

## Honorable Todd M. Shaughnessy – District Court Judge

Serving Salt Lake, Summit and Tooele counties

Commission Recommendation: **RETAIN**

(vote count: 12-0 for retention)

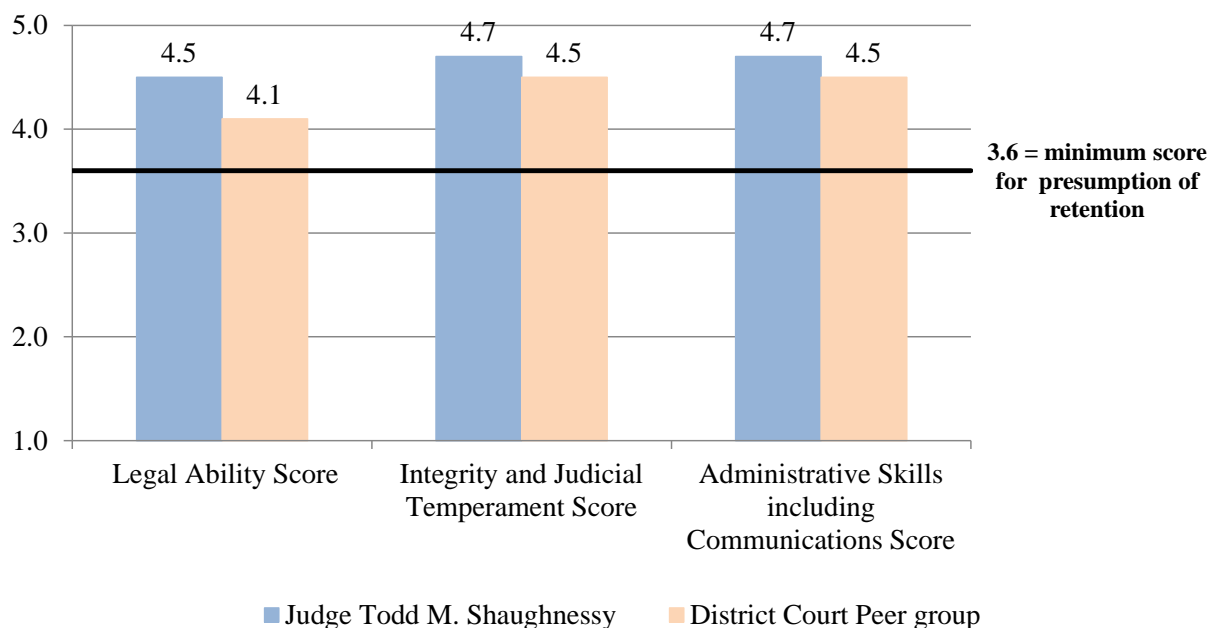


Appointed in 2011, Judge Todd Shaughnessy scored higher than the average of his district court peers in all survey categories. Respondents described Judge Shaughnessy as professional, humble, careful, practical, thoughtful, and engaged. From a list of adjectives, they selected 98% positive words to describe him. Both survey respondents and courtroom observers characterized Judge Shaughnessy as intelligent, polite, and well-prepared. Courtroom observers also praised Judge Shaughnessy for his attentive listening skills, professional demeanor, and careful explanations of decisions. They noted that he demonstrated equal respect for attorneys and defendants and allowed all courtroom participants to have their say. Of those who answered the retention question, 97% recommended Judge Shaughnessy be retained.

The commission reviewed surveys and courtroom observation reports in addition to verifying that Judge Shaughnessy has met all time standards, judicial education requirements, and discipline standards established by the judicial branch.

Judge Todd Shaughnessy was appointed to the Third District Court in May 2011 by Governor Gary Herbert. Judge Shaughnessy received his law degree from the University of Utah College of Law where he was managing editor of the Utah Law Review. Prior to his appointment, Judge Shaughnessy was a partner at Snell & Wilmer in Salt Lake City. He previously worked at Van Cott, Bagley, Cornwall & McCarthy. In addition to his membership in the American, Utah, and Salt Lake County Bar associations, Judge Shaughnessy is a member of the Utah Supreme Court Advisory on Rules of Civil Procedure.

