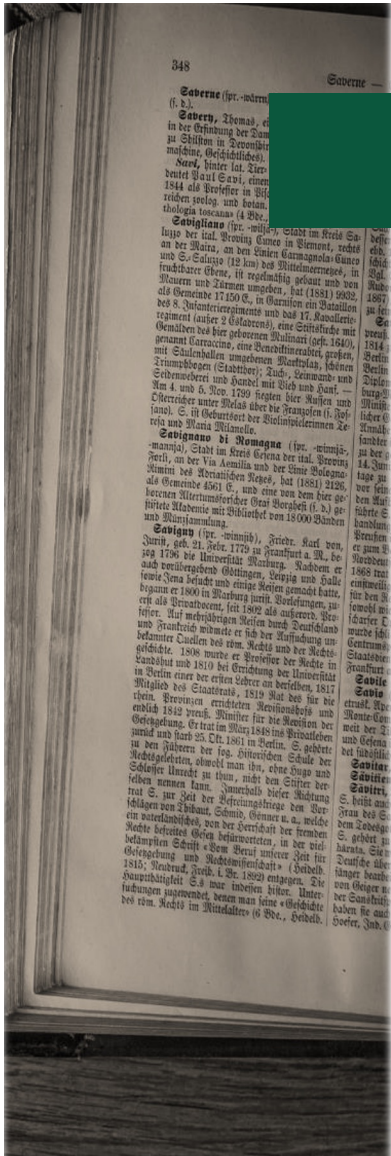


SOMEONE IN AUTHORITY CARES: ROLE OF THE JUDGE IN TREATMENT COURT

**Treatment Court Institute
Hon. Gregory G. Pinski (Ret).
Judicial Consultant**

**2024 Washington
Treatment Court Conference**



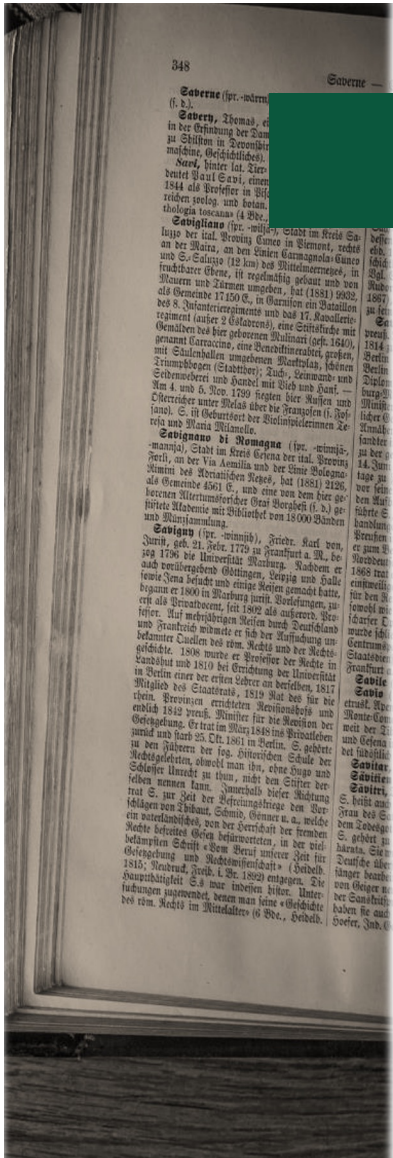


LEARNING OBJECTIVES

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



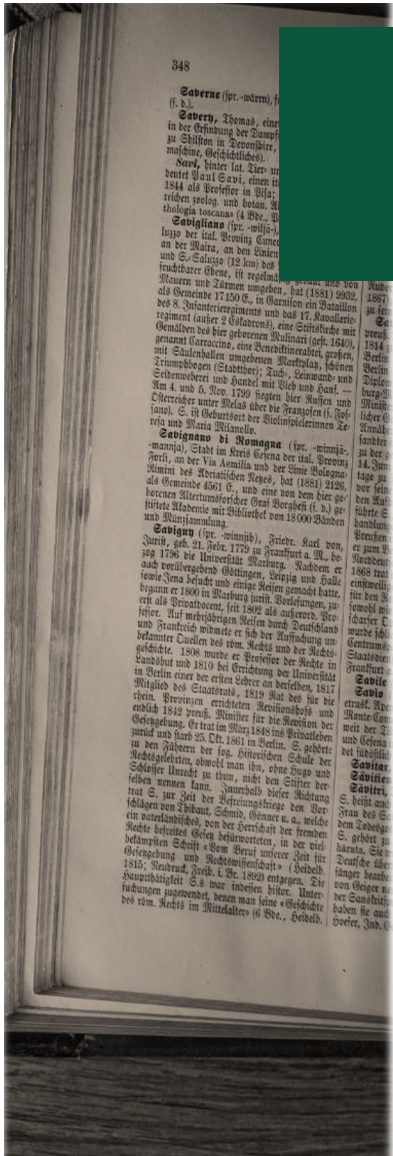


JUDGES

“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

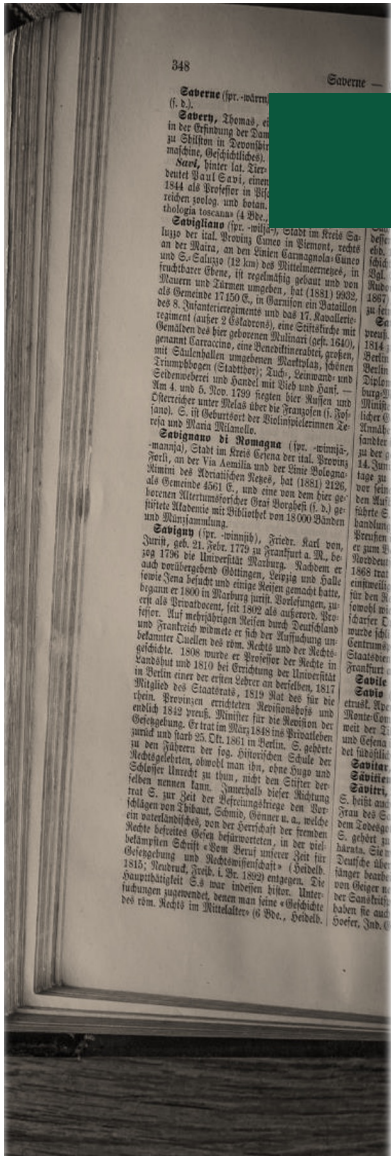


REVISED BEST PRACTICE STANDARD III (2023)

“The treatment court judge stays abreast of current law and research on best practices in treatment courts and carefully considers the professional observations and recommendations of other team members when developing and implementing program policies and procedures. The judge develops a collaborative working alliance with participants to support their recovery while holding them accountable for abiding by program conditions and attending treatment and other indicated services.”

