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**OBSERVATIONAL STUDY OF  
COURTROOM DYNAMICS  
IN SELECTED DRUG COURTS**

**By Sally L. Satel, MD<sup>iv</sup>**

*In this ground breaking article, Dr. Sally Satel (93) reviews the literature in the field, interviews drug court judges and program participants and observes 15 courtroom settings in an attempt to describe and analyze the role of the drug court judge. This far ranging article of first impression looks at what makes a good drug court judge, the psychological implication of the drug court judicial model and how the drug court environment can effect program outcomes.*

*Dr. Satel is a practicing psychiatrist as well as a lecturer at Yale University School of Medicine. She has written extensively on drug abuse and cocaine addiction. Her clinical and research expertise is in addiction medicine. She has worked in the Washington, DC Drug Court as a Staff Psychiatrist and consultant.*

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## ARTICLE SUMMARIES

### JUDGE-ROLE

[10] Unlike the traditional judge, the current drug court judge is directly involved in the treatment and supervision of offenders.

### JUDGE-ROLE CODIFIED

[11] NADCP “Key Components” describe the role of the drug court judge.

### JUDGE- “JUDGE EFFECT”

[12] A study illustrates the significance that involving a judge in an already established treatment program may have on the success of the participants. Another assessment revealed that conviction rates varied each year depending on which judge presided over the court.

### JUDGE- SELF ASSESSMENT

[13] Twelve drug court judges are surveyed on “what are the six most important characteristics of an effective drug court judge.”

### JUDGE- COUNTER TRANSPERENCE

[14] The judge’s attitudes toward participants can be complicated by the judge’s

subconscious feelings triggered by the participants.

### JUDGE- PARTICIPANT ATTITUDE

[15] Participants generally believe that the involvement of the drug court judge is critical to their success in the program.

### JUDGE- PARTICIPANT PSYCHOLOGY

[16] Insight into the mental life of the addict is necessary for drug court practitioners.

### JUDGE- COURT ENVIRONMENT

[17] The author isolated 17 courtroom and process variables believed to promote successful drug court interactions and applied them to 15 drug court environments.

### JUDGE- COURT ENVIRONMENT

[18] The judge helps communicate the message by controlling the court environment, including the order of calling participants, the seating arrangement, amplification of dialogue and the like.

## **INTRODUCTION**

The judge is considered the symbolic and functional centerpiece of the drug court program. Intuition dictates that, the more effective the judge, the more successful the drug court in curbing crime and drug use. Just how significant is the drug court judge in the process? How different are the interactions of the drug court judge with offenders before the court from that of the traditional judge?

This article will examine these questions and provide a first impression of a very practical issue. It will define the drug court judge's role, describe the nature of his or her relationship with the participant and in turn, the participant's relationship with the judge. It will also consider the therapeutic impact of the judge's actions on the participant. Finally, it will provide an empirical assessment of the interactional and environmental variables of the drug court setting in 15 drug courts.

## **THE JUDGE'S ROLE**

[10] In the pre-drug court era, when judges ordered offenders into drug treatment as a condition of sentencing or probation, they were largely uninvolved with monitoring the offender's compliance with treatment conditions. In fact, it was typical for offenders to be terminated from treatment without the judge being made aware of it.<sup>1</sup>

Drug courts are a significant departure from that past system. The process has been transformed by involving the judge directly in the treatment and supervision of the defendant. During regularly scheduled status hearings, which take place in an open courtroom, the judge holds the defendant publicly accountable for his progress in treatment. The judge uses progressive sanctions and

incentives to reward success and discourage certain behaviors. Sanctions follow violations and are applied as close to the time of failure as possible. Ideally, the sanctions become incentives to compliance.

**THE VIEW FROM THE FIELD:**

To date, the peer-reviewed literature on drug courts is scant, but conferences and agency publications have been host to considerable discussion about the role of the drug court judge.<sup>2,3,4</sup> In fact, many observers and judges themselves have attributed the success of drug courts in large part to the investment of the judges and the nature of their relationships with defendants. However, until now, there has been no systematic effort to characterize the judge-participant relationship. When a search of the post 1983 PsycINFO database for articles containing the words “drug” and “court” was queried, no mention of any article that touched on the topic of judge-defendant interaction was found. Nor was there any mention of mental health professionals empirically examining the dimensions or variations of such a relationship.

In drug court, the judge works to keep participants engaged in treatment.<sup>4</sup> Every dirty urine drug screen or missed appointment is met with a sanction, with the severity of these sanctions escalating if infractions recur. This conforms to what behaviorists have long appreciated, that behavior is shaped most effectively when punishments are swift and sure but not necessarily severe. The strategy demonstrates to the participant that his actions are taken seriously and that he predictably controls his fate. The judge is guided in this process by an algorithm that may be rigid or flexible depending upon the particular drug court.

Traditional court-mandated treatment, on the other hand, is generally a few unacknowledged, strikes-and-you're out affair. That is, the first few dirty urine drug

screens go unpunished, but the next one lands the defendant in jail or prison to serve out his or her deferred sentence.<sup>1</sup> Ignoring lapses and then, in a seemingly capricious way, coming down hard is a notoriously poor way to shape accountability.

