



LEGAL & TREATMENT ETHICS FOR TREATMENT COURT PROFESSIONALS

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

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ROLE OF TREATMENT PROVIDER ON TEAM



- ✓ Obtain and maintain consent to release information
- ✓ Provide and/or coordinate clinical care with client
- ✓ Obtain clinical updates from other treating providers for the purpose of care coordination and staff disclosure
- ✓ Provide clinical updates to treatment court team at staffing
- ✓ Educate treatment court team on substance use disorders, client's trajectory of change and evidence-based practices/interventions
- ✓ Attend staffing and court sessions

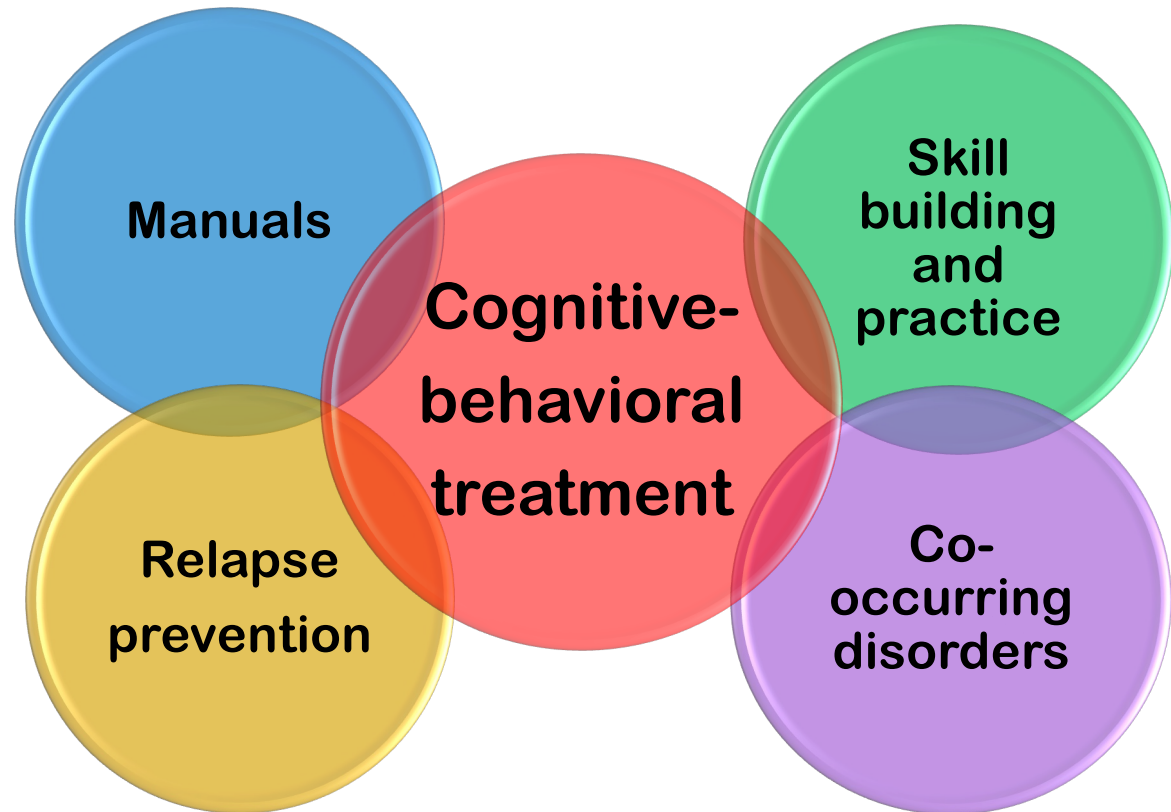
THE BIG PICTURE

- ✓ Participants receive substance-related treatment based on a standardized assessment of their treatment need.
- ✓ Treatment is not provided to reward, to punish, or to serve other nonclinical goals.
- ✓ Treatment providers are trained and supervised to deliver a continuum of evidence-based interventions that are documented in treatment manuals.





EFFECTIVE TREATMENT PRACTICES



OUTCOMES IMPROVE WHEN . . .

- Participants receive behavioral or cognitive-behavioral interventions.
- Interventions are carefully documented in treatment manuals.
- Providers are trained to deliver the intervention consistent with the manual.
- Fidelity to the treatment model is maintained through continual clinical oversight.