EIGHT FIVE COMPONENTS TO 2023 STANDARD

- ~~1. Professional Training Judicial Education~~
- ~~2. Length of Term Judicial 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



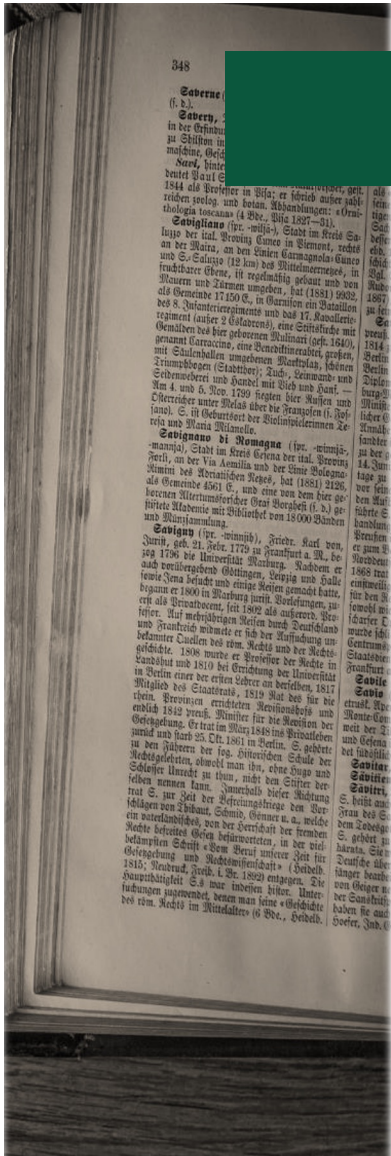
FIVE JUDICIAL ROLES

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



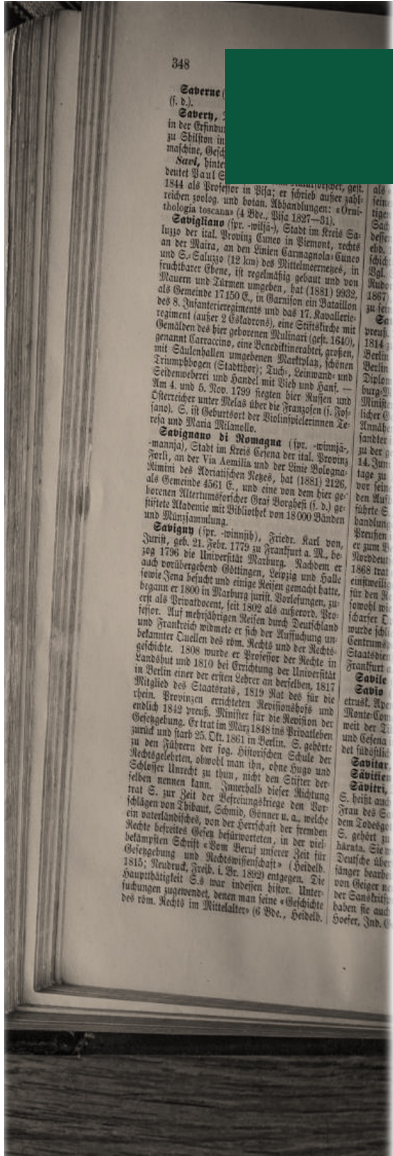
LENGTH OF TERM

- 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”