The drug court judge's role is unconventional in other ways. First, the depth of involvement with the defendant is unprecedented. Not only does the judge review the progress of defendants many times over the course of the treatment, but he or she engages the defendant directly. These exchanges may take the form of praise or encouragement. If the participant has committed an infraction (*e.g.*, a dirty urine drug screen or missed appointment) the judge may seek an explanation and then admonish the participant and impose a sanction. The judge, unlike a clinician explicitly, represents moral authority.

According to psychiatrist and drug court consultant Michael Smith of New York's Lincoln Hospital, "the drug court model creates a very healthy and transparent system of authority. The actions of the judge depend directly on the patient's own performance; it's all observable: the urine screens, the attendance, how the patient relates to staff and other patients."<sup>5</sup> "The symbolic impact of the black robe can't be underestimated; it shows defendants that the system takes the defendant's conduct seriously," explains former Judge Jeff Tauber, now President of the National Association of Drug Court Professionals. A survey conducted by the Drug Court Clearinghouse, American University confirms this. From its surveys, it found that "eighty percent of participants indicated they would not have remained if they did not appear before a judge as part of the process."<sup>2</sup>

Second, the nature of the relationship challenges the time-honored role of judicial impartiality. Traditional judges may bristle at the thought of developing a coopera-

tive relationship with the defense, prosecution and treatment provider – not to mention with the defendant himself or herself. They see their job as determining guilt or innocence and meting out punishment, rather than collaborating with other court personnel for a therapeutic purpose. Judges Peggy Hora and William Schma find this limiting. It is “judging in a non-traditional form,” they write, “that becomes an invigorating, self-actualizing and rewarding exercise instead of an isolating, unsatisfying experience of watching the same people repeatedly cycle through.”<sup>6</sup>

Third, the drug court judge has the latitude to shape a courtroom drama. He or she can orchestrate the timing and sequencing of cases heard and perhaps most dramatic, can arrange for these dynamics to have an impact on participants seated in the courtroom and – more important – on those defendants who are sitting in the jury box as a sanction.

#### **JUDGE’S ROLE CODIFIED:**

[11] In January 1997, the Office of Justice Programs (OJP) at the U.S. Department of Justice released a key document called “Defining Drug Courts: The Key Components.”<sup>4</sup> The OJP was assisted in this effort by a committee formed by the National Association of Drug Court Professionals called the Drug Court Standards Committee. The purpose of the “Key Components” is to provide benchmarks....“describing the very best practices, designs and operation of drug courts.” “Because drug courts are evolving,” the committee writes, “the field would benefit most from general, practical guidance on how to get established, what to consider, whom to include and how to proceed.”

Key Component # 7 is especially relevant to this paper. It states: “Ongoing judicial interaction with each drug court participant is essential.” It reads as follows:

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- ❖ A drug court judge must be prepared to encourage appropriate behavior and to discourage and penalize inappropriate behavior.
  - ❖ Ongoing judicial supervision also communicates to participants – often for the first time – that someone in authority cares about them and is closely watching what they do.
  - ❖ Frequent status hearings give the participant a sense of how he or she is doing in relation to others.
  - ❖ Having a significant number of drug court participants appear at a single session gives the judge the opportunity to educate both the offender at the bench and those waiting as to the benefits of program compliance and consequences for noncompliance.

#### **EVIDENCE OF A “JUDGE EFFECT”:**

[12]The drug court judge’s non-traditional role is assumed to be critical to the process and thus, to the outcome of the court. Indeed, several quasi-natural “experiments” suggest that different drug court judges may have demonstrably different effects on participant outcome.

A study of the Stillwater, Oklahoma drug court experience illustrates the significance that involving a judge in the program may have on the success of participants.<sup>7</sup> Before its drug court was established in March 1995, Payne County, Oklahoma, had a district attorney-run treatment program (ATTAC). Treatment program philosophy and content remained constant through the transition from ATTAC to a drug court format. The major innovations associated with the drug court were a single judge dedicated to drug court cases and the imposition of intermediate sanctions. Preliminary pre and post-data analysis shows impressive reductions of over 50% in dropout rate, dropout recidivism and graduate recidivism rates. Follow-up data for the ATTAC program and the drug court were available for two years and one year, re-

spectively. The addition of a drug court judge to the existing sanctions program appears to be very significant in terms of improving the overall outcome.

An assessment by the National Center for State Courts of the Oakland Drug Court from 1991 (the first full year of the drug court program) through 1994 revealed that conviction rates varied each year depending on which judge presided over the court. A different judge presided over drug court each year, while no other significant changes in the program occurred during the study period. The assessment found that in 1991, there was a 1.6% participant conviction rate, in 1992, the conviction rate was 10.2%, in 1993, 5.8% of participants were convicted and in 1994, 7.0%.<sup>8</sup>

Another study illuminates the variability of judicial attitude and response to drug court participants. Under one Denver Drug Court judge, 66% of participants got “good and passable reviews” and 14 % were sent to jail over the course of a year. Under his successor, only 40% received “good and passable reviews” and 40% went to jail. This drug court program was stable over the years examined, save for the switching of judges. It is possible that the second judge was more strict than the first, but because the program used a fairly rigid sanctions algorithm, the influence of judicial discretion was minimal.<sup>9</sup>

### **JUDICIAL SELF-ASSESSMENT:**

[13]With drug courts in 49 states, the District of Columbia, Guam and Puerto Rico, there exists considerable variability in drug court environment and style of proceeding. This ranges from crowded dockets in huge courtrooms where participants are managed in a brisk, assembly-line fashion, to more intimate courts where the atmosphere resembles a fellowship meeting. Regardless of the variability, judges tend to see their roles similarly.

