

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Court Review: The Journal of the American
Judges Association

American Judges Association

2018

Court Review 54: 2 (2018)- Whole Issue

Follow this and additional works at: <https://digitalcommons.unl.edu/ajacourtreview>

"Court Review 54: 2 (2018)- Whole Issue" (2018). *Court Review: The Journal of the American Judges Association*. 681.

<https://digitalcommons.unl.edu/ajacourtreview/681>

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Court Review

Volume 54, Issue 2

THE JOURNAL OF THE AMERICAN JUDGES ASSOCIATION

T A B L E O F C O N T E N T S

EDITORS

Professor Eve Brank
University of Nebraska

Judge Julie Kunce Field
Colorado State District Court

Judge Devin Odell
Colorado State District Court

Judge David Prince
Colorado State District Court

MANAGING EDITOR

Charles F. Campbell
National Center for State Courts

ASSOCIATE EDITORS

Abbie Carver
Kansas Court of Appeals

Debra Twitchell
Kansas Court of Appeals

EDITORIAL BOARD

Kelly Lynn Anders
Kansas City, Missouri

Judge Karen Arnold-Burger
Kansas Court of Appeals

Pamela Casey, Ph.D.
National Center for State Courts

Judge B. Michael Dann
National Institute of Justice

Judge Julie Kunce Field
Fort Collins, Colorado

Judge John Irwin
Nebraska Court of Appeals

Judge Leslie G. Johnson
American Institute for Justice

Steven Lubet
Northwestern University

Judge Gregory E. Mize
Washington, D.C.

Elizabeth Neeley, Ph.D.
University of Nebraska

David Rottman, Ph.D.
National Center for State Courts

Professor Alan Tomkins
University of Nebraska

ARTICLES

60 Judges' Well-Being and the Importance of Meaningful Work
Anne Brafford & Robert W. Rebele

74 One Judge's Journey to Why—A Search for Meaning and Purpose
David Prince

80 Mindfulness Training for Judges: Mind Wandering and the
Development of Cognitive Resilience
Scott L. Rogers, Chris McAliley & Amishi Jha

90 Reducing Judicial Stress through Reflective Practice
Jennie Cole-Mossman, Elizabeth Crnkovich, Lawrence Gendler & Linda Gilkerson

96 The Power of Compassion in the Court: Healing on Both Sides
of the Bench
Jamey Hueston & Miriam Hutchins

ESSAY

102 Appropriate Action
Cynthia Gray

DEPARTMENTS

50 Editor's Note

51 President's Column

52 Thoughts from Canada

95 Crossword

104 The Resource Page

EDITORIAL FEATURES

Bench Card on Procedural Fairness (Back Cover)

Court Review

THE JOURNAL OF THE AMERICAN JUDGES ASSOCIATION
Volume 54, Issue 2 2018

EDITOR'S NOTE

We are pleased to bring you a special issue addressing wellness from the judge's perspective. We start the articles with an overview of judicial well-being and discussion of the importance of finding meaning in one's work. This article comes to us from Anne Brafford and Robert Rebele, two leaders in the field of positive psychology with substantial experience in the legal profession. Next, my essay describing my own search for meaning in our work.

We explore mindfulness practices tailored for judges with an internationally acclaimed team led by Prof. Amishi Jha from the University of Miami. If you find the article interesting, you will want to check out her TedTalk. You should find the link to resources for judges on page 83 particularly helpful.

We then have a collaboration between academics and judicial professionals to provide us with excellent insights into tactics and strategies judges can use to counter the deleterious effects of the stresses inherent in our roles. This article draws the best from the worlds of research and hard-knocks practicality.

Our final article proposes the value of researching and developing compassion training for judges. Two pioneering judges, Jamey Hueston and Miriam Hutchins of Maryland, bring their experience and insights to an intriguing new concept.

We hope you will find our other regular features of interest and help as well. In this issue, Judge Wayne Gorman's column addresses intriguing practices under Canadian criminal sentencing law related to the unique circumstances and history of Indigenous Peoples. We also have the first installment of our new regular column on judicial ethics from Cynthia Gray. Consistent with our theme, Ms. Gray discusses dealing with an impaired professional. You will enjoy the President's Column and the crossword puzzle. Our Resource Page will provide you with some helpful tools for case management from the Institute for the Advancement of the American Legal System and for criminal pretrial assessment and monitoring programs from the National Center for State Courts and the Pretrial Justice Institute. —David Prince



Court Review, the quarterly journal of the American Judges Association, invites the submission of unsolicited, original articles, essays, and book reviews. *Court Review* seeks to provide practical, useful information to the working judges of the United States and Canada. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court, or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work. Guidelines for the submission of manuscripts for *Court Review* are set forth on page 94 of this issue. *Court Review* reserves the right to edit, condense, or reject material submitted for publication.

Advertising: *Court Review* accepts advertising for products and services of interest to judges. For information, contact Shelley Rockwell at (757) 259-1841.

The cover photo is of the Prowers County Courthouse and Windmill in Lamar, Colorado. This courthouse was built in 1929 and designed by the architect Robert K. Fuller. The little Dutch windmill was built on the courthouse grounds to commemorate the new found wind energy potential in Prowers County. Photo by Mary Watkins.

The cover of vol. 54, no. 1 of *Court Review* was a photo of the Lake Country Courthouse in Minnesota, which was incorrectly identified as the Lafayette County Courthouse in Oxford, Mississippi. The photo was by Mary Watkins. The editors of *Court Review* regret the error.

©2018, American Judges Association, printed in the United States. *Court Review* is published quarterly by the American Judges Association (AJA). AJA members receive a subscription to *Court Review*. Non-member subscriptions are available for \$35 per volume (four issues per volume). Subscriptions are terminable at the end of any volume upon notice given to the publisher. Prices are subject to change without notice. Second-class postage paid at Williamsburg, Virginia, and additional mailing offices. Address all correspondence about subscriptions, undeliverable copies, and change of address to Association Services, National Center for State Courts, Williamsburg, Virginia 23185-4147. Points of view or opinions expressed in *Court Review* are those of the authors and do not necessarily represent the positions of the National Center for State Courts or the American Judges Association. ISSN: 0011-0647.

Cite as: 54 Ct. Rev. ____ (2018).

President's Column

Catherine Shaffer

My dear colleagues and *Court Review* readers, greetings.

I want to begin by highlighting our outstanding midyear conference in Memphis. It included an excellent minority community outreach event at the law school attended by three separate high schools, a well-attended group tour of the powerfully moving National Civil Rights Museum at the Lorraine Hotel, a welcoming address from a Supreme Court Justice, an outstanding day of educational programs, and a fabulous evening barbecue event at Albert's on Beale Street. Justice Torres and Judge Betty Moore planned the conference, but Justice Torres and I agree Judge Moore, the conference chair, deserves huge kudos for it. She found our wonderful venue right across from Graceland, organized the outreach event and educational programs, introduced the speakers, planned the barbecue, and got so many sponsorships that the conference made a significant profit. Thank you again, Judge Moore!

Coming up soon on my calendar as your President are the racial justice and reconciliation symposium AJA is co-sponsoring with the National Judicial College and a host of other national organizations on July 16 at Logan College near St. Louis. Later in July I am scheduled to attend the National Association for Court Management (NACM) annual meeting in Atlanta. In August I am due to go to the combined Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) annual meeting in Newport, Rhode Island. And then in September, of course, we have our outstanding conference program in Kauai, Hawai'i, the product of a tremendous planning effort by Justice Torres and Judge Catherine Carlson. It is already so popular that our AJA room block has sold out!

For this, my final *Court Review* column, however, I want to return to the linked goals I have pursued over this past year and their significance at this time in history. Those goals, as you know, are 1) enhancing the value of AJA membership for those who are unable to attend conferences, 2) building on AJA's advances toward diversity in our organization, on our benches, and improving understanding and responses to diversity issues in our courts, and 3) strengthening AJA's ties to and collaborations with other national court-oriented organizations.

I, my Executive Committee, AJA's committees, and the force that is Mary Celeste have worked hard over this past year to develop increased value for the membership of each person who belongs to AJA. Some of that value is monetary, such as the discounts and scholarships and free CLEs you can access as a member. Some is intellectual, such as the cutting edge information you find in each edition of *Court Review*. And some of

it is the value of networking with other judicial officers who share friendship and a deeper sense of shared values.

What are these shared values? I feel confident, dear colleagues, that we mutually venerate the rule of law and its bedrock assumption that all persons are equal before the law, equally endowed with rights and responsibilities, and equally deserving of opportunity, safety, and liberty. And is it not implicit in these values that we honor the richness that our populations' diversity has brought to our national heritages as American and Canadian judges, that we strive to reflect that

diversity in our courts, and that we seek to provide truly equal justice in the justice system? Finally, how can we carry out these values if we do not cooperate and collaborate with the other national court oriented organizations?

If you wonder what these observations have to do with this moment in history, I will tell you that I believe these values are indeed shared by all of us, regardless of our political preferences and loyalties, but that they are being tested to a greater degree than I have seen before in my lifetime and that we must find the courage to defend

them. Moreover, to do this we must find a way to transcend the extreme polarization that is occurring in the political sphere, to maintain our commitment to honor and celebrate diversity, and to continue to communicate and collaborate with each other and all our national court partners.

Let me talk briefly about some ways we might each find to meet these goals. If you can, come to conferences to mingle with fellow AJA members. If you cannot, maintain your AJA engagement by reading and contributing to *Court Review*, by checking that AJA's regular emails to you are not sidelined by your court's IT system, by reading and commenting on our blog, by joining or continuing to work in the AJA committees that interest you, and by affiliating with AJA's existing partners or helping us widen that network. You can continue to enhance your work on diversity efforts through AJA's committee work, reviewing our presentations on this subject, and supporting AJA's collaboration efforts with other organizations. You can help build those collaboration efforts: you can bring an AJA a conference to your jurisdiction, ideally in cooperation with other judicial organizations in your area, and you can link AJA to the other national court organizations in which you participate.

In short, AJA draws its strength from you, our members, and through AJA, working together, we can all provide strength to each other in challenging times.

Thank you for the honor of serving as your President.



The Sentencing of Indigenous Offenders in Canada

Wayne K. Gorman

Canada's Indigenous population has been overrepresented in Canada's prison population for a considerable period of time. In the mid-1980s, for instance, aboriginal people made up approximately two percent of the population of Canada but made up ten percent of the penitentiary population.¹

On September 3, 1996, the Parliament of Canada enacted a number of amendments to the *Criminal Code of Canada*, R.S.C., 1985.² One of these was in response to the level of incarceration of Indigenous people: section 718.2(e). This provision deals with the sentencing of "aboriginal offenders." It states as follows:

A court that imposes a sentence shall also take into consideration the following principles:

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.³

In this quarter's column I will review three Supreme Court of Canada decisions, which have considered this provision and the manner in which those decisions have been subsequently applied by other courts. As will be seen, the application of this provision has raised a number of questions concerning the sentencing of Indigenous Canadians.

The Supreme Court of Canada's initial consideration of this section came in *R. v. Gladue*, [1999] 1 S.C.R. 688.

R. v. GLADUE

In *Gladue*, an Indigenous offender was convicted of the offence of manslaughter. She had stabbed and killed her boyfriend. She was sentenced to a period of three years of imprisonment. The sentence was affirmed by the British Columbia Court of Appeal.

On appeal to the Supreme Court of Canada, the Court indicated that the "issue in this appeal is the proper interpretation and application to be given to s. 718.2(e) of the *Criminal Code*" (at paragraph 24).

The Supreme Court commenced its analysis by suggesting that section 718.2(e) of the *Criminal Code* was "more than simply a re-affirmation of existing sentencing principles. The

remedial component of the provision consists not only in the fact that it codifies a principle of sentencing, but, far more importantly, in its direction to sentencing judges to undertake the process of sentencing aboriginal offenders differently" (at paragraph 33).

The Supreme Court of Canada held that section 718.2(e) of the *Criminal Code* mandates a different approach to sentencing those of aboriginal heritage. The Court indicated that the "background considerations regarding the distinct situation of aboriginal peoples in Canada encompass a wide range of unique circumstances, including, most particularly" (at paragraph 66):

(A) The unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and

(B) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection.

(a) Systemic and Background Factors:

Under this heading, the Supreme Court indicated in *Gladue* that "it must be recognized that the circumstances of aboriginal offenders differ from those of the majority because many aboriginal people are victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions" (at paragraph 68).

(b) Appropriate Sentencing Procedures and Sanctions:

Under this heading, the Supreme Court indicated in *Gladue* that it "is important to recognize" that "for many if not most aboriginal offenders, the current concepts of sentencing are inappropriate because they have frequently not responded to the needs, experiences, and perspectives of aboriginal people or aboriginal communities" (at paragraph 73). The Court also indicated that "one of the unique circumstances of aboriginal offenders is that community-based sanctions coincide with the aboriginal concept of sentencing and the needs of aboriginal people and communities. It is often the case that neither aboriginal offenders nor their communities are well served by incarcerating offenders, particularly for less serious or non-vio-

Footnotes

1. See M. Jackson, *Locking Up Natives in Canada*, 23 U.B.C. L. REV. 215 (1988-89).
2. See *An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, S.C. 1995, c. 22.
3. Alexandra Hebert, in *Change in Paradigm or Change in Paradox?*

Gladue Report Practices and Access to Justice, 43:1 QUEEN'S L.J. 149 (2017), described the enactment of section 718.2(e) of the *Criminal Code* as a "fundamental paradigm change in the framework for sentencing Indigenous offenders" (at paragraph 4).

lent offences. Where these sanctions are reasonable in the circumstances, they should be implemented. In all instances, it is appropriate to attempt to craft the sentencing process and the sanctions imposed in accordance with the aboriginal perspective” (at paragraph 74).

THE DUTY OF THE SENTENCING JUDGE

The Supreme Court also commented on the “duty of the sentencing judge” when imposing sentence upon an aboriginal offender. The Court held that there “is no discretion as to whether to consider the unique situation of the aboriginal offender; the only discretion concerns the determination of a just and appropriate sentence” (at paragraph 82). In addition, it held that sentencing judges must “take judicial notice of the systemic or background factors and the approach to sentencing which is relevant to aboriginal offenders” (at paragraph 83). The Court mandated an interventionist judicial approach by requiring the sentencing judge “to attempt to acquire information regarding the circumstances of the offender as an aboriginal person. . . . Beyond the use of the pre-sentence report, the sentencing judge may and should in appropriate circumstances and where practicable request that witnesses be called who may testify as to reasonable alternatives” (at paragraph 84).

A BACKING AWAY?

Having said all of this, at the end of its decision in *Gladue* the Supreme Court appears to have backed away from some of its earlier comments. The Court indicated, for instance, that it was not suggesting that “aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice, and less weight to goals such as deterrence, denunciation, and separation” (at paragraphs 78). In addition, the Court stated that section 718.2(e) “should not be taken as requiring an automatic reduction of a sentence, or a remission of a warranted period of incarceration, simply because the offender is aboriginal” (at paragraph 88). Finally, it indicated “the more violent and serious the offence the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing” (at paragraph 79).

In summary, the Supreme Court suggested in *Gladue* that Indigenous offenders must be sentenced individually, but in a different fashion than non-Indigenous offenders. The Court indicated that “the jail term for an aboriginal offender may in some circumstances be less than the term imposed on a non-aboriginal offender for the same offence,” but not “necessarily” (at paragraph 95). The Court also held, however, that for violent or serious offences, Indigenous offenders will likely receive the same sentence as non-Indigenous offenders.

So then, what real effect does section 718.2(e) have? This difficult question lies at the core of how Indigenous offenders should be sentenced in Canada.