**This judge has met all minimum performance standards established by law.**



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# **The Honorable Todd M. Shaughnessy**

**Judicial Performance Evaluation Commission Report**

**Retention 2014**

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# I. Survey Report

## Survey Results

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### A. How to Read the Results

For Judge Todd M. Shaughnessy, 64% of qualified survey respondents submitted surveys. Of those who responded, 128 agreed they had worked with Judge Todd M. Shaughnessy enough to evaluate his performance. This report reflects the 128 responses. The survey results are divided into five sections:

- Statutory category scores
- Procedural fairness survey score
- Responses to individual survey questions
- Summary of adjectives
- Retention question

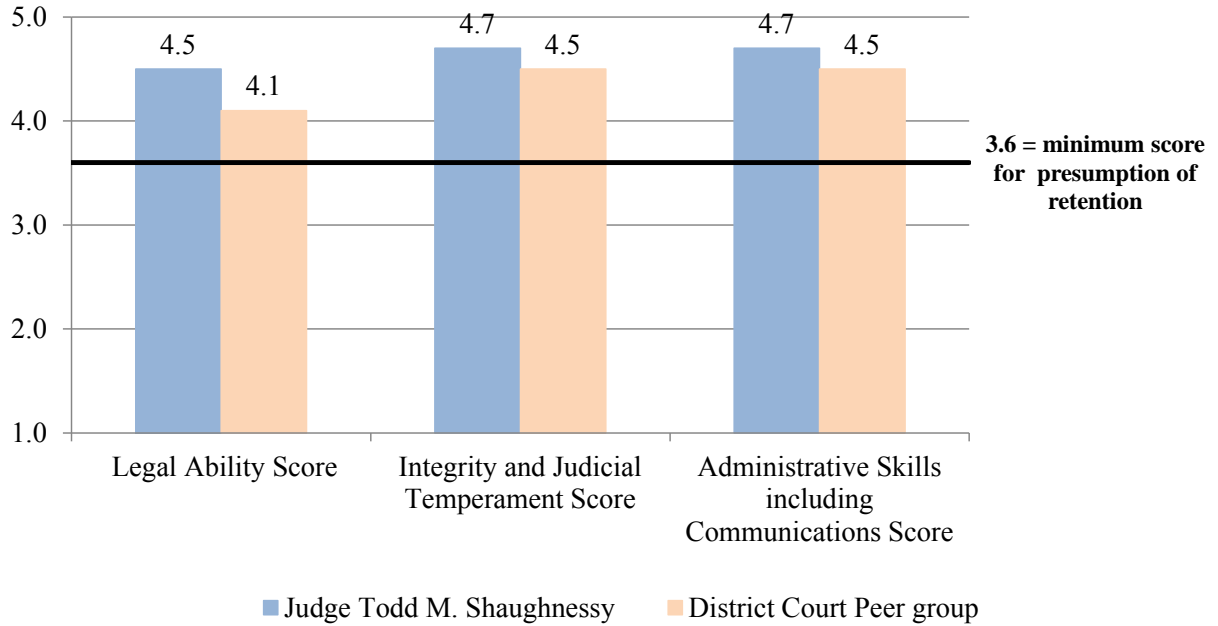
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Court" on the charts.

The statutory category scores and the procedural fairness survey score represent average scores on a scale of 1 (inadequate) to 5 (outstanding). Responses from all survey respondent groups contribute to the average score shown for each category, with the exception of Legal Ability. Only attorneys answer these questions.

What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to recommend retention unless it can articulate a substantial reason for overcoming the presumption in favor of retention. Similarly, if a judge fails to get a 3.6 in a category, the commission will vote against retention unless it can articulate a substantial reason for overcoming the presumption against retention.

