Someone in Authority Cares: Role of the Judge in Treatment Court

National Drug Court Institute Hon. Gregory G. Pinski
Judicial Consultant

Presented by:

Judge Christine Carpenter, Ret.

NDCI
NATIONAL DRUG COURT INSTITUTE

DISCLOSURE

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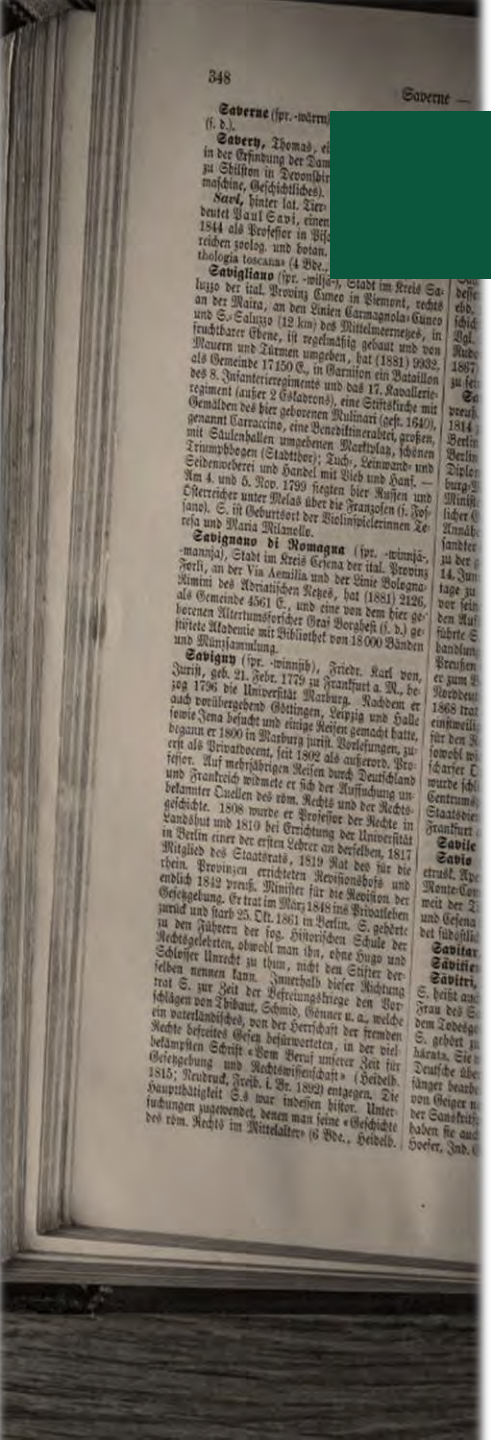
LEARNING OBJECTIVES

After this presentation, you will know:

- Best Practice Standard III
- Eight Components to Best Practice Standard III
- Five Roles of the Treatment Court Judge
- Due Process Protections
- Importance of Being Trauma-Informed
- Courtroom Environment Issues
- Judicial Style Issues

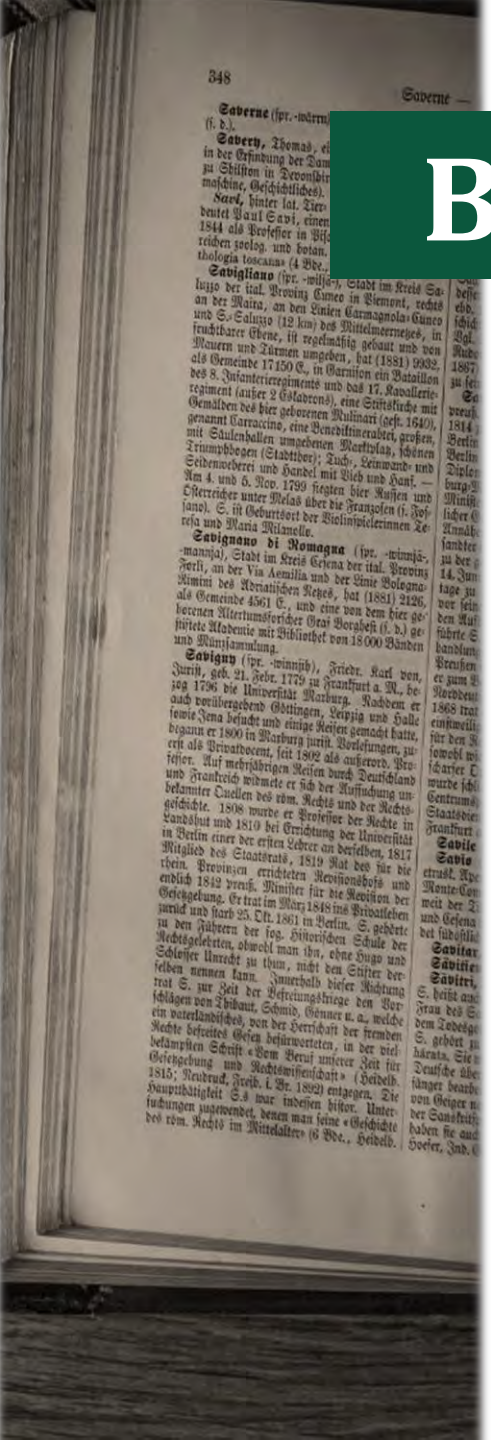


JUDGES

"Judges are not moral or intellectual giants, prophets, oracles, mouthpieces, or calculating machines. They are all too human workers responding to the labor market in which they work."

