and border issues. These are issues that not a lot of other districts face and really raise some unique challenges especially for defenders and sort of other criminal justice stakeholders as well. I wonder whether you could speak to how the work you've been doing in taking a more holistic approach perhaps -- you had mentioned earlier the pretrial diversion court. Are there ways in which you are working to try to affect the disposition of the case? We're sort of here getting into even talking about sentencing.

Maureen Scott Franco: Right. So the predisposition court absolutely is taking a holistic approach to the client's needs. That is a team of the pretrial officers, the federal defenders, the U.S. Attorney's Office, the judge. We have the service providers, the mental health providers, and also the cognitive therapists that are involved. Everyone is working holistically to try to help this client become successful so that their case will be ultimately dismissed. That's what our court is. It's a predisposition. So they plead guilty. But if they are

successful with the program, then the case is dismissed against them.

It had a bumpy start, quite honestly, because I think that everyone had this idea of we'll just treat it like it's someone who's out on pretrial release. And very quickly all the stakeholders realized that, oh no, no, no, we've got to look at this person in total. We have to look at all of their problems and we have to address all of their problems. Be it living driver's license, traffic ticket, child support issues, everything had to be approached and taken care of in order to ensure that this person was going to be successful.

Mark Sherman: Kathy, same question. What's been your experience in Utah especially with regard to pretrial and sort of the work that you're doing more holistically and the impact, if at all, on the disposition of cases?

Kathy Nester: Sure. So Utah is of course the Mountain West. We're traditionally a pretty conservative area. Our judges tended to be conservative in the past about making decisions about detention versus pretrial release. I think it would be fair to say that traditionally we had a culture of detention. We all started really looking at the cost that it was having not only to our districts but also to the families and to the defendants. We really dug down to see what it would take to switch more to a culture of release which really, under

the Bail Reform Act, that's what we're supposed to be. Right? There's supposed to be a presumption that you are released except in particular crimes.

So we started looking at different ways to change the way we approach the in/out decision of pretrial. One of the areas that we looked at were these risk assessment tools that became available within the last several years. Of course I know the audience is aware of the PTRAs, the pretrial risk assessment tool, that's been fully adopted and vetted and scientifically tested and is now in use in all of our districts. What we realized was that at the time the only person who really was even aware of the PTRAs scores or the PTRAs risk assessment results was the probation officer. And in our district, our probation officer wasn't even conveying those risk analysis to the court. The court was not aware of the PTRAs or what it meant.

So we dug down as a group and started looking at what the PTRAs was. We trained everyone about the history of it and how it's used and we basically incorporated it into our pretrial approach, our decision in front of the judge. We had even incorporated our PTRAs scores into our pretrial reports. I think to anyone who is familiar with the PTRAs and the scientific results of that, it's fairly shocking how rarely people are at a risk of violating. A tiny percentage of people, even in the

most serious of criminal history categories, actually violate while they're on pretrial release.

So once we all started just becoming aware of the low risk of the majority of our clients to be out on release, we slowly started seeing more and more judges willing to consider alternative conditions and allow them to be released. Interestingly, what we saw was a huge change at sentencing. I don't know if it's simply the ability to holistically help your client while they're out to get employment, you know, deal with their addiction issues so that by the time they get to sentencing they really have made great progress which impresses the court or whether there's some type of psychological factor where it's just more difficult for a judge to take someone who is doing well and is productive and basically send them backwards into a prison setting. But we have seen immense changes at sentencing for the clients that have been successful on pretrial release.

In our office we now treat the detention hearing as seriously as we treat the sentencing hearing because we had determined that it has the greatest impact on what ultimately happens to our client on the backend. It's been an interesting journey. There are some issues with these risk assessment tools. The jury is still out. There is some suggestion that there is a disparate impact on minority populations simply by

the factors that you look at to determine a group's risk. But even with those issues, which I think we can all kind of be careful about and take into account, it has been an interesting way to really start shifting a culture of detention into a culture of release.