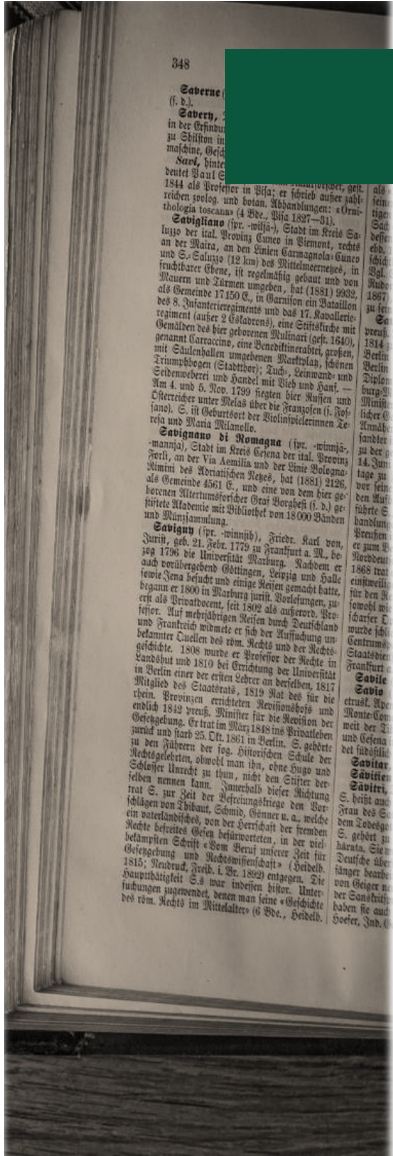
LENGTH OF TERM

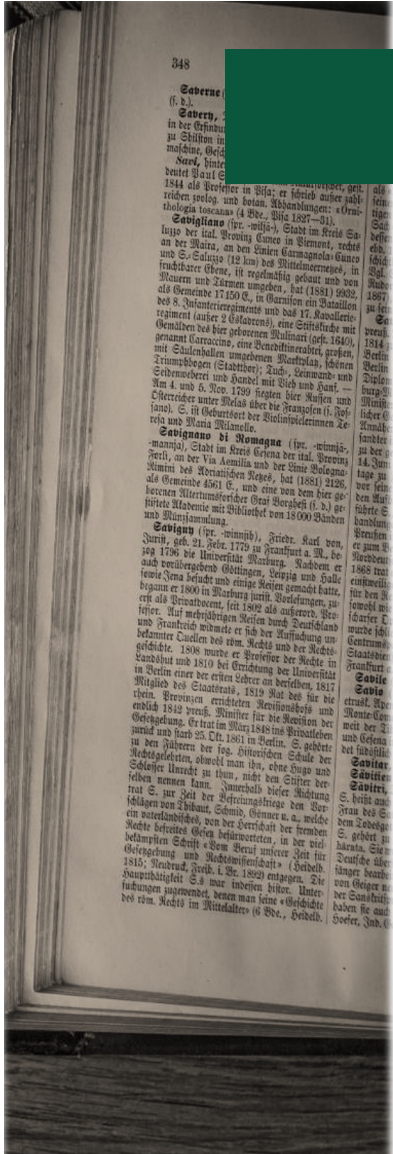
- Maintains continuity
- Enables judge's knowledge of policies and procedures
- Allows for consistency



CONSISTENT DOCKET

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





LENGTH OF COURT INTERACTION

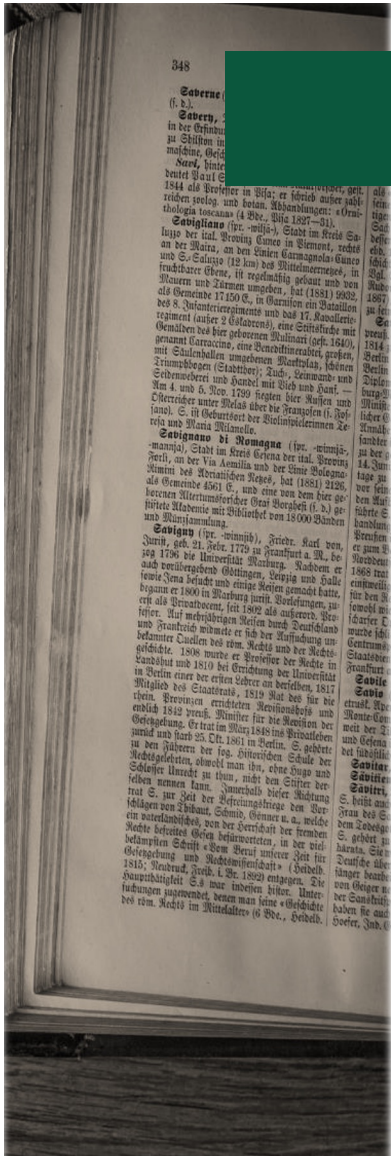
Treatment courts where the judge spends an average of three minutes or greater per participant during court hearings had 153% greater reduction in recidivism

‘We’re just here to help you’



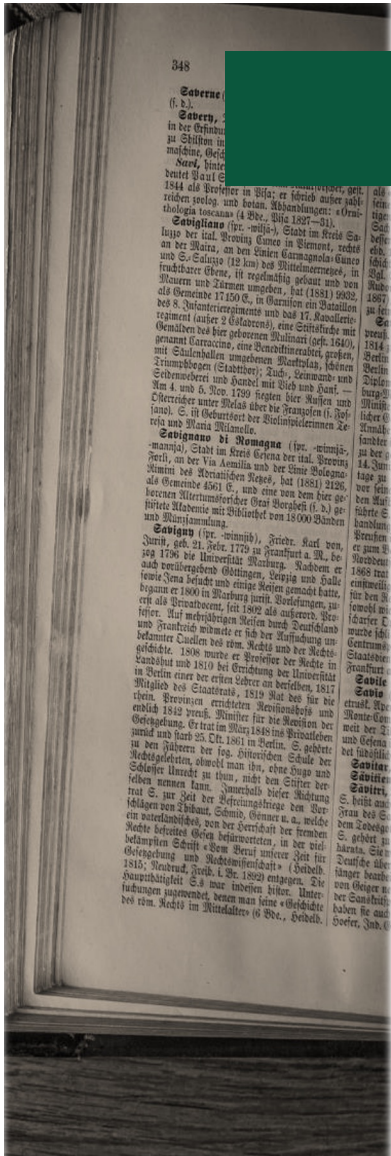
LENGTH OF COURT INTERACTION

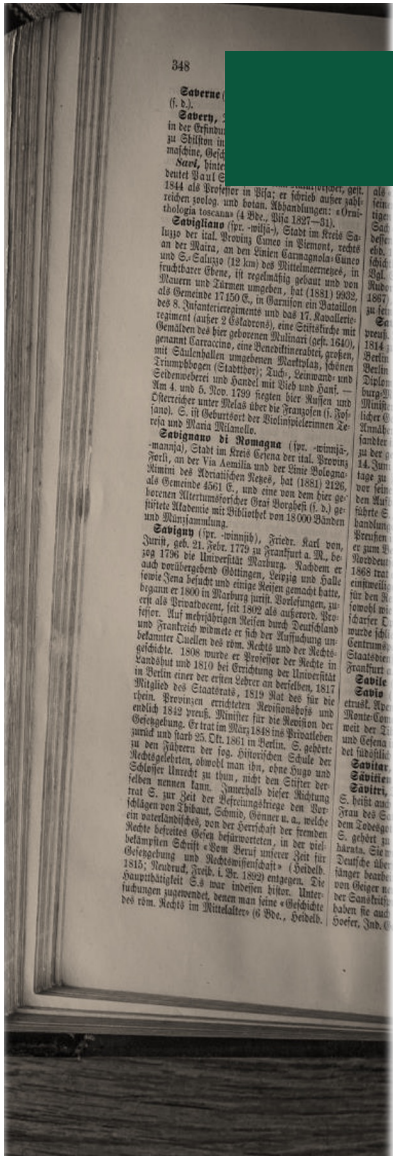
- NADCP Judicial Bench Card
- Input from treatment providers
- Participant assignments
- Read participant workbooks
- Participant essays
- Use the courtroom as a classroom
- Motivational Interviewing
 - Open questions
 - Affirmations
 - Reflective Listening
 - Summarize