USING RECOVERY SUPPORT GROUPS IN THERAPY

Offer choice (types, spiritual and secular)

Try to match demographics, lifestyles, and level of substance involvement



CONSTITUTIONALITY

FIRST AMENDMENT – ALCOHOLICS ANONYMOUS

Treatment courts can *refer* participants to deity-based programs such as Alcoholics Anonymous[®], but courts cannot *require* participation in such programs without violating the First Amendment.

WARNING

CONSTITUTIONALITY

FIRST AMENDMENT – ALCOHOLICS ANONYMOUS

Why does *requiring* attendance at deity-based programs violate the First Amendment?

The First Amendment Establishment Clause prohibits the government from establishing or requiring religious practices.

Deity-based programs like Alcoholics Anonymous[®] require:

- Confess to God “the nature of our wrongs” (Step 5)
- Appeal to God to “remove our shortcomings” (Step 7)
- By “prayer and meditation” make “contact” with God to achieve the “knowledge of the will” (Step 11)

CONSTITUTIONALITY

FIRST AMENDMENT – ALCOHOLICS ANONYMOUS

IT DOESN'T MATTER:

- Treatment court is voluntary
- AA doesn't require belief in God, just a higher power
- It's just a reference to God
- Treatment providers require AA, not the treatment court

Courts have uniformly held that requiring attendance at AA/NA violates the First Amendment

CONSTITUTIONALITY

FIRST AMENDMENT – ALCOHOLICS ANONYMOUS

Recommendations:

- Courts have held that if a secular alternative is available, there is no First Amendment violation by referring to AA/NA.
- Secular alternatives include, among others, LifeRing Secular Recovery[®], Rational Recovery[®], Smart Recovery[®]





MEDICATIONS

omeprazolium
O.MED.CS
Praha a. s.

Loseprazol® 20 mg
enterosolventní
tvrdé tobolky
omeprazolium

PRO.MED.CS
Praha a. s.



MAT – MEDICATIONS FOR ADDICTION TREATMENT

- ✓ Medication- refers to any FDA-approved medication used to treat addiction
- ✓ ASAM recommends MAT be understood as medications for addiction treatment

MEDICATIONS



- ✓ Medications for addiction treatment improves outcomes, and includes buprenorphine, methadone, and naltrexone (Vivitrol).
- ✓ Participants are prescribed psychotropic or substance use disorder medications based on medical necessity by a treating physician with related experience.
- ✓ Treatment courts discourage participants from obtaining mood-altering medication from general practitioners.

MEDICATIONS

- ✓ **Methadone**
- ✓ **Buprenorphine**
- ✓ **Naltrexone**
- ✓ **Disulfiram**
- ✓ **Acamprosate**

MEDICAL MARIJUANA

Follow medication policy of your program as you would for any other drug

- ✓ Letter signed by doctor acknowledging participant has advised that they are being treated for substance use/mental health issues and are in a treatment court program
- ✓ Appropriate release of information and communication is in place with provider and program

NOTE: The federal government regulates drugs through the Controlled Substances Act (CSA), which does not recognize the difference between medical and recreational use of cannabis. Therefore, programs who received federal funds need to be aware of the funding requirements.



A grayscale photograph of a courtroom interior, showing rows of wooden benches, a central aisle, and a large chandelier hanging from the ceiling. The image is used as a background for the text.

CONSTITUTIONALITY

MEDICATION ASSISTED TREATMENT LEGAL CHALLENGES

MAT prohibitions are invalid under:

Americans with Disabilities Act (ADA)

Rehabilitation Act of 1973

Fourteenth Amendment due process guarantees

Eighth Amendment cruel and unusual punishment



INCARCERATION IS NOT A LEVEL OF CARE

Participants *are not* incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.

CONSTITUTIONALITY

DUE PROCESS ~ PREVENTIVE DETENTION

It is lawful to place a participant with a substance use disorder in jail while you are waiting for a placement bed to become available?

NO!

CONSTITUTIONALITY

DUE PROCESS ~ PREVENTIVE DETENTION

“But, if I release her, she will OD...”



NO!