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In preparation for an advisory meeting that took place last February at the home office of the National Association of Drug Court Professionals (NADCP), the Association asked a dozen judges to answer the question: “What are the six most important characteristic of an effective drug court judge?” There were 21 classes of responses from nine individuals, but a few appeared regularly on the lists. In order of descending frequency these were:

- ❖ The ability to be empathic or to show genuine concern;
- ❖ Knowledge about drug addiction and pharmacology;
- ❖ Team leadership (consensus building; team player, leader or motivator);
- ❖ Acceptance of an unconventional role;
- ❖ Consistency in applying sanctions (or in explaining rationale);
- ❖ Knowledge of the addict community and street life in your jurisdiction;
- ❖ Sense of humor;
- ❖ Ability to communicate;
- ❖ Commitment to the enterprise;
- ❖ Willingness to learn/ humility;
- ❖ Ability to impose sanctions, comfort with “tough love” approach; and
- ❖ Having experienced personal crises.

Other responses, mentioned once each were awareness that the traditional system was ineffective; displaying a judicial bearing; ability to sell the program to the community; ability to balance interests of the client with public safety; patience; knowledge of local social service referral options; ability to spot a “con artist”; ability to work with diverse clientele; and an awareness that the impact of drug court was made in a public venue.

Results from the author’s non-representative interviews complement this list in some ways and depart from it in others. For example, no judge spontaneously men-

tioned that knowledge of addiction or pharmacology was a particularly important attribute, yet it was often ranked first in the NADCP questionnaire. Judges chiefly valued the relationship between themselves and the participant. The notion that drug court participants have few “honest, straightforward and caring relationships” in their lives was mentioned as an impetus for the judge to be engaged with them. One judge said he did not see himself as “imposing punishment but as providing help. Through judicial coercion, I try to get them to be sober for a long period of time. If it’s long enough, and they can figure out how to lead productive lives during that time, then hopefully they can translate that into a lifelong knowledge.” Another said, “I am a cheerleader. My job is to motivate people.”

Being the leader of a team was also emphasized. In almost all cases, the bench and treatment providers experienced initial friction (*i.e.*, struggles over the treatment staff relinquishing control over the participant and disclosing clinical information to the judge). However, this was resolved within one to two years. One judge saw his primary function as “keeping people interested in the drug court program so that they would continue to go to treatment.” All judges interviewed were invested in treatment but not necessarily in acupuncture. None, however, was opposed to the use of acupuncture and most had volunteered to undergo the procedure to see what it was like.

The third most common function of a drug court judge was to organize a community of recovering people. Meting out sanctions and shaping behavior with incentives and punishments were not cited as prominent functions of the judge, though, as activities, they were taken seriously by the judges. “Keeping the addicts going to treatment is the purpose of the drug court judge,” said one judge.

### **JUDICIAL PERCEPTIONS OF TREATMENT:**

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A 1990 study by the New York City Criminal Justice Agency examined factors and perceptions affecting judges' decisions regarding the adjudication of crack and powdered cocaine offenders.<sup>10</sup> Eighty two percent of the 71 judges interviewed agreed that diversion of selected crack cocaine, related defendants would be a reasonable option "if effective treatment existed." Among judges who identified a preferred type of treatment referral, 77% named residential programs. They felt that those most likely to benefit were defendants who showed "motivation" to receive treatment. Interestingly, data does not support this all-too intuitive belief. Indeed, numerous studies have shown that patients coerced into treatment do as well or better than those who volunteer for it.<sup>11</sup> Furthermore, judges had expressed disappointment with treatment, citing its failure to follow up with the court, verify patient participation and administer urine drug screens. It is no coincidence, then, that integration of information and collaboration between criminal justice and treatment services are substantial departures for the judiciary and the very hallmark of drug court programs.

#### **PSYCHOLOGICAL IMPLICATIONS FOR THE JUDGE:**

[14] Judges' attitudes toward participants can be complicated. The Freudian concept of transference refers to the patient's "transferring" tightly held attitudes (beliefs) and emotional dispositions forged in childhood onto new individuals in their lives. Since parent-child relationships are the first attachment that a child develops, they almost always influence all later relationships, including formal helping relationships in adulthood. The therapist's interpretation of the transference allows the patient to better distinguish between remnants of past relationships and the real association between himself or herself and the therapist.

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Counter-transference is the inverse of transference; it describes the therapist's reaction to the patient. In the context of drug court, "judicial" countertransference would thus refer to the personal reactions that are invoking in the judge by the participant (in the clinical setting, by analogy, it would refer to the therapist's response to the patient). Classically, these reactions are unconscious – that is, outside the awareness of the judge (or therapist) – but are manifested in ideas, feelings or behaviors that are inappropriately intense (in the positive or negative direction) or somehow not fully rational.