LENGTH OF COURT INTERACTION

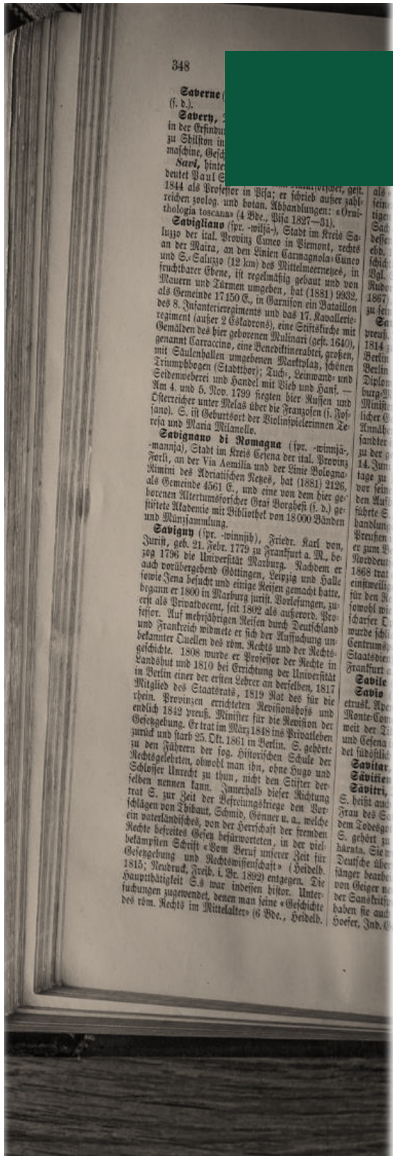
- Use phase objectives to structure interaction
 - Phase 1: Acute Stabilization
 - Phase 2: Clinical Stabilization
 - Phase 3: Pro-Social Habilitation
 - Phase 4: Adaptive Habilitation
 - Phase 5: Continuing Care
- Use interaction as education for team and others
- Allows participants to tell their story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



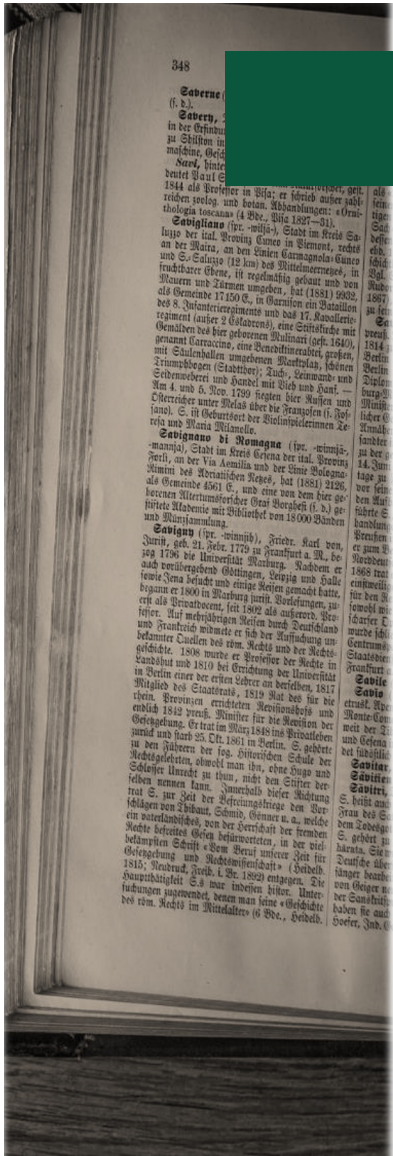
JUDICIAL DEMEANOR

¶ 4 During a hearing on February 24, 2017, Lemke reported that he had a sore shoulder from being on work crew. The judge told him he could “stop with the shoulder bullshit now.” Lemke admitted he had been drinking and said he needed anger management counseling. The judge said, “I think you’re a fucking addict and maybe you need treatment. I don’t think it’s got nothing to do with anger management. You think I’ll give you anger management and that’s going to get you clean and sober? . . . What the hell are you talking about?” The judge said, “You can’t even give me a clean date you’re so fucked up.”

7 Wash.App.2d 23
STATE of Washington, Respondent,
v.
David Wayne LEMKE, Appellant.
No. 76633-3-I
Court of Appeals of Washington,
Division 1.
Filed December 3, 2018
Publication Ordered January 7, 2019

JUDICIAL Demeanor

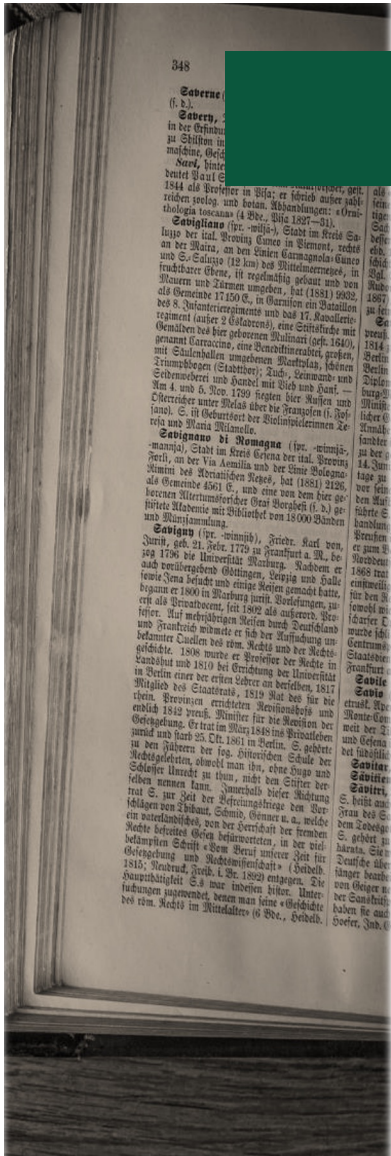
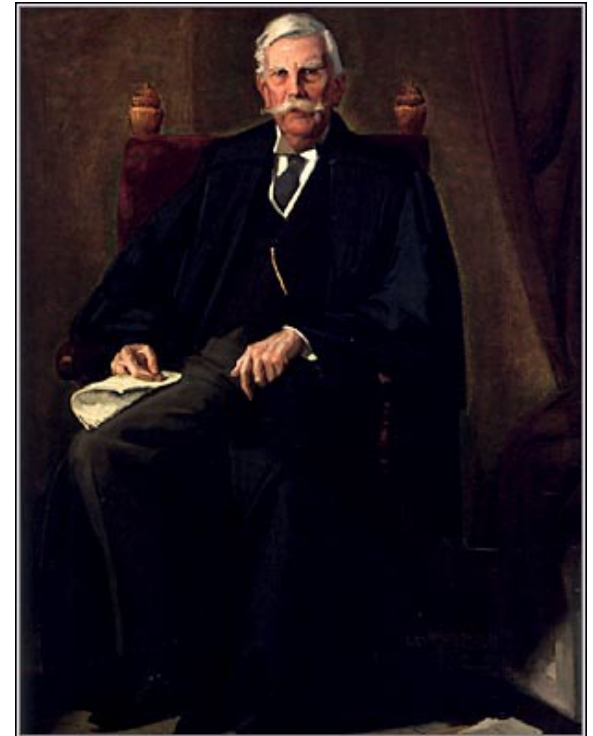
[7] ¶ 14 No judge wielding the power of the State in any courtroom has any good reason to call a litigant a “fucking addict” and “just a criminal.” The judge’s manifestation of personal animosity toward Lemke is not something we can write off as a byproduct of the informal and confrontational culture of drug court. A “fair trial in a fair tribunal is a basic requirement of due process.” In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955). The sentence must be reversed.