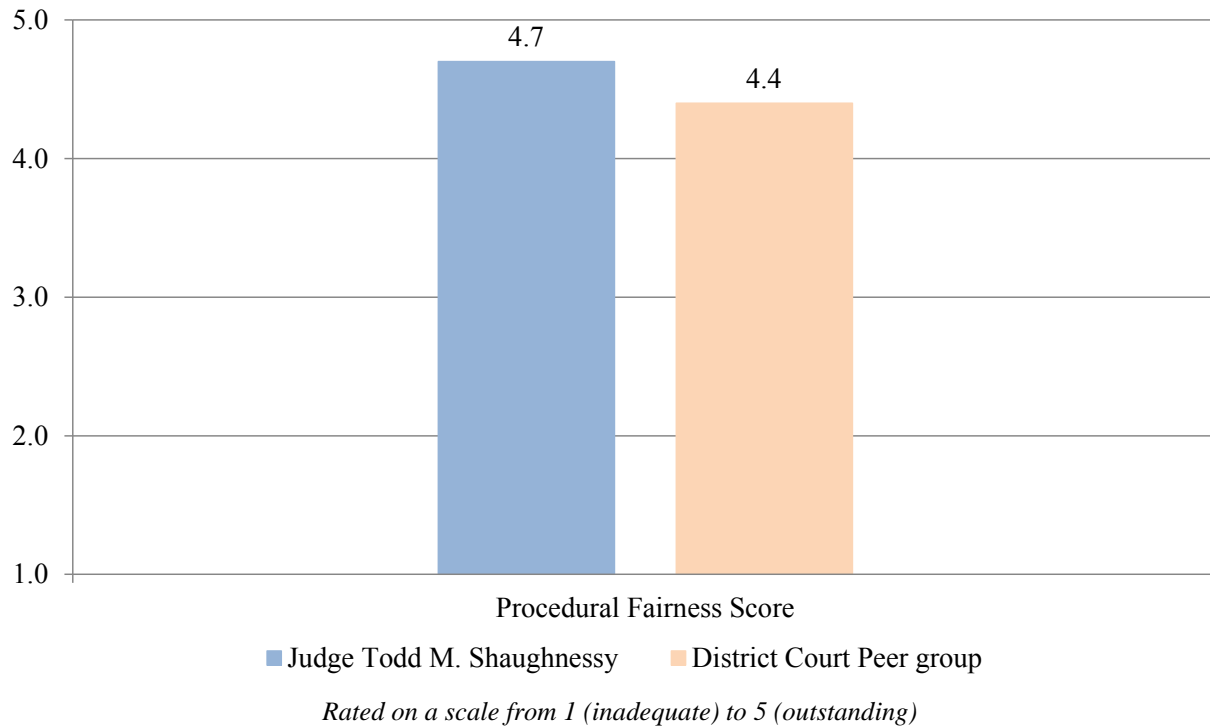
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness, and this determination will be made by the commission only during the retention cycle.

## B. Statutory Category Scores



*Rated on a scale from 1 (inadequate) to 5 (outstanding)*

### C. Procedural Fairness Survey Score



For procedural fairness, the judge must demonstrate by a preponderance of the evidence that the judge’s conduct in court promotes procedural fairness for court participants. This determination is based on courtroom observations and relevant survey responses.

#### Overall Procedural Fairness Determination

Category	Judge Todd M. Shaughnessy
Procedural Fairness	PASS

## D. Responses to Individual Survey Questions

Category	Question	Judge Todd M. Shaughnessy	District Court
Legal Ability	The judge follows the applicable legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that apply to the case at issue.	4.5	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.5	4.1
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.4	4.1
Legal Ability	The judge only considers evidence in the record.	4.5	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.5	4.1
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.6	4.5
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.8	4.5
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.6	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.6	4.3
Integrity & Judicial Temperament	The judge promotes access to the justice system for people who speak a language other than English, or for people who have a physical or mental limitation.	4.7	4.6