Preventive detention is **UNCONSTITUTIONAL!**

Treatment courts **CANNOT** jail participants because they need inpatient treatment and a bed is not available without basic due process protections.

CONSTITUTIONALITY

DUE PROCESS ~ PREVENTIVE DETENTION

Why Is Preventive Detention Wrong?

- The Sixth Amendment guarantees the right to a speedy and public trial and arrested persons cannot be detained for extended period without a trial.
- The Eighth Amendment allows for reasonable bail and prohibits cruel and unusual punishment.
- Jail is not treatment.
- There is no evidence that preventive detention reduces crime, treats substance use disorders or instills fear.

CONSTITUTIONALITY

DUE PROCESS ~ PREVENTIVE DETENTION

Unlawful Preventive Detention Exposes Treatment Courts to CLASS ACTION LAWSUITS

Recently, the Seventh Circuit Court of Appeals made this observation about a treatment court in Indiana:

“Unfortunately, the drug treatment court in Clark County was not one of the success stories. Under the stewardship of Judge Jerome Jacobi, the court ran roughshod over the rights of participants who frequently languished in jail for weeks and even months without justification. The jail stays imposed as sanctions for noncompliance [and awaiting placement in treatment facilities] were arbitrary and issued without due process.”



CONSTITUTIONALITY

DUE PROCESS ~ PREVENTIVE DETENTION

Recommendations

- Hold a hearing with testimony by a treatment provider concerning the participant's substance use or mental health needs.
- Document the efforts taken to secure a treatment bed placement.
- Make a probable cause determination.
- Set bail.
- Exhaust other less restrictive alternatives (e.g. house arrest, halfway house, GPS monitoring, etc.)
- Rely on other non-compliance issues to justify the sanction (e.g. missing appointments, curfew, etc.)



CONSTITUTIONALITY

DUE PROCESS ~ PREVENTIVE DETENTION

Recommendations

- Rely on treatment provider recommendations for alternatives.
- Allow consultation with an attorney.
- Set review dates, as well as an automatic release condition when a treatment bed is available.
- Explore a civil commitment proceeding.

A modern office meeting room with glass walls, a large screen, and a conference table. The room is brightly lit with recessed ceiling lights. The glass walls reflect the room's interior and the ceiling lights. A large black screen is mounted on the white wall. The floor is covered with a dark carpet. The text "HOW ARE WE DISCUSSING INFORMATION?" is overlaid in the center of the image in a bold, red, serif font.

**HOW ARE WE DISCUSSING
INFORMATION?**

SHARING INFORMATION

- ✓ Assessment results pertaining to a participant's eligibility for treatment court and treatment and supervision needs
- ✓ Attendance at scheduled appointments/sessions
- ✓ Drug and alcohol test results conducted by the treatment center, including efforts to defraud or invalidate
- ✓ Attainment of treatment plan goals
- ✓ Evidence of symptom resolution or exacerbation
- ✓ Evidence of treatment-related attitudinal changes
- ✓ Attainment of treatment program phase requirements