PROCEDURAL FAIRNESS

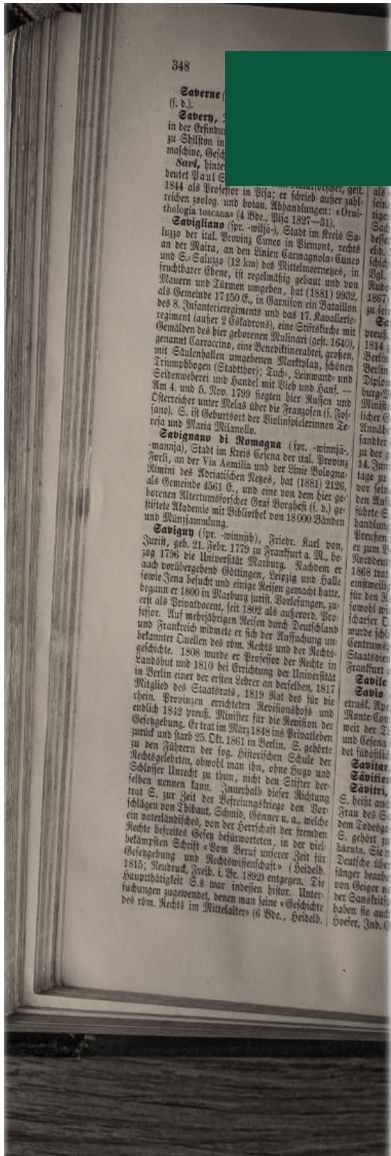
Whatever disagreement there may be as to the scope of due process, there is no doubt that it embraces the fundamental concepts of fairness and opportunity to be heard.

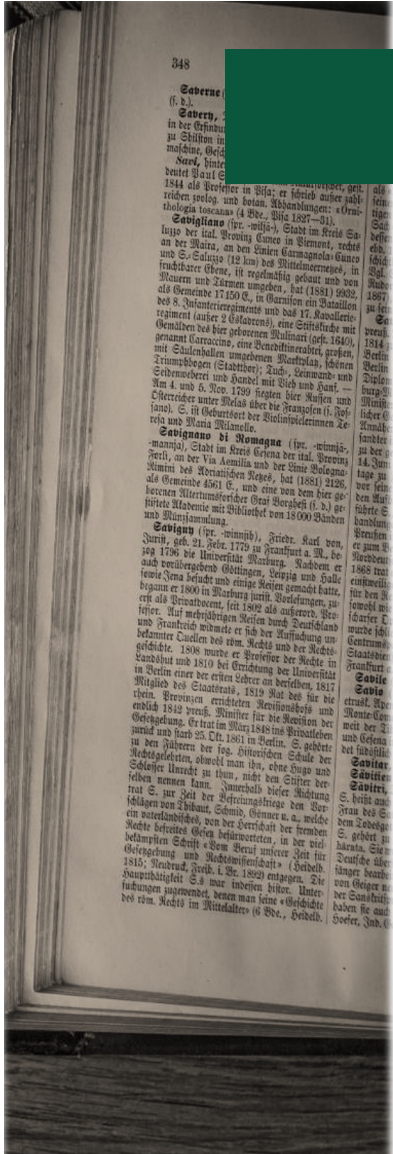
--- Justice Oliver Wendell Holmes, *Frank v. Mangum*, 237 U.S. 309 (1915)



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 outcome of the decision that is important. It's how the decision was reached and how the participant is treated.





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



The screenshot shows the top portion of a news article from The New York Times. The navigation bar includes 'SECTIONS', 'HOME', and 'SEARCH'. The article title is 'Gov. Bush's Daughter Is Sentenced to Jail', dated 'OCT. 18, 2002'. The text describes the sentencing of Noelle Bush, the daughter of Governor Jeb Bush, to 10 days in jail for violating a court-ordered drug treatment program. The article also mentions Judge Reginald K. Whitehead of Circuit Court in Orange County.

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.

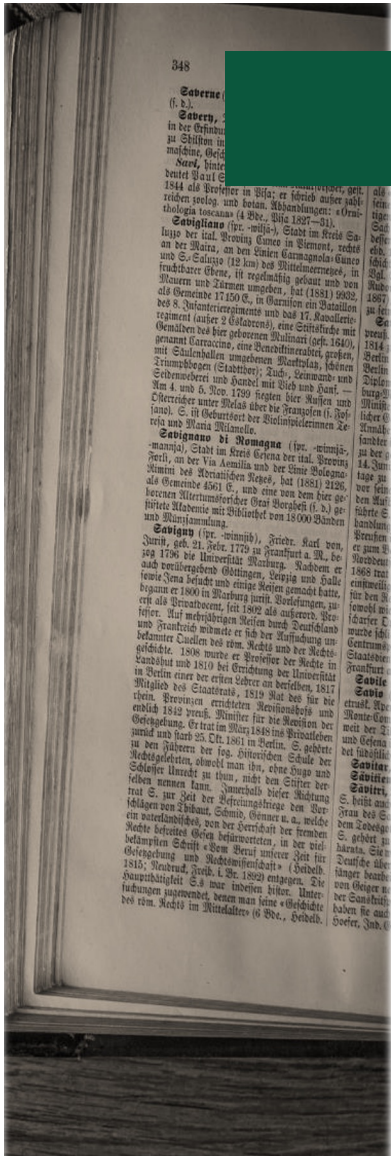
Judge Reginald K. Whitehead of Circuit Court in Orange County sentenced Ms. Bush, 25, after citing accusations that crack cocaine had been found in her shoe at a treatment center in Orlando.