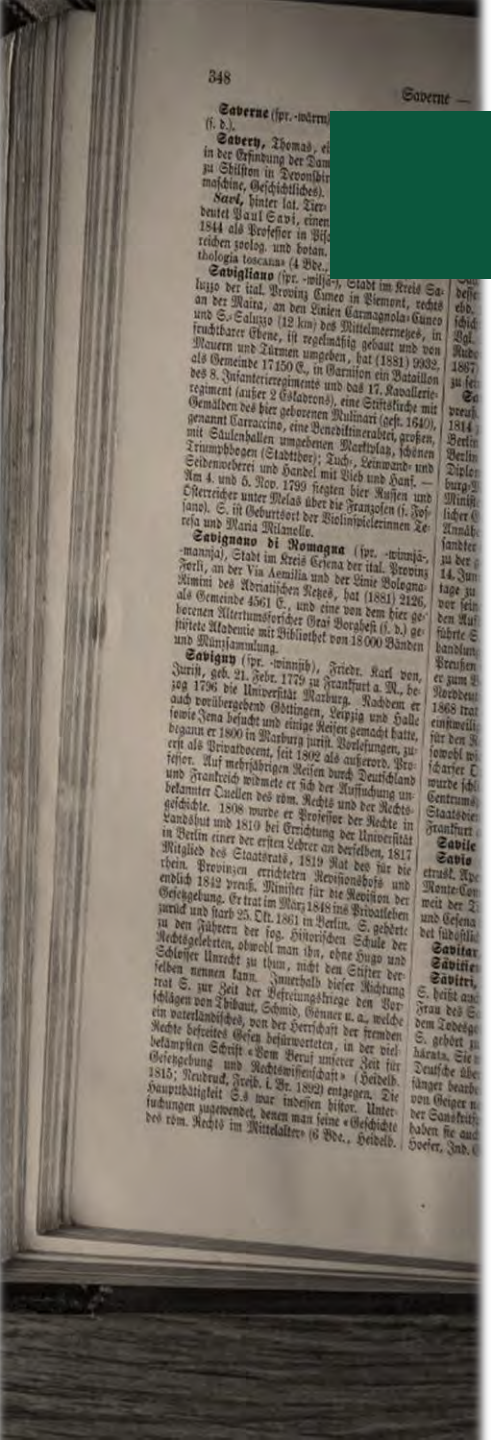
--Hon. Richard Posner,

United States Circuit Judge



BEST PRACTICE STANDARD III

"The Drug Court judge stays abreast of current law and research on best practices in Drug Courts, participates regularly in team meetings, interacts frequently and respectfully with participants, and gives due consideration to the input of other team members."