GLADUE CONCLUSION:

The Supreme Court concluded that the sentencing judge and the Court of Appeal had erred in failing to consider “the systemic or background factors which may have influenced the appellant to engage in criminal conduct” (at paragraph 94). The Court indicated that normally this would result in remitting the matter to the sentencing judge for reconsideration. However, by the time the Supreme Court had rendered its decision, the offender had been released on parole. As a result the Court decided not to remit the matter to the sentencing judge and dismissed the appeal.

Four years would pass before the Supreme Court considered the sentencing of Indigenous offenders again. This time, in *R. v. Wells*, [2000] 1 S.C.R. 207.

R. v. WELLS

In *Wells*, an Indigenous offender was convicted of the offence of sexual assault. He was sentenced to a period of twenty months of incarceration. He appealed seeking to have a “conditional period of imprisonment” substituted for the period of incarceration imposed.⁴ The Alberta Court of Appeal dismissed his appeal.

The Supreme Court of Canada indicated that the appeal required it “to consider the conditional sentencing provisions of the *Criminal Code*, R.S.C., 1985, c. C-46, in the context of aboriginal offenders.”

The Supreme Court suggested in *Wells* that section 718.2(e) “was intended to address the serious problem of overincarceration of aboriginal offenders in Canadian penal institutions.” In very broad terms, the Court indicated that “Parliament intended to address this social problem, to the extent that a remedy was possible through sentencing procedures.” The Court indicated that “given that most traditional aboriginal approaches place a primary emphasis on the goal of restorative justice, the alternative of community-based sanctions must be explored” for Indigenous offenders (at paragraphs 37 and 38).

However, despite this broad language the Supreme Court returned to the qualified approach it had explained in *Gladue* concerning the commission of “violent or serious” offences. The Court held in *Wells*, at paragraph 42, that “the more violent and serious the offence, the more likely as a practical matter that the appropriate sentence will not differ as between aboriginal and non-aboriginal offenders, given that in these cir-

“Indigenous offenders must be sentenced individually, but in a different fashion than non-Indigenous offenders”

4. Section 742.1 of the *Criminal Code* allows a sentencing judge to impose a period of imprisonment and to order that it be served in the community subject to certain conditions. It states as follows:

If a person is convicted of an offence and the court imposes

a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender’s behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3.

“the ‘central issue in these appeals is how to determine a fit sentence ... of an Aboriginal offender’”

cumstances, the goals of denunciation and deterrence are accorded increasing significance.” In addition, the Court also held in *Wells* that section 718.2(e) “requires a different methodology for assessing a fit sentence for an aboriginal offender; it does not mandate, necessarily, a different result” (at paragraph 44).

What is a sentencing judge to make of these words? A different

approach, but the same result might suggest that the enactment of section 718.2(e) was meaningless.

THE SENTENCING JUDGE’S DUTY

The Supreme Court returned to this issue in *Wells* and this time indicated that section 718.2(e) “places an affirmative obligation upon the sentencing judge to inquire into the relevant circumstances. In most cases, the requirement of special attention to the circumstances of aboriginal offenders can be satisfied by the information contained in pre-sentence reports. Where this information is insufficient, s. 718.2(e) authorizes the sentencing judge on his or her own initiative to request that witnesses be called to testify as to reasonable alternatives to a custodial sentence” (at paragraph 54).

Once again, the Supreme Court mandated a very interventionist judicial approach to sentencing. An approach which is very different from the approach traditionally adopted by Canadian judges. However, at the very end of its decision in *Wells*, the Court stated that it “was never the Court’s intention, in setting out the appropriate methodology for this assessment, to transform the role of the sentencing judge into that of a board of inquiry” (at paragraph 55).

WELLS CONCLUSION

The Supreme Court concluded in *Wells* that the trial judge did not err in declining to impose a conditional period of imprisonment. It held that “it was open to the trial judge to give primacy to the principles of denunciation and deterrence in this case on the basis that the crime involved was a serious one” (at paragraph 44).

The Supreme Court would return to the sentencing of Indigenous offenders twelve years later. This time in *R. v. Ipeelee*, [2012] 1 S.C.R. 433, in which it suggested that numerous courts had “erroneously interpreted” its decisions in *Wells* and *Gladue* (at paragraph 84).

R. v. IPEELEE

In *Ipeelee*, the Supreme Court considered appeals involving two Indigenous offenders (Mr. Ipeelee and Mr. Ladue) in relation to the sentences imposed for breaches of long-term supervision orders (LTSO).⁵

Mr. Ipeelee had been declared to be a long-term offender. He was the subject of conditions for a period of seven years. He breached the LTSO by consuming alcohol. He was sentenced to a period of three years of incarceration.

Mr. Ladue had also been declared to be a long-term offender. He was the subject of conditions for a period of ten years. He breached his LTSO by taking drugs. He was sentenced to a period of one year of incarceration.

The Supreme Court indicated that the “central issue in these appeals is how to determine a fit sentence for a breach of an LTSO in the case of an Aboriginal offender. In particular, the Court must address whether, and how, the *Gladue* principles apply to these sentencing decisions” (at paragraph 34).

The Supreme Court repeated its comments in *Gladue* in which it described section 718.2(e) as being “remedial” in nature. It pointed out that though *Gladue* had been decided over a decade ago; it and section 718.2(e) have “not had a discernible impact on the overrepresentation of Aboriginal people in the criminal justice system.” The Court concluded that this “can be attributed to some extent to a fundamental misunderstanding and misapplication of both s. 718.2(e) and this Court’s decision in *Gladue*.” The Supreme Court indicated that it was taking the opportunity offered by *Ipeelee* “to resolve these misunderstandings, clarify certain ambiguities, and provide additional guidance so that courts can properly implement this sentencing provision” (at paragraph 63). Did it do so?

JUDICIAL NOTICE

The Court commenced with stressing the importance of judicial notice in the sentencing of Indigenous offenders. The Court held in *Ipeelee* that sentencing courts “must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples” (at paragraph 60).

A CAUSAL LINK?

The Court rejected the proposition that an Indigenous offender need “establish a causal link between background factors and the commission of the current offence before being

5. Section 753.1 of the *Criminal Code* allows for an offender to be declared a “long-term offender.” If such a declaration is made, the sentencing judge can impose conditions. A breach of these conditions constitutes an offence. Section 753.1(1) states as follows:

753.1(1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term

offender if it is satisfied that

(a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
(b) there is a substantial risk that the offender will reoffend; and
(c) there is a reasonable possibility of eventual control of the risk in the community.

entitled to have those matters considered by the sentencing judge” (at paragraph 81). However, the Court went on to say that “[u]nless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, they will not influence the ultimate sentence” (at paragraph 83).

SERIOUS OR VIOLENT OFFENCES

In *Ipeelee*, the Court returned to its comments in *Gladue* concerning serious or violent offences. The Court stated that a failure to apply *Gladue* “in any case involving an Aboriginal offender runs afoul of this statutory obligation. . . . Therefore, application of the *Gladue* principles is required in every case involving an Aboriginal offender” (at paragraph 87).

IPEELEE CONCLUSION

The majority of the Court concluded that the sentence imposed on Mr. Ipeelee should be reduced to a period of one year of imprisonment. It concluded that the sentence imposed upon Mr. Ladue should be affirmed.

THE DISSENT

Ipeelee contained the first Supreme Court dissent in relation to the interpretation of section 718.2(e) of the *Criminal Code*. It is illustrative of the tensions caused by *Gladue*.

Mr. Justice Rothstein indicated that Aboriginal communities “are not a separate category entitled to less protection because the offender is Aboriginal. Where the breach of an LTSO goes to the control of the Aboriginal offender in the community, rehabilitation and reintegration into society will have faltered, if not failed” (at paragraphs 130 and 131).

Mr. Justice Rothstein would have affirmed the three-year sentence imposed upon Mr. Ipeelee and the one-year sentence imposed upon Mr. Ladue.

A SUMMARY

In summary, over the course of these three judgments the Supreme Court of Canada has attempted to formulate a national approach to the sentencing of Indigenous offenders. The decisions contain some bold and general statements, but there is also some hedging of these comments by reference to a lack of intent to create a race-based sentencing process and the end result being the same for Indigenous and non-Indigenous offenders when a serious or violent crime has been com-

mitted. Thus, Indigenous offenders are to be sentenced differently, but how exactly?

Having said this, the Supreme Court’s three decisions contain a number of consistent themes. The Court has consistently characterized section 718.2(e) of the *Criminal Code* as being “remedial” in nature and thus constituting a new approach to the sentencing of Indigenous offenders. The Court has consistently held that it is mandatory that judges take judicial notice of the history and present social economic plight of Indigenous Canadians. It has consistently directed judges to seek out background information on their own initiative when counsel have failed to present such evidence.⁶

These themes continue to be judicially debated in Canada. Let us now turn to how the interpretation of section 718.2(e) has unfolded since *Ipeelee*.⁷

GLADUE REPORTS

As noted earlier, the Supreme Court referred to the necessity of evidence being presented at the sentence hearing concerning the offender’s Indigenous background. These reports have come to be known as “*Gladue* Reports.” In *R. v. Macintyre-Syrette*, 2018 ONCA 259, the nature and importance of such reports was commented upon in the following manner (at paragraph 14):

The *Gladue* factors are highly particular to the individual offender, and so require that the sentencing judge be given adequate resources to understand the life of the particular offender. But that is not all. A second enquiry is required by *Gladue*, assessing available sentencing procedures and sanctions, requires an understanding of available alternatives to ordinary sentencing procedures and sanctions. In particular, if, as in this case, the offender lives as a member of a discrete Indigenous community, the sentencing judge needs to be told what institutions exist within that community and whether there are specific proposals from community leadership or organizations for alternative sentencing to promote the reconciliation of the offender to his or her community:

“the Supreme Court’s three decisions contain a number of consistent themes”

6. An example of how far this can be taken can be found in *R. v. Bennett*, 2017 NLCA 41. In *Bennett*, the offender indicated at his sentence hearing that he was “native and a member of the local Qalipu band.” Nothing else was referred to. On appeal from the sentence imposed, the Court of Appeal concluded that the sentencing judge “erred in principle by failing to obtain a waiver or to turn her mind to the application of section 718.2(e) of the *Code* when determining an appropriate sentence. While Mr. Bennett did not elaborate regarding his statement that he was a member of the local Qalipu band, it was incumbent on the judge to address the issue because it had been raised” (at paragraph 26).

7. One author has referred to *Ipeelee* as a “major step forward” (see Jonathan Rudin, *Looking Backward, Looking Forward: The Supreme*

Court of Canada’s Decision in R. v. Ipeelee, (2012), 57 S.C.L.R. (2d) 375, at paragraph 18):

There is no question that *Ipeelee* is more than just a strong re-statement of *Gladue*. For those concerned with increasing levels of Aboriginal over-representation over time — to the point where now approximately one-quarter of inmates in custody in Canada are Aboriginal, *Ipeelee* is a major step forward. In its clarification of some of the confusion that arose following *Gladue*, and in its repudiation of those academics and judges who have sought to minimize or trivialize that decision, the Court has made clear that addressing Aboriginal over-representation is properly the responsibility of all those in the justice system.

“the evidence did not establish a ‘connection between’ the offender’s Aboriginal heritage and ‘his culpability’”

Gladue, at para. 84; *R. v. Laliberte*, 2000 SKCA 27 (CanLII), at para. 59. The ordinary source of this information is the *Gladue* report.

In *Macintyre-Syrette*, the Court of Appeal concluded that it “was an error” for the sentencing judge “to have proceeded with sentencing on the strength of the materials before him. The *Gladue* report gave insufficient assistance to the sentencing judge with respect to

the second aspect of the *Gladue* analysis: of determining the types of sentencing procedures and sanctions that would be appropriate given the offender’s connection to his specific Aboriginal community” (at paragraph 19).

DO THE GLADUE PRINCIPLES APPLY OUTSIDE OF THE IMPOSITION OF SENTENCE?

How far can *Gladue* be extended? An unsuccessful attempt to extend *Gladue* well beyond the imposition of sentencing can be found in *R. v. Anderson*, [2014] 2 S.C.R. 167.

In *Anderson*, an Indigenous offender was convicted of a drinking and driving offence. He had prior convictions for such an offence. The *Criminal Code* requires that in such a situation that minimum prescribed periods of incarceration must be imposed, depending on the number of prior convictions. However, for this mandatory minimum sentencing scheme to be activated, the Crown must serve the offender with a notice that it will be seeking this penalty. In this case, the Crown served Mr. Anderson with the appropriate notice.

Mr. Anderson argued that before serving such a notice the Crown was obliged to consider the offender’s Indigenous status and that the Crown had not done so in his case. This argument was accepted by the trial judge and the Court of Appeal for Newfoundland and Labrador. However, it was rejected by the Supreme Court of Canada. The Supreme Court held that “there is no principle of fundamental justice that supports the existence of such a constitutional obligation” and thus “Crown prosecutors are under no constitutional duty to consider the accused’s Aboriginal status when tendering the Notice” (at paragraphs 1 and 5).

Though the appeal to the Supreme Court in *Anderson* did not directly involve the issue of the sentencing of Indigenous offenders, the Court made some comments on this issue. It indicated that the “failure of a sentencing judge to consider the unique circumstances of Aboriginal offenders . . . breaches both the judge’s statutory obligations, under ss. 718.1 and 718.2 of the *Code*, and the principle of fundamental justice that sentences be proportionate” (at paragraph 24).⁸

DOES SECTION 718.2(E) REQUIRE MORE THAN AN INDIGENOUS BACKGROUND TO APPLY?

One of the issues raised in *Gladue* was what is an “aboriginal offender” for the purpose of section 718.2(e) of the *Criminal Code*? In *Gladue*, the Supreme Court indicated that the “class of aboriginal people who come within the purview of the specific reference to the circumstances of aboriginal offenders in s. 718.2(e) must be, at least, all who come within the scope of s. 25 of the *Charter* and s. 35 of the *Constitution Act, 1982*” (at paragraph 90). However, is this sufficient?

In *R. v. Lavergne*, 2017 ONCA 642, the offender was described as being “Indigenous.” However, the Ontario Court of Appeal noted that “the record does not disclose anything else beyond his statement of his Indigenous heritage. There is no evidence of any systemic or background factors which may have played a part in bringing this accused before the court.” The Court of Appeal held that a “bare assertion of Indigenous heritage, without more, would not have had any impact on the sentence imposed” (at paragraph 33). The British Columbia Court of Appeal used similar language in *R. v. Fontaine*, 2014 BCCA 1: “there was no suggestion or evidence in this case that there have been any ‘systemic background factors’ that might ‘bear on the culpability’ of the offender” (at paragraph 33). But how can these types of comments coexist with the Supreme Court’s requirement that sentencing judges take judicial notice of the systematic background factors which apply to all Indigenous peoples?

In *R. v. Violette*, [2013] B.C.J. No. 110 (C.A.), the offender was sentenced to a period of six years imprisonment for the commission of a number of offences. On appeal from sentence he sought to introduce fresh evidence “revealing his Aboriginal heritage, which was not known to him at the time of sentencing” (see paragraph 4). The British Columbia Court of Appeal dismissed the application to introduce this evidence because it could not have affected the result. The Court of Appeal pointed out that the evidence did not establish a “connection between” the offender’s Aboriginal heritage and “his culpability, or anything to suggest the sentencing objectives should be influenced by this newly discovered factor” (at paragraph 8):

In this case, the appellant does not assert any personal background, or any systemic factors, that bear upon his appearance as an accused person. There is no material before the court which would suggest he has suffered deprivation because of Aboriginal heritage, nor is there connection between this circumstance and his culpability, or anything to suggest the sentencing objectives should be influenced by this newly discovered factor. It simply cannot be said, in my view, that the evidence sought to be adduced could have a bearing upon the sentence imposed for these offences. Accordingly, I would dismiss the application to adduce new evidence.