For example, a female participant who is flirtatious and seductive may "convince" the judge to give her a light sanction for a transgression. He does so, but when she fails again, the judge is not simply annoyed, but furious. Why? As it happens, this participant unwittingly re-enacted the behavior of the judge's own teenage daughter who, too, acts like "daddy's little girl" when she misbehaves. Against his better judgement, the father (our judge) will let her off easy only to be faced with the daughter's subsequent acting out. This leaves him feeling helpless, betrayed and enraged.

Indeed, drug court is fertile ground for the unfolding of psychological drama. Perhaps, for example, the judge is a recovering alcoholic or has loved a one who is addicted to drugs. This could stir up inappropriately strong feelings of sympathy, impatience or even hostility toward a participant who happens to remind him of his or her former self (or his or her loved one). Consider the participant who casts the judge in the parental role. He or she may elicit deep feelings in the judge, rooted in the latter's own experience as a parent or a once-needed child. Or consider the participant who related to the judge in a provocative manner – or, more precisely, in a manner that the judge finds provocative – stemming from an (uncon-

scious) desire to be punished or controlled or to elicit concern through censure.

These kinds of psychodynamic scenarios are more likely to get played out in a drug court, with its somewhat relaxed structure, than in a standard court where proceedings, expectations and personnel roles are clear, traditional and fairly predictable. The expression of the participant's psychological conflicts and needs naturally find outlet in a setting where a potent figure (the judge) actively probes for personal details and takes a visible interest in their lives. While it would be a grave mistake for the judge to fashion himself or herself as a therapist – better to be seen as a moral authority with the flexibility to be practical and compassionate while demanding accountability – the judge should be aware that the unconventional nature of his or her relationship with participants can engender complex reactions in himself or herself.

### **PARTICIPANT'S ASSESSMENTS OF THEIR RELATIONSHIPS WITH THE JUDGE:**

[15] As important as the drug court judge is to the court process, dynamics and outcome, there remains a variable that plays an equally paramount role in drug court – the participants. Focus groups, surveys and exit interviews allow us to learn about the participant's impressions of the drug court experience. Urban Institute researchers conducted focus groups with participants of the Washington, DC Drug Court.<sup>12</sup> The researchers found, not surprisingly, that the certainty of consequences was psychologically powerful and important to the participants. "The reason the sanctions track people did so well is because they knew what the judge would do. And he did it," said senior researcher Adele Harrell who conducted focus groups with study participants. She also

credited the “swiftness of the penalties – they had to report to court immediately for a urine drug screen failure – and their fairness.” That is, they understand that there are consequences for their behavior, a truly important realization for permanent change. Furthermore, Harrell learned from the focus groups that “the defendants believe that the judge takes a personal interest in them.” As one man summed it up for her, “you get a dirty urine, man, you’re going to jail. They’re letting you know... you know the chances.”

In some cases, when participants tell evaluators that the judge “really cares,” the true meaning of this superficial endorsement is not always clear. In optimal instances, this means that the judge is genuinely engaged with the participants and has become a central and respected figure in their drug court and recovery experience. In these situations, motivation to succeed may stem partly from a desire to “make the judge proud of me.” A participant in the Denver Drug Court told evaluators that, “[When] the judge recognized that I’ve been here so long it was like he was proud, it was strange, like a father kinda. There’s no doubt in my mind that his is different [from other court experiences]. When I relapsed and got disciplined, he said, ‘well, you still owe me a day.’ But he didn’t do it out of vindictiveness, you know, like a spanking or something. Actually, it was what I needed.”<sup>13</sup>

On the other hand, some participants have indicated to this author that a caring judge is a lenient judge. Judicial credibility can be severely damaged when, in effect, the judge invites defendants to pull the wool over his eyes. “When a judge gets into the buddy-advocate role he can be reluctant to impose sanctions. Also, believe it or not, I’ve seen judges underestimate how manipulative addicts are and get tricked into being too lenient,” a case manager at treatment court in New York told me. Oftentimes, when a participant states that a judge “really ca-

res”, these participants have made the all too common mistake of confusing the failure to demand accountability with compassion. Yet another interpretation of “caring” is simply that the drug court judge is more involved in their personal situation than a traditional judge who sentences them and/or sends them to jail.

It is clear in the American University 1997 Drug Court Survey Report that drug court participants identify the purpose and importance of sanctions. It queried 256 participants from 53 drug courts and found that the highest percentage (82%) responded that “the possibility of sanctions (being) imposed if you didn’t comply with the program” was “very important.” Seventy-five percent said it was “very important” that “a judge monitors my progress.” Unfortunately, there was no elicitation of spontaneous comments; the participants were limited to five responses, none of which referred to their interaction with the judge.<sup>6</sup> However, as mentioned earlier, 80% said that they would not have remained in the drug court program if they were not required to appear before a judge as part of the process.