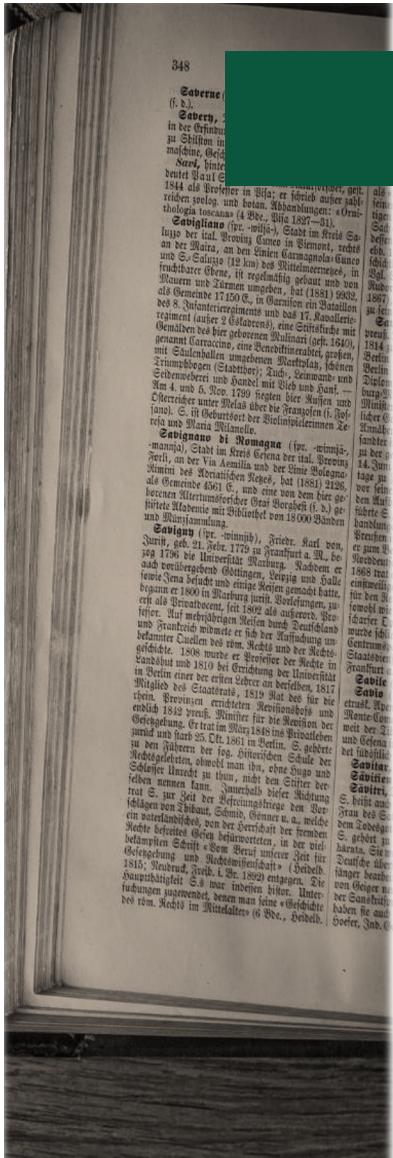
SHARING INFORMATION

- ✓ Compliance with supervision requirements that treatment professional may be aware of (e.g., electronic monitoring, home curfews, travel limitations, stay aways, etc.)
- ✓ Adherence to legally prescribed and authorized use of medicines—if relevant to team decisions
- ✓ Procurement of unauthorized prescriptions or addictive or intoxicating medications
- ✓ Commission of or arrests for new offenses that treatment professionals may be aware of
- ✓ Menacing, threatening, or disruptive behavior

STAFFING CONSIDERATIONS

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

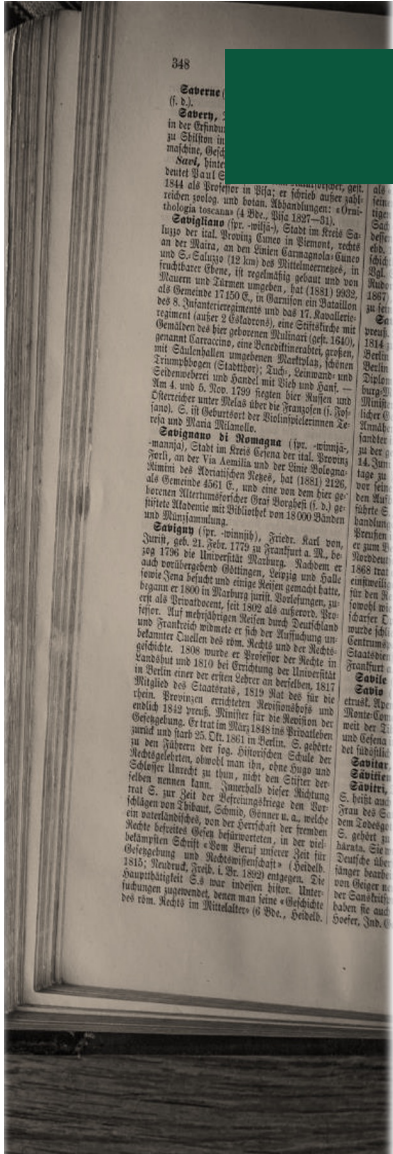




STIGMA

“Stigma is a degrading and debasing attitude of the society that discredits a person or a group because of an attribute... Stigma destroys a person’s dignity; marginalizes affected individuals; violates basic human rights; markedly diminishes the chances of a stigmatized person of achieving full potential; and seriously hampers pursuit of happiness and contentment.”

2015 International Conference on Stigma, Howard University, Washington, DC



TRAUMA INFORMED PRACTICE

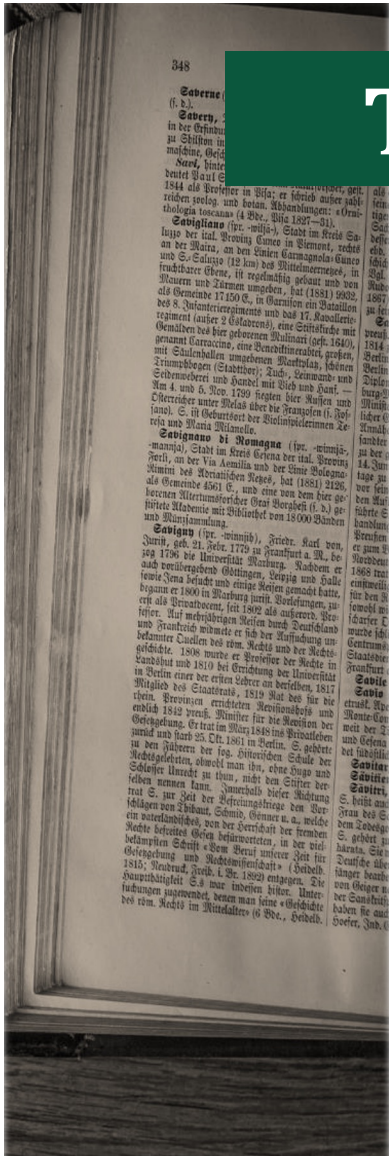
Be Trauma Informed!