8. Interestingly, legislation has been presented in Parliament to require an offender’s aboriginal status to be considered in bail hearings. In *An Act to Amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, Bill C-75, the bail provisions in the *Criminal Code*

would be amended to require that judges “pay particular attention to circumstances of Aboriginal accused and accused who belong to other vulnerable populations overrepresented in the criminal justice system and disadvantaged in obtaining release.”

Thus, it appears that the Court of Appeal is saying that if an offender is Indigenous, a Canadian judge must consider this factor in determining an appropriate sentence, but it will be insignificant unless there is a connection between the offender's Indigenous heritage and the offence. This sounds like requiring a causal connection. So then, when will an offender's Indigenous background result in a lesser sentence being imposed?

WHEN THEN WILL AN OFFENDER'S INDIGENOUS BACKGROUND RESULT IN A LESSER SENTENCE?

In *R. v. FL.*, 2018 ONCA 83, [2018] O.J. No. 482, the Ontario Court of Appeal asked the ultimate question: "In what circumstances, then, will an offender's Aboriginal background influence their ultimate sentence?" The Court of Appeal indicated that the answer is not "easily ascertained or articulated" (at paragraph 38).

The Court of Appeal stated that "the mere assertion of one's Aboriginal heritage is insufficient" and that "more is required than the bare assertion of an offender's Aboriginal status." The Court of Appeal also indicated that it is "insufficient for an Aboriginal offender to point to the systemic and background factors affecting Aboriginal people in Canadian society. While courts are obliged to take judicial notice of those factors, they do not "necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary context for understanding and evaluating the case-specific information presented by counsel" (at paragraphs 38 and 39).

The Court of Appeal concluded in *FL.*, that the correct approach may be articulated as follows: (at paragraph 40):

For an offender's Aboriginal background to influence his or her ultimate sentence, the systemic and background factors affecting Aboriginal people in Canadian society must have impacted the offender's life in a way that (1) bears on moral blameworthiness, or (2) indicates which types of sentencing objectives should be prioritized in the offender's case. This approach finds support both in *Ipeelee* and decisions of this court.

As a result, the Court of Appeal held that sentencing judges "must take judicial notice of the systemic and background factors affecting Aboriginal peoples in Canadian society" and then consider whether those "factors have impacted the offender's own life experiences — in other words, whether the offender has 'lift[ed] his life circumstances and Aboriginal status from the general to the specific'...If systemic and background factors have impacted an Aboriginal offender's own life experiences, the sentencing judge must then consider whether they 'illuminate the offender's level of moral blameworthiness' or disclose the sentencing objectives that should be prioritized" (at paragraphs 44 and 45).

This approach is similar to the approach adopted in relation to all offenders in Canada in the sense that a Canadian sentencing judge must impose a proportionate sentence based upon the offence and the offender's degree of moral responsibility for the offence (see *R. v. Levesque*, [2000] 2 S.C.R. 487, at paragraph 18 and *R. v. C.A.M.*, [1996] 1 S.C.R. 500, at paragraph 56). The only difference suggested by the reasoning utilized in *FL.* involves the

requirement for the sentencing judge, without the requirement of evidence, to accept the existence of there being systemic and background factors that have negatively affected Indigenous people in Canada. This interpretation would appear to effectively render section 718.2(e) meaningless despite the Supreme Court comments concerning its importance.

Interestingly, *R. v. Boutillier*, [2017] 2 S.C.R. 936, the Supreme Court held that "through s. 718.2(e) of the *Criminal Code*, Parliament has directed sentencing judges to pay particular attention to the circumstances of Indigenous offenders. This recognizes that the systemic disadvantages and marginalization faced by Indigenous people inform moral blameworthiness and therefore the proportionality of sentences for Indigenous offenders" (at paragraph 108).

CONCLUSION

It is clear that in Canada, "sentencing judges are required to consider the *Gladue* principles in every case involving the sentencing of an Indigenous offender" (see *R. v. Sanderson*, 2018 MBCA 63, at paragraph 10).

Gladue continues to be the source of significant appellate court commentary. For instance, in *R. v. Skookum*, 2018 YKCA 2, it was indicated that section 718.2(e) "recognizes that the devastating intergenerational effects of the collective experience of First Nations peoples may shape the way in which expression is given to the fundamental purposes and principles of sentencing" (at paragraph 98). However, in *R. v. Holloway*, [2014] A.J. No. 217 (C.A.), it was held that "nothing in s. 718.2(e) of the *Code* suggests that there should be a discount from a proportional sentence automatically because the offender is an aboriginal person" (at paragraph 42). In contrast, in *R. v. Sellars*, 2018 BCCA 195, the British Columbia Court of Appeal held that a "disparity between sentences for Aboriginal offenders and other offenders can be justified where there are circumstances unique to the Aboriginal offender, even when considering the principle of parity as codified in s. 718.2(b) that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances" (at paragraph 31).

In *R. v. Anderson*, 2018 MBCA 42, the Manitoba Court of Appeal held that "sentencing judges have the legal duty in every case involving an Indigenous offender to alter their method of analysis in the assessment of moral culpability in order to achieve a truly fit and proper sentence in terms of the circumstances of the offence, the offender, the victim and the wider community. . . . There is no discretion to ignore this legal duty even in cases where the offence is serious (see *Gladue* at para 82; and *Ipeelee* at para 87). The failure of a sentencing judge to fully engage in their legal duty is an error in principle justifying appellate intervention" (at paragraph 57).

In *R. v. Giroux*, 2018 ABCA 56, an Indigenous offender was convicted of the offence of possession of cocaine for the purpose of trafficking and sentenced to a period of ninety days of

"the devastating intergenerational effects of the collective experience of First Nations people may shape ... sentencing"

imprisonment. On appeal, the Alberta Court of Appeal indicated that the “starting point” for the offence was a period of three years of imprisonment, but only increased the sentence imposed to one of nine months of imprisonment. In doing so, the Court of Appeal indicated that it was applying “the mitigating effect of the guilty plea, her lack of criminal record, an absence of financial incentive, her work and family life, and the influence of *Gladue* factors in her life” (at paragraph 31).

Thus, the offender’s Indigenous heritage was a factor in the Court of Appeal imposing a sentence which was lower than normal. However, it is difficult from the Court’s comments to ascertain what impact the offender’s Indigenous heritage had upon the sentence imposed.

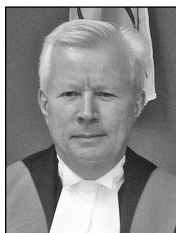
In Australia, the sentencing of Aboriginal offenders has also been an issue of significant debate.⁹ The Australia High Court has adopted a much different approach than the one adopted by the Supreme Court of Canada.

In *Bugmy v. The Queen* [2013] HCA 37, the High Court of Australia considered the Supreme Court of Canada’s decisions in *Gladue* and *Ipeelee*. The High Court distinguished *Gladue* based upon the wording of the *Criminal Code of Canada* being different than the applicable Australian legislation (see section 5(1) of the *Crimes (Sentencing Procedure) Act 1999* (NSW)). In addition, however, the High Court also refused to adopt the *Gladue* sentencing approach on the basis that it would result in the sentencing of Aboriginal offenders ceasing “to involve individualised justice” (at paragraph 36):

...There is no warrant, in sentencing an Aboriginal offender in New South Wales, to apply a method of

analysis different from that which applies in sentencing a non-Aboriginal offender. Nor is there a warrant to take into account the high rate of incarceration of Aboriginal people when sentencing an Aboriginal offender. Were this a consideration, the sentencing of Aboriginal offenders would cease to involve individualised justice.

In conclusion, it has been over twenty years since section 718.2(e) has been added to Canada’s *Criminal Code* and its application remains a challenge for sentencing judges. The section requires a broad application of judicial notice and an interventionist approach, but determining its practical effect on the sentence imposed is still far from certain. Though the Supreme Court of Canada has rejected the requirement for a “causal link” some recent appellate court decisions appear to be applying such an approach.



Wayne Gorman is a judge of the Provincial Court of Newfoundland and Labrador. His blog (*Keeping Up Is Hard to Do: A Trial Judge’s Reading Blog*) can be found on the web page of the Canadian Association of Provincial Court Judges. He also writes a regular column (*Of Particular Interest to Provincial Court Judges*) for the Canadian Provincial

Judges’ Journal. Judge Gorman’s work has been widely published. Comments or suggestions to Judge Gorman may be sent to wgorman@provincial.court.nl.ca.

9. See “Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples” (Australian Law Reform Commission, Report 133, March 28, 2018), which made the following recommendation (Recommendation 6.1):

Sentencing legislation should provide that, when sentencing Aboriginal . . . offenders, courts take into account unique systemic and background factors affecting Aboriginal . . . peoples.



AMERICAN JUDGES ASSOCIATION: PROCEDURAL FAIRNESS INTERVIEWS

The American Judges Association (AJA) conducted interviews about procedural fairness with nine national leaders on issues involving judges and the courts. The interviews, done by Kansas Court of Appeals Judge and past AJA president Steve Leben, cover the elements of procedural fairness for courts and judges, how judges can improve fairness skills, and how the public reacts to courts and judges. The interviews were done in August 2014; job titles are shown as of the date of the interviews.

Visit <http://proceduralfairnessguide.org/interviews/> to watch the interviews.

You are inspiring our communities

It's been said that when we know better, we do better and that's the spirit you embody every day - whether working with citizens, making decisions that protect public safety, or helping to keep justice moving behind the scenes.

We are right here with you! Working alongside you, we get to see first-hand how your efforts make a difference. Helping you in ways to improve access to justice, make the most informed decisions, resolve matters faster, and ensure that you're equipped to help people do better whenever possible.

You inspire our communities. Now, see how you've inspired us to build better solutions that help you do your part.

Visit www.equivant.com or call:

800.406.4333

equivant.com

equivant

Judges' Well-Being and the Importance of Meaningful Work

Anne Brafford & Robert W. Rebele

At their swearing-in ceremonies, most judges are filled with a sense of meaning, pride, and happiness after achieving such an honored role. And rightly so. Alexander Hamilton said that “the first duty of society is justice,” and judges play a central role in this epic duty. With this duty, however, comes enormous responsibility—and plenty of pressure. Judges are not always well-prepared to deal with the stressful realities of the job that come after the ceremony and celebrations have ended, including overloaded dockets, heightened public scrutiny, weighty decisions, disturbing evidence, irritating lawyers and litigants, anxiety over time limits and expectations of perfection, threats to safety, social isolation, and more.¹ That this onslaught of new pressures does not cause a diagnosable mental health disorder or addiction for many judges does not mean that they are mentally healthy, fully engaged, or thriving. Instead, too many end up feeling isolated, trapped, and burned out.

The National Task Force on Lawyer Well-Being recently issued a watershed report—*The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*—that calls for judges and all of the profession’s stakeholders to prioritize well-being. The report defines well-being as a “continuous process toward thriving across all life dimensions”² and establishes it as a key contributor to professional competence. In February 2018, the American Bar Association (ABA) House of Delegates endorsed the report through Resolution 105.³ These developments, along with many other initiatives cropping up across the profession, suggest a growing demand for positive changes to support lawyer thriving.

The National Task Force’s definition of well-being encompasses six life dimensions. Our article focuses on one in particular: the “Spiritual,” which entails “[d]eveloping a sense of

meaningfulness and purpose.”⁴ As discussed below, meaningfulness fuels forms of work-related well-being like engagement, and its decline can lead to burnout and other negative consequences that harm judges’ ability to perform their best. We offer substantial evidence to support our view that meaningfulness should play a prominent role in well-being initiatives in the legal profession, as well as evidence-based strategies for judges to enhance meaningfulness and well-being for themselves and their colleagues and staff.

MEANING & PURPOSE ARE KEY CONTRIBUTORS TO WELL-BEING

The “Spiritual” dimension of well-being—developing meaning and purpose—too often has been overlooked in a profession that narrowly favors rationality and logic:⁵

Probably more than in any other profession, legal practitioners have been trained to ignore intuition, emotions, spiritual, and other human gifts that best facilitate connections with other humans on matters of meaning and values.⁶

This blind spot to the full scope of well-being may help explain why many lawyers and judges experience a “profound ambivalence” about their work⁷ and are not fully thriving.⁸

The importance of creating meaningfulness in our lives can hardly be overstated. Research suggests that it is powerfully important to our happiness, and, for many people, it is the ultimate goal of their work and non-work lives.⁹ In his famous book, *Man’s Search for Meaning*, Holocaust survivor and psychiatrist Viktor Frankl argued that a primary motivational force that drives us all is the desire to find meaning in life.¹⁰ He

Footnotes

1. Bree Buchanan et al., *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, American Bar Association 22 (Aug. 14, 2017) <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>; Gerald Lebovits, *Judicial Wellness: The Ups and Downs of Sitting New York Judges*, 89 N.Y. ST. BAR ASS’N J. 10, 10-22 (2017); Monica K. Miller & James T. Richardson, *A Model of Causes and Effects of Judicial Stress*, 45 JUDGES J. 20, 20-23 (2006); Alexis Resnick et al., *Surviving Bench Stress*, 49 FAM. CT. REV. 610, 610-617 (2011).
2. Buchanan, *supra* note 1, at 9.
3. Terry Harrell, *Adopted Resolution 105*, American Bar Association (Feb. 2018), https://www.americanbar.org/news/reporter_resources/midyear-meeting-2018/house-of-delegates-resolutions/105.html.
4. *Id.*
5. Susan S. Daicoff, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* (American Psychological Association 2004).
6. Pat M. Sullivan, *Spirit of the Law: How Lawyers, Judges, Law Professors, and Legal Staff Bring Spirit to Work*, in *HANDBOOK OF FAITH AND SPIRITUALITY IN THE WORKPLACE: EMERGING RESEARCH AND PRACTICE* 315, 330 (J. Neal ed., 2013).
7. David L. Chambers, *Overstating the Satisfaction of Lawyers*, 21 LAW & SOC. INQUIRY 1, 1 (2013).
8. Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. 46, 46-52 (2016).
9. Stephen E. Humphrey et al., *Integrating Motivational, Social, and Contextual Work Design Features: A Meta-Analytic Summary and Theoretical Extension of the Work Design Literature*, 92 J. APP. PSYCHOL. 1332, 1332-1356 (2007).
10. Victor E. Frankl, *MAN’S SEARCH FOR MEANING* (Beacon Press 1959).

developed a whole theory of psychotherapy (called “logotherapy”) based on that belief.

The concept of meaning and purpose also appears as a factor in well-established definitions of well-being in the social sciences. For example, Dr. Carol Ryff’s popular concept of “psychological well-being” includes having purpose in life, defined to include a sense of meaning, direction, and objectives for living.¹¹ Positive psychology co-founder Dr. Martin Seligman defines well-being to include meaning, which he says entails a sense of “belonging to and of serving something that you believe is bigger than the self.”¹²

Much research supports these views that meaning is a key ingredient of well-being. It shows that meaning has a big impact on both psychological wellness and physical health, including the following:¹³

- Better emotion regulation
- Reduced risk of anxiety, depression, and suicidal thinking
- Reduced substance abuse
- Reduced risk of heart attack and stroke
- Healthy sleep
- Slower cognitive decline in Alzheimer’s patients
- Lower overall mortality for older adults

It is through meaningful *work* that many of us seek to build a meaningful *life*. “Work” is among the most common responses to surveys asking what gives life meaning,¹⁴ and most people identify having important and meaningful work as the single most valued feature of their employment.¹⁵ A recent review article of a large number of studies found that work can contribute to meaning in life through six pathways:

- Making people happy;
- Providing opportunities for social connections and contributing to others;
- Helping people identify goals and feel motivated;

- Helping people create a sense of coherence and structure in their lives;
- Providing financial resources that can facilitate other meaningful pursuits; and
- Interacting with religious beliefs and values in ways that foster meaning and purpose.¹⁶

**“He who has a why to live can bear almost any how.”
—Nietzsche**

When work is meaningful, people feel motivated to fully invest themselves, as is reflected in the many positive outcomes of meaningful work: higher job performance; job and life satisfaction; cohesion with colleagues; work effort; engagement; and lower stress, anxiety, and depression, to name a few.¹⁷ Meaningfulness also serves as a source of resilience,¹⁸ as captured in the famous Nietzsche quote that, “He who has a why to live can bear almost any how.”