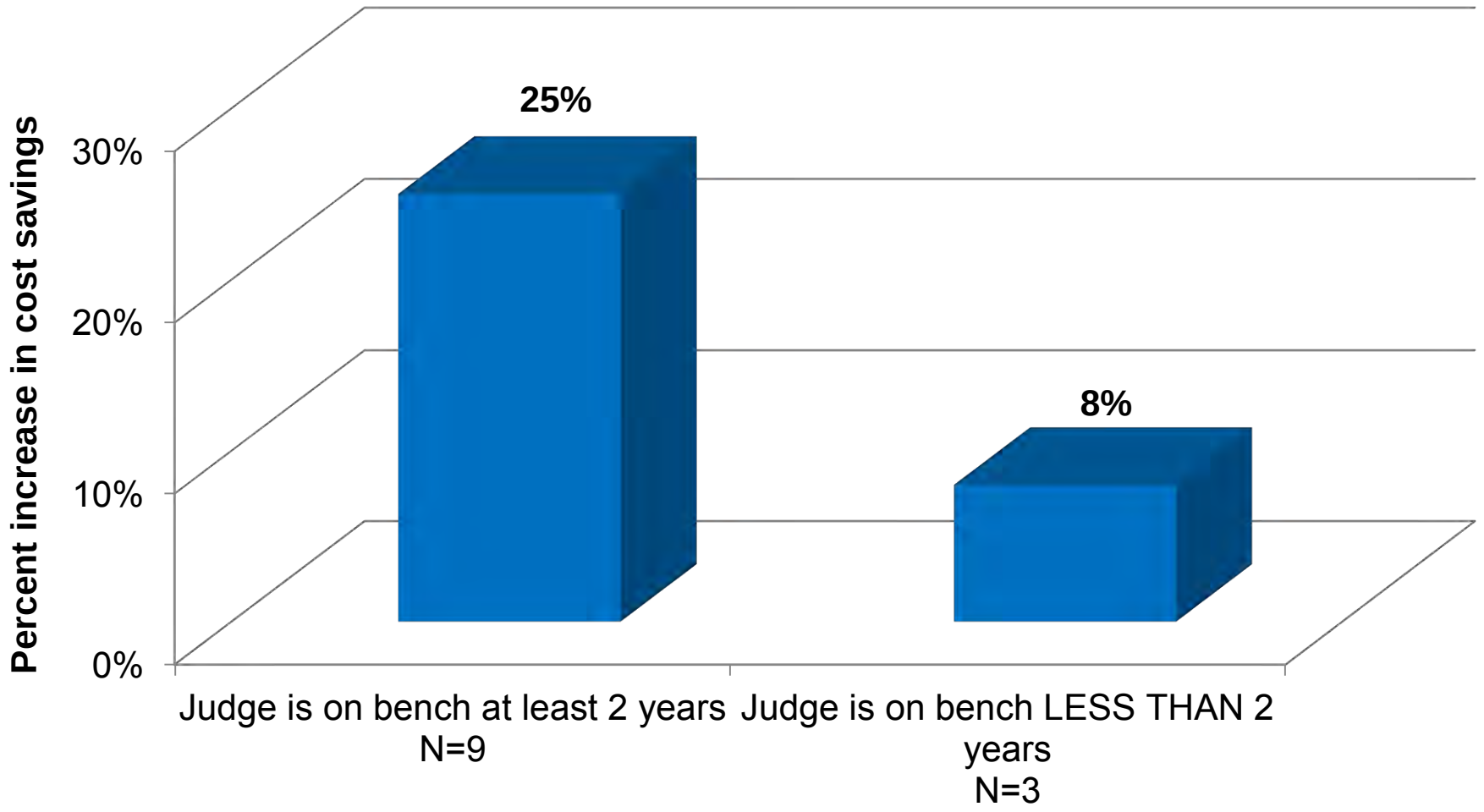
Eight Components to Standard

1. Professional Training
2. Length of Term
3. Consistent Docket
4. Participation in Pre-Court Staff Meetings
5. Frequency of Status Hearings
6. Length of Court Interactions
7. Judicial Demeanor
8. Judicial Decision Making

FIVE JUDICIAL ROLES

1. Judge as LEADER
2. Judge as COMMUNICATOR
3. Judge as EDUCATOR
4. Judge as COMMUNITY COLLABORATOR
5. Judge as INSTITUTION BUILDER

LENGTH OF TERM



Length of Term

- Establishes leadership
  - Empower others
  - Fix problems
  - Serve others
- Establishes continuity of relationship with team
- Establishes continuity of relationship with participants
- Sends the message that “someone in authority cares”

Length of Term

- Maintains continuity
- Enables judge's knowledge of policies and procedures
- Allows for consistency

Consistent Docket

- Same judge positively impacts participants
- Back-up judge versus stand-in judge

Length of Court Interaction

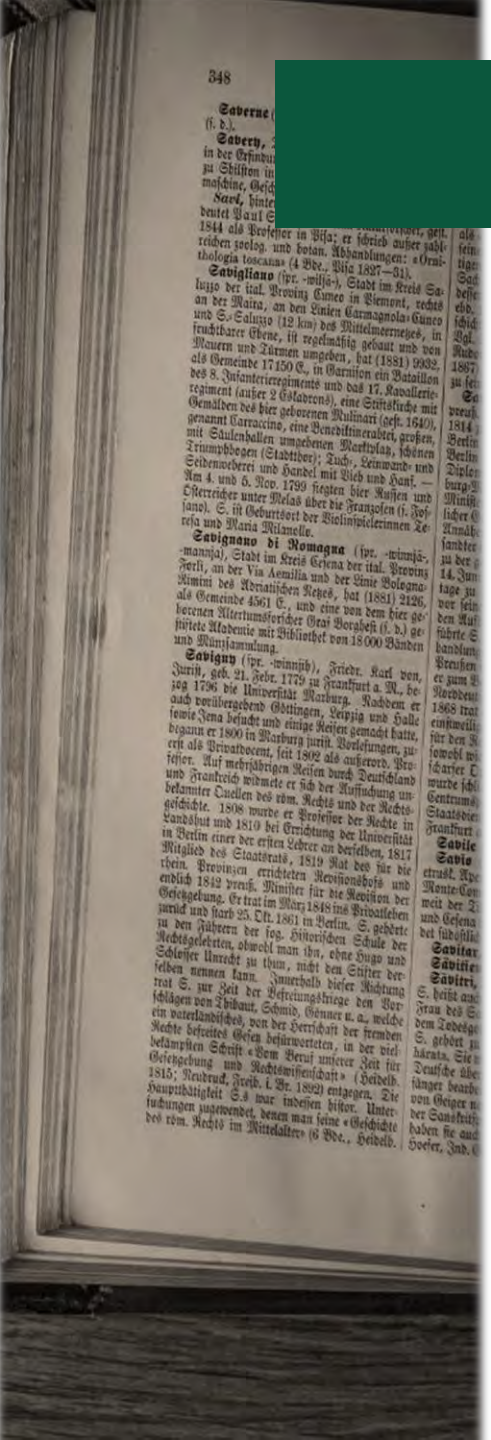
Treatment courts where the judge spends an average of three minutes or greater per participant during court hearings had <u>153% greater reduction in recidivism</u>