*Rated on a scale from 1 (inadequate) to 5 (outstanding)*

<b>Category</b>	<b>Question</b>	<b>Judge Todd M. Shaughnessy</b>	<b>District Court</b>
Administrative Skills	The judge is prepared for court proceedings.	4.7	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.7	4.5
Administrative Skills	The judge is an effective manager.	4.6	4.3
Administrative Skills	The judge convenes court without undue delay.	4.6	4.5
Administrative Skills	The judge rules in a timely fashion.	4.6	4.4
Administrative Skills	The judge maintains diligent work habits.	4.7	4.5
Administrative Skills	The judge's oral communications are clear.	4.7	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.6	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.8	4.5
Procedural Fairness	The judge is fair and impartial.	4.7	4.4
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.7	4.3
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.8	4.4

*Rated on a scale from 1 (inadequate) to 5 (outstanding)*



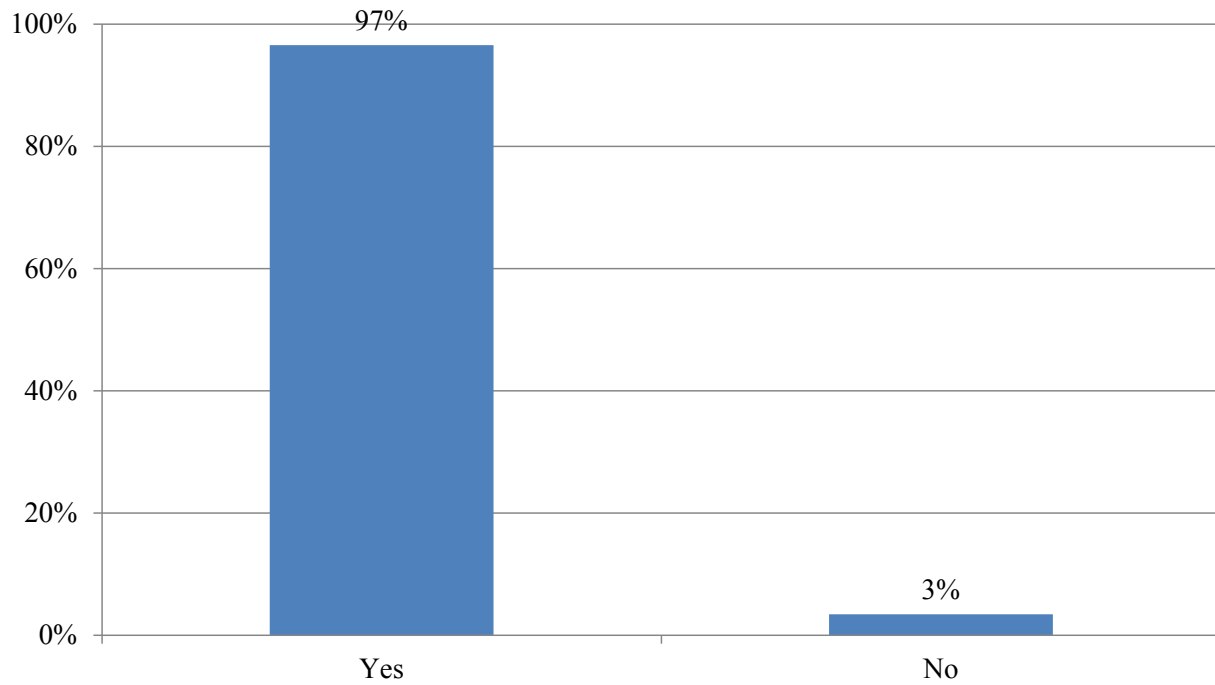
## E. Adjective Question Summary

	Number of Times Mentioned*
Attentive	79
Calm	38
Confident	37
Considerate	40
Consistent	18
Intelligent	87
Knowledgeable	63
Patient	38
Polite	59
Receptive	32
Arrogant	1
Cantankerous	0
Defensive	3
Dismissive	4
Disrespectful	0
Flippant	0
Impatient	0
Indecisive	0
Rude	0
<b>Total Positive Adjectives</b>	<b>491</b>
<b>Total Negative Adjectives</b>	<b>8</b>
<b>Percent of Positive Adjectives</b>	<b>98%</b>

Respondents were asked to select adjectives from a list that best described the judge. The number shown is the total number of times an adjective was selected by respondents. The percent of positive adjectives shows the percent of *all* selected adjectives that were positive.