MEANINGFUL WORK (OR ITS ABSENCE) DRIVES WORK ENGAGEMENT (OR BURNOUT)

Most judges likely have heard of burnout and work engagement, the two sides of the work well-being continuum. But they may be less familiar with their definitions, causes and consequences. At the heart of each is the experience of meaningful work.

Work engagement is a form of workplace thriving in which people feel energetic, resilient, a sense of meaning and purpose, optimally challenged, and absorbed in their work tasks.¹⁹ High engagement contributes to, for example, better mental health, job satisfaction, helping behaviors, and performance, as well as reduced stress, burnout, and turnover.²⁰ Multiple studies have found that the biggest driver of work engagement is the experience of meaningful work.²¹

On the other hand, a declining sense of meaningfulness is highly damaging—and is a primary cause and effect of

11. Carol D. Ryff, *Psychological Well-Being Revisited: Advances in the Science and Practice of Eudaimonia*, 83 *PSYCHOTHERAPY & PSYCHOSOMATICS* 10, 10–28 (2014).

12. Martin E. Seligman, *FLOURISH: A VISIONARY NEW UNDERSTANDING OF HAPPINESS AND WELL-BEING* 12 (Free Press 2011).

13. Eric S. Kim et al., *Purpose in Life and Incidence of Sleep Disturbances*, 38 *J. BEHAV. MED.* 590, 590–597 (2015); Michael F. Steger et al., *The Meaning in Life Questionnaire: Assessing the Presence of and Search for Meaning in Life*, 53 *J. COUNSELING PSYCHOL.* 80, 80–93 (2006).

14. Blake A. Allan et al., *Meaning in Life and Work: A Developmental Perspective*, 10 *J. POSIT. PSYCHOL.* 323, 323–331 (2015).

15. Catherine Bailey et al., *The Mismanaged Soul: Existential Labor and The Erosion of Meaningful Work*, 27 *HUM. RESOUR. MANAG. REV.* 416, 416–430 (2017); Adam M. Grant, *Relational Job Design and the Motivation to Make a Prosocial Difference*, 32 *ACAD. MANAG. REV.* 393, 393–417 (2007).

16. Sara J. Ward & Laura A. King, *Work and the Good Life: How Work Contributes to Meaning in Life*, 37 *RESEARCH ORG. BEHAV.* 59, 59–82 (2017).

17. Blake A. Allan, *Task Significance and Meaningful Work: A Longitudinal Study*, 102 *J. VOC. BEHAV.* 174, 174–182 (2017); Kara A. Arnold et al., *Transformational Leadership and Psychological Well-Being: The Mediating Role of Meaningful Work*, 12(3) *J. OCCUP. HEALTH PSYCHOL.* 193, 193–203 (2007); Fernando Jaramillo et al., *Bringing Meaning to the Sales Job: The Effect of Ethical Climate and Customer Demandingness*, 66 *J. BUS. RES.* 2301, 2301–2307 (2013); Jing Hu & Jacob Hirsh, *The Benefits of Meaningful Work: A Meta-Analysis*, *ACAD. MANAG. PROC.* (2017).

18. Cary Cooper et al., *BUILDING RESILIENCE FOR SUCCESS: A RESOURCE GUIDE FOR MANAGERS AND ORGANIZATIONS* (Palgrave Macmillan 2013); Randall R. Ross & Elizabeth M. Altmaier, *INTERVENTION IN OCCUPATIONAL STRESS* (Sage Publications Ltd. 1994).

19. William B. Schaufeli, *What Is Engagement?* in *EMPLOYEE ENGAGEMENT IN THEORY AND PRACTICE* (C. Truss, K. Alfes, R. Delbridge, A. Shantz, & E. Soane eds., 2013).

20. Catherine Bailey et al., *The Meaning, Antecedents and Outcomes of Employee Engagement: A Narrative Synthesis*, 19 *INT. J. MANAG. REV.* 31, 31–53 (2017).

21. Anne M. Brafford, *POSITIVE PROFESSIONALS: CREATING HIGH-PERFORMING, PROFITABLE FIRMS THROUGH THE SCIENCE OF ENGAGEMENT* 14 (American Bar Association 2017).

“the root cause of burnout lies in people’s need to believe that their lives are meaningful”

burnout.²² Burnout is a debilitating response to chronic stress that can have serious psychological and physiological effects.²³ People experiencing burnout feel emotionally drained, callous toward others, cynical about the value of their work, and uncertain about their abilities.

Burnout can negatively impact judges’ physical and psychological health, as well as their ability to effectively function in their work.²⁴ For example, burnout and related conditions undermine the capacity for emotion regulation, impulse control, and deliberative decision making.²⁵ The effects increase the likelihood of angry outbursts, intolerance, irritability, and frustration.²⁶ In the medical profession, burnout has been linked to dishonesty, ethical lapses, increased errors, and a decline in the quality of patient care,²⁷ as well as an increased risk of depression, substance abuse, and suicidal thinking.²⁸ Although we have not found any studies that have identified the burnout rate in the legal profession, commentators repeatedly have pointed out that many aspects of judges’ work make them vulnerable to burnout and related conditions.²⁹

Burnout is not necessarily the consequence of working hard or generic workplace stress.³⁰ Instead, one scholar has argued that “the root cause of burnout lies in people’s need to believe that their lives are meaningful, that the things they do are useful and important.”³¹ People with high initial expectations for deriving significance from their work gradually can become overwhelmed by a sense of helplessness and meaninglessness as they come to view their work as ultimately futile or not enough to live up to those early ideals.

For example, in a study of hospital nurses, total number of hours worked was not significantly related to burnout, but the

nurses’ sense of accomplishment was. An exemplar comment came from a nurse who described her best days as those in which she worked the hardest. Burnout crept in only when she felt there was nothing she could do to help a patient.³² This finding comports with other evidence suggesting that professionals’ goals and expectations that they had when entering their careers are related to burnout. For nurses, for example, their most important goal was to help people who were suffering. Consequently, witnessing people’s pain without being able to help is the greatest cause of burnout for them. Research like this suggests that burnout results “from the appraisal that one’s contribution is insignificant.”³³

Generally, if people are able to recover a sense of significance in their work, the problem of burnout can be resolved.³⁴ Accordingly, having a sense that one’s work is meaningful is a key factor for stimulating engagement and avoiding burnout. Judges interested in a check-up of their own burnout symptoms can start with a self-assessment created by Dr. Isiah Zimmerman—a clinical psychologist who has worked with judges—that can be found on the Missouri Bar’s website.³⁵

Making Work Meaningful. The above discussion of the animating forces of burnout and engagement gives a strong hint as to the definition of the vital concept of “meaningful work.” It has been defined as a sense that one’s work has significance, facilitates personal growth, and contributes to the greater good.³⁶ Work has “significance” when we judge it as being worthwhile and important within our own value system.³⁷ Judges can assess their own experience of meaningful work using the Work and Meaning Inventory created by Professor Michael Steger (a leading researcher on meaning) and available on his website.³⁸ It asks, for example, whether you believe that your work contributes to your personal growth, makes a positive difference in the world, and provides a sense of meaning in your life.

22. Patrick M. Dunn et al., *Meeting the Imperative to Improve Physician Well-Being: Assessment of an Innovative Program*, 22 J. GEN. INTERN. MED. 1544, 1544-1552 (2007); Jing & Hirsh, *supra* note 17; Michael S. Krasner et al., *Association of an Educational Program in Mindful Communication with Burnout, Empathy, and Attitudes Among Primary Care Physicians*, 302 JAMA 1284, 1284-1293 (2009); Christina Maslach et al., *Job Burnout*, 52 ANNU. REV. PSYCHOL. 397, 397-422 (2001); Ayala M. Pines & Oreniya Yafe-Yanai, *Unconscious Determinants of Career Choice and Burnout: Theoretical Model of Counseling Strategy*, 38 J. EMPL. COUNSELING 170, 170-184 (2001).

23. Maslach et al., *supra* note 22.

24. Hon. Felicity Hampel, *From Stress to Resilience*, LAW INST. J. (Sept. 2015).

25. Jared Chamberlain & Monica K. Miller, *Stress in the Courtroom: Call for Research*, 15 PSYCH. & PSYCHOL. L. 237, 237-250 (2008); Jared Chamberlain & Monica K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 J. AMER. ACAD. PSYCH. L. 214, 214-224 (2009); Hempel, *supra* note 24; Carly Schrever, *Judging Stress*, 89 L. INST. J. 29, 29-32 (September 2015).

26. E.g., Peter G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 JUV. FAM. CT. J. 1, 1-10 (2003).

27. Thomas L. Schwenk, *Resident Depression: The Tip of a Graduate Medical Education Iceberg*, 314 JAMA 2357, 2357-2358 (2015).

28. Liselotte N. Dyrbye & Tait D. Shanafelt, *Physician Burnout: A Potential Threat to Successful Health Care Reform*, 305 JAMA 2009, 2009-2010 (2009); Liselotte N. Dyrbye & Tait D. Shanafelt, *A Narrative Review of Burnout Experienced by Medical Students and Residents*, 50 MED. EDUC. 132, 132-149 (2016).

29. E.g., Chamberlain & Miller, *supra* note 25; Jaffe et al., *supra* note 26; Miller & Richardson, *supra* note 1; Deborah W. Smith, *Secondary and Vicarious Trauma Among Judges and Court Personnel*, Trends in State Courts (Apr. 2017) https://ncsc.contentdm.oclc.org/digital/api/collection/hr/id/171/page/0/inline/hr_171_0.

30. Ayala M. Pines & Giora Keinan, *Stress and Burnout: The Significant Difference*, 39 PERSON. & INDIV. DIFF. 625, 625-635 (2005).

31. *Id.* at 626.

32. *Id.*

33. *Id.* at 633.

34. *Id.*

35. Isiah M. Zimmerman, *Six-Month Checkup: Early Warning Signs of Judicial Burnout*, MO. B. BULL. (Nov. 2001) <http://www.mobar.test02.org/uploadedfiles/home/molap/judicial-burnout.pdf>.

36. Allan et al., *supra* note 14.

37. Douglas R. May et al., *The Psychological Conditions of Meaningfulness, Safety and Availability and the Engagement of the Human Spirit at Work*, 77 J. OCCUP. & ORG. PSYCHOL. 11, 11-37 (2004).

38. <http://www.michaelfsteger.com>.

Meaningfulness is created (or not) in an ongoing dynamic process.³⁹ It is not akin to an Easter egg hunt. We are not done once we “find” the prize. Rather, every day, we have interactions and experiences that can shape our experience of meaningfulness. Additionally, cultivating meaningful work is not a solo activity—it is influenced significantly by other people and by our work environments.⁴⁰ The content of the work we do, the perceived importance of our work roles to the wider world, social interactions that give us a sense of belonging and positively contributing to others, and our sense of fit within the organization and with its mission all affect our sense of meaningfulness.⁴¹ Through our own daily behaviors that are big or small, conscious or unconscious, each of us has a huge impact on ourselves, each other, and whether meaningfulness is enhanced or diminished.

That meaningfulness is malleable and dynamic is good news. It means that meaningfulness is not the result of a fixed attribute of a particular job or person. In fact, social science researchers have identified many meaning-making strategies. But there is no one-size-fits-all formula. As noted above, whether we deem our work “significant” is tied to our own values and preferences. What we find meaningful may not be meaningful for others.⁴² Accordingly, the best approach will be to try a variety of strategies to see what works for us and what is most effective for boosting the experience of meaningfulness for our colleagues.

Motivation and Meaningfulness. While particular meaning-making strategies for each person may be individualized, there is a unifying framework that can help us to understand what makes some strategies more effective than others: This framework is called self-determination theory (SDT). SDT is a well-established and powerful theory of motivation. It proposes that our growth toward optimal functioning depends on fulfillment of three basic needs: autonomy (feeling that we’re acting volitionally), relatedness (feeling cared about and a sense of belonging), and competence (feeling confidence in our ability to master new skills and have an impact on our environment⁴³). A growing body of evidence suggests that there may also be a fourth need termed “beneficence,” which refers to one’s sense of having a positive impact in the lives of other people (sometimes referred to as “prosocial impact”⁴⁴). According to SDT, optimal

functioning is possible only to the extent that people’s social surroundings satisfy these needs, or to the extent that people are able to individually construct sufficient inner resources to satisfy their own needs.

Need-fulfillment has many positive outcomes connected to work and life well-being, including the generation of high-quality internal motivation.⁴⁵ We are internally (rather than externally) motivated when we make choices because they align with our values and preferences rather than because we feel coerced or goaded by guilt. Research shows that pursuits that fulfill our SDT basic needs and are fueled by internal motivation will be experienced as the most meaningful.⁴⁶ Research also reflects that needs will be most fulfilled by intrinsic aspirations—those that are desirable ends in and of themselves. These include things like personal growth, close relationships, helping make the world better, and being healthy.⁴⁷ On the other hand, pursuing extrinsic goals (which are instrumental or contingent on others’ reactions) like financial success, fame, and an appealing image are less supportive of SDT needs. In fact, they are linked to greater depressive symptoms, anxiety, and lower-quality relationships.⁴⁸

The positive effects of SDT need-satisfaction have been found in a broad range of contexts, including the legal profession itself. For example, in a recent study of more than 6,000 practicing lawyers and judges, of all factors studied, the three SDT needs and internal motivation had the largest relationships with subjective well-being.⁴⁹ The SDT factors trumped law-school grades, law-school ranking, physical exercise, vacation days, and religious or spiritual practice. In other words, having one’s SDT needs satisfied was far more important to current happiness than, for example, having a high income or graduating from a prestigious law school with top grades. A recent unpublished study of more than 200 practicing lawyers found similar effects—SDT needs had strong positive relationships with engagement and strong negative relationship with turnover intentions.⁵⁰

“Meaningfulness ... is not akin to an Easter egg hunt. We are not done once we ‘find’ the prize.”

39. Allan et al., *supra* note 14.

40. Brent D. Rosso et al., *On the Meaning of Work: A Theoretical Integration and Review*, 30 RES. ORG. BEHAV. 91, 91–127 (2010).

41. Bailey et al., *supra* note 20.

42. Michael G. Pratt et al., *Doing Well, Doing Good, and Doing with: Organizational Practices for Effectively Cultivating Meaningful Work*, in PURPOSE AND MEANING IN THE WORKPLACE 173, 173-196 (B. J. Dik, Z. S. Byrne, & M. F. Steger eds., 2013).

43. Edward L. Deci & Richard M. Ryan, *The Importance of Universal Psychological Needs for Understanding Motivation in the Workplace*, in OXFORD HANDBOOK OF WORK ENGAGEMENT, MOTIVATION, AND SELF-DETERMINATION THEORY 13, 13-32 (M. Gagne ed., 2014).