- 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

TRAUMA INFORMED COMMUNICATION

Communication Counts!

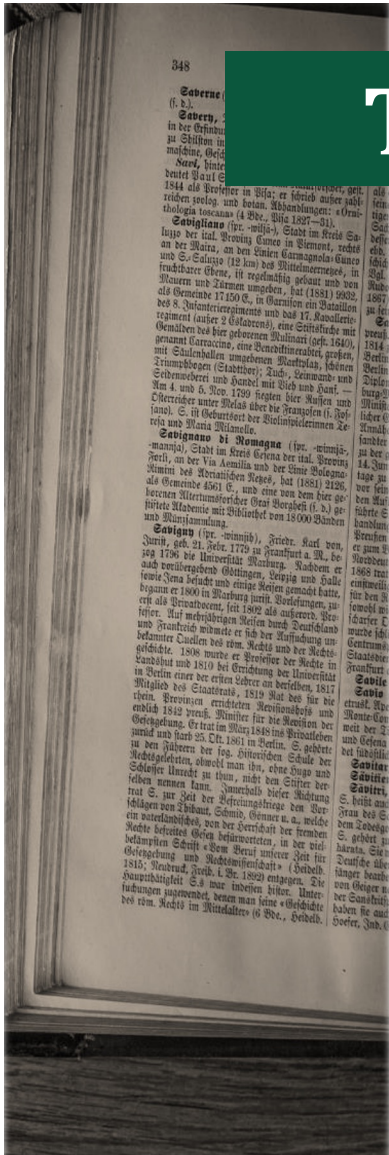
- Words can be hurtful or healing
- For example:
 - Court: “Your drug screen is dirty.”
 - Participant: “I’m dirty. Something is wrong with me”
 - Trauma informed: “Your UA shows the presence of drugs.”
- Court: “I’m sending you for a mental health evaluation.”
- Participant: “I must be crazy and something is wrong with me.”
- Trauma informed: “I’m referring you to a doctor who can help us better understand how to support you.”



TRAUMA INFORMED COMMUNICATION

Communication Counts!

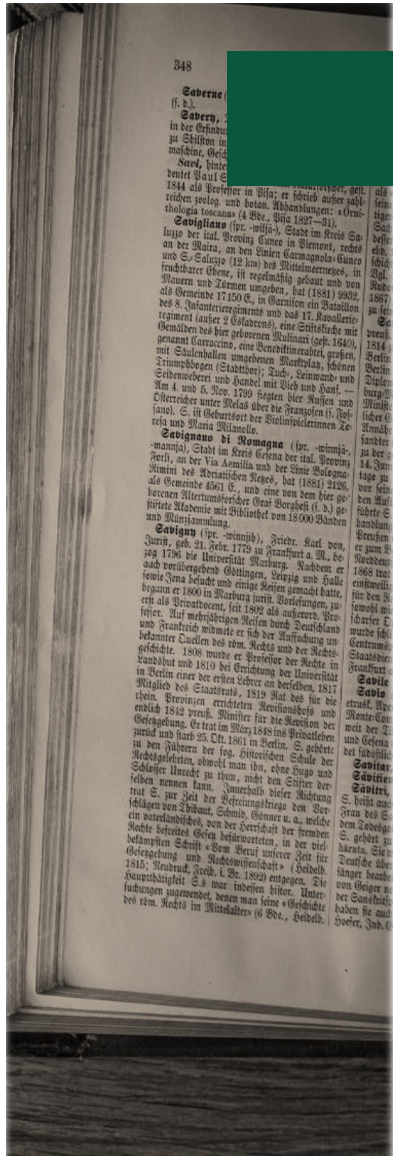
Avoid these terms...	Use these instead...
Addict, user, drug abuser, junkie	Person with opioid use disorder or person with opioid addiction, patient
Addicted baby	Baby born with neonatal abstinence syndrome
Opioid abuse or opioid dependence	Opioid use disorder
Problem	Disease
Habit	Drug addiction
Clean or dirty urine test	Negative or positive urine drug test
Opioid substitution or replacement therapy	Opioid agonist treatment
Relapse	Return to use
Treatment failure	Treatment attempt
Being clean	Being in remission or recovery



