

Role of the Judge

Standard III

Judge William Meyer (ret.)
Senior Judicial Fellow
National Drug Court Institute

Two Parts

- Short Presentation on Role of the Judge
- Opportunity for you to share concerns and have a facilitated discussion on how your colleagues have addressed the issue

Role of the Judge

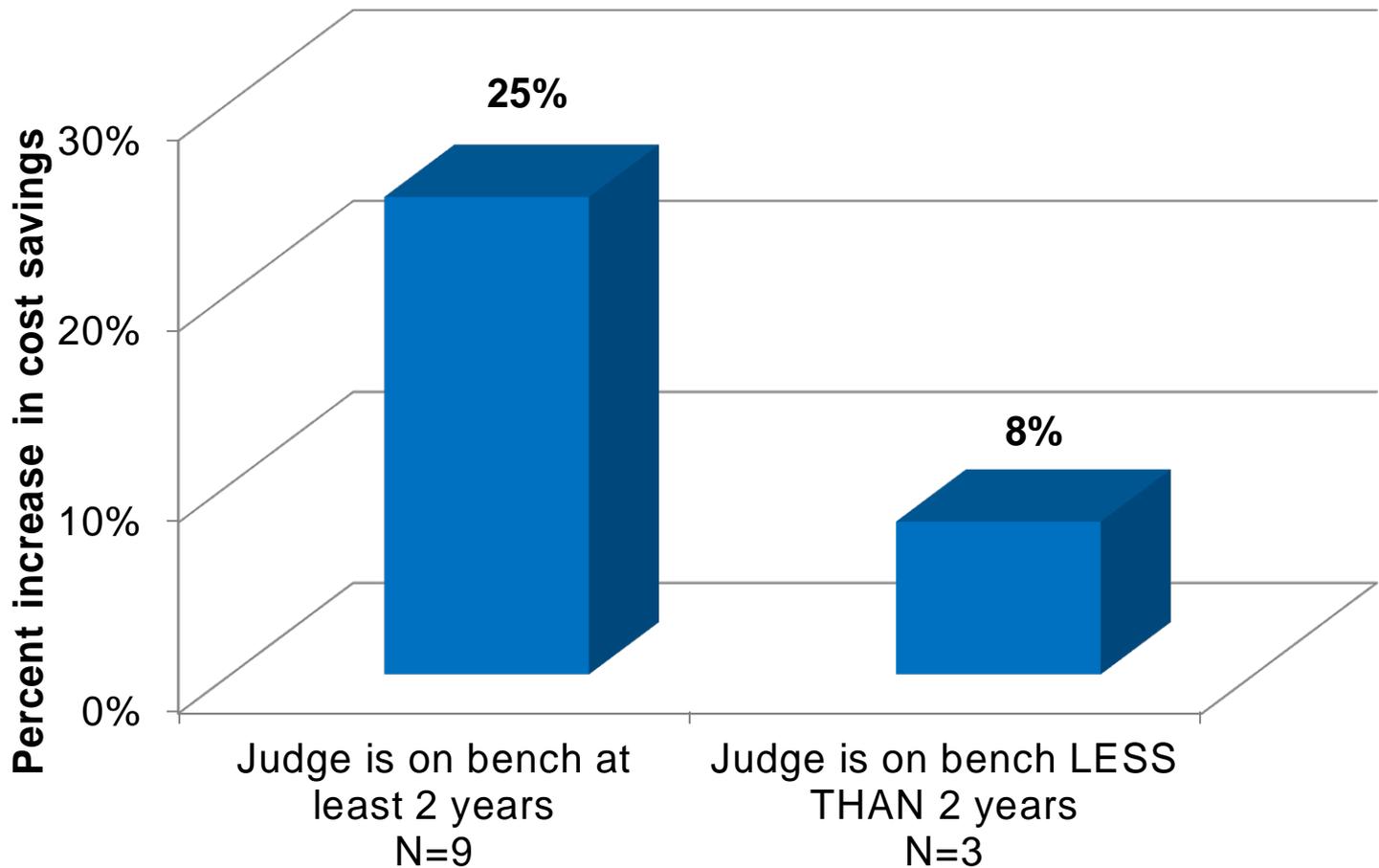
- First and foremost, you are still a judge. Neither your independence nor your discretion is to be surrendered. Constitutional, statutory and ethical obligations remain.