44. Frank Martela & Richard M. Ryan, *The Benefits of Benevolence: Basic Psychological Needs, Beneficence, and the Enhancement of Well-Being*, 84 J. PERSON. 750, 750–764 (2016).

45. Brafford, *supra* note 21, at 22-28.

46. Allan et al., *supra* note 14; Frank Martela et al., *Meaningfulness as*

Satisfaction of Autonomy, Competence, Relatedness, and Beneficence: Comparing the Four Satisfaction and Positive Affect as Predictors of Meaning in Life, J. HAPPINESS STUD. (2017); Netta Weinstein et al., *Motivation, Meaning, and Wellness*, in THE HUMAN QUEST FOR MEANING 81, 81-106 (P. T. P. Wong ed., 2014).

47. Tim Kasser & Richard M. Ryan, *Further Examining the American Dream: Differential Correlates of Intrinsic and Extrinsic Goals*, 22 PERSONALITY & SOC. PSYCHOL. BULL. 80, 80-87 (1996); Kennon M. Sheldon et al., *The Independent Effects of Goal Contents and Motives on Well-Being: It’s Both What You Pursue and Why You Pursue It*, 30 PERSON. & SOC. PSYCHOL. BULL. 475, 475-486 (2004).

48. Weinstein et al., *supra* note 46.

49. Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, 83 GEO. WASH. UNIV. L. REV. 554, 554-627 (2015).

50. Brafford, *supra* note 21, at 27.

“What we pay attention to influences who we become.”

CULTIVATING MEANINGFULNESS AND WELL-BEING THROUGH NEED-SATISFACTION

The large body of evidence supporting SDT (including within the legal profession)

warrants placing it at the center of well-being strategies for judges. The rest of this article recommends evidence-based strategies designed to help fulfill the basic SDT needs while also cultivating a sense of meaningfulness and boosting well-being. Given the diversity of personalities, values, and experiences of the judicial workforce, these strategies are offered not as a singular prescription but instead as a menu from which different people can select options that most appeal to them.

Autonomy-Enhancing Strategies. The SDT autonomy need is driven by a basic human desire to be “self-creating” and under self-rule.⁵¹ It is not exaggerated individualism, nor does it entail total independence from others. Rather, our autonomy need is about feeling authentic and like the author and architect of our own behavior—that our behavior aligns with our interests and values and is within our responsibility and control.⁵² Autonomy can harmonize with outside influences so long as we concur with them, feeling both a sense of choice and alignment of values.⁵³

Although judges have substantial latitude in their work roles, they are not free from external pressures and sometimes may feel that the job requirements do not align with their values, preferences, and identity. Coercive external forces that compel or guilt us into action thwart our feelings of autonomy.⁵⁴ To better support this need while enhancing meaningfulness and well-being, judges might consider trying to reshape their daily mental habits by making more intentional choices about where to invest their attention and how to craft their jobs to make them more personally meaningful.

Invest Attention More Deliberately Into Well-Being. The valuable resource of attention can be thought of like “psychic energy.”⁵⁵ Every minute of every day, we are bombarded by demands on our limited attentional bandwidth.⁵⁶ What we pay attention to (either intentionally or as a result of automatic mental habits) determines what gets into our consciousness.

What we pay attention to influences who we become; and who we become shapes what we pay attention to.

We’re constantly burning our psychic energy, including on things like ruminating, worrying, or just being unfocused or distracted. Understanding this empowers us to create a better life by choosing one thought over another—by managing and protecting the limited resource of our attention. Being more intentional and selective about how we plan our days can enhance our experience of autonomy and leave us with more attention for things that will make our lives more meaningful and boost our well-being.

In fact, research shows that people who deliberately plan their days to incorporate opportunities that can lead to naturally occurring positive emotions more frequently experience them and have higher well-being—a positive mental habit labelled “prioritizing positivity.”⁵⁷ And if intentionally cultivating positive emotions sounds too self-indulgent or unserious, consider that a high frequency of positive emotions is strongly associated with feelings of meaning and purpose,⁵⁸ work engagement, and physical and psychological well-being.⁵⁹ The most effective activities will be those that boost positive emotions and meaningfulness by satisfying SDT needs. Examples include activities that allow us to achieve something that provides a sense of accomplishment, develop feelings of mastery, help others, express personal values, or tackle just the right amount of challenge.⁶⁰

Enhance Self-Congruence Through Job Crafting. Judges also can try to craft their jobs in ways that better fit their values and preferences. This strategy enhances a sense of self-congruence, which supports the autonomy need while boosting meaningfulness.⁶¹ To create true meaning, people first must get to know who they really are, including their values and priorities, and then act in accordance with that knowledge.⁶² For work, this means that the tighter the “fit” between ourselves and our jobs, the greater the sense of meaningfulness. The more our work aligns with our interests, skills, abilities, strengths and values, the happier we’ll be.⁶³

Notably, feelings of fit and passion with our work can grow and change; they’re not fixed.⁶⁴ This means that judges can proactively shape their sense of fit with their jobs if they currently feel misaligned. How might they do so? One potential

51. Richard M. Ryan, *The Nature of the Self in Autonomy and Relatedness*, in *THE SELF: INTERDISCIPLINARY APPROACHES* 208, 208-238 (J. Strauss & G. R. Goethals eds., 1991).

52. Edward L. Deci & Richard M. Ryan, *HANDBOOK OF SELF-DETERMINATION RESEARCH* 8 (University of Rochester Press 2002); Ryan, *supra* note 51.

53. Deci & Ryan, *supra* note 52, at 8.

54. Richard M. Ryan, *Psychological Needs and the Facilitation of Integrative Processes*, 63 *J. PERSON.* 397, 397-427 (1995).

55. MIHALY CSIKSZENTMIHALYI, *Flow: The Psychology of Happiness* 30 (Rider 1992).

56. Mihaly Csikszentmihalyi, *Preface to Positive Leisure Science: From Subjective Experience to Social Contexts* vii-ix (Springer 2013).

57. Jesus A. Datu & Ronnel B. King, *Prioritizing Positivity Optimizes Positive Emotions and Life Satisfaction: A Three-Wave Longitudinal Study*, 96 *PERSON. INDIV. DIFF.* 111, 111-114 (2016).

58. Laura A. King & Joshua A. Hicks, *Positive Affect and Meaning in*

Life, in *THE HUMAN QUEST FOR MEANING* 125, 125-141 (P. T. P. Wong ed., 2014); Martela et al., *supra* note 46.

59. Brafford, *supra* note 21, at 29-33.

60. *Id.* at 133-38; Aaron M. Eakman, *Relationships Between Meaningful Activity, Basic Psychological Needs, and Meaning in Life: Test of the Meaningful Activity and Life Meaning Model*, 33 *OTJR: OCCUP. PARTIC. HEALTH* 100, 100-109 (2013).

61. Rosso et al., *supra* note 40.

62. Weinstein et al., *supra* note 46.

63. Neil Chalofsky & Liz Cavallaro, *A Good Living Versus a Good Life: Meaning, Purpose, and HRD*, 15 *ADV. DEVEL. HUM. RESOURCES* 331, 331-340 (2013); Ryan D. Duffy et al., *Work Volition and Job Satisfaction: Examining The Role of Work Meaning and Person-Environment Fit*, 63 *CAREER DEV. Q.* 126, 126-140 (2015).

64. Patricia Chen et al., *Finding Fit or Developing Fit: Implicit Theories About Achieving Passion for Work*, 41 *PERS. SOC. PSYCHOL. BULL.* 1411, 1411-1424 (2015).

technique is job crafting, which is a process in which people tweak their jobs (or their perceptions of their jobs) to make them more personally meaningful.⁶⁵ Through job crafting, we can actively shape our work to enhance fit with our values, talents, strengths, skills, and interests.

Job tasks, relationships, and our own thoughts and feelings can be targets of job crafting. In what's called *cognitive crafting*, for example, we focus our attention on the benefits of our work—including the benefits that flow even from the undesirable parts. For example, a hospital janitor might frame her job not as simply mopping floors but as creating a healing environment for patients. In *relationship crafting*, we seek connection with people who energize us and avoid those who deplete us. *Task crafting* includes proactively seeking out tasks that interest us. For example, a study in the medical field found that the extent to which faculty physicians were able to focus on the aspect of their work that was most meaningful to them (most often, caring for patients) had a strong inverse relationship to their risk of burnout.⁶⁶ In each of these examples, individuals are changing their experience of their work without having to change jobs or employers.

Accordingly, to foster meaningfulness and support their autonomy need, judges should seek out more tasks that they enjoy, that match their ideals for entering the profession, and that use a full range of their strengths and abilities. They also potentially could explore delegating tasks that they do not enjoy to other qualified people—like other judges, law clerks, or staff. For judges who are interested in exploring job crafting further, the University of Michigan's Center for Positive Organizations offers a booklet on its website.⁶⁷

In addition to the tasks, relationships, and thoughts that comprise much of our jobs, values are another important aspect of our identities that can be connected (or not) to our work.⁶⁸ So, in addition to the job-crafting activities above, judges also could try values crafting. For example, judges could identify several values that are personally meaningful to them and reflect on how they implement those values in their work every day, as well as how they might do so more often or

in new ways. Research has shown that values exercises like this help people cultivate a sense of meaningfulness, cope with stress, and enhance well-being.⁶⁹

Relatedness-Enhancing Strategies. Through the autonomy and relatedness needs, SDT reflects that humans are strongly driven to be both distinct and connected.⁷⁰

While taking more control of our individual experiences can help satisfy our autonomy need, we also require positive connections with others to experience meaningfulness and achieve well-being. No one is an island. The courthouse is a microcosm of community, made up of people with whom you interact regularly, briefly, or only rarely. This social dimension of work offers ample opportunity—along with a few notable pitfalls—for fulfilling relatedness needs.

Relatedness is a potent need hardwired into us through evolution. It entails a basic human desire to care for others, to be cared for, and to experience a sense of belongingness to groups that are significant to us.⁷¹ A long line of studies in anthropology, sociology, and psychology establish that the need for connection is a powerful and pervasive motivation. It impacts many aspects of human functioning—including cognitive processes, emotional patterns, behaviors, and health and well-being.⁷²

The effects are wide-ranging and often surprising. For example, when we interact with people we view positively, we get a physiological boost—our blood pressure, immune system, and beneficial hormones all are positively affected.⁷³ Feeling supported by people who care about us actually alters our perception of challenge, including suffering less physical pain⁷⁴ and perceiving hills as less steep.⁷⁵ But when people are socially rejected, they can experience physical pain⁷⁶ or plunge into a downward spiral of self-defeating behavior,⁷⁷ and their IQs may even drop.⁷⁸ Relationships are so universally important that they are the most common response to the question of what gives life meaning.⁷⁹ Similarly, close interpersonal relationships

“judges should seek out more tasks ... that match their ideals for entering the profession”

65. Amy Wrzesniewski et al., *Job Crafting and Cultivating Positive Meaning and Identity in Work*, 1 ADV. POSITIVE. ORG. PSYCHOL. 281, 281-302 (2013).

66. Tait D. Shanafelt et al., *Career Fit and Burnout Among Academic Faculty*, 169 ARCH. INTERN. MED. 990, 990-995 (2009).

67. <http://positiveorgs.bus.umich.edu/cpo-tools/job-crafting-exercise/>.

68. Jaramillo et al., *supra* note 17; Rosso et al., *supra* note 40.

69. Robert Biswas-Diener et al., *A Dynamic Approach to Psychological Strength Development and Intervention*, 6(2) J. POSITIVE PSYCHOL. 106, 106-118 (2011); Geoffrey L. Cohen & David K. Sherman, *The Psychology of Change: Self-Affirmation and Social Psychological Intervention*, 65 ANN. REV. PSYCHOL. 333, 333-371 (2014); Kelly McGonigal, *THE UPSIDE OF STRESS: WHY STRESS IS GOOD FOR YOU, AND HOW TO GET GOOD AT IT* (Penguin Random House LLP 2015).

70. Deci & Ryan, *supra* note 43.

71. Edward L. Deci & Richard M. Ryan, *The “What” and “Why” of Goal Pursuits: Human Needs and the Self-Determination of Behavior*, 11 PSYCHOL. INQUIRY 227, 227-268 (2000); Jolanda Jetten et al., *Having a Lot of a Good Thing: Multiple Important Group Memberships as a Source of Self-Esteem*, 10 PLOS ONE 1, 1-29 (2015).

72. Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 PSYCHOL. BULL. 497, 497-529 (1995).

73. EMILY D. HEAPHY, *BODILY INSIGHTS: THREE LENSES ON POSITIVE ORGANIZATIONAL RELATIONSHIPS* 47-71 (Lawrence Erlbaum 2007).

74. James A. Coan et al., *Lending a Hand: Social Regulation of the Neural Response to Threat*, 17 PSYCHOL. SCI. 1032, 1032-1039 (2006).

75. Simone Schnall et al., *Social Support and the Perception of Geographical Slant*, 44 J. EXPERIMENTAL SOC. PSYCHOL. 1246, 1246-1255 (2008).

76. MATTHEW D. LIEBERMAN, *SOCIAL: WHY ARE BRAINS WIRE TO CONNECT* (Broadway Books 2014).

77. Roy F. Baumeister et al., *Social Exclusion Impairs Self-Regulation*, 88 J. OF PERS. SOC. PSYCHOL. 589, 589-604 (2005).

78. SENDHIL MULLAINATHAN & ELДАР SHAFIR, *SCARCITY: THE NEW SCIENCE OF HAVING LESS AND HOW IT DEFINES OUR LIVES* (Henry Holt & Company LLC 2014).

79. Michael F. Steger, *MEANING IN LIFE*; OXFORD HANDBOOK OF POSITIVE PSYCHOLOGY 679-687 (Oxford University Press 2009).

“incivility and other negative interactions can be toxic”

and a sense of belongingness are major contributors to a sense of meaningfulness at work.⁸⁰

Root Out Incivility. Not all social connections are so positive, however. Incivility and other negative interactions can

be toxic, thwarting the relatedness need and destroying the experience of meaningfulness. Much has been written that denounces the dwindling civility and professionalism in the legal profession.⁸¹ Although reliable data on the issue are hard to find, the general consensus concurs with that view.⁸² Broader cultural forces appear to be a factor, with public polls suggesting rising workplace incivility nationwide.⁸³

Incivility includes low-intensity acts of disrespect, whether or not the conduct is intentionally malicious. It includes, for example, rudeness, sarcasm, belittling others, using a condescending tone, treating others like they're invisible, and taking others for granted. Chronic incivility is corrosive. It depletes people's energy and motivation, increases burnout, and inflicts emotional and physiological damage.⁸⁴ It diminishes productivity, performance, creativity, and helping behaviors for targets of the behavior and for those who see or hear about it.⁸⁵

Although both positive and negative interactions can significantly affect well-being and meaningfulness, generally, “bad is stronger than good.”⁸⁶ This means that negative interactions harm us longer and more deeply than positive ones benefit us.⁸⁷ Given the destructive power of incivility, judges should seek to eradicate it from their own behavior, chambers, and courthouses to protect their own and their colleagues' well-being.

Develop High-Quality Relationships. What we should strive for, though, is not only to eliminate incivility but also to affirmatively foster high-quality relationships and a sense of

belonging among colleagues. An important way relationships effect a sense of meaningfulness is by making people feel that they *matter*.⁸⁸ People feel that they matter at work when others pay attention to them, support and care for them, appreciate them, and also seek their contribution.⁸⁹ Feeling valued and valuable is at the very heart of work engagement.⁹⁰ The opposite of mattering is feeling marginalized—that one does not fit in, is not significant, and is not needed.⁹¹ Colleagues can support each other's sense that they matter and that their work matters through activities, communications, and cues that reinforce that their work is valued by society and influences people's lives, that individual judge's ideas and suggestions are valued, and that their contribution is desired and appreciated.⁹²

Making high-quality connections (HQCs) is one important way to regularly reinforce mattering.⁹³ HQCs are the little bits of positive interactions that occur minute-to-minute during our work days. They are the opposite of incivility.