COURTROOM ENVIRONMENT

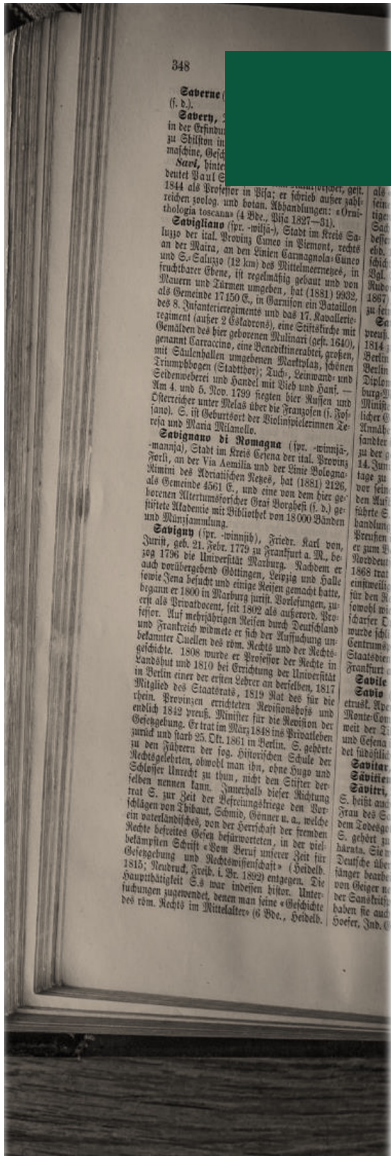
Environment Matters!

- 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



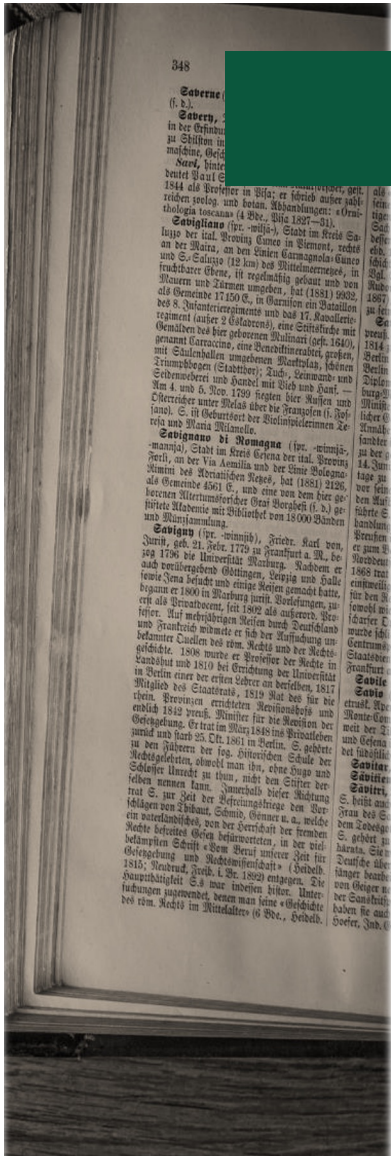
COURTROOM BEST PRACTICES

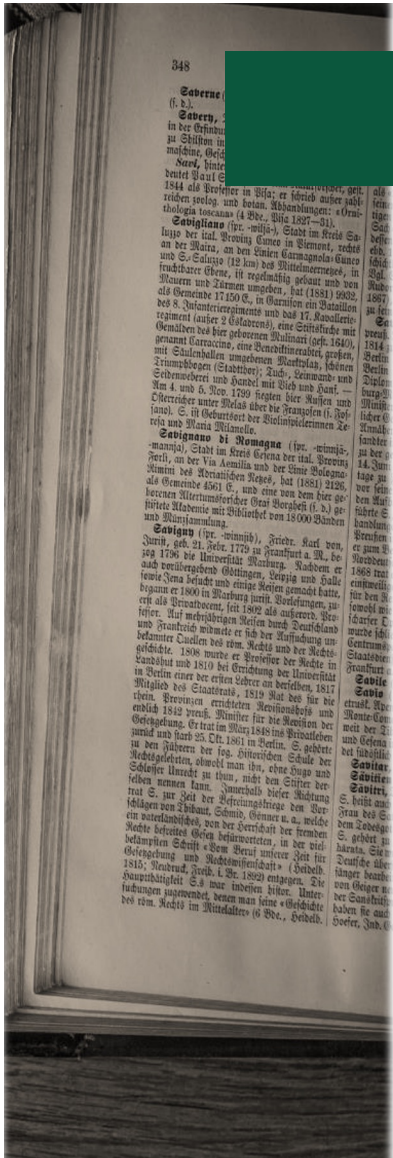
- NADCP Judicial Bench Card
- Input from treatment providers
- Participant assignments
- Read participant workbooks
- Participant essays
- Use the courtroom as a classroom
- Motivational Interviewing