- 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!

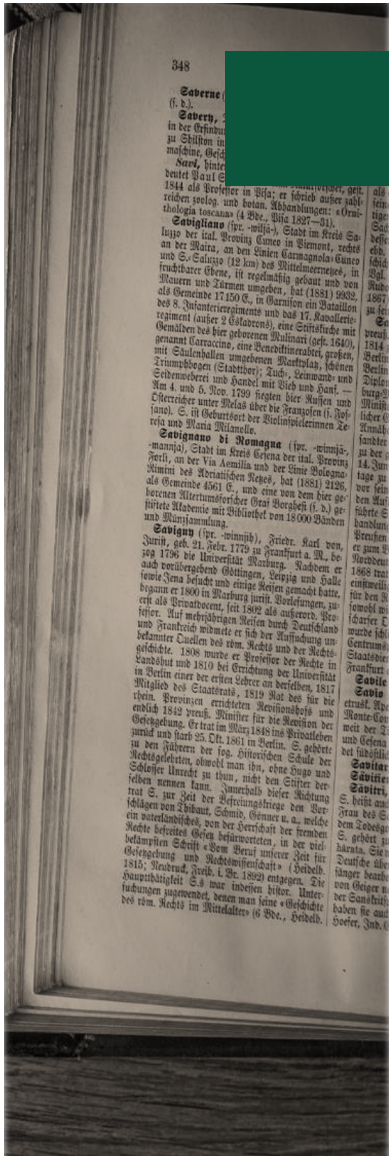
- Use microphones
- Closeness to bench
- Allow other participants to hear and learn
- Engage team members in court
 - Observations
 - Encouragement
 - Missing information
 - Challenge participant
 - Recommendations
 - Avoids staff splitting

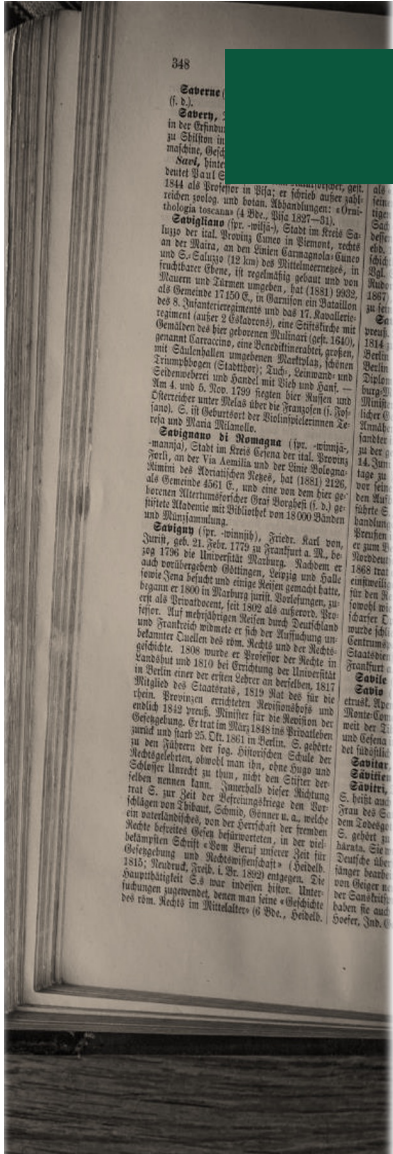


COURTROOM ENVIRONMENT

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

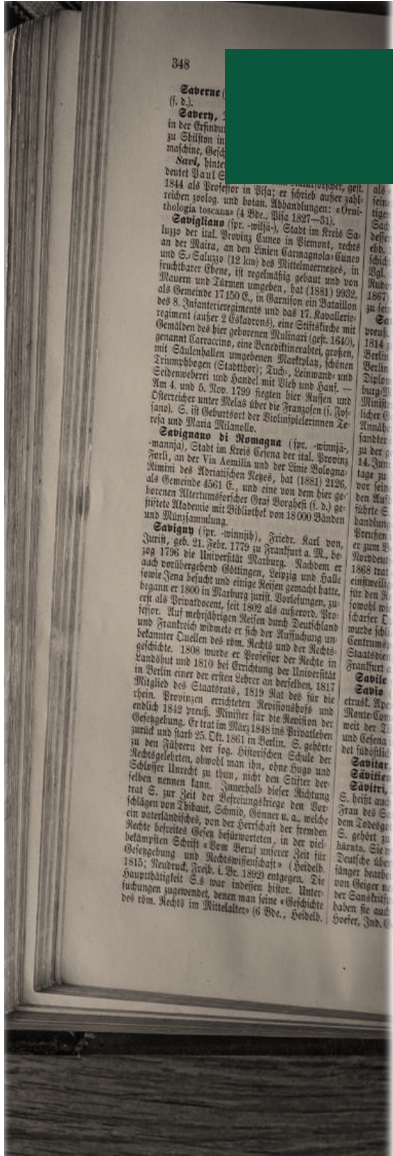




COURTROOM ENVIRONMENT

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

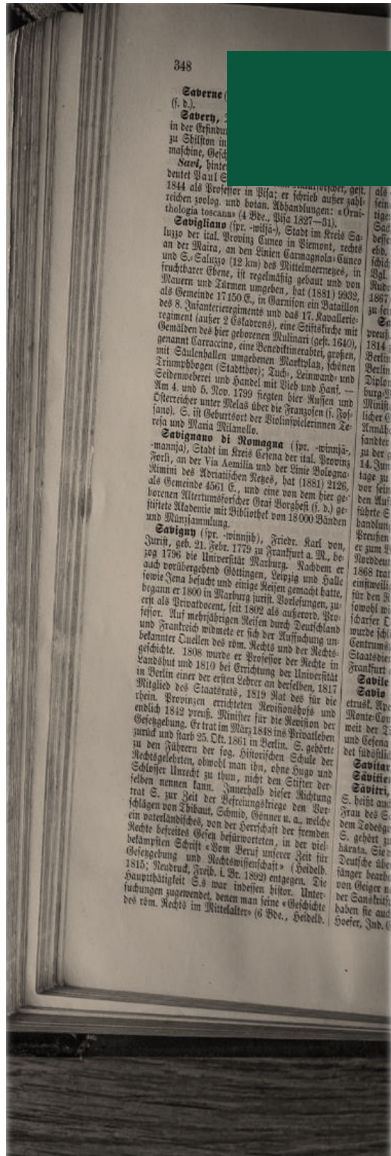
Communication Counts!