HQCs are experienced as energizing and uplifting. Each participant has a sense that the other is fully engaged and genuinely cares. Judges can build HQCs with others by, for example, enabling others' success through providing advice, removing obstacles, helping them learn, and nurturing their growth. They can cultivate trust by sharing information, soliciting input, and engaging in some amount of self-disclosure. Judges also can support respectful engagement by being accessible, paying attention to others, listening, being empathetic, and affirming others' value.⁹⁴

Organizing social activities in which colleagues can have fun together also facilitates HQCs⁹⁵ and negatively relates to burnout symptoms.⁹⁶ Judges may balk at “fun” as somehow unjudicial. At least one state court trial judge suggests otherwise, advocating that judges “[g]ive up the notion that professionalism and the nature of the mission of the courthouse means being serious all of the time.”⁹⁷

80. WILLIAM A. KAHN, MEANINGFUL CONNECTIONS: POSITIVE RELATIONSHIPS AND ATTACHMENTS AT WORK 189-206 (Lawrence Erlbaum 2007); Rosso et al., *supra* note 40.

81. Anne M. Brafford, Building the Positive Law Firm: The Legal Profession at Its Best 23-24 (unpublished Master's thesis, University of Pennsylvania 2014) (on file with the University of Pennsylvania Scholarly Commons database) http://repository.upenn.edu/mapp_capstone/62/.

82. *Id.*; Buchanan et al., *supra* note 1, at 15.

83. Christine M. Pearson & Christine L. Porath, *On the Nature, Consequences and Remedies of Workplace Incivility: No Time for “Nice”? Think Again*, 19 ACAD. MANAG. EXEC. 7, 7-18 (2005).

84. JANE E. DUTTON & EMILY D. HEAPHY, THE POWER OF HIGH-QUALITY CONNECTIONS 263-278 (Berrett-Koehler Publishers, Inc. 2002).

85. ABRAHAM CARMELI, POSITIVE WORK RELATIONSHIPS, VITALITY, AND JOB PERFORMANCE 45-71 (Oxford: JAI Press 2009); Pearson & Porath, *supra* note 83; Benjamin M. Walsh et al., *Assessing Workgroup Norms for Civility: The Development of the Civility Norms Questionnaire-Brief*, 27 J. BUS. PSYCHOL. 407, 407-420 (2012).

86. Roy F. Baumeister et al., *Bad Is Stronger Than Good*, 5 REV. GEN. PSYCHOL. 323, 323 (2001).

87. *Id.*; Brafford, *supra* note 21, at 130-32.

88. Kathleen M. Connolly, WORK: MEANING, MATTERING, AND JOB SATISFACTION 3-15 (American Counseling Association 2002).

89. *Id.*; Ae-Kyung Jung, *Interpersonal and Societal Mattering in Work: A Review and Critique*, 63 CAREER DEV. Q. 194, 194-208 (2015).

90. William A. Kahn, *Psychological Conditions of Personal Engagement and Disengagement at Work*, 33 ACAD. MGMT. J. 692, 692-724 (1990).

91. Connolly, *supra* note 88.

92. Ae-Kyung Jung & Mary J. Heppner, *Development and Validation of a Work Mattering Scale*, 25 J. CAREER ASSESSMENT. 467, 467-483 (2017).

93. JOHN PAUL STEPHENS et al., HIGH QUALITY CONNECTIONS; OXFORD HANDBOOK OF POSITIVE ORGANIZATIONAL SCHOLARSHIP 385-399 (Oxford University Press 2012).

94. *Id.*; JANE E. DUTTON, ENERGIZE YOUR WORKPLACE: HOW TO CREATE AND SUSTAIN HIGH-QUALITY CONNECTIONS AT WORK (Jossey-Bass 2003).

95. Barbara Plester & Ann Hutchison, *Fun Times: The Relationship Between Fun and Workplace Engagement*, 38 EMP. RELATIONS 332, 332-350 (2016); Stephens et al., *supra* note 93.

96. Michael J. Tews et al., *Does Fun Pay? The Impact of Workplace Fun on Employee Turnover and Performance*, 54 CORNELL HOSPITALITY Q. 370, 370-382 (2013).

97. Hon. Kevin S. Burke, *It's All About the People Who Work in the Courthouse*, National Center for State Courts (2011) https://ncsc.contentdm.oclc.org/digital/api/collection/ctadmin/id/1845/page/0/inline/ctadmin_1845_0.

While the description of HQCs may sound focused primarily on raising the well-being of others, this is not the case. Both sides benefit from the positive emotions and health-boosting aspects that emanate from energizing interactions as well as from the high-quality relationships for which HQCs are a foundation.⁹⁸ Additionally, because most of us have a robust reciprocity reflex, we want to help others that we like, that have a reputation for helping others, and that have contributed to our own well-being.⁹⁹ HQCs and reciprocity reinforce each other: “HQCs foster the practice of reciprocity; reciprocity builds new connections and improves the quality of connections.”¹⁰⁰ Thus, by creating HQCs with others, we are fostering a culture that also benefits our own well-being.

Closely related to our need for high-quality interpersonal relationships is the experience of belonging and acceptance in groups that are important to us.¹⁰¹ Being part of desirable social groups produces a sense of shared attributes or beliefs that are experienced as meaningful because people feel like they belong to something special.¹⁰² Workplace belongingness has been defined as feeling personally accepted, respected, included, and supported by others and a sense of fit in the social group.¹⁰³ Low scores on workplace belonging scales are strongly associated with depressive symptoms. Proactively carving out our own sense of belonging and fostering it for others are essential strategies for well-being and meaningfulness at work.

Competence-Enhancing Strategies. The next SDT need is competence, which stems from an in-born desire to impact our environment and attain valued outcomes within it.¹⁰⁴ It drives us to seek opportunities to exercise and express our capacities and to seek optimal challenges that stretch our abilities without overmatching them.¹⁰⁵ The need for competence is not primarily about *attaining* a skill or capability but feeling confident and effective as we make progress toward our self-aligned goals or mastery of skills.¹⁰⁶ As discussed below, our competence need can be supported at work by making progress toward goals and personal development.

Set Meaningful Goals and Track Progress. Goal-setting and making progress toward long- and short-term goals help satisfy

our competence need, boost well-being and work engagement, and also foster a sense of meaningfulness.¹⁰⁷ To take advantage of these benefits, judges should consider setting meaningful goals and keeping them salient by tracking progress.

When selecting goals, judges should be mindful of the research noted above showing that intrinsic aspirations (e.g., personal growth, community contributions, etc.) promote well-being and the experience of meaningfulness much more than extrinsic aspirations (e.g., fame, image). Further, the research above suggests that burnout is more likely if we neglect the goals and ideals that we set for ourselves when first entering the profession.¹⁰⁸ Accordingly, judges might reflect on what originally motivated them to become lawyers and judges and consider formulating and tracking goals that match those core values.

To keep their meaningful goals salient, judges might form a new habit of scanning the day’s events and identifying progress on their goals. Research shows that even small steps forward can boost engagement and well-being.¹⁰⁹ The difference between a good day and a bad day at work often comes down to the presence of progress and the absence of a major setback. To keep longer-term goals salient and amplify meaningfulness, judges might consider periodically taking 20 minutes or so to write about progress on their life goals.¹¹⁰

Participate in Personal Development Activities. Other competence-boosting strategies include personal development efforts, coaching, and feedback. These all can play a role in achieving a sense of personal enrichment that helps satisfy the competence need and contributes to a sense of meaningfulness.¹¹¹ Feeling that we are continuously learning, growing, increasing our level of mastery, and enhancing our capacity to respond effectively to challenges provides a strong source of meaning in work.¹¹² In fact, people who are committed to con-

“Low scores on workplace belonging scales are strongly associated with depressive symptoms”

98. WAYNE BAKER & JANE DUTTON, ENABLING POSITIVE SOCIAL CAPITAL IN ORGANIZATIONS 325-345 (J. E. Dutton & B. R. Ragins Eds. 2007).

99. *Id.*; Adam M. Grant, *Leading with Meaning: Beneficiary Contact, Prosocial Impact, and the Performance Effects of Transformational Leadership*, 55 *ACAD. MGMT. J.* 458, 458-476 (2012); Nadav Klein, *Prosocial Behavior Increases Perceptions of Meaning in Life*, *J. POSITIVE. PSYCHOL.* (2016).

100. Baker & Dutton, *supra* note 98, at 326.

101. Wendell D. Cockshaw & Ian M. Shochet, *The Link Between Belongingness and Depressive Symptoms: An Exploration in the Workplace Interpersonal Context*, 45 *AUSTRAL. PSYCHOL.* 283, 283-289 (2010); Jetten et al., *supra* note 71.

102. Martela et al., *supra* note 46; Rosso et al., *supra* note 40.

103. Wendell D. Cockshaw et al., *Depression and Belongingness in General and Workplace Contexts: A Cross-Lagged Longitudinal Investigation*, 33 *J. SOC. CLINICAL PSYCHOL.* 448, 448-462 (2014).

104. Deci & Ryan, *supra* note 71.

105. Deci & Ryan, *supra* note 52.

106. *Id.*

107. Hannah P. Klug & Gunter W. Maier, *Linking Goal Progress and Subjective Well-Being: A Meta-Analysis*, 16 *J. HAPPINESS STUD.* 37, 37-65 (2015); Andrew K. MacLeod et al., *Increasing Well-Being Through Teaching Goal-Setting and Planning Skills: Results of a Brief Intervention*, 9 *J. HAPPINESS STUD.* 185, 185-196 (2008); Patrizia Steca et al., *The Effects of Short-Term Personal Goals on Subjective Well-Being*, 17 *J. HAPPINESS STUD.* 1435, 1435-1450 (2016).

108. Pines & Keinan, *supra* note 30.

109. Teresa Amabile et al., *The HBR List: Breakthrough Ideas for 2010*, 88 *HARV. BUS. REV.* 44, 44-45 (2010); TERESA AMABILE & STEVEN KRAMER, *THE PROGRESS PRINCIPLE: USING SMALL WINS TO IGNITE JOY, ENGAGEMENT, AND CREATIVITY AT WORK* (Harvard Business Review Press 2011).

110. Laura A. King, *The Health Benefits of Writing About Life Goals*, 27 *PERS. SOC. PSYCHOL. BULL.* 798, 798-807 (2001).

111. Bailey et al., *supra* note 20.

112. Rosso et al., *supra* note 40.

“people who are committed to continuous learning are more likely to feel that their work is meaningful”

tinuous learning are more likely to feel that their work is meaningful.¹¹³ On the other hand, when work feels boring, routine, and lacking in challenge, meaningfulness can plummet.

This source of meaning can be difficult for judges, however, for whom there typically is no regular system

for structured development or feedback.¹¹⁴ Most state judicial education systems include mentoring programs,¹¹⁵ which potentially could be expanded to train mentors on basic coaching and feedback skills to further enhance a sense of growth and development. Judges also might monitor their own progress through daily reflection activities. Leadership scholars consistently recommend taking time daily for reflection to help identify what went well, what did not go as well, and what opportunities exist for learning and development.¹¹⁶

Beneficence-Enhancing Strategies. The three needs just discussed—autonomy, relatedness, and competence—are the foundational pillars upon which SDT has been built. But the theory might not be done developing yet. Existing research has established that beneficence, or the desire to have a positive impact on others, is another important pathway to well-being and meaningfulness,¹¹⁷ and that autonomously chosen benevolent acts generate these positive effects by satisfying SDT needs.¹¹⁸ Very recent research further indicates that beneficence may be so fundamental to human well-being as to qualify as a distinct, fourth need under SDT.¹¹⁹ However this academic question ultimately is resolved, the strong existing evidence justifies including beneficence as a crucial component of judicial well-being strategies.

Work, where we spend so much of our time and energy each

day, offers numerous opportunities for satisfying the beneficence need. Many of us have a strong desire for our work to make a positive difference in others' lives,¹²⁰ and the extent to which our work positively impacts others (whom we will call “beneficiaries” of work) or society more generally plays a vital role in work's meaningfulness.¹²¹ In fact, feeling that we are directly helping others or are contributing to the greater good has been found to be the biggest contributor to meaningfulness.¹²² On the flip side, the perceived absence of a positive impact can leave us at greater risk of burnout and reduced job satisfaction.¹²³

Cultivate Feelings of Positive Social Impact. Research identifies several strategies for reminding ourselves how our work positively contributes to others and the greater good. For example, a significant body of research reflects that coming face-to-face with living, breathing people who communicate with us about the positive impact of our work gives a powerful boost to engagement and meaningfulness.¹²⁴ In one study, a college scholarship recipient met with callers who solicited alumni donations. For only five minutes, the recipient talked about how the scholarship had made a difference in his life. One month after the visit, the callers showed average increases of 142% weekly time spent on the telephone and 171% in scholarship funds raised.¹²⁵ A control group who did not meet with a scholarship recipient showed no significant changes in performance.

We can get a boost of meaningfulness even if we don't have direct contact with beneficiaries.¹²⁶ For example, in another study of college fundraisers, their motivation and performance was positively affected by reading letters from scholarship recipients about how the scholarships had helped them.¹²⁷ In a study of pool-side lifeguards (who rarely perform rescues), their perceived social impact, social worth, work hours, and helping behaviors all increased after reading four stories about rescues performed by other lifeguards.¹²⁸

In another study, participants were asked to write about

113. Patricia Boverie et al., *Leading Individual Development and Organizational Change Around Learning, Meaning, and Nurturing Environment*, 15 *ADV. DEV. HUM. RESOURCES* 382, 382-400 (2013); Chalofsky & Cavallaro, *supra* note 63.

114. Celeste F. Bremer, *Reducing Judicial Stress Through Mentoring*, 87 *JUDICATURE* 244, 244 (2004).

115. *Id.*; Celeste F. Bremer, *Impact of a Mentoring Program on Occupational Stress, Personal Strain, and Coping Resources of Newly Appointed U.S. Magistrate Judges* (unpublished Doctoral dissertation, Drake University 2002) <https://escholarshare.drake.edu/handle/2092/457>.

116. E.g., Nancy J. Adler, *Want to Be an Outstanding Leader? Keep a Journal*, *HARV. BUS. REV.*, Jan. 13, 2016; Dan Ciampa, *The More Senior Your Job Title, the More You Need to Keep a Journal*, *HARV. BUS. REV.* (July 7, 2017).

117. E.g., Klein, *supra* note 99; Frank Martela & Richard M. Ryan, *Prosocial Behavior Increases Well-Being and Vitality Even Without Contact with the Beneficiary: Causal and Behavioral Evidence*, 40 *MOTIVATION & EMOTION* 351, 351-357 (2016); Martela & Ryan, *supra* note 44; Martela et al., *supra* note 46.

118. Martela & Ryan, *supra* note 117.

119. Martela & Ryan, *supra* note 44.

120. Grant, *supra* note 15.

121. Connolly, *supra* note 88; ADAM M. GRANT, *GIVE AND TAKE* (Penguin Books 2012).

122. Allan, *supra* note 17; Adam M. Grant, *The Significance of Task Significance: Job Performance Effects, Relational Mechanisms, and Boundary Conditions*, 93 *J. APPL. PSYCHOL.* 208, 208-124 (2008).

