

## A JUDGE'S FIRST IMPRESSION OF DWI/DRUG COURTS

How unusual is it to see a Judge in the Courtroom smiling and having a pleasant conversation with a four-time DWI offender? Carlos was one of the Defendant's in my first DWI court session as he interacted with Judge Wayne Griego. The reason for the smile and pleasant conversation was that Carlos was making his last appearance before the Judge before his graduation from the DWI court program. Instead of being placed in jail for a substantial period of time, Carlos had been given the opportunity to participate in the Albuquerque, New Mexico DWI court project, had been clean and sober for 2 years, and was about to receive his graduation certificate. He tells the Judge through an interpreter that he is the first one in his family to ever receive a graduation certificate for anything. The reason I have come to observe this project is that the New Mexico DWI courts have a eight year track record of reducing their repeat offender recidivism rate from approximately 65% (nation wide average) to approximately 15%. I am also interested to see what would make a Judge volunteer to do extra work, and "social work" at that.

When I first assumed the bench, a Senior Judge pulled me aside to give me advice. He talked about how we are to be "above the fray," and an informed observer, a dispassionate referee, and uninvolved facilitator of the process. He said, "The only two words a Judge should ever say are 'sustained' and 'overruled'." Some judges feel that our job is merely to process the cases in an efficient manner, and let the executive and legislative branches worry about whether the system is serving the overall needs of the society. I remember many times lecturing defendants about their obligation to be personally responsible for their success or failure on probation. I would say, "This is not a social service agency. It is a Court of Law. We have 2000 people on probation and do not have time to hold your hand and make sure you comply with this order."

The only defendants that I saw again after placing them on probation were the ones who came before me on a motion to revoke probation or for a subsequent offense. Even though we serve on our Board of Judges, supervising the local probation department, most Judges do not involve themselves in the probation supervision or treatment programs. It is viewed as "social work" which is not in our job description. With that background, I approached my first exposure to a "DWI/Drug court" with many reservations.

A "DWI Court" is really a misnomer. Each of the judges who runs the DWI docket, handles his or her regular docket 4 ½ days out of the week, but then gives one afternoon a week for the repeat offenders on the DWI court docket. This docket is composed entirely of repeat offender DWI defendants who have already plead guilty to the charges, and through the request of their defense counsel and the recommendation of the district attorney, have entered this special program. Instead of having the defendant appear only once before the judge, unless his probation is revoked, this program may require the defendant to make as many as 15 or 20 appearances back before the Court for a status report. However, the defense attorney and prosecutor are only present at the first hearing, as with a normal plea, so scarce prosecutor resources are not impacted.

The afternoon that we observed consisted entirely of defendants appearing with their probation officer and treatment counselor for status hearings. Before the court session, the Judge staffs each case with the probation officer and the drug/alcohol counselor. With their input, the Judge decides how to handle each defendant. The afternoon session began very formally, as in most courtrooms, with the judge bringing defendants before him who had either been serving sanctioned jail time in the program, or where being removed from the program for repeated violations. The judge was very stern in admonishing the defendants that they had wasted a valuable opportunity, had taken someone else's place who might have taken treatment more seriously, and would not be given another chance. Those defendants were then escorted out in handcuffs and taken to the jail.

For the next several hours, each defendant currently on the program was brought up before the judge, standing informally at the bench, flanked on either side by probation officer and treatment counselor. Those who were brought up first had committed a variety of minor violations of the programs rules and were being recommended for sanctions by their treatment team. Sanctions are received for failing to submit to a urinalysis, missing a group meeting, or even missing time at work. After being placed in the program, defendants have to appear before the judge for one of these hearings at least every two weeks, and in some cases every week until they graduate to the next phase of the program.