Mark Sherman: Maureen, I wanted to rift on that culture of detention to culture of release a little bit more and ask you whether you've seen progress in that regard in your district.

Maureen Scott Franco: Well, absolutely. I believe that pretrial understands and certainly the magistrate judges understand that under the Bail Reform Act they should be releasing people and not detaining them. But as with everything, it requires a cultural shift in their thinking. I agree with what Kathy said absolutely, that the detention hearing should be treated as seriously as a sentencing hearing because it can greatly determine what the ultimate outcome of not only the case for the client but the client's life. A lot of times they are missing direction. So if we're able to get in there and help them through the pretrial and backing up pretrial and helping get jobs and secure employment and good employment and help with the living situation, it really will not only impact positively their lives but also it helps us with advocating for them at sentencing.

Mark Sherman: My guests are federal defenders Kathy Nester and Maureen Scott Franco. After a short break we'll talk with Kathy and Maureen about the impact of holistic indigent defense on relationships with the clients and criminal justice counterparts. We'll also talk about how holistic indigent defense and the development of problem-solving approaches in federal criminal justice more generally are affecting defender offices as organizations. I'm Mark Sherman and you're listening to *Off Paper*.

Male Voice: To help supervisors learn to improve their work with line officers in this age of risk and needs assessment, core [sounds like] correctional practices and reducing recidivism, FJC probation and pretrial services education has developed supervising officers in an evidence-based environment. This in-district year-long blended learning program aims to teach supervisors an array of skills such as listening actively, providing feedback, and reinforcing officer's effort.

You'll learn to apply evidence-based principles and help officers connect risk assessment results with case plans and supervision strategies. Methods for conducting focus discussion during case staffing and interactions with officers will be examined, and strategies for reviewing case plans to ensure that

they reflect evidence-based supervision approaches will be explored.

Because these skills and these training are in such demand, the 2017 program is already fully subscribed. But it is not too early to start thinking about your training needs for next year. For more information about the program, visit the FJC's probation and pretrial services page at fjc.dcn.

Mark Sherman: Kathy Nester and Maureen Scott Franco are our guests. I want to explore with you how the emerging holistic approach to indigent defense practice in the federal system is affecting the relationships of defenders both with clients and professional counterparts. When it comes to clients, defenders have always been viewed as their champions. After all, the primary role of criminal defense is to force the government to prove its case beyond reasonable doubt before it can deprive an individual of his or her liberty and, in the most extreme case, his or her life.

But advocates of the holistic approach, like Robin Steinberg of the Bronx Defenders, say that doing an excellent job in addressing the needs of a client's criminal case is not enough because many indigent clients have other needs that will be unaddressed and will eventually drive the client back into the criminal justice system. So I wonder if each of you could talk about a client that you or one of your assistant defenders

have represented recently who had a lot of needs that wouldn't have been addressed but for our problem-solving approach, and how that changed your client's lives. Kathy, let's start with you.

Kathy Nester: I think probably some of the most really stunning results that we have seen have probably come out of what we call our behavioral health court. This court is designed to assist people that are on medication, that are diagnosed, that really need a whole different level of supervision to succeed in society.

So many times people with serious mental illness just simply can't succeed under our typical culturally traditional model of supervision. What we have seen is very ill people that come into the behavioral health court, and they come often and they're monitored, their medications are monitored. We assist them with just the most minor problems. We recently had a very ill man who just simple was -- none of us believed that he could function well in society without ultimately ending up back in our system. He got his medications regulated and he was just really receptive to connections with our social workers, our mental health care treatment providers. He is actually doing great and even made the statement a few weeks ago to our social worker that we have on staff that he just couldn't believe

programs like this existed and that, in fact, it was a life saver. He thought he was going to die.

Just really briefly, one other really interesting thing that's recently happened that just revealed how culturally tribal communities are impacted by supervision, we had a tribal reentry court situation where we had a long time - we call them a regular in the criminal justice system.