123. Adam M. Grant & Elizabeth M. Campbell, *Doing Good, Doing Harm, Being Well and Burning Out: The Interactions of Perceived Prosocial and Antisocial Impact in Service Work*, 80 *J. OCCUPATIONAL ORG. PSYCHOL.* 665, 665-91 (2007); Pines & Keinan, *supra* note 30.

124. Grant, *supra* note 15; Grant, *supra* note 122.

125. Adam M. Grant et al., *Impact and the Art of Motivation Maintenance: The Effects of Contact with Beneficiaries On Persistence Behavior*, 103 *ORG. BEHAV. HUM. DECISION PROC.* 53, 53-67 (2007); Adam M. Grant, *How Customers Can Rally Your Troops: End Users Can Energize Your Workforce Far Better Than Your Managers Can*, 89 *HARV. BUS. REV.* 97, 97-103 (2011).

126. Martela & Ryan, *supra* note 44.

127. Grant, *supra* note 122.

128. *Id.*

recent experiences in which they had benefited others.¹²⁹ Over the next few weeks, when participants came to pick up payments for participating in the study, they were invited to make a contribution to victims of a recent natural disaster. Participants who had written about giving to others were significantly more likely to donate compared to those who engaged in other writing activities. The findings suggested that the reflective writing exercise increased the salience of helping activities and participants' "giver" identities, which encouraged more giving.

Together, these findings suggest several strategies for judges to enhance their sense of social impact and meaningfulness. For example, judges might take time periodically to reflect on all the ways that they positively contribute to others and the greater good through their work. This can help boost their appreciation of meaningful experiences and interactions as they occur.¹³⁰ When judges overlook or discount the many ways that they may be benefiting others in the midst of their hectic schedules, they miss out on opportunities to boost the meaningfulness of their work and their own well-being.

The research above also reflects that having in-person encounters or reading vivid accounts of how beneficiaries have been positively impacted may boost meaningfulness. Business organizations have sought to take advantage of the positive consequences of this research in a variety of ways. For example, Medtronic has an annual custom of inviting patients to its holiday party to share stories about how the company's technology has helped them. At Wells Fargo, managers show bankers videos of people describing how low-interest loans rescued them from severe debt. Olive Garden shares letters from customers describing meaningful events celebrated at the company's restaurants.¹³¹

Carrying out this strategy can be tricky for judges, though—both in identifying the "beneficiaries" of judges' work (e.g., who is the positively impacted "beneficiary" when judges issue criminal sentences or resolve business-to-business civil disputes?) and how judges might appropriately connect with beneficiaries to learn how they were positively impacted.

Nonetheless, judges might think of innovative ways to adapt the above-mentioned strategies. Judges, courthouses, or judicial conferences could consider, for example, collecting vivid letters, creating videos (often done by public law centers

to encourage pro bono work), or organizing events that allow the court's beneficiaries to share their stories of how judges have made a positive difference in their lives. Doing so could provide a potent boost to judges' experience of meaningfulness as well as their well-being.

Increase Benevolence During Everyday Contacts with Beneficiaries.

Judges also could consider how to increase their benevolence during their daily interactions with people involved in the court system. As noted above, people who regularly engage in benevolent acts have greater need-satisfaction, well-being, and sense of meaningfulness.¹³² And by treating beneficiaries as valuable human beings, we perceive our work as more valuable and worthy, which, in turn, makes our work more meaningful.¹³³

Innovative strategies that hold potential for enhancing benevolence in the courthouse are recommended by the Comprehensive Law Movement. This growing movement advocates for a more humanistic approach to resolving legal disputes, including greater attention to psychological well-being of those involved in the legal process and treating everyone with respect and dignity.¹³⁴ This more humanistic approach may provide a better fit for judges and lawyers who are "desperate for work that matters, makes sense, makes a difference, is moral, is valuable and valued and produces sustainable outcomes."¹³⁵ In short, it may provide a strong sense of meaning and purpose.¹³⁶

Manage "Compassion Fatigue." In contrast to the emerging perspective of the Comprehensive Law Movement, a more traditional perspective casts judges as rationally administering the law in an emotionally detached, depersonalized manner.¹³⁷ Research reflects, however, that attempting to depersonalize others or suppress our emotions and natural empathetic response to others' distress can harm our own health,¹³⁸ and damage our ability to derive meaning from our work.¹³⁹

On the other hand, becoming too involved in others' suffering—called "empathetic distress"—can backfire and also lead to burnout.¹⁴⁰ Empathetic distress arises when we take on the suffering person's emotional state and personally experience

"people who regularly engage in benevolent acts have greater need-satisfaction, well-being, and sense of meaningfulness"

129. Adam M. Grant & Jane E. Dutton, *Beneficiary or Benefactor: The Effects of Reflecting About Receiving Versus Giving on Prosocial Behavior*, 23 *PSYCHOL. & SCI.* 1033, 1036 (2012).

130. *Id.*

131. Grant & Dutton, *supra* note 129.

132. Martela & Ryan, *supra* note 44.

133. Grant, *supra* note 15.

134. Daicoff, *supra* note 5, at 197-201.

135. Susan S. Daicoff, *The Future of the Legal Profession*, 37 *MONASH U. L. REV.* 7, 9 (2011).

136. Sullivan, *supra* note 6.

137. Thomas D. Barton, *Troublesome Connections: The Law and Post-Enlightenment Culture*, 47 *EMORY L. J.* 163 (1998).

138. Joshua D. Margolis & Andrew Molinsky, *Navigating the Bind of*

Necessary Evils Psychological Engagement and the Production of Interpersonally Sensitive Behavior, 51 *ACAD. MGMT. J.* 847, 847-872 (2008); Terry A. Maroney, *The Emotionally Intelligent Judge: A New (and Realistic) Ideal*, 49 *CT. REV.* 100, 100-113 (2013); Resnik et al., *supra* note 1.

139. Krasner et al., *supra* note 22.

140. OLGA KLIMECKI & TANIA SINGER, *EMPATHIC DISTRESS FATIGUE RATHER THAN COMPASSION FATIGUE? INTEGRATING FINDINGS FROM EMPATHY RESEARCH IN PSYCHOLOGY AND SOCIAL NEUROSCIENCE* 368-384 (Oxford University Press 2007); Jill Suttie, *Should We Train Doctors for Empathy?* University of California Berkeley (July 8, 2015) https://greatergood.berkeley.edu/article/item/should_we_train_doctors_for_empathy.

“It is important to distinguish between healthy compassion and unhealthy empathetic distress”

their distress. This unhealthy response can be distinguished from compassion, in which we feel concern for others’ suffering and a desire to help, but we do not personally take on their suffering.¹⁴¹

Judges may be especially susceptible to empathetic distress (sometimes called compassion fatigue or empathetic stress

fatigue¹⁴²), as there is no end to the streams of difficult cases and sad stories that come before them and only a limited ability for them to provide help. Additionally, judges often do not know the long-term impact of their decisions—and, in many cases, never see the people they have impacted again. As a result, some judges might come to see their work as futile—as meaningless. The result may be learned helplessness¹⁴³ or “compassion collapse” in which they turn off compassion (and turn up their risk of burnout) as a defense mechanism to avoid feeling overwhelmed by the sense that they are unable to make much of a difference.¹⁴⁴

To help judges avoid compassion collapse and maintain a sense of meaningfulness under such difficult circumstances, they should be encouraged to remain engaged in emotionally healthy ways. It is important to distinguish between healthy compassion and unhealthy empathetic distress. Compassion actually protects against burnout and depression¹⁴⁵ and potentially improves the quality of judgments.¹⁴⁶ Thus, the goal is not to shut off emotions but to channel them in a productive, healthy way. One strategy for judges to build this capacity is by adopting a mindfulness meditation practice. Mindfulness skills can enhance judges’ ability to accept experiences without judging them, help them avoid compassion collapse,¹⁴⁷ and enable them to continue to derive meaning from their work.¹⁴⁸

FOSTER A NEED-SUPPORTING WORKPLACE CULTURE THROUGH POSITIVE LEADERSHIP

Through their roles as leaders, judges can seek to build

work cultures that support SDT needs and foster meaningfulness. They can do so by applying all of the evidence-based strategies above in ways designed to positively impact colleagues and staff and also can experiment with the additional strategies below.

Become a Transformational Leader. Transformational leadership is a style of positive leadership that “is based on vision, trust-building, core values, continuous learning and long-term sustainability.”¹⁴⁹ These leaders are distinguished by their commitment to influencing followers to do great things by speaking to their own needs, values, and the greater good rather than appealing solely to self-interest through a simple transactional model of work for pay.¹⁵⁰

A major way that transformational leaders are effective is by cultivating an environment conducive to the satisfaction of SDT needs¹⁵¹ and the experience of meaningful work for others.¹⁵² They engage in inspirational behaviors, including articulating a compelling vision, expressing optimism about the future and capacity to achieve and succeed, bolstering collective identities, and affirming core values and ideals.¹⁵³ As a result of transformational leaders’ words and actions, people grow to view the organization’s core values as aligned with their own, which enhances self-congruence and makes work more meaningful.¹⁵⁴ By boosting people’s experience of meaningful work, transformational leaders help improve their psychological well-being¹⁵⁵ and engagement¹⁵⁶ and minimize depressive symptoms.¹⁵⁷

Shape the Experience of Meaningful Work for Others. One tool that transformational leaders use to make meaning more salient in followers’ every-day work lives is “framing”—which is simply a way of presenting information in ways that call attention to certain aspects of a situation and minimize others.¹⁵⁸ How we frame our world—and how it is framed for us—can have a very real impact on our emotions, motivation, and performance. Transformational leaders frame work in ways that call followers’ attention to its importance and value, including how it benefits others, contributes to the greater good, or aids their individual growth.¹⁵⁹

Other tools used by transformational leaders are charis-

141. Klimecki & Singer, *supra* note 140.

142. *Id.*

143. Grant, *supra* note 15.

144. C. Daryl Cameron, *How to Increase Your Compassion Bandwidth*, GREATER GOOD MAG. (January 16, 2013) https://greatergood.berkeley.edu/article/item/how_to_increase_your_compassion_bandwidth.

145. Suttie, *supra* note 140; David Turgoose & Lucy Maddox, *Predictors of Compassion Fatigue in Mental Health Professionals: A Narrative Review*, 23 TRAUMATOLOGY 172, 172-185 (2017).

146. Jill Suttie, *Do We Need More Empathetic Judges?* University of California Berkeley (June 22, 2016) https://greatergood.berkeley.edu/article/item/do_we_need_more_empathetic_judges.

147. Cameron, *supra* note 144.

148. Krasner et al., *supra* note 22.

149. Linda M. Sama & Victoria Shoaf, *Ethical Leadership for the Professions: Fostering a Moral Community*, 78 J. BUS. ETHICS 39, 39 (2007).

150. Grant, *supra* note 122.

151. Snjezana Kovjanic et al., *Transformational Leadership and Perfor-*

mance: An Experimental Investigation of the Mediating Effects of Basic Need Satisfaction and Work Engagement, 86 J. OCCUPATIONAL ORG. PSYCHOL. 543, 543-555 (2013).

152. Fred O. Walumbwa et al., *TRANSFORMATIONAL LEADERSHIP AND MEANINGFUL WORK; PURPOSE AND MEANING IN THE WORKPLACE* (American Psychological Association 2013).

153. *Id.*; Grant, *supra* note 122; Rosso et al., *supra* note 40.

154. Jaramillo et al., *supra* note 17.

155. Arnold et al., *supra* note 17.

156. Mohammed Y. Ghadi et al., *Transformational Leadership and Work Engagement*, 34 LEADERSHIP & ORG. DEV. J. 532, 532-550 (2013).

157. Kaisa Perko et al., *Transformational Leadership and Depressive Symptoms Among Employees: Mediating Factors*, 35 LEADERSHIP & ORG. DEV. J. 286, 286-304 (2014).

158. Dean J. Cleavenger & Timothy P. Munyon, *It’s How You Frame It: Transformational Leadership and the Meaning of Work*, 56 BUS. HORIZONS 351, 351-360 (2013).

159. Grant, *supra* note 122; Walumbwa et al., *supra* note 152.

matic forms of influence that rely on emotional appeal and symbolism¹⁶⁰—which may not come naturally to many judges who are more accustomed to rational arguments. As one state trial court judge recently put it, “Frankly, many court leaders are charismatically challenged.”¹⁶¹ Without expressive forms of communication and symbolism, however, meaningfulness can wane and life can become “an endless set of Wednesdays.”¹⁶² To boost emotional appeal, judicial leaders can consider a greater use of stories; conveying moral conviction; communicating high expectations and confidence that they can be met; using rhetorical devices (e.g., contrasts, lists, rhetorical questions); and non-verbal and verbal cues that convey enthusiasm and positivity.¹⁶³

Foster a Sense of Belonging. Transformational leaders also can use symbolic approaches to help satisfy followers’ basic need for belonging. We experience a sense of belonging when we are so personally involved in a system or social network that we feel that we are an integral part of it.¹⁶⁴ A sense of belonging can be fostered around any community in which people perceive some commonality with others.¹⁶⁵ For judges, this could include, for example, the judiciary generally, the community of judges within the same courthouse, our court system, all courthouse personnel, or the legal profession as a whole. Transformational leaders can help satisfy the need for belonging within a particular community by creating shared experiences through, for example, rituals and ceremonies to confirm values and provide opportunities for bonding, to celebrate occasions, to mark transitions, and to foster a sense of belonging to a valued community of practice.¹⁶⁶

Organize Judicial Round Tables. To foster a sense of community and meaningfulness, transformational leaders might also form or facilitate judicial mentoring circles or round table discussions at judicial conferences—a practice that already has been piloted.¹⁶⁷ These groups could adapt practices from the medical profession which, for years, has structured opportuni-

ties at the workplace or during conferences for doctors to meet in small groups to share stories about meaningful events.¹⁶⁸

Highlight Moral Exemplars. Another potential strategy for leaders to enrich interpersonal connections and enhance meaningfulness is to call attention to moral exemplars that inspire people to act more kindly and helpful to each other. One study found that “other-praising” positive emotions (elevation, gratitude, and admiration) all motivated people in prosocial ways.¹⁶⁹ They found that elevation motivated people to want to be kind or warm to others; gratitude made people want to connect with their benefactors or to “give back” more generally; and admiration had an energizing effect that made people want to work harder to reach their goals. Judges might consider public acknowledgment and story-telling about judges and other courthouse staff who have done admirable acts and about events that are elevating.

Be Sincere. For all of these strategies, it is important that judicial leaders be sincere. Transformational behaviors used by manipulative hypocrites can backfire,¹⁷⁰ decimating commitment and motivation and leaving corrosive cynicism in their place.¹⁷¹ Judges who aspire to be transformational leaders should take care to develop an authentic approach and to walk their talk consistently. In the rush of daily schedules, it is easy to focus on all of the annoyances demanding our attention—and, in the process, allow meaningfulness to dwindle.

CONCLUSION

Promoting well-being is an imperative for the legal profession generally and for judges in particular. As discussed above, aspects of judges’ work make them vulnerable to burnout, which can thwart their health, happiness, and professionalism. On the bright side, the large-scale study of more than 6,000

“Frankly, many court leaders are charismatically challenged”

160. John Atonakis et al., *Can Charisma Be Taught? Tests of Two Interventions*, 10 ACAD. MGMT. LEARNING & EDUC. 374, 374–396 (2011); Amir Erez et al., *Stirring the Hearts of Followers: Charismatic Leadership as the Transferal of Affect*, 93 J. APPL. PSYCHOL. 602, 602-615 (2008).

161. Burke, *supra* note 97.

162. LEE BOLMAN & TERRENCE E. DEAL, *REFRAMING ORGANIZATIONS: ARTISTRY, CHOICE, AND LEADERSHIP* 404-05 (John Wiley & Sons 2013).