## F. Retention Question

**Would you recommend that Judge Todd M. Shaughnessy be retained?**



## G. Attorney Demographics

### What are your primary areas of practice?

Collections	3%
Domestic	28%
Criminal	27%
Civil	71%
Other	6%

### How many trials or hearings have you had with this judge over the past year?

5 or fewer	64%
6 - 10	29%
11 - 15	2%
16 - 20	2%
More than 20	4%

# Survey Background and Methods

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This report presents the results from the 2013 survey process, conducted by Market Decisions, LLC. A detailed description of the survey methodology is available separately on the Utah Judicial Performance Evaluation website.

## A. Survey Overview

### 1. Description of Sample

The following groups are invited to participate in the survey process:

- Attorneys with appearances before the judge
- Court staff who work with the judge
- Juvenile court professionals who work in the judge's courtroom on a regular and continuing basis to provide substantive input to the judge (juvenile court judges only)
- Jurors who participate in jury deliberation (district and justice court judges only)

With the exception of the attorney survey, the survey contractor attempts to survey all court staff and juvenile court professionals who work with judge and all jurors who reach the point of jury deliberation. The lists of court staff and juvenile court professionals are provided by the courts and by the Division of Child and Family Services and Juvenile Justice Services. A list of jurors is created after each trial. All lists are forwarded to the surveyor, Market Decisions, LLC.

For the attorney survey, a representative sample of attorneys is drawn to evaluate each judge based on appearances over a designated two-year period. The sample is weighted to select those with the greatest experience before the judge, assuming that these people will have a better knowledge base about the judge than those with less experience. Attorneys are first stratified into three groups; those with one or more trial appearances, those with 3 or more non-trial appearances, and those with 1-2 non-trial appearances. Attorneys within each sample are then randomized prior to selection. Selection begins with attorneys who have trial experience, then those with a greater number of non-trial appearances (if needed), and finally those with fewer non-trial appearances (if needed).

### 2. Summary of Survey Methods

Surveys are conducted online, using web-based survey software. Each respondent receives an initial email invitation requesting participation in the survey. A separate email is sent for each judge that a respondent is asked to evaluate. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by three additional reminder emails sent to respondents over the next three weeks. If a respondent completes only part of the survey, he or she is able to finish the survey at a later time. Once a respondent has completed the survey for a specific judge, the survey is locked and cannot be accessed again.

The number of questions included in the survey varies, ranging from 9 (jurors) to 24 (attorneys with an appearance before an appellate court judge). Each question is evaluated on a sliding scale ranging from 1 (inadequate) to 5 (outstanding).

Responses to individual questions are used to calculate averaged scores in three statutory categories: Legal Ability, Integrity & Judicial Temperament, and Administrative Skills. Judges also receive an averaged score in Procedural Fairness.

## **B. Evaluation Period**

The retention evaluation period for judges standing for election in 2014 began on June 1, 2012 and ended on June 30, 2013.

## II. Courtroom Observation Report

### REPORT OF COURTROOM OBSERVATIONS FOR JUDGE TODD SHAUGHNESSY

Four observers wrote 71 codable units that were relevant to 13 of the 17 criteria. Two observers reported that the judge was not aware that JPEC observers were present, and two did not know if the judge was aware.