#### **THE MIND OF THE ADDICT:**

[16] Insight into the mental life of the addict is helpful to the drug court judge and other criminal justice personnel whose aim is to reduce subsequent crime through changing offenders’ behaviors. Partly, this change will be effected through behavior modification (sanctions, consequences and rewards), but it will also be influenced, to some degree, by the relationship with the judge. Nevertheless, there are aspects of the addicts’ attitudes and actions that can make it difficult for the judge to form a relationship. It is not uncommon, for example, for a participant to choose drug court simply because he or she wants to avoid jail and to imagine that he or she will simply go through the motions (“get over and get by”).

This kind of gaming, while not specific to drug addicts, is a classic manipulation which judges are used to dealing with, but until they preside over a drug court, are unaccustomed to breaking through and working with.

Psychiatry does not recognize a so-called “addictive personality type,” yet some psychological traits are fairly typical of addicts; among them (1) low tolerance for stress and emotional turmoil, and (2) poor behavioral control. While not unique to addicted individuals, such traits and associated features are likely manifested as poor impulse control, inability to delay gratification, action-orientation (rather than reflection), poor ability to plan and anticipate consequences of actions, misreading of interpersonal situations and damaged capacity to trust. Commonly, addicts have frustrated, hurt and disappointed family and friends to the point where few people have faith in their capacity to transform.

The profound problems of self-governance suggest that limit-setting, consistency and firmness are critical aspects of judicial behavior. From the clinical standpoint, the constellation of frailties described above explains why most therapists avoid classical insight-oriented therapy (*i.e.*, in-depth, anxiety-provoking, psychodynamic psychotherapy) with individuals who are currently using drugs or who are recently recovered: they usually cannot tolerate the intensity of the treatment and may turn to drugs to “medicate” the stress it produces.

Also, gaining immediate control of an addict’s day-to-day behavior requires a here-and-now orientation, practical problem solving and the acquisition of cognitive-behavioral relapse prevention skills. For addicts – as well as some other individuals whose behavior is self-destructive – insight can follow change, it need not precede it as conventional psychodynamic theory has it – and thus formal exploration of deep-seated psychological conflicts is contraindicated. To put it another way, it often

takes a period of abstinence for the addict to understand why he or she needed drugs in the first place.

This key point may conflict with the popular notion that addiction is a primary illness rather than a symptom of deeper personal distress. Nonetheless, it is important for judges (and treatment providers) to recognize that drugs once played an adaptive role in the participants' lives. This so-called "self-medication hypothesis" of addiction, which holds that drugs provide some kind of relief – from loneliness, boredom, depression, anxiety, guilt, feelings of failure – explains why addicts are usually so ambivalent about giving them up in spite of the damage they eventually cause.<sup>14</sup>

One important function of treatment, therefore, is to help patients understand what his or her drug did for them so that they can meet those psychological needs of gratification, self-soothing or self-stimulation, in other, more constructive ways. Gradually, as the participant realizes that the costs of drug use outweigh the benefits, they become "motivated" to change. Yet, motivation is not critical for change. Many drug court participants have no desire to be in treatment; it was chosen on the basis of expediency. They are resistant to treatment. Nevertheless, they remain in treatment because of the threat of sanctions and/or jail, and while they are literally captive in the program, they acquire genuine, internal motivation. They come to recognize that there are alternative lifestyles and they too have the capacity to change.

## **DESCRIPTIVE ANALYSIS OF THE INTERACTIONAL AND ENVIRONMENTAL VARIABLES OF THE DRUG COURT SETTING**

**METHODOLOGY:**

[17] The goals of this descriptive analysis are to (1) identify interactional variables between judge and drug court participant, (2) identify environmental variables in a drug court setting and (3) document variability within a sample of drug court programs.

**Selection of Drug Courts**

Given travel budget limitations, the investigator chose drug courts based on proximity to home or other locales frequented. These sites were (1) District of Columbia Drug Court (Pretrial Services). This site had the added advantage of rotating judges, so the courtroom dynamics of two judges could be examined; (2) Brooklyn Treatment Court, Kings County, New York; (3) New Haven Drug Court, New Haven County, Connecticut; (4) Fort Lauderdale Drug Court, Broward County, Florida; (5) Miami Drug Court, Dade County, Florida; (6) Marathon Drug Court, Marathon Key, Florida. Filmed sessions were obtained from Bakersfield Court, California; San Diego; Denver; Kalamazoo, Michigan; and interviews with judges from Los Angeles County, Oakland; Pensacola; and Richmond, Virginia. This provided an opportunity to observe 15 courtrooms and to interview 14 judges. In all, over 500 judge-participant interactions were observed.

**Process Evaluation**

Specific variables relating to the judge-participant interaction are listed in Table 1. The investigator sat in the front row of each courtroom and completed the check list for each participant reviewed by the judge as well as for the judge's engagement with participants seated in the jury box.

**Procedural Characteristics**

The investigator met with the judges to (1) solicit their opinions as to the importance of the variables being examined in this study; (2) collect suggestions for new

ones; and (3) inquire about their impression of their relationship to the participant, guiding models and understanding of addiction.

*Interview with Judges by Phone*

To complement the observational data, nine judges were contacted by phone and/or interviewed in person when they attended a two-day meeting at the offices of the National Association of Drug Court Professionals.