Tennessee v. Stewart, NSOP, No. M2008-00474-CCA-R3-CD (October 6, 2008)

- In Tennessee, the “neutral and detached hearing body” is statutorily prescribed to be the trial judge.
- Based upon the statute, we hold that the trial judge violated the defendant’s due process protections in allowing the drug court team to deliberate and make a recommendation to the court about the disposition of a matter that was statutorily vested in the trial judge’s authority.
- Further, the record in this case reflects that the trial judge not only received the recommendation from the drug court team, it delegated the decision-making authority to the team. In this regard, it is telling that the trial judge instructed the drug court team at the hearing, “I have no thoughts or opinions on what you should do, should you decide that [the defendant] should come back with no sanctions whatsoever, or if he should be revoked and dismissed from the program or anything between, I do not care what your opinion is. I trust your judgment.”

- Judge as leader of the team.
- Continuity of relationship between judge and participant
- Relationship from acceptance in program throughout treatment and commencement and aftercare
- The message is “Someone in authority cares”

Drug Courts That Have Judges Stay Longer Than Two Years Had 3 Times Greater Cost Savings



Note: Difference is significant at $p < .05$

Length of Term

- Maintain continuity of the program
- Judge is knowledgeable about policies and procedures

Consistent Docket

- Same Judge throughout participants enrollment
- Back-up Judge versus unqualified Stand-in Judge

Length of Court Interactions

Drug Courts Where the Judge Spends an Average of
3
Minutes or Greater per Participant During Court
Hearings
had 153% greater reductions in recidivism



How?

- What did you do this week to stay sober?
- Describe one of the most important reasons for you to stop being dishonest?
- What does responsibility mean to you?

How?

- What past hobbies or activities are you looking forward to getting re-involved in?
- What are some things in your work or school that are getting in the way of your change efforts?

Manualized Treatment

- Cognitive Behavioral
- AA/NA/ or secular 12 step
what step are you on?

Judicial Demeanor

- Offers supportive comments
- Stresses importance of clients commitment to treatment and other program requirements
- Express optimism

Not Supportive, but Actual Excerpts from Royal Navy and Marines Officer Fitness Reports

You would be out of your depth in a car park puddle.

Since my last report you have reached rock bottom, and started to dig.

You set low personal standards and then consistently fail to achieve them.

You work well, when under constant supervision and cornered like a rat in a trap.

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Procedural Fairness

- Knowledgeable of client's case
- Know them by name
- Encourage them to succeed
- Emphasize treatment
- Not intimidating
- Approachable
- Let them tell their story
- Treat them fairly and with respect
- Impartial – do not prejudge



DRUG COURT ENVIRONMENT

What environmental elements are necessary to create and operate an effective drug court?

Variables in Courtroom Environment

- Ambient noise, distraction
- Participant miked
- Closeness to bench

Variables in Courtroom Environment

- Participant next to lawyer
- Who is first addressed by judge
- Level of eye contact
- Physical contact
- Arranged seating

Variables in Courtroom Environment

- Order of cases
- Time spent with participant
- Frequency of courtroom sessions
- Judge addresses gallery
- Participant addresses gallery