#### Overview

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WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"><li>• All observers were generally positive about Judge Shaughnessy in most areas, with reservations in some areas.</li><li>• All observers variously reported that Judge Shaughnessy was knowledgeable and well organized. He was courteous, polite, and patient, and while he listened carefully, made eye contact and nodded in understanding, he was also somewhat detached and informal, perhaps due to needing to rush between courts. He invited all participants to express their feelings and make as many comments as they wanted, and he asked them if they had questions or anything to add. He listened carefully and astutely to what he heard and ruled accordingly. Judge Shaughnessy used clear language, reviewed charges at the beginning of cases, explained the reasoning for his decisions, and consistently advised defendants about their rights.</li><li>• All observers particularly emphasized the lengths to which Judge Shaughnessy went to ensure that all participants understood the proceedings. Before defendants made pleas or waived rights or signed documents, he questioned and challenged their responses when he sensed that they did not sufficiently understand the issues that affected them.</li><li>• Three observers reported that they would feel comfortable appearing before Judge Shaughnessy, although two reported some reservations. One reported that he would not feel comfortable.</li></ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"><li>• Two observers reported that Judge Shaughnessy started on time, and he explained and apologized for the many delays. However two observers reported in stronger terms the frequent and lengthy delays in this “speed court” that was conducted with a sense of urgency in which attorneys were routinely unprepared for their cases, and the judge frequently accepted disruptive interruptions on unrelated matters requiring his signature (see “Respect for others’ time”).</li><li>• While two observers reported that Judge Shaughnessy treated all parties alike, one noted that in one case he appeared not to listen to a witness before ruling (see “Consistent and equal treatment”).</li></ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"><li>• None</li></ul>

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#### Summary and *exemplar language* of four observers’ comments

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##### RESPECTFUL BEHAVIORS

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Well-prepared & efficient	Two observers reported that Judge Shaughnessy was <i>knowledgeable</i> and <i>well organized</i> . As the judge <i>divides his time between courthouses</i> , he wanted to complete as much as possible while there and <i>remained on the bench working with his clerks while attorneys were preparing</i> . One observer commented on this lack of preparation of lawyers who were <i>doing work in the courtroom or hallway that could have been done before the court session</i> , and the judge seemed to <i>accommodate</i> their lack of in-time management.
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Respect for others' time	<p>Observers expressed divergent reports on the respect showed by the court for participants' time. On the positive side, observers reported that the court <i>started on time</i>, and Judge Shaughnessy set <i>short time delays to continue cases</i> to avoid extended wait periods. When there were delays due to attorneys meeting with their clients, the judge explained that court would <i>resume as soon as the attorneys were ready</i>, and he <i>appreciated</i> other participants' <i>patience</i>. He apologized to a defendant when he realized he was waiting, <i>quickly reviewed</i> and <i>dismissed</i> the case, ending with a <i>"thank you."</i></p> <p>On the critical side, one observer described the court as a <i>"speed court"</i> for which attorneys were routinely unprepared, resulting in <i>lengthy delays</i>. In one session, delays caused by a telephone conference that ran overtime, an un-docketed adoption hearing, and waiting for lawyers to make final arrangements for their cases, <i>delayed all docketed cases</i> by a total of an hour and forty five-minutes. This <i>affected everyone in the court seemingly for the expediency of the court</i>. Another observer reported that cases were <i>frequently interrupted and disrupted without explanation, to allow the judge to sign unrelated documents brought to him</i>. This <i>took his full attention</i> from the case in process and <i>gave the impression of taking precedence</i> over the current case.</p> <p>In one case a defendant was <i>confused and concerned during long delays while research was conducted on the important issue of the correct infraction code, but the delay and purpose were never communicated to the defendant</i>.</p>
Respectful behavior generally	<p>One observer reported that Judge Shaughnessy <i>immediately</i> asked a defendant <i>in custody who was hard of hearing</i>, <i>"If at any time you can't hear me or anyone else, don't be shy about letting me know, ok?"</i></p> <p>Another observer noted that Judge Shaughnessy <i>asked if he had defendants' correct names and dates of birth</i> but did <i>not greet them with a pleasant salutation</i>.</p>
<i>RESPECTFUL TONE</i>	
Courtesy, politeness and patience	Two observers reported that Judge Shaughnessy was <i>consistently courteous, polite</i> and <i>patient</i> to all parties.
Courtroom tone & atmosphere	Two observers reported that while Judge Shaughnessy <i>listened</i> to and <i>spoke clearly</i> to each person, his demeanor seemed somewhat <i>detached</i> and the atmosphere somewhat <i>informal</i> , perhaps <i>because the judge had a great deal to accomplish in rushing</i> between courts.
Body language	Two observers reported that Judge Shaughnessy <i>faced</i> speakers, made <i>eye contact</i> , and <i>often nodded in understanding</i> .
<i>NEUTRALITY</i>	
Consistent and equal treatment	Two observers reported that Judge Shaughnessy <i>treated all attorneys and defendants alike</i> . However, one observer reported that Judge Shaughnessy <i>seemed to decide to proceed with a case without appearing to have been listening to the prosecution witness</i> , which could have indicated to the defendant that <i>he had already made up his mind about the probable cause</i> .
Acts with concern for individual needs	Two observers reported that Judge Shaughnessy <i>listened with interest</i> and asked attorneys if the defendant <i>had been advised about testifying on their own behalf</i> .
Unhurried and careful	One observer reported that Judge Shaughnessy moved things along <i>with a sense of urgency notwithstanding the needs of the defendants</i> .