Length of Court Interaction

- NADCP Judicial Bench Card
- Input from treatment providers
- Participant assignments
- Read participant workbooks
- Participant essays
- Use the courtroom as a classroom
- Motivational Interviewing
  - Open questions
  - Affirmations
  - Reflective Listening
  - Summarize

Length of Court Interaction

- Use phase objectives to structure interaction
  - Phase 1: Acute Stabilization
  - Phase 2: Clinical Stabilization
  - Phase 3: Pro-Social Habilitation
  - Phase 4: Adaptive Habilitation
  - Phase 5: Continuing Care
- Use interaction as education for team and others
- Allows participants to tell their story
- Shows you care



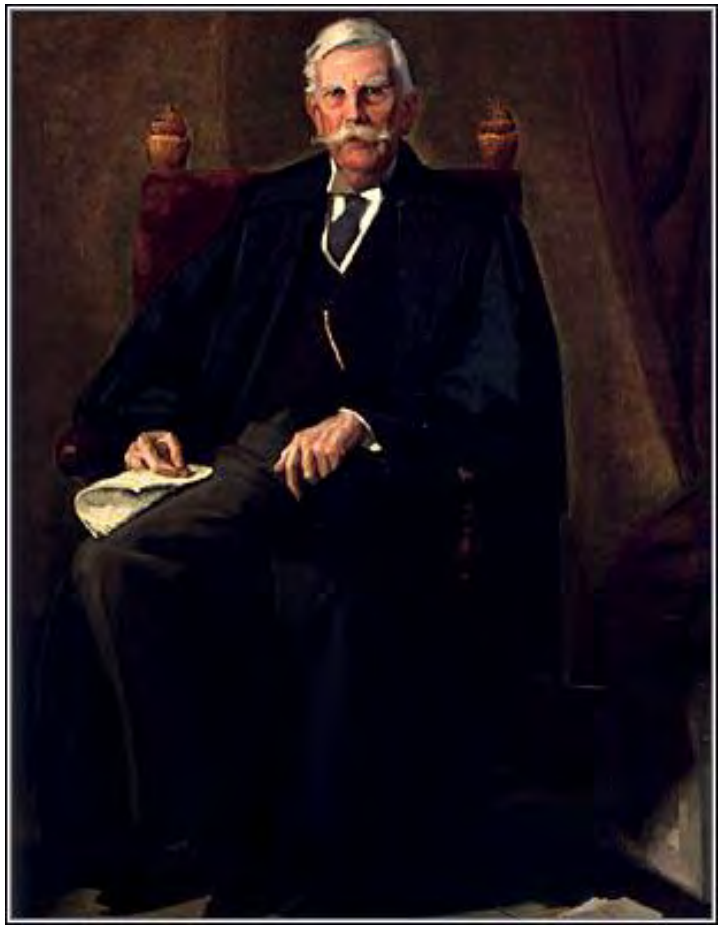
JUDICIAL DEMEANOR

- Offer supportive comments
- Stress the importance of participant commitment to treatment and other program requirements
- No humiliation or foul language (NO “Judge Judy”!)
- Allow a participant a reasonable opportunity to explain his or her perspective concerning factual controversies and especially before the imposition of sanctions

Procedural Fairness

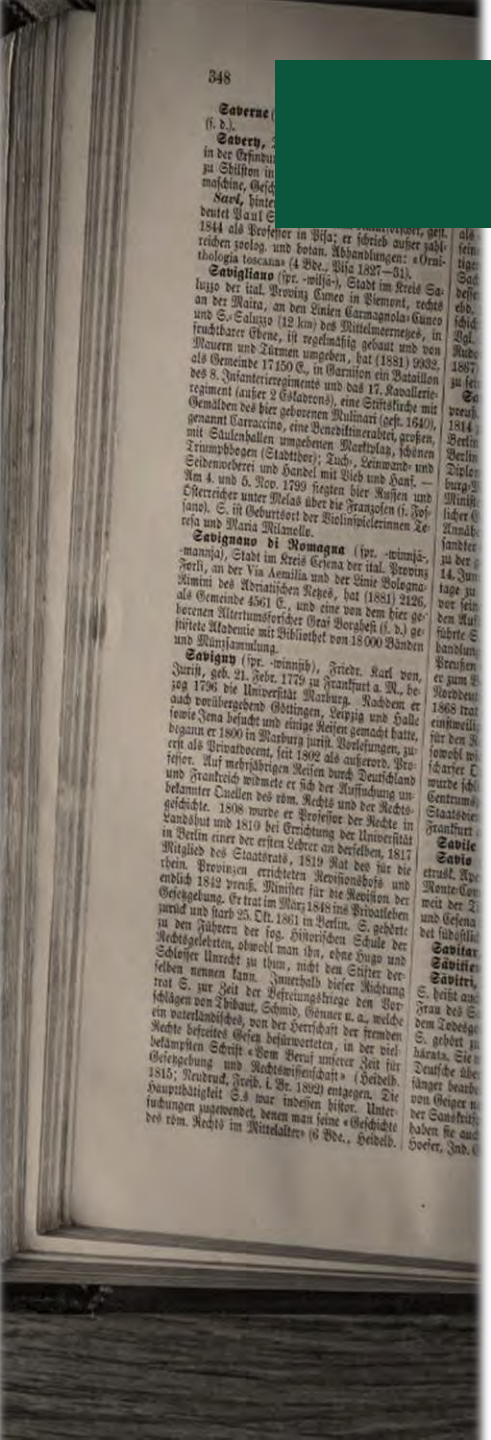
Whatever disagreement there may be as to the scope of due process, there is no doubt that it embraces the fundamental concepts of <u>fairness</u> and <u>opportunity to be heard</u>.