Relationships in the Drug Court Environment

■ Relationship between

Judge and

- Participants
- Audience
- Staff / Team

JUDICIAL STYLES

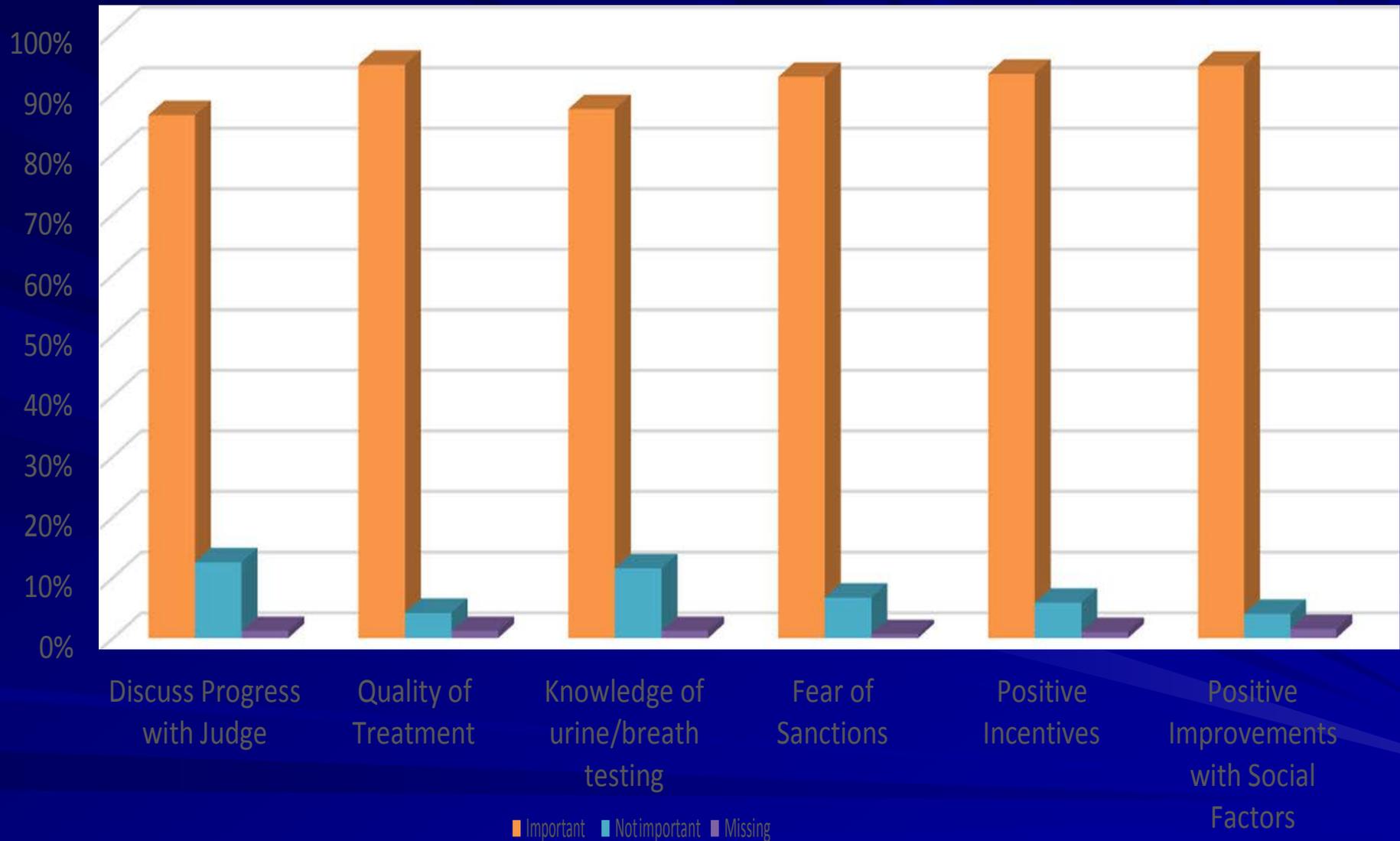
Judicial Styles

- Talks or Listens
- Formal or Informal

Judicial Styles

- Be Supportive
- Use Motivational Enhancements
- Avoid Confrontation

Factors related to the Decision to remain in Drug Court



Contrino, K. et. al., "Factors of Success: Drug Court Graduate Exit Interviews", Amer. Journal of Criminal Justice, (January 6, 2016)

AMBIVALENCE

“I want to but I don’t want to”

Tasks under the Stages of Change

PRECONTEMPLATION	Raise doubt - Increase the client's perception of risks and problems with current behavior
CONTEMPLATION	Tip the decisional balance - Evoke reasons for change, risks of not changing; Strengthen client's self-efficacy for change of current behavior
PREPARATION	Help the client to determine the best course of action to take in seeking change; Develop a plan
ACTION	Help the client implement the plan; Use skills; Problem solve; Support self-efficacy
MAINTENANCE	Help the client identify and use strategies to prevent relapse; Resolve associated problems
RELAPSE	Help the client recycle through the stages of contemplation, preparation, and action, without becoming stuck or demoralized because of relapse

PRINCIPLES OF MOTIVATIONAL INTERVIEWING

- Express empathy
- Develop discrepancy
- Avoid argumentation
- Roll with resistance
- Support self-efficacy

from Morgenstern-Motivational Interviewing

Motivational Interviewing

- **Expresses Empathy** —sometimes bored
- **Discrepancy**-Can you think of other positive ways of spending your time
- **Avoids argument** but still imposes sanction
- **Rolls with resistance** and explains how sanction arrived at
- **Builds self esteem** —I know you are working hard; every person is different-we try to figure out what is best for you

Relationships between Judge and Participants

- Positive Authority Figure
- Consistent
- Knowledgeable
- Empathy

Relationship Between Judge and Audience

DIRECTING COURTROOM THEATRE

- 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.

How to evaluate and deliver consequences

Response Considerations and Elements

1. **Who** are they (Risk/ Need)?
2. **Where** are they in the program (what phase)?
3. **Which** behaviors we are responding to (are they proximal or distal)?
4. **What** is the response choice and magnitude? (including treatment response)
5. **How** do we deliver and explain the **response (using the above elements)?**

Advice

- Read the Judicial Benchbook
- Listen to the team, but use your discretion
- Follow the experts recommendations
- Adhere to procedural due process
- Go to NADCP National Conference