As we progressed through the afternoon, the atmosphere became more relaxed as the judge dealt with defendants

who were in the second and third phases of the program. Each time, the judge would ask the defendant's individual probation officer and treatment professional how the defendant was doing in the program. Any noncompliance was dealt with quickly, with an immediate consequence. By the same token, defendants complying with the treatment program were complimented by their probation officer, treatment counselor and the judge. Defendants are given positive reinforcement for positive behavior. The last defendants to come up are the ones who have just been placed in the program and are there for the first time. The program is specifically designed to have them watch the entire afternoon proceedings to see the dichotomy between behavior that merits consequence and behavior that merits compliments.

The Judge has spent a few minutes with each defendant, engaging him in a personal dialogue about his successes, failures, attitudes toward treatment and probation, etc. Using his position as an authority figure, the Judge encourages, cajoles, and lectures each defendant on his progress or lack thereof. The exchange between the Judge and the defendant is engaging, entertaining, and enlightening. Before we know it, hours have passed, it is well after 5:00 o'clock and no one seems anxious to go home.

The general concept of "DWI court" is to take the model of a "drug court" and apply it to DWI offenders, to treat alcohol as another drug. In most cases, those defendants placed on probation in DWI courts are repeat offenders with an alcohol addiction, not social drinkers who made a mistake.

There are approximately 1200 drug courts across the United States and their documented success in reducing recidivism is remarkable. Study after study has shown that for every dollar spent on a drug court, taxpayers can save \$7.00 to \$10.00 on incarceration costs.<sup>1</sup>

My first thought after observing a DWI court personally, was "I wish I had known about this twenty years ago." Judge Griego, and every DWI/Drug court Judge I have interviewed since, have told me that this has saved and invigorated their judicial careers. Each says that it is the most rewarding experience in his/her career. In fact, one of the judges opposed to the program sent one of her worst repeat offenders to Judge Griego's DWI court, hoping to prove that it would not work. When that defendant successfully completed the program, she became a believer and is now the Presiding Judge of the DWI court program.

So why should law enforcement, prosecutors, and conservator judges (like myself) consider implementing DWI courts? Don't people who drink and drive desire to go to jail? Absolutely. For first offenders the fear of jail time, license suspension, and other consequences has been proven to be an effective deterrent. However, for repeat offenders for whom alcohol is an addiction, jail time and other sanctions are just part of the cost of drinking, and in most cases, will not modify future behavior. If our goal is to reduce alcohol related accidents, injuries, and deaths, then we will either have to incarcerate them for the rest of their life or change their behavior.

DWI courts' per/day cost is approximately one-tenth of the cost of incarceration. What's more important is that for those who complete their first year in the program, recidivism rates are approximately 15% compared to an approximate 65% recidivism rate for those who only receive prison time as a consequence of their repeated DWIs.<sup>2</sup>

Although DWI courts exist in many states, New Mexico was one of the first to formalize the process, and their legislature was one of the first to recognize the taxpayer benefits of the reduced incarceration costs.

The bottom line is that DWI and drug courts work. They effectively and substantially reduce the number who re-offend, and those people become productive tax paying members of society, instead of costing us untold millions in tax dollars, insurance costs, destruction of property, and peoples' lives.

In my position as Judicial Liaison for the National Highway Traffic Safety Administration, South Central Region, I have been working with the Judicial Section of the State Bar of Texas, the Governor's office (Criminal Justice

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<sup>1</sup> A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States, May 2004 available through the National Drug Court Institute, C. West Huddleston, III, Executive Director, [www.ndic.com](http://www.ndic.com)

<sup>2</sup> **DWI/Drug Courts: Reducing Recidivism, Saving Lives**, C. West Huddleston, Director, National Drug Court Institute, Kristen Daugherty, Project Coordinator, National Drug Court Institute

Division), Texas Department of Transportation, and other officials in state government attempting to facilitate the implementation of a statewide DWI court program. Many individual judges have already expressed an interest in running a DWI court docket, and in fact some are already doing so. If you or your judges are interested in further information contact:

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