--- Justice Oliver Wendell Holmes, *Frank v. Mangum,* 237 U.S. 309 (1915)



Procedural Fairness

- Know the participant's name
- Know the participant's case
- Encourage them to succeed
- Emphasize treatment
- Don't be intimidating
- Be approachable
- Let the participant tell their story
- Treatment the participant fairly and respectfully
- Be impartial – do not prejudge
- Remember: It's not the <u>outcome</u> of the decision that is important. It's how the decision was <u>reached</u> and how the participant is <u>treated.</u>



Frequency of Status Hearings

- **48% greater recidivism reduction** when status hearings are held at least bi-weekly

- **35% greater recidivism reduction** when all team members attend status hearings
  - Allows for participant interaction with team members
  - Consistent delivery of incentives, sanctions, and therapeutic adjustments

- Frequent status hearings promote:
  - Improved treatment attendance
  - Improved abstinence
  - Improved graduation rates

Courtroom Environment
Open Courtrooms

Florida vs. Noelle Bush

SECTIONS HOME SEARCH The New York Times

ARCHIVES | 2002

Gov. Bush's Daughter Is Sentenced to Jail

OCT. 18, 2002

Gov. Jeb Bush's daughter, Noelle, was sentenced today to 10 days in jail for violating the terms of a court-ordered drug treatment program that she entered to avoid trial on charges of trying to buy an antidepressant drug with a fraudulent prescription.

Judge Reginald K. Whitehead of Circuit Court in Orange County sentenced Ms. Bush, 25, after citing accusations that crack cocaine had been found in her shoe at a treatment center in Orlando.

- Public access to the courts is paramount
- Treatment court proceedings must be open so participants can learn from others
- If treatment court proceedings are closed, other participants and families would be excluded

COURTROOM ENVIRONMENT

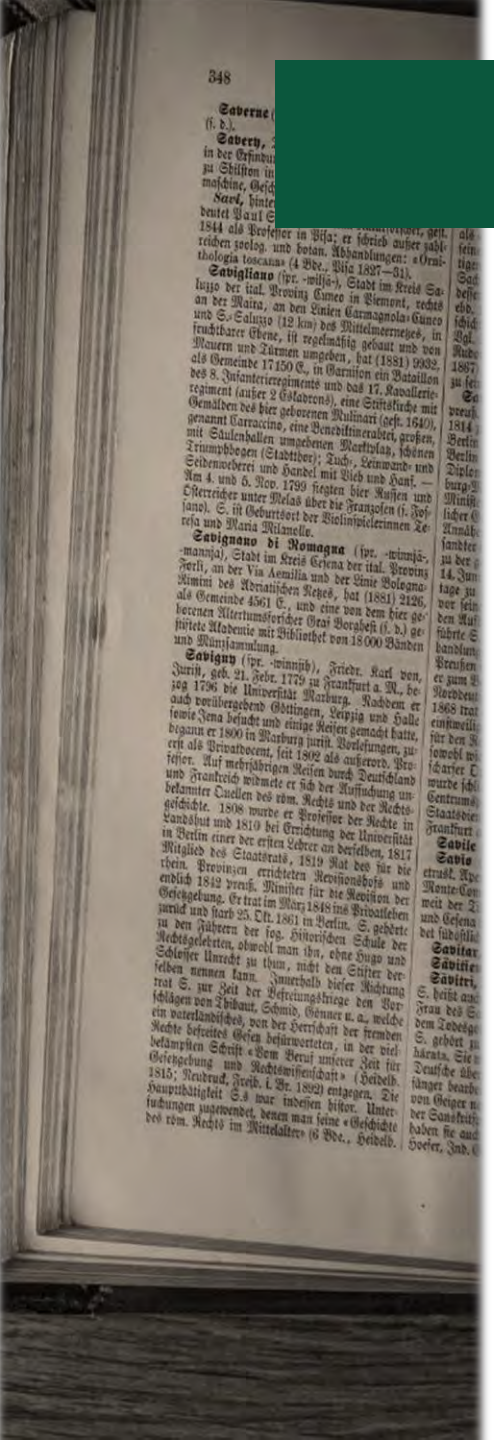
USE THE COURTROOM AS A CLASSROOM!