Mark Sherman: Right.

Maureen Scott Franco: He was just aged out. He was tired and he wanted to stop the revolving door. He needed help. He was desperately impoverished. He needed to hunt to feed his family, and he asked for permission to hunt with a bow and arrow. It took huge efforts on the part of everyone involved in the tribal community, but we realized that that was his only way that he could avoid another charge of being caught with some type of improper weapon such as a gun. So everybody pulled together and worked it out, got a special accommodation for him and he has had zero problems. No weapons. No violence. All he needed was a way to feed his family.

It's just things like that. But if you don't experience these types of collaborative court settings, that man's problem never would have been addressed or even realized and he would have ended up back in the system because either he would have gotten a gun and hunted and done everything he wasn't supposed

to do. So just little stories like that I think really show that there are small things that can make huge differences in the trajectory of people's lives.

Mark Sherman: Maureen, can you talk about a client you've worked with in this way and what happened to them?

Maureen Scott Franco: Yes. The one that pops to my head is one of our participants in the Adelante program who is, as it turns out, borderline mentally retarded. He was facing tremendous sentences, what we referred to as the bridge case. He got recruited to cross a load of, I think it was methamphetamine if I'm not mistaken. So he came in and struggled terribly at first because one was we have group hearings. That was very uncomfortable for him because of his inability really to cognitively grasp everything that was going on. At one point he said, I mean he verbally said it would be easier for me just to go do prison - and we're talking six, seven years of prison - than it would be to try to complete this program.

So the judge called an all hands on deck, and I mean every hand was on deck to try to figure out what we could do to make sure that he was successful. So then we delved into his history and into his situation with his mother. His father had committed suicide. His mother has serious mental health problems. He had a brother who was in the criminal justice

system as well. It was looking at that and everyone jumping in to try to help. We had the shadows to light [sounds like] class which is a cognitive-based class that our participants engaged in.

But working on the issues that he had, working and trying to get him into MRT to work with that, it took a while. We separated him from the rest of the participants and he reported in. Even as he's faced with the program, he reported in on a weekly basis because he needed that attention on a weekly basis so that he saw everyone was behind him. He will graduate within the next couple of months.

This is somebody who at the very beginning thought that it would be easier for him to do six or seven years in prison than to try to tackle the problems that he had. I will tell you there was probably people in that courtroom that thought the same thing, that it would be easier just for him to go do his prison sentence and for all of us to take off our blinders and figure out what was going on in his life and to try to make a difference for him. It's made a tremendous difference for not just him but for his mother. Because of our involvement, she's now getting proper mental health care. The brother as well is doing much better on his criminal justice issues because of the good example his old brother has presented to him.

Mark Sherman: Those are amazing stories. And when I hear both of you describe the impact that your work and the work of the other professionals in the court that you are both working with, it's really quite extraordinary and so different than the stories we hear and just so different from the traditional way of working. I think it provides a nice segue into this next part of the conversation where I wanted to switch gears a little bit and talk about how taking a holistic problem-solving approach to client representation has affected your offices' relationship with counterparts like probation and pretrial services.

Kathy referred before or earlier to the challenges to defenders, of collaborating when they are traditionally sort of used to engaging in an adversarial relationship. That sometimes extends to not just the U.S. Attorney's Office but to other stakeholders that you all work with regularly. I think it's no secret that the relationship between defenders and pretrial services officers generally is quite good primarily because pretrial services, when executed well, is helpful to the court and the defendant and therefore to the defense lawyer.

On the other hand, the history of the relationship between probation and defenders has been more adversarial. In part it's because of the officers' role in compiling the presentence report under current sentencing law and policy, and the

officer's law enforcement role when it comes to supervision. Also the defender, in doing his or her job, must be zealous in defending the client which for some officers I think comes across not so much as an ethical obligation of defense counsel but is getting in the way of the officer who's simply trying to do his or her job.

It seems to me though that with a problem-solving approach, these professional relationships are evolving. I'm wondering if you're seeing the same thing and if you can speak to that.