*Variables*

Seventeen courtroom characteristic and process variables believed to promote successful drug court interactions were chosen based on many discussions with judges and observations of drug court environments and interactions. Listed below are the variables and the rationale for their inclusion. (See Table 1)

**RESULTS OF OBSERVATIONS AND INTERVIEWS:**

Table 1 presents the range of variables in this non-representative sample. Interviews with the judges suggested that drug court processes were often dictated more heavily by the magnitude of the workload than by the judge's conception of how a drug court should be run.

For example, all judges appreciated the idea that participants could benefit from remaining throughout the entire session, but only three judges, all with modest-sized drug courts, felt they could require them to stay for the period that their court was in session. Also, all but one judge endorsed the idea of ordering cases to achieve a psychological impact, but only a little over half did so. (See Table 2) Among the other half, judges either planned to do so soon or felt that the caseload was so big that it would be impractical to do more than take cases as they come in or by alphabetical order. Also, all judges wanted to be able to call a participant in to see him or her the day after a significant infraction, but since some courts met

**TABLE I: VARIABLES AND RATIONALE FOR INCLUSION**

<b>VARIABLE</b>	<b>RATIONALE</b>
Ambient noise, distraction	Impediments to engagement of individuals and community.
Participant miked	Emphasizes primacy of participant.
Closeness to bench	Relevant to intensity of judge-participant exchange.
Participant next to lawyer	Dilution of judge-participant exchange.
Who is first addressed by judge	Emphasizes primacy of participant.
Level of eye contact	Intensity of exchange.
Physical contact	Aspect of exchange.
Remain throughout session	Opportunity to educate by example, reinforce norms and solidify group cohesion.
Arranged seating	Vehicle for setting example.
Order to cases	Opportunity to reinforce norms.
Fixed sanction algorithm	Aspect of consistency.
Review on short notice	Capacity for immediate response, emphasizes sense of judicial watchfulness.
Time spent with participant	Level of engagement, opportunity to develop relationship.
Frequency of courtroom sessions	Opportunity to develop relationship.
Judge addresses gallery	Reinforces sense of court as a community.
Participant addresses gallery	Reinforces community.

Outside contact	Level of engagement.
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**TABLE 2: VARIABLES BY DRUG COURT:**

<b>Variable:</b>	<b>Court A<sup>v</sup></b>	<b>Court B</b>	<b>Court C</b>	<b>Court D</b>	<b>Court E</b>	<b>Court F</b>	<b>Court G</b>	<b>Court H</b>	<b>Court I</b>
Ambient noise, distraction (1-5)	4	5	2	3-4	1	1	1-2	3	2
Participant miked	No	No	No	No	No	No	Yes	No	No
Closeness to bench	12 Ft	12 Ft	6-8 Ft	20 Ft	10-12 Ft	10-12 Ft	6 Ft	12 Ft	12 Ft
Participant next to lawyer	No	No	No	Yes	No	Yes	No	Yes	Yes
Who is first addressed	Personnel	Participant	Participant	Personnel	Participant	Participant	Participant	Personnel	Participant
Level of eye contact	Intermittent	Sustained	Sustained	Sustained	Sustained	Sustained	Sustained	Intermittent	Sustained
Physical contact	Graduation	Graduation	Yes	Yes	Graduation	Graduation	Yes	NA	YES
Remain throughout session	No	Yes	Yes	No	No	No	New Clients	No	No
Arranged seating	Jury Box	Jury Box	Jury Box	Jury Box	No	No	Jury Box	No	Jury Box
Order to cases	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
Fixed sanction algorithm	No	No	No	No	No	No	No	Yes	Yes
Review on short notice	Yes	Yes	No	Yes	Yes	Yes	yes	Yes	Yes
Time spent with participant	1 min.	1-2 min.	1-2 min.	1-5 min.	2-10 min.	1-7 min.	5-10 min.	1-10 min.	1-5 min.
Frequency of courtroom sess.	Monthly	Weekly/BI.	Monthly	Monthly	Monthly	Monthly	Biweekly	Monthly	Monthly

<sup>v</sup> Court Identities (A)-Ft. Lauderdale, (B) San Diego, (C) Marathon, (D) Miami, (E) Pensacola, (F) New Haven, (G) Kalamazoo, (H) DC-Fox, (I) DC-Lopez, (J) Bakersfield, (K) Denver, (L) Oakland, (M) Richmond, (N) Brooklyn, (O) Los Angeles

Judge addresses gallery	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Participant addresses gallery	No	Yes	Yes	No	No	No	Yes	No	No
Outside contact	No	No	Yes	No	No	No	No	No	No