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*VOICE*

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Considered voice      All observers reported that Judge Shaughnessy *told most defendants that they had the right to address the court and invited them to express their feelings regarding their case, clarify their understanding, and make as many comments as they wanted.* He asked all parties *if they had any questions or anything they would like to add.* He *carefully read documents presented to the court* about defendants' cases, and he *asked specific questions and got direct answers* from them. He *listened carefully and was astutely attentive to their points of view, questions, arguments, comments, and answers.*

The parent of a *defendant of diminished capacity* was *pleased* with a ruling that followed Judge Shaughnessy's *patient listening to all comments* before saying, "*Wouldn't it be better to release him with a curfew and have him focus on school rather than have him bailed out and on his own recognizance?*"

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*COMMUNICATION*

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Communicates clearly      One observer reported that Judge Shaughnessy *used clear language that the defendants would be able to understand.*

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Ensures information understood      All observers reported that Judge Shaughnessy asked for a *clear verbal statement that affirmed defendants' understanding of each question.* He *challenged some yes answers by more directly asking defendants if they really understood.* In one case he *delayed a dismissal because he seemed to sense that the defendant did not understand and was not sufficiently prepared.* In one *significant instance,* when a defendant appeared *intimidated and passive* in his responses, looking to his lawyer who *cued him to provide affirmative responses,* the judge *seemed to sense the defendant's confusion and with further questioning* determined that the defendant did not want to waive his rights. Another observer was *impressed* when Judge Shaughnessy asked a defendant if he had reviewed his plea document, and when the man replied that he hadn't because he *didn't have his reading glasses,* the judge *advised the attorney to take this man out and read it to him verbatim.*

One observer reported that a further consequence of the attorneys' lack of preparation was that Judge Shaughnessy *allowed quiet meetings between lawyers in muted discussion and hushed whispers that not all defendants participated in or understood,* which the observer did not believe *served justice or the needs or rights of the defendants in a clear and unambiguous way.*

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Provides adequate explanations      Three observers reported that Judge Shaughnessy *customarily began each case with a review of the charges and consistently advised defendants of their rights.* He *took time to carefully explain his reasoning* in decisions and his rulings.

One observer reported that Judge Shaughnessy's *warning about the possibility of re-filing charges in dismissal cases was confusing,* as he *did not explain the reasons that charges could be re-filed and left the impression that the issue hangs over the defendant indefinitely.*

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