- Use microphones
- Closeness to bench
- Allow other participants to hear and learn
- Engage team members in court
  - Observations
  - Encouragement
  - Missing information
  - Challenge participant
  - Recommendations
  - Avoids staff splitting

COURTROOM ENVIRONMENT

Miscellaneous considerations

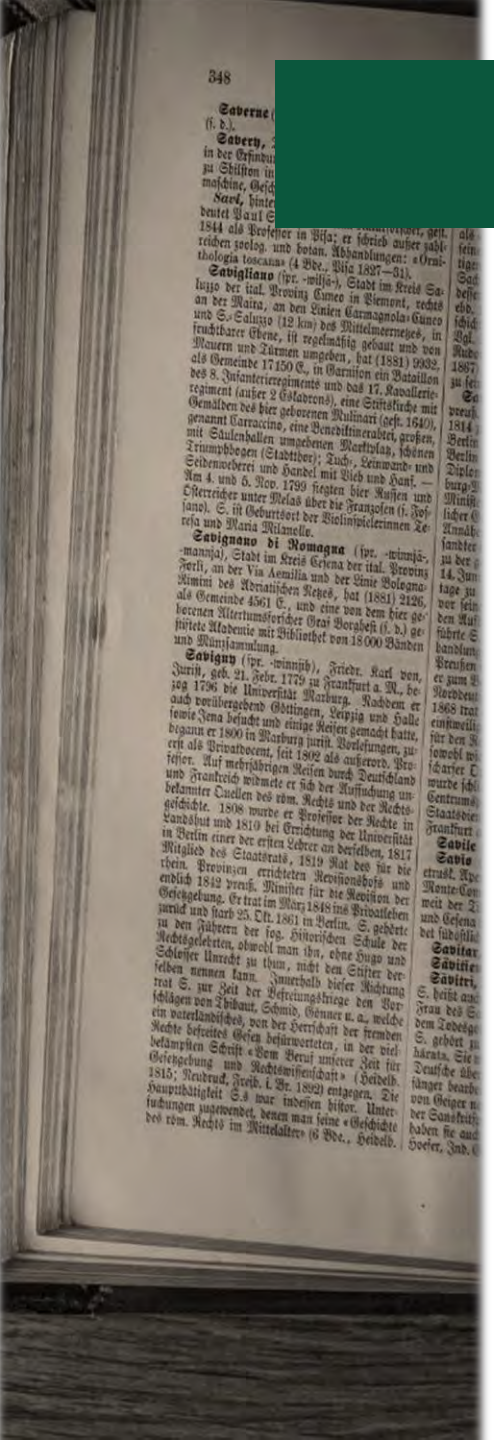
- Participant next to attorney or mentor
- Order of participants
- Level of eye contact
- Physical contact
- Arranged seating
- Participant addresses gallery
- Judge addresses gallery



COURTROOM ENVIRONMENT

Be Trauma Informed!

- Acknowledge the prevalence and impact of trauma
- Create a sense of safety
- Many treatment court participants engage in behaviors that others may consider self-destructive
- Important to understand these behaviors are not character flaws but a strategy or behavioral adaptation developed to cope with the physical or emotional impact of past trauma