**TABLE 2: VARIABLES BY DRUG COURT CONTINUED:**

	<b>Court J</b>	<b>Court K</b>	<b>Court L</b>	<b>Court M</b>	<b>Court N</b>	<b>Court O</b>
Ambient noise, distraction (1-5)	3-4	5	2	1	3	3-5
Participant miked	Yes	Yes	No	Yes	No	No
Closeness to bench	6-8 Ft	10 Ft	12 Ft	15 Ft	15 Ft	4-5 Ft
Participant next to lawyer	No	No	No	No	No	No
Who is first addressed	Personnel	Participant	Participant	Participant	Participant	Participant
Level of eye contact	Sustained	Intermittent	Sustained	Intermittent	No	Sustained
Physical contact	Yes	Graduation	Graduation	Graduation	Graduation	Yes
Remain throughout session	No	No	Yes	No	No	New Clients
Arranged seating	Jury Box					
Order to cases	No	No	Yes	No	Yes	Yes
Fixed sanction algorithm	No	Yes	Yes	No	Yes	Yes
Review on short notice	Yes	Yes	Yes	No	Yes	Yes
Time spent with participant	1-5 min.	1-5 min.	1-3 min.	1-5 min.	1-5 min.	3-8 min.
Frequency of courtroom sess.	Weekly	Monthly	Biweekly	Monthly	Monthly	Bimonthly
Judge addresses gallery	Yes	No	Yes	No	No	Yes
Participant addresses gallery	Yes	No	Yes	No	No	Yes
Outside contact	Yes	No	Yes	No	No	No

only weekly or even monthly, that kind of swift response was not always possible.

Almost all judges sought to make sustained eye contact with participants, to minimize ambient noise so that everyone could hear the exchange and to spend as much time as they could with someone who was not doing well in the program. If there were physical contacts, most preferred that it be limited to graduations. Male judges were wary about any contact with female participants, noting that breaching personal-space boundaries could complicate their work with women who were already confused about the meaning of male contact.

There was disagreement on the virtue of fixed sanction algorithms. Most said that they did not want to be constrained, but four felt that a relatively fixed schedule was most fair. These were also the judges with some of the busiest courts.

#### *Directing Courtroom Theater*

[18] One of the virtues of drug court, according to Judge Jeffery Tauber of NADCP, is that “the drug court is theater and the drug court judge has the opportunity to tell a story.” Accordingly, the courtroom proceedings can be shaped to reify and reinforce the essence of drug court: individual accountability and restorative justice. By engaging the drug court “audience” and setting examples, the judge can communicate certain principles, namely, that behaviors have consequences and that he or she has faith in the participants’ abilities to change.

The judges interviewed directed the drama of their courtroom in various ways. Only one said he paid little attention to the organization of the proceedings or to the arrangement of judicial symbols and actions. The others identified the following as features of the drug court environment that were designed and executed with their psychological impact in mind: (1) the order in which cases

were called; (2) the order in which the judge addressed the “players” (*e.g.*, the participant, his lawyer and treatment provider); (3) assignment of those to be sanctioned or rewarded to a special section of the courtroom; (4) the use of video recording.

### Order of Cases

The ordering of cases helps determine the composition of the audience and what information is imparted at any given time. Ordering cases has a practical side, (*e.g.*, those in custody may have to return to jail at a certain time and must be disposed of first), but it can also be a deliberate arrangement designed to impart meaning. By dealing with those in custody first (often absconders) everyone sees that the judge will indeed set limits and penalize individuals. “Those who are doing well can’t afford to get cocky. They have to know that I will give out sanctions when they are called for,” said one judge. Clearly, the judge who rarely sanctions, violates participant expectations and thereby erodes trust in the relationship and in the drug court mission overall. Calling sanctions cases first enhances the aversiveness – the shaming quality – of sanctions. A stable audience is present and the message that “bad behavior results in bad consequences” is reiterated to all. The following are examples of other case ordering scenarios:

- ❖ A drug court in California calls employed participants first in order to minimize the amount of time they are absent from work and to reward them for re-entry into society. Next to come before the judge are the “success stories” (those who are doing well and/or being advanced to the next phase of their programs). Then the judge sanctions the participants who have been out of compliance and, finally, he takes the remainder of the calendar (offenders

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who are newly entering the drug court program, etc.).

- ❖ In the Reno, Nevada Drug Court, the graduates go first, then those in custody (offenders who were newly arrested or absconders brought back on warrants), then others.
- ❖ In the New Haven, Connecticut Drug Court, the judge imposes no particular order on cases.
- ❖ In the Marathon, Florida Drug Court, everyone remains, and the participants who are to be sanctioned are seated in the jury box. At the end of the session, the judge has each come before her, and she imposes a sanction.

*Illuminating the Judge-Participant Dialogue*

A number of judges indicated that this exchange is the main event of the drug court session. Thus, minimizing noise and distraction is a priority. In some courtrooms the participant, as well as the judge, speaks into a microphone. Not only does this signify respect for the process, but it helps the participant focus – especially when personal and sensitive matters are being discussed – and enables other participants to follow along more easily. To this end as well, some judges discourage the presence of the attorneys. When attorneys are present, these judges always address the participant first and maintain eye contact.

*Creating a Sense of Community*

While some judges confine themselves to their relationship with the participants, others take a more expansive approach, which involves members of the entire courtroom. This is why, for example, some feel strongly that the participant should have a microphone to ensure that everyone can hear. Along these lines, one judge expressed unease with the current arrangement in his court wherein participants stand directly in front of him with

their back to the spectators. He would prefer the participant to be “off to the side so the placement would allow us to be more open to the view of the audience.”