COURTROOM BEST PRACTICES

- 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





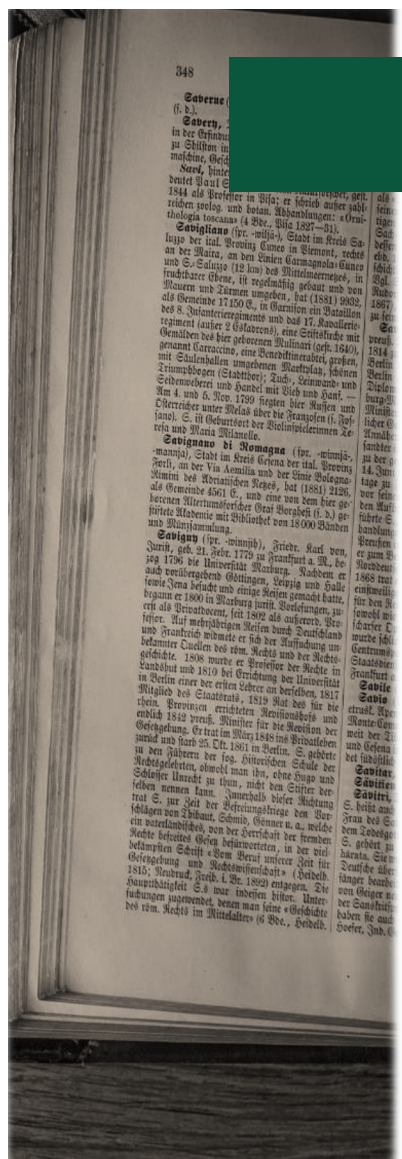
COURTROOM BEST PRACTICES

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

COURTROOM BEST PRACTICES

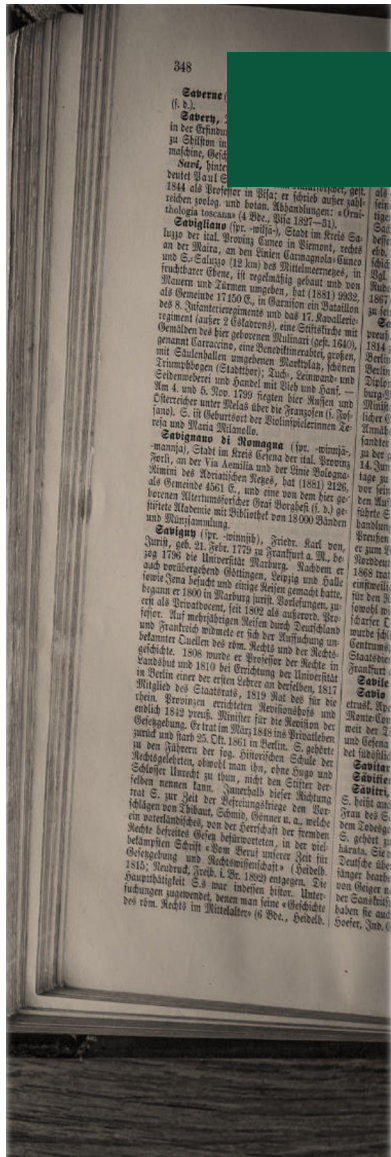
¶ 4 During a hearing on February 24, 2017, Lemke reported that he had a sore shoulder from being on work crew. The judge told him he could “stop with the shoulder bullshit now.” Lemke admitted he had been drinking and said he needed anger management counseling. The judge said, “I think you’re a fucking 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 126 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