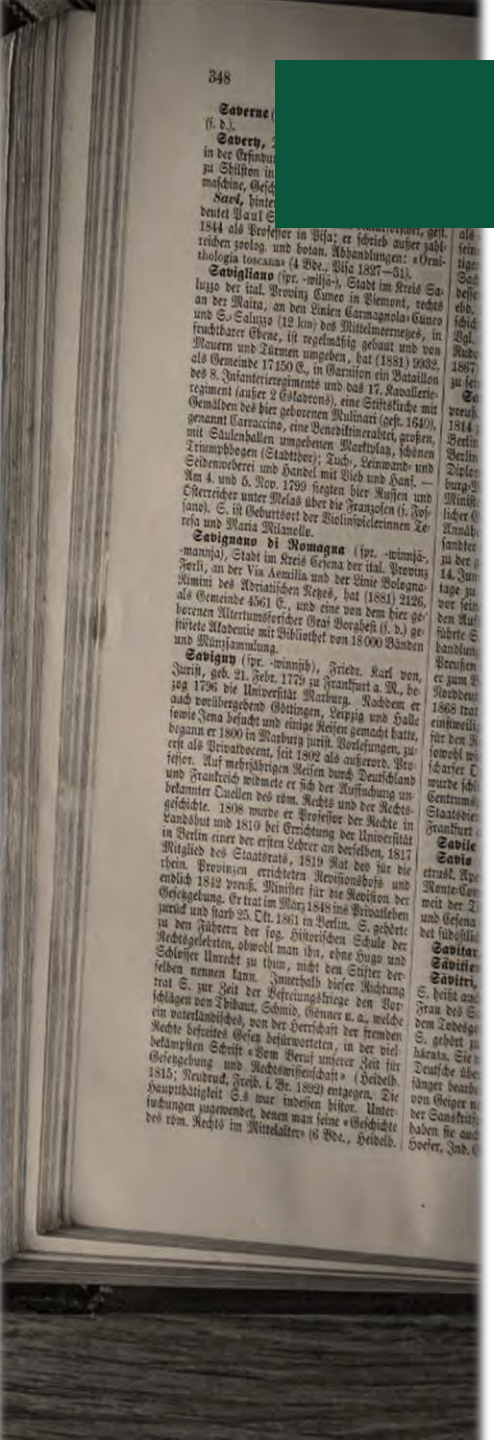


COURTROOM ENVIRONMENT

Communication Counts!

- Words can be hurtful or healing
- For example:
  - Court: “Your drug screen is dirty.”
  - Participant: “I’m dirty. Something is wrong with me”
  - Trauma informed: “Your UA shows the presence of drugs.”

  - Court: “I’m sending you for a mental health evaluation.”
  - Participant: “I must be crazy and something is wrong with me.”
  - Trauma informed: “I’m referring you to a doctor who can help us better understand how to support you.”



COURTROOM ENVIRONMENT

Environment Matters!

- Minimize perceived unfairness of sanctions
  - Equivalent does not mean identical
  - Based on phase and risk/need
  - Similar value, severity, magnitude or intensity
- Be aware of anxious participants
  - Prioritize
  - Address anxiety
  - Prepared remarks
- Be aware of courtroom set-up
  - Backs to doors, crowds (especially combat veterans)
  - Isolation
  - Anxiety

Judicial Styles

- Don’t underestimate verbal praise
- Don’t underestimate applause
- Don’t underestimate judicial recognition
- Don’t underestimate handshake
- Recognize accomplishments
  - Photographs
  - Pro-sobriety artwork
  - Letters
  - Engage families

Judicial Styles

<u>When delivering sanctions:</u>

- Hold an evidentiary hearing if jail is involved
- Provide an opportunity to explain
- Treat participants equivalently
- Use respect and dignity
- Ambiguity undermines sanctions

Judicial Styles
Due Process ~ Jail Sanctions

The Constitution <u>GUARANTEES</u> Due Process!

Key Component 2: "Using a nonadversarial approach, prosecution and defense counsel promote public safety while <u>protecting participants' due process rights</u>."

Courts require evidentiary hearings when jail is a possible sanction and the participant denies the factual basis for the sanction

An evidentiary hearing with basic procedural protections is required because the participant may suffer a loss of a liberty or property right.

Relations with Participants

DO NOT *take participants to support meetings*

DO NOT *visit participant homes*

DO NOT *invite participants to your home to play video games*

DO NOT *collect participant UAs*

STAY IN YOUR LANE!

Relations with Participants Recommendations

"But, I want to show my participants that I care…"

If there was a picnic and the district attorney, defense counsel, law enforcement, other members of the drug court team, and drug court participants were present and the judge made a cameo appearance and said a few words of encouragement, such conduct would not violate the Canons.

Relationships with Audience

- The judge has the ability to shape and reinforce individual accountability
- By engaging the drug court audience and setting examples , the judge can communicate important principles:
  - Phase promotion
  - Incentives/sanctions

JUDGE AS COMMUNITY COLLABORATOR

- Bring together agencies and stakeholders
- Share information on efficacy of treatment courts with civic organizations and other judges
- Media relations
  - NADCP Toolkits
  - Graduations
  - Understanding of community issues
- Sustainability

Judge as Institution Builder

- Maintain policies and procedures
- Review evaluations and outcomes
- Review exit interviews
- Make changes
- Form an advisory committee
- Succession planning

Role of the Judge

Witnessing the transformation of your participants before your eyes makes it all worth it!

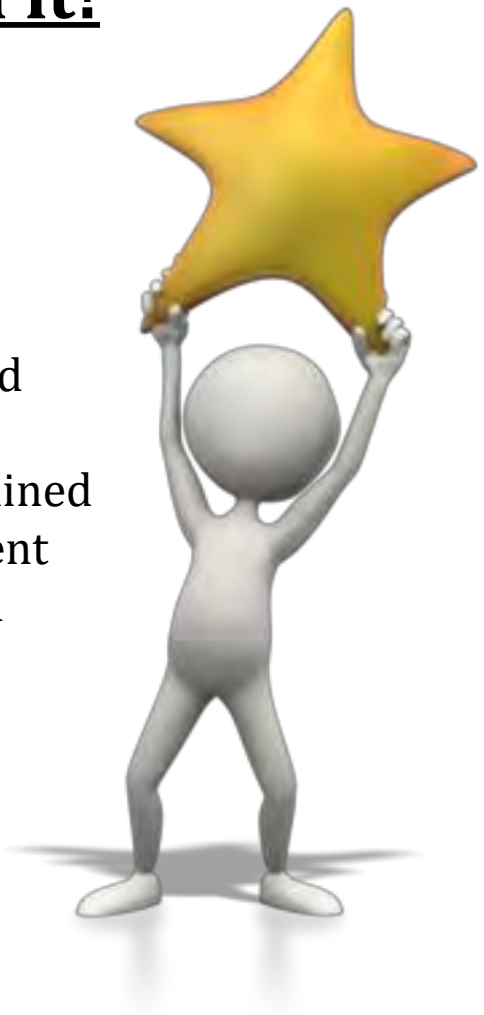
Before:

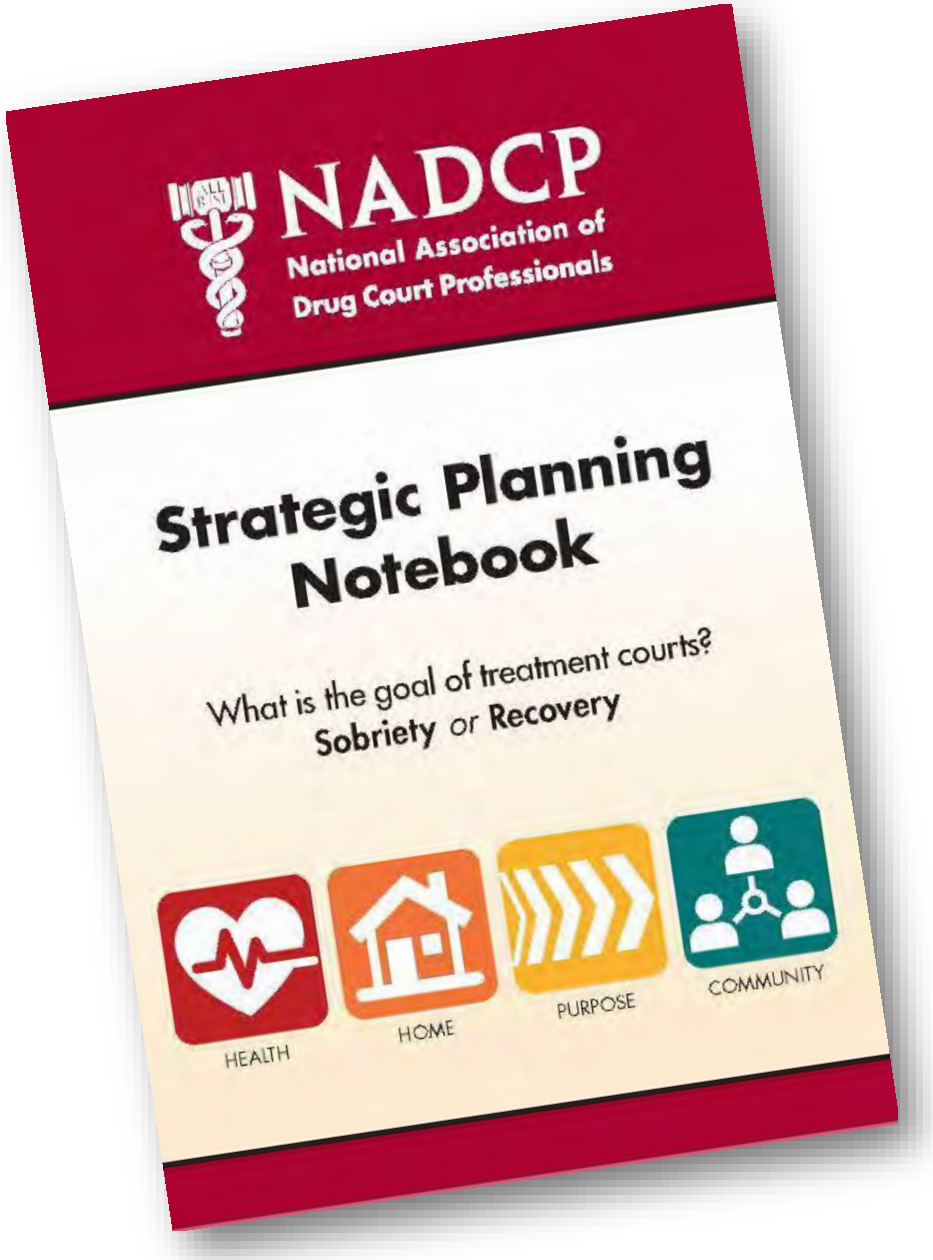
Hopeless
Resistant
Dependent
Ambivalent
Lonely
Manipulated
Entitled
Angry
Disconnected
Unemployed
Homeless
Untrusting
Depressed
Sick

After:

Stable
Independent
Employed
Sober
Thankful
Motivated
Healthy
Law abiding
Proud
Honest
Connected
Likeable
Social

Engaged
Aware
Determined
Confident
Housed





Strategic Planning Notebook

Connect how the topic relates to recovery

Write down these connections to recovery

Share ideas on how to incorporate the topic into your program