Kathy.

Kathy Nester: Actually, I have a great example of that. So one of the things when we started holding the pretrial risk assessment into our pretrial process, we all decided we wanted to have a pretrial report at the initial appearance. Many of our clients are needlessly being held for two to three days which is just enough time to lose your job, right? We just decided we didn't want to do that anymore, that we thought it was a waste of money especially if they are ultimately going to get out. So we looked at our system and said what are we going to have to do to have a pretrial report ready at the initial, and we realized that all of us were going to have to change the way we work a bit.

So the U.S. Attorneys are going to have to take an extra step of, when they indicted someone, providing in advance to

probation the identifiers so they could run a criminal history in advance. That's one more thing they had to do that they normally didn't do. Then the marshals are going to have to get the defendants into the courthouse by 8:00 in the morning, which the marshals have to get up very early in the morning. Then the defenders have to get up really early in the morning because we have to be there at 8:00 AM on the dot so we could get an early morning interview and be present and to get the probation pretrial enough time to go upstairs and draft the report.

Then the magistrates have to give a little bit because they have to agree to push their hearings back until later in the afternoon, which is challenging for them sometimes because that's when a lot of them do their paperwork. So basically we all have to give something up, and none of us wanted to. So we got a meeting and all just kind of looked each other in the eye and said, you know what, this is what we're going to have to do to make this happen, let's just do it. And it felt good. It was a real interesting exercise in everybody giving a little bit. Instead of just saying we don't do it that way, just say, well, why can't we. It's been such a great benefit to all of us, especially even the marshals are pleased with it. Because now, instead of transporting someone back to jail, they go home that day. The marshals could save some work on the backend.

So it was a really interesting way to work together as a team instead of against each other, and it benefited everyone. It was just very emblematic of how we are starting to see each other as a team rather than as adversaries when it comes to issues like this. It's improved all our relationships even when we are adversarial. It kind of brings peoples' hearts out. You get to see that they do really care about your clients when you were skeptical of that before. So it's been a great experience, I think.

Mark Sherman: Maureen, have you seen a similar evolution in terms of the relationships that you and your assistant defenders have with your counterparts in the system as you worked on cases? Just sort of whether it's within the sort of collaborative court context or just sort of in the more traditional context, what have you observed?

Maureen Scott Franco: Well, I would agree with what you had stated earlier - that the relationship between a defender's office and pretrial has always been a much more cozy, warm, and fuzzy relationship and feeling than what the defenders have felt towards probation officers. I mean I remember for many, many years - really until I started this court - I'm thinking of them as the enemy because I didn't think that they were there to help the clients. In fact, I probably had said that in my younger years. You know, when they were doing a presentence interview.

They were not your friends. They were going to come across as your friends, but they were not your friends.

So participating in this court completely changed my philosophy about that - that the people who are drawn to doing probation worked, especially the supervision officers, if they have hired right. In a lot of cases they have. They really are as equally vetted to the idea that you are or want the idea that you are, that you want this person to be successful. I have to say, I mean shame on me, that I really didn't believe that until I got involved in the reentry court. Then I saw it firsthand. I saw officers that were going overboard and working long, long hours to help the client be successful in the court. It really gave me a new respect for the type of work that they do.

When you see a good officer with the type of rapport that they have with the client, I think it's even better in some ways than the rapport that they have with myself or with my assistant defenders because they're talking to them on a daily basis because that's part of the program. So it really has improved my view on probation. I will tell you though that because of that, if I see a probation officer outside in the normal context - so outside the collaborative court - who really isn't living up to that standard of what now I think a probation officer should be, it really makes me want to go after them in a court case because you know that they've been given all the training

and the programs and the education and they know how to do it right. When you see that they're not doing it right and that they're really setting the client up for failure, it really angers you because you know that they have been given the right resources to do it right.