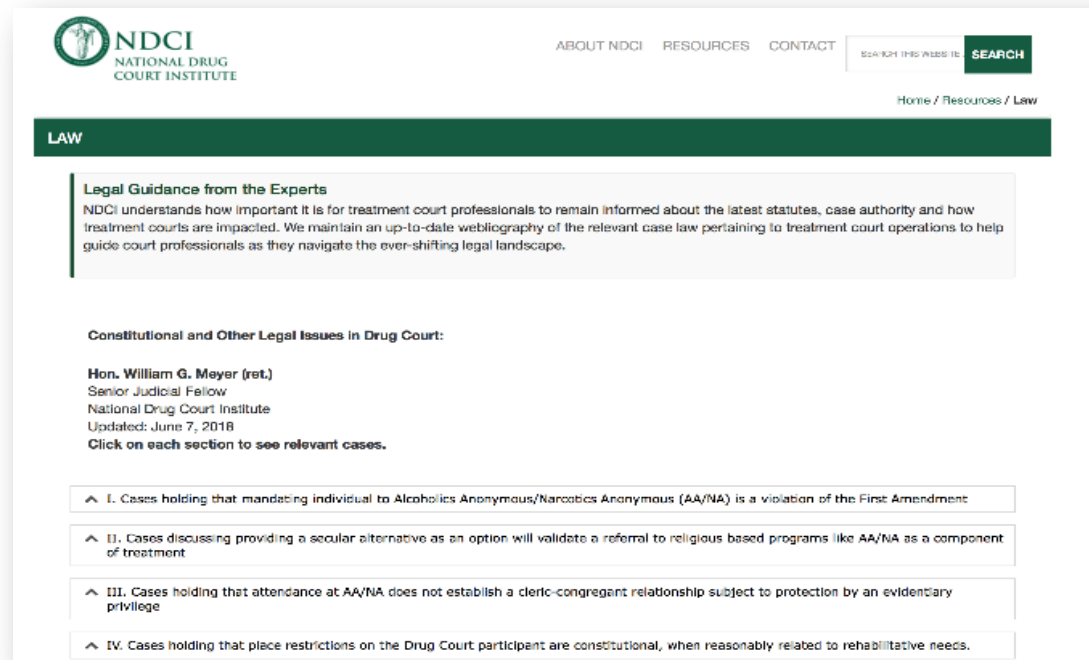


COURTROOM BEST PRACTICES

[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.



LEGAL ISSUES RESOURCES FOR TREATMENT COURTS



The screenshot shows the NDCI (National Drug Court Institute) website. The header includes the NDCI logo, navigation links for 'ABOUT NDCI', 'RESOURCES', and 'CONTACT', and a search bar. The breadcrumb trail reads 'Home / Resources / Law'. A dark green bar with the word 'LAW' in white is positioned below the breadcrumb. The main content area features a section titled 'Legal Guidance from the Experts' with a paragraph explaining NDCI's commitment to providing up-to-date legal resources. Below this is a section titled 'Constitutional and Other Legal Issues in Drug Court:' by Hon. William G. Meyer (ret.), Senior Judicial Fellow, dated June 7, 2018. A list of four legal issues is provided, each in a separate box with a small upward-pointing arrow icon:

- I. Cases holding that mandating individual to Alcoholics Anonymous/Narcotics Anonymous (AA/NA) is a violation of the First Amendment
- II. Cases discussing providing a secular alternative as an option will validate a referral to religious based programs like AA/NA as a component of treatment
- III. Cases holding that attendance at AA/NA does not establish a cleric-congregant relationship subject to protection by an evidentiary privilege
- IV. Cases holding that place restrictions on the Drug Court participant are constitutional, when reasonably related to rehabilitative needs.

<https://www.ndci.org/resources/law/>

Evaluation



<https://cvent.me/yPgmXP>

1. On your compatible phone or tablet, open the built-in camera app.
2. Point the camera at the QR code.
3. Tap the banner that appears on your phone or tablet.
4. Follow the instructions on the screen to complete the evaluation.
5. After completion, you will be provided with a certificate that can be saved and printed.

**ANY
QUESTIONS?**