When drug court jurisdictions are small and participants are familiar with one another from their neighborhood, it is easier to create the kind of “AA atmosphere” that judges sometimes seek. One judge actively welcomed members of the public and described friendly exchanges between himself and a recovered addict from the neighborhood. This judge would occasionally call on the gentleman to act as an “on-site crisis sponsor” for participants who were wavering in their commitment to drug court.

#### *Seating Arrangement*

The jury box often seats participants who are being sanctioned. “Jury duty” itself constitutes a sanction in many courts though the box may also hold other individuals in custody that have just been arrested, returned to court on a warrant or who are waiting to be admitted to the program or to receive a sanction.

#### *Video*

The Denver, Colorado, Drug Court has two, large split-screen television sets mounted near the gallery so that the audience can see both judge and participant and hear the proceedings. The Bakersfield, California, Drug Court routinely videotapes all sessions for purposes of educating other judges. At graduation, participants receive “before” (addict and criminal) and “after” (drug-free, employed, law-biding) still-photos of themselves taken off of the video. For promotional and educational purposes, the judge made a half-hour videotape that chronicles the progression of an in-

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dividual participant using footage of sessions filmed over her tenure in drug court.

*Use of Language*

Although a number of judges said they viewed addiction as a disease, they universally adopted the language of will and personal responsibility when talking to participants.

*Other Activities Intended to Strengthen the Judge-Participant Bond*

*Physical Contact -*

Judges sometimes hug participants after graduation. During the course of a session, some judges may call the participant up to the bench, exchange a few words and shake hands.

*Out-of-Courtroom Activities -*

Judges may attend or arrange picnics or Christmas parties. One judge leads participants on a one-mile run after the monthly court.

*Individual Meeting -*

One judge meets with each graduate in his chambers to congratulate him or her, talk about their future and so on. Some judges meet with participants seated in the jury box after everyone else has been dismissed. Others invite the participant up to the bench to talk privately or meet with him along with other court staff afterward in their chambers.

**CONCLUSION:**

The drug court has ushered in a new model of judge – one who can exercise a more flexible and consciously therapeutic rapport with the drug-using offender.

Clearly, further analysis and study of this new model is needed. For example, once aspects of the judge-participant relationship are elucidated, they could be ma-

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nipulated and tested in drug court settings by future investigators. Researchers could employ focus groups to assess the impression of the judge's actions on participants and, ultimately, correlate this with outcome. The ideal set-up for comparison evaluations would be a stable drug court treatment program with an explicit sanction algorithm overseen either by judges who rotate or by more than one judge simultaneously presiding over status and sanctions hearing. Though the "drug court model" does create concerns that some judges may attempt to act as therapists, the seemingly extraordinary potential of this model, warrants its continued development and study.

## **REFERENCES**

1. Anglin, Douglas, Longshore, Douglas, Turner, Susan, McBride, Duane, Inciardi, James and Michael Prendergast. "Studies of the Functioning Effectiveness of Treatment Alternatives to Street Crime (TASC)." U.C.L.A. Drug Abuse Research Center 1996.
2. Cooper, Caroline S. "Drug Court Survey Report: Executive Summary." Office of Justice Programs,
3. National Drug Court Institute Judicial Advisory Meeting. "In your own opinion, what are the six most important characteristics of an effective drug court judge, in order of importance?," Survey. February 28 – March 1, 1998.
4. Drug Court Standards Committee, National Association of Drug Court Professionals, "Defining Drug Courts: the Key Components." Office of Justice Programs, U.S. Department of Justice, National Institute of Justice, Washington, D.C., January 1997.

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5. Michael Smith, MD, Personal Communication. September, 1997
  6. Hora, Peggy Fulton and William G. Schma. "Drug Treatment Courts: Therapeutic Jurisprudence in Practice," *Judicature Magazine*, in press.
  7. Nichols, William and Travis Nelson. "An Evaluation of the Freedom Ranch, Inc. C.B.T.I. drug court programs and the Impact of Moral Reconciliation Therapy and Quality Control Systems." ND Enterprises. Oklahoma City, Oklahoma, March, 1997
  8. Access to data through NADCP: data on file with author (confidential)
  9. Data from Denver drug court, years 1996-1997, on file with author
  10. Belenko, Steven, Nickerson, Gary and Tina Rubenstein. "Crack and the New York Courts: a Study of Judicial Responses and Attitudes." New York City Criminal Justice Agency, New York, December 1990.
  11. Drug Court Clearinghouse and Technical Assistance Project. "Summary Assessment of the Drug Court Experience." Office of Justice Programs, U.S. Department of Justice, national Institute of Justice, Washington, D.C., October, 1996.
  12. Harrell, Adele and Barbara Smith. "Evaluation of the District of Columbia Superior Court Drug Intervention Program: Focus Group Interviews." Urban Institute, Washington, D.C., January 1997
  13. Gransfield, Robert and Cindy Eby. "An Evaluation of the Denver Drug Court; The Impact of a Treatment-Oriented Drug Offender System." Department of Sociology, University of Denver, Denver, Colorado, January 1997.

14. Shaffer, Howard J. "Denial, Ambivalence, and Countertransference Hate." *The Dynamics and Treatment of Alcoholism*. Edited by Levin, J. and Weiss, R. Jason Aronson, New Jersey, 1994.