Mark Sherman: So we are nearing the end of the program. But before we close, I wanted to ask you both whether in light of this emerging holistic practice you've made any changes to the way your offices operate or if you've observed changes in the way other defender offices operate or just sort of whether the practices kind of naturally evolved. For example, and Kathy referred to this in talking about her own offices' work, I've noticed that some defender offices have social workers on staff to assist clients with needs that is outside of their criminal cases. I imagine that some defender offices have ramped up. Sort of employing staff who are non-lawyers, social workers or whomever, who can work with clients in that kind of way. What are your thoughts about that type of thing? Maureen.

Maureen Scott Franco: I recently hired really based upon what I've learned from Kathy's office, to hire a social worker. A mitigation specialist is what we call her, but she's a licensed social worker. And because of that, she's able to bring in interns who are trying to get their masters in social work so they get an extra benefit. Give free labor. But it's

been enormously helpful to us in the traditional setting of our cases because she's able to really delve into the client's history and is able to find the information that is assisting us in advocating for the client at sentencing.

I mean I can't believe that we did it for so long without somebody like that because I think that we all thought that lawyers and investigators can do it and really we're not trained to do that. It really does require us shifting to how we think in order to get the whole picture of the client in order to present that to the judge, or even the prosecutor for that matter, because we've used our mitigation specialist to help us in negotiating pleas or dismissals from the U.S. Attorney's Office based upon her research. So I really owe it to my exposure to Kathy and our trainings that I saw the benefit of it and decided to try it out. I have to say that I've been very happy with the results, and hopefully I can move the office more towards that.

Mark Sherman: Kathy, what kinds of things have you done? You've mentioned that the social workers in your office.

Kathy Nester: Sure.

Mark Sherman: Talk a little bit about that.

Kathy Nester: Well, I'm just tickled that Maureen has seen the light now. That makes me happy. But we have two social workers. One of the things we did was I created a mental health

committee over a third of our clients. It ebbs and flows, but clearly we have serious mental health issues. We actually have our committee screen every case that involves mental health issues to make sure that we are working with the right care providers, that we're doing the proper evaluations. We have our social workers do initial evaluations, that holistic approach of looking at the core issues the person is suffering with even before we ever get to the crime they've been charged with. That's made a huge difference for our clients who suffer with mental illness which, again, is just a huge portion of our client base. We've also really engaged people across the spectrum. I probably have a total of 15 different people in my office involved in one way or another in holistic work.

I will say that I get frustrated because the courts have not really created a budget for these kinds of things yet. We're still really trying to educate the courts on why this is important, and why it should be funded, and why there should be staffing formulas that take into account the work that we have to do over and above our mission which is to set the leg. Right? We're all doing that, too. So I hope in the future that we see more support in terms of funding for allowing designated people, that this is just their role and this is what they do and we should pay for them to do that. Not have the people working late hours or on their own time to accomplish these

goals. So we're trying to push that forward and, again, it's a slow process. It's going to require judges across the country and the ones who serve on the major committees to really understand that there needs to be funding for this, and I'm hopeful that we're getting there. I'm grateful to this podcast for giving us the chance to convince the people of that. So thank you.

Mark Sherman: Well, this has been a fascinating and enlightening discussion. Maureen Franco, thank you so much for talking with us.

Maureen Scott Franco: Thank you, Mark. I appreciate it.

Mark Sherman: And Kathy, thanks a million for joining us this morning.

Kathy Nester: Thank you, Mark. I enjoyed it.

Mark Sherman: Maureen Scott Franco and Kathy Nester are federal defenders in the Western District of Texas and the District of Utah. They've been at the forefront of holistic indigent defense in their districts addressing clients' needs beyond their criminal cases. By doing so, they're helping clients avoid involvement in the criminal justice system. Their work and similar efforts by other defenders is transforming indigent defense in the federal courts and improving outcomes for clients, courts, and the public.

Off Paper is produced by Paul Vamvas. The program is directed and edited by Craig Batten [phonetic]. I'm Mark Sherman. Thanks for listening. See you next time.

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