- 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

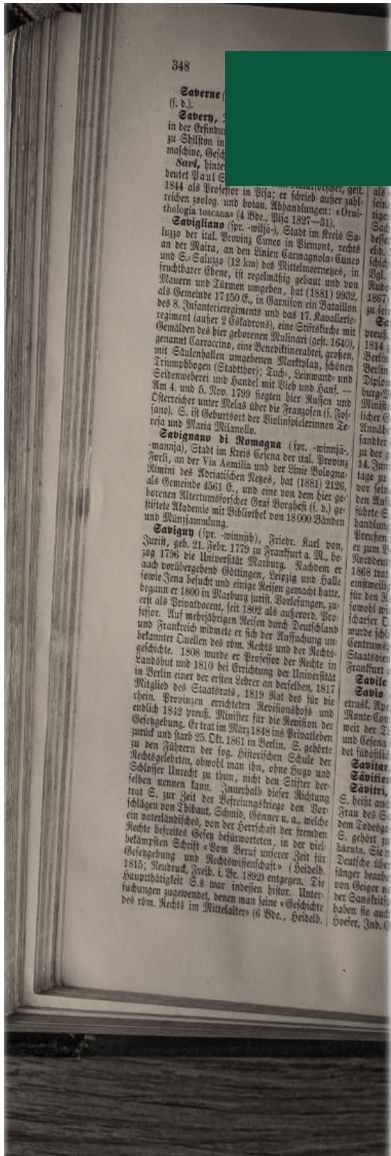
Environment Matters!

- 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

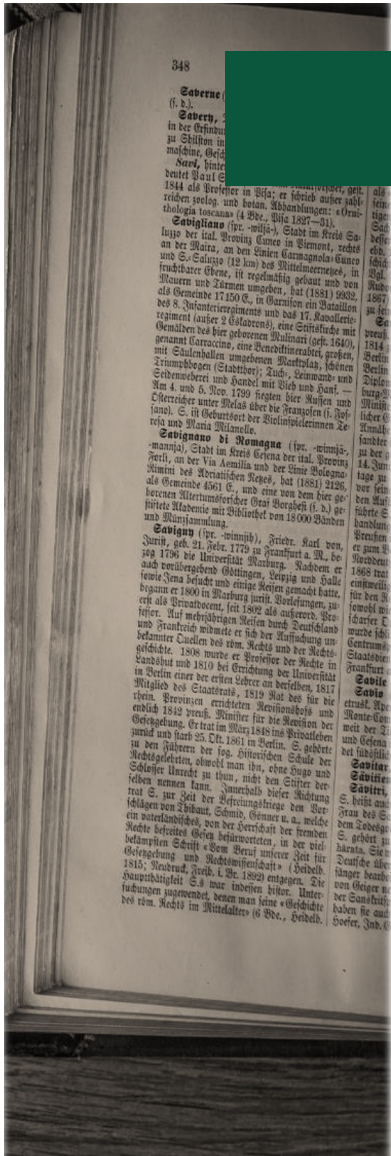
- Don't underestimate verbal praise
- Don't underestimate applause
- Don't underestimate judicial recognition
- Don't underestimate handshake
- Recognize accomplishments
 - Photographs
 - Pro-sobriety artwork
 - Letters
 - Engage families



JUDICIAL STYLES

When delivering sanctions:

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



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!

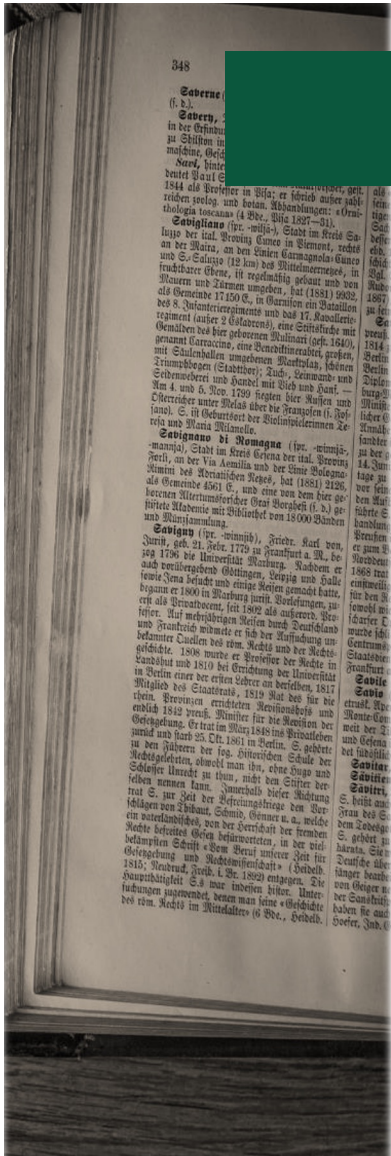
RELATIONS WITH PARTICIPANTS RECOMMENDATIONS

“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.

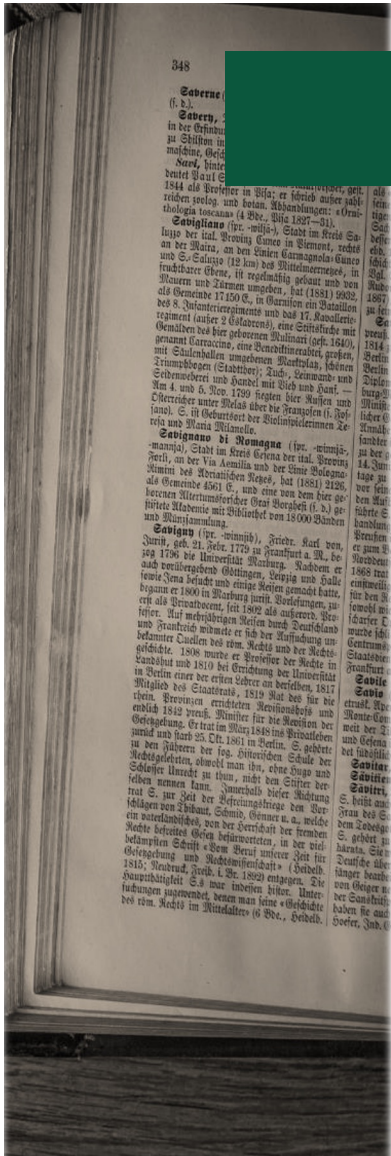
RELATIONSHIPS WITH AUDIENCE

- 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



RELATIONSHIPS WITH TEAM

- Multidisciplinary team serves essentially as a panel of *expert witnesses* providing legal and scientific expertise for the judge—who makes ultimate decision
- Judge should not make treatment decisions
- Assessment results pertaining to a participant's eligibility for treatment court; and treatment and supervision needs
- Attainment of program phase requirements
- Commission of or arrests for new offenses that treatment professionals may be aware of
- Discuss participant progress in all areas



HOW WE DECIDE

- Responses to behavior
- Changes in treatment
- Changes in supervision



TREATMENT COURT STAFFING FRAMEWORK

Participant's Name: Chris

Date of Hearing: March 3, 2023

1. **Who** are they in terms of current Risk and Need?

- HR/HN LR/HN
 HR/LN LR/LN

2. **Where** are they in the program (Phase)? Phase 1 Phase 2 Phase 3 Phase 4 Phase 5

3. **Why** did this happen (circumstances)?

Told probation he didn't use but tested positive. This is 3rd time. Is 3 weeks in program. Proximal behavior. Living in home of friend on couch. Friend uses opioids and marijuana. Can't say no to friend.

4. **Which** behaviors are we responding to?

Behaviors	Proximal (near, easier)			Distal (far, harder)		
	Incentive	Sanction	5. Magnitude (L, M, H)	Incentive	Sanction	5. Magnitude (L, M, H)
dishonesty		8 -hours community service	medium			

Therapeutic Adjustment Recommendation: _____

6. **How** do we deliver the message (explain the response)?

CASE STUDY: STAFFING COMMUNICATION



Dishonesty and Team Decision Making Part 1

Multnomah Co. START Court
Honorable Michael A. Greenlick presiding

CASE STUDY: STAFFING COMMUNICATION

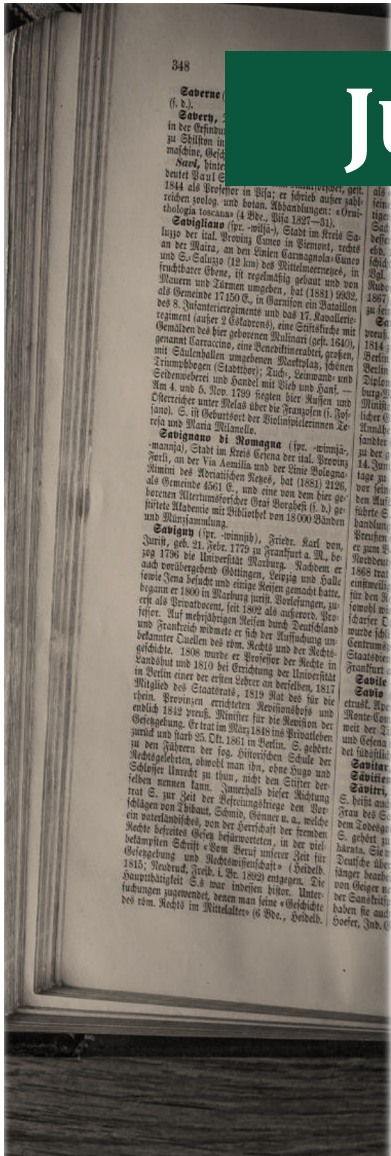


Dishonesty and Team Decision Making Part 2

Multnomah Co. START Court
Honorable Michael A. Greenlick presiding

JUDGE AS COMMUNITY COLLABORATOR

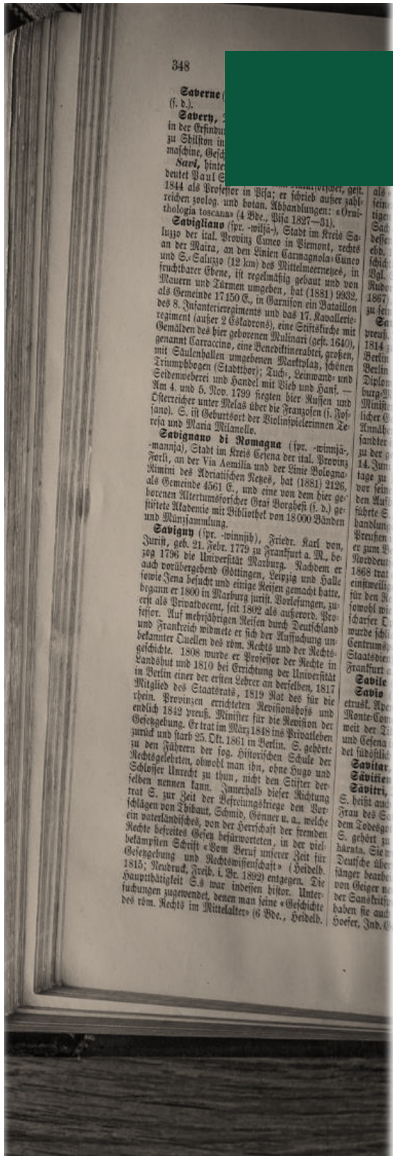
- Bring together agencies and stakeholders
- Share information on efficacy of treatment courts with civic organizations and other judges
- Media relations
 - NADCP Toolkits
 - Graduations
 - Understanding of community issues
- Sustainability



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