163. Atonakis et al., *supra* note 160.

164. Bonnie M. K. Hagerty et al., *Sense of Belonging: A Vital Mental Health Concept*, 6 ARCHIVES PSYCHIATRIC NURSING, 172, 172–7 (1992); Leah Turner & Suzanne McLaren, *Social Support and Sense of Belonging as Protective Factors in the Rumination-Depressive Symptoms Relation Among Australian Women*, 51 WOMEN & HEALTH, 151, 151-167 (2011).

165. RUTH BLATT & CARL T. CAMDEN, *POSITIVE RELATIONSHIPS AND CULTIVATING COMMUNITY* 243-264 (J.E. Dutton & B.R. Ragins eds. 2007).

166. Bolman & Deal, *supra* note 162, at 308-09; Jeanne Nakamura & Mihaly Csikszentmihalyi, *THE CONSTRUCTION OF MEANING THROUGH VITAL ENGAGEMENT* 83-104 (American Psychological Association 2003); Aaron C. T. Smith & Bob Stewart, *Organizational Rituals: Features, Functions, and Mechanisms*, 13 INTL. J.

MGMT. REV. 113, 113–133 (2011).

167. Buchanan et al., *supra* note 1, at 23-24; Hon. Sallie Krauss et al., *Judicial Roundtables*, American Bar Association (Sept. 2011) https://www.americanbar.org/content/dam/aba/administrative/la_wyer_assistance/ls_colap_judicial_Roundtable_Protocols.authcheckdam.pdf.

168. THOMAS COLE & NATHAN CARLIN, *FACULTY HEALTH AND THE CRISIS OF MEANING: HUMANISTIC DIAGNOSIS AND TREATMENT* 147-156 (Humana Press 2009); Carol R. Horowitz et al., *What Do Doctors Find Meaningful About Their Work?*, 138 ANN. INTERNAL MED. 772, 772–775 (2003); Tait D. Shanafelt, *Enhancing Meaning in Work*, 302 JAMA 1338, 1338-1340 (2009); Colin P. West et al., *Intervention to Promote Physician Well-Being, Job Satisfaction, And Professionalism: A Randomized Clinical Trial*, 174 J. AMER. INTERN. MED. 527, 527–533 (2014).

169. Sara B. Algoed & Jonathan Hvidt, *Witnessing Excellence in Action: The “Other-Praising” Emotions and Elevation, Gratitude, and Admiration*, 4 J. POSITIVE PSYCHOL. 105, 105-27 (2009).

170. Bailey et al., *supra* note 15.

171. Sandra E. Cha & Amy C. Edmondson, *When Values Backfire: Leadership, Attribution, and Disenchantment in a Values-Driven Organization*, 17 LEADERSHIP Q. 57, 57-78.

lawyers referenced above found that, of all the categories of lawyers examined, judges had the highest life satisfaction, the highest ratio of positive to negative emotions, and the lowest level of depressive symptoms.¹⁷² These findings provide some evidence that, while judges face many obstacles to well-being, they also can feel optimistic that their jobs can support a happy, healthy life.

Judges may neglect their own health and happiness, however, viewing these topics as frivolous or as ancillary to the important and serious work that they do as judges. But judges' well-being is not only a personal matter. Indeed, "[g]iven the impact of judicial decisions on people's lives, courts have a duty to consider and promote judicial wellbeing."¹⁷³ They owe a responsibility not only to themselves to craft happy, satisfying lives but also to protect their professional competency and be their best at work. As the above reflects, multiple strategies are available for judges to do so. For many judges, the time is overdue to replace their old attachments to rigid self-reliance with the wisdom of well-being educator Eleanor Brown, who advised, "Self-care is not selfish. You cannot serve from an empty vessel."



Anne Brafford practiced law for nearly 20 years before returning to school to study thriving in the legal profession. Anne is a Ph.D. candidate in positive organizational psychology at Claremont Graduate University and previously earned a Master's of Applied Positive Psychology from University of Pennsylvania. She is the founder of Aspire, an educational and consulting firm for the legal profession, and is part of multiple national and local-level lawyer well-being initiatives.



Robert (Reb) Rebele is a Senior Research Fellow for the Wharton People Analytics initiative at the University of Pennsylvania and a Ph.D. candidate in psychology at the University of Melbourne. Reb earned his Master of Applied Positive Psychology degree from Penn in 2010 and has taught in that program for the past 8 years. His research, writing and consulting projects bring behavioral science and research into the world of work to drive better employee experiences and organizational outcomes.

172. Krieger & Sheldon, *supra* note 49.

173. Schrever, *supra* note 25, at 29.



EFFECTIVE ADJUDICATION OF DOMESTIC ABUSE CASES

The American Judges Association, with the assistance of Futures Without Violence, and the National Center for State Courts, is proud to provide this high quality, web-based, comprehensive domestic violence education for judges. Using adult-learning instruction tools and interactive exercises, separate training modules on key issues allow new and experienced judges to learn at their own pace from leading national experts they might not otherwise have the time, opportunity or funding to see. The AJA offers this timely, engaging and convenient resource at no cost to judges who want to apply this state of the art learning to make our communities safer.

Visit <http://education.amjudges.org> to learn more.



JUSTICE[®] SYSTEMS

Powerful ♦ Innovative ♦ User-Friendly



- FullCourt *Enterprise*[®]
Court Case Management
- E-Payments
- E-Filing
- Document Imaging
- Integration
- Automation
- Implementation, Training, and Support

The Right Solution for the Justice System
Call 505-883-3987 or Visit www.justicesystems.com

One Judge's Journey to Why — A Search for Meaning and Purpose

David Prince

The week had been one of those that make you question your choices in life. Monday, as always, started with my criminal docket. It was probably my attitude, but working through the 80 cases, one after another, had an impersonal, assembly-line feel to it. The day had started poorly with the People seeking to dismiss one case due to the defendant's death—one of our more promising probationers. She had one of those rare personalities that shined through her orange scrubs and silvery shackles at the podium. Though she recited the clichés of change learned in countless hours of mandated therapy, she gave you the impression she could make it. Unfortunately, this time her demon was heroin and the dose was too high. The start to this day drew me back to an all-too-familiar ground, wondering why I do this, what the point is. . .

I went through the rest of docket mechanically, guarding my reserves as much as possible. But then came one of my self-representeds late in the day. Usually intelligent, insightful, and engaging (if also aggravating), he had gotten it into his head on this day that he needed to speak his own version of legal latin while in the courtroom. I could not coast through that one and mustered what procedural fairness skills I could, struggling to decipher what he was trying to communicate and make him feel heard. After my third, "I'm sorry Mr. Jensen, I'm just not following you," he growled in exasperation "officio juris ignorante." Despite my mood, this had me fighting to control a smile. I acknowledged that I had understood him this time and that he may well be right.

So that was the highlight of my day, summoning my most empathetic self available only to get, in return, "juris ignorante." And, worse, I agreed that I probably deserved it. The week went downhill from there and, by the end, I was fighting to tamp down those darker feelings of regret, frustration, and purposelessness.

Conveniently, I had a little escapist busman's holiday right around the corner. I was headed half way around the world to do some sightseeing and give some lectures. My host was David Mundy, a law professor in South Korea and point person for a UNICEF program to promote the rule of law in developing nations. That Saturday, I found myself boarding a plane for a 27-hour trip. As I put my bags on the scales, I tried to shed the buildup of detritus from, as the old courthouse joke goes, watching good people at their worst. Instead, I looked forward to marveling at humanity's potential reflected in the stone temples known collectively as Angkor Wat near Siem Reap, Cambodia.

Without telling me, Prof. Mundy had wisely arranged the schedule to build toward our work. We began with sightseeing

that gave me time for decompression and emersion in Cambodia's culture. Without telling me, he had also planned a catalyst for reflection and growth as he put me to work.

We spent the first days traipsing around the temples, roadside butterfly farms, and rice paddies by open air tuk-tuk. We were awed by millennia old temples with their intricately detailed stone carvings and friezes telling ancient tales of gods, demons, and humanity. The lines and louvres of French colonial era buildings helped bridge the ages while meals of traditional Khmer ("Keh-my") dishes revived our weary bodies. The towering carved faces of benevolence at temple Bayon were the epitome of serenity and completed my decompression.

As we finished a sumptuous breakfast on the third day, Prof. Mundy surprised me. "I won't be with you this morning but I set up a driver for you. He'll take care of you." I walked outside and Narith came into my life.

He stood about 5'4" and square shouldered with a wiry athletic build. He had a weathered and expressionless face with a blank cast to his right eye. He gave off a less-than-friendly vibe. He motioned me into the back of his tuk tuk, tugged on his helmet, and climbed aboard the front motorcycle. He twisted half around toward me, tossed back a heavily accented "war museum" at me, nodded, and gunned the spluttery little motor of the tuk tuk.

Seeking peace of mind, I was none too enthusiastic about visiting a "war museum," but I could see no easy way to bridge the gaps of noise, and language between me and my driver. I had also placed myself so completely in Prof. Mundy's hands that I had no idea where else I could direct him to take me. So, I settled back into the warn vinyl seat of the tuk tuk to see what the morning would bring.

We drove on the rough local roads to the outskirts of Siem Reap and found ourselves on a narrow, hard-as-rock dirt track bordered by moldy cement walls that formed a kind of splotchy grey and white canyon eight feet high. We saw no other people or traffic for the last half mile. The wall on the left suddenly ended and we pulled into an empty dirt parking lot under some trees. There sat a modest cement-and-mold structure with a coarsely tiled roof somewhat like a weathered picnic pavilion at a state park back home.

Here beyond the city's confines, the area was dead silent except for the periodic buzzing of insects. The morning was still young and the museum did not appear to be open yet. At 80 degrees, this was the cool of the day. While the air was heavy with humidity, the sour smells of the decaying rain forest that dominated yesterday's temple marches were just a light

The events in this essay are true. However, some timelines, individuals, and facts have been consolidated and changed to protect individ-

uals who face risks each day due to their work to promote the rule of law.

background to the more pleasant aromas of turned soil, cut wood, and blooming flowers.

It didn't look like a museum. The entryway structure by the shed—and the trees beyond—suggested more the start of a forest hiking trail in Washington State than a museum. However, there was a large hand-painted and weathered sign that said “War Museum” and, underneath it, a tank, fighter jet, artillery piece, and other weapons were splayed. My driver motioned me to go in while he started rummaging under the tuk tuk's seat.

I walked past the rusting rocket-propelled grenade that was mounted on a post and had “entrance” crudely painted on it. I went with some trepidation, not sure in the silence if I was really supposed to be there. Once in, it gave the impression of some militaristic botanic garden. Portions of the greenery were carefully manicured, and crushed stone pathways wove through the features. Those features, instead of being exotic plants, were battlefield debris. No pristine Smithsonian restorations here. Each rusting hulk appeared as it must have been found, long after battle and cannibalization. There were a handful of skeletal tanks, helicopters, artillery, and other devices of war. There were also several crude and moldering lean-to sheds forming the edges of the grounds.

Soon after I walked in, I was joined by a Khmer sporting a broad smile. In very passable English, he introduced himself as my free guide; a common feature of area attractions other than the temples is a personal guide that joins you upon entering, working for tips alone. My driver, Narith, appeared suddenly as if springing from the foliage. He stepped toward my friendly new guide firing staccato Khmer at him. After some initial sharp noises from the guide, he visibly shrank under Narith's hardening onslaught before leaving quickly. I took this exchange to be capitalistic combat over the tourist dollar and was mildly amused. Then I realized this exchange would compel Narith to give me the full tour treatment to justify chasing off the guide. I could not refuse under the circumstances. My already bleak outlook for this particular excursion and hopes for an early exit were dampening quickly.

I spoke no Khmer and Narith's English was shrouded in the strongest accent I had yet heard. He began his explanations as I fell in behind him on the pathway. He spoke in a low voice that compounded the difficulties of understanding. Picking up only about one in ten words, I soon abandoned the chore of trying to decipher the rest. I began to tune Narith out and focus on the broken English of the little placards scattered through the warfare garden. In hindsight, I can recall the frequent pauses when Narith awaited a response from me on some question. He was trying diligently to reach me but without success. Narith persisted, though, and today I am glad he did.

As we walked, I called up my knowledge of Cambodia's modern history and found it sadly limited. I had taken a class in college on the Vietnam War in which a single lecture covered the rise of the Khmer Rouge and the short, genocidal existence of Democratic Kampuchea. I had also seen the movie *The Killing Fields* a couple of decades ago. I thought of this history as regrettable but distant and disconnected from me like World War II. However, as we walked, Narith's broken lectures began to draw me in. I also found that the more I genuinely tried to

hear him, the easier his words became for me to understand. I learned that the fall of the Khmer Rouge regime at the end of the 1970s marked only the start of a new phase of the Cambodian civil war. The war would rage on until the late 1990s, as would the infamous Pol Pot. The ancient temples I had been visiting were still a heavily mined part of the battlefield and inaccessible to visitors well past 1990, when I had graduated law school.

A realization began to dawn on me: Narith was nearly as old as I and must have some direct experience with the “history” he was sharing with me. So I began to ask questions, but not about the displays.

“Yes, born here” with outstretched arms. We were in the regional capital, Siem Reap. “Family fled Khmer Rouge. ... Refugee camps cross border, Thailand. ... Father, army, die. ... Mother, me could not.”

When the Khmer Rouge cadres arrived, they evacuated the cities. Siem Reap had a population of about 200,000 people. Like all other Cambodia cities, Siem Reap was depopulated practically overnight. Five-year-old Narith and his mother were caught up in that evacuation. They were given notice of mere minutes and told to leave everything behind. In the chaotic rush, they were separated from the rest of their family. But, somehow Narith and his mother managed to stay together—at first.

“We were put in the fields. They call us ‘new people,’ very bad to be new people.”

A short time later, the cadres would separate Narith from his mother and raise him communally as a matter of policy to limit the “corrupting influence of parents.” He stayed in those fields under the Khmer Rouge for many years. He received no schooling other than periodic ideological indoctrination. I asked him what those times were like.

“Much work, little food.” He repeated these words a couple of times and, about those years under the Khmer Rouge cadres, he would say no more.

As I thought about how close we were in age, his experiences became more real and disturbing. About the age I was when I got my first job as a busboy, Narith was taken into the Cambodian army. As a young teen he was eventually assigned to a landmine unit. The landmine became the weapon of choice for both sides in the Cambodian civil war and they blanketed the countryside. He told me the average life span (by this, he meant until killed or maimed) in the section laying land mines was three months. The average life span in the section clearing mines was three days.

We walked over to one of the lean-to display sheds and he picked up one of the many, many samples of different types of landmines used in Cambodia and we sat down on a log bench. “This the kind got me.”

He rolled up his pant leg and knocked on his hardened calf. This took me completely by surprise; I had not realized he had any injuries, much less a missing leg. I numbly mimicked him and knocked on his leg as well—disbelieving what I had just done and withdrawing my hand in deep embarrassment.

Narith went on to provide more detail about the various displays but I was uncomfortably adrift by this point. When we

**“Much work,
little food”**

“I began to feel like Scrooge anticipating the arrival of the third ghost”

finished and returned to the tuk tuk, I stopped Narith from tugging on his helmet and motioned him to sit across from me in the back of the tuk tuk. A glimmer of suspicion was beginning to take hold that Prof. Mundy had not paired me with a random driver this morning.

“Narith, what did you do after the army?”

He told me of the international group (known as NGOs) that did the surgeries on his leg and supplied him with his prosthetic leg. He told me of the schooling the NGOs helped him get and how, after the war, he was able to join one of the first schools for lawyers. He trained to be a judge. He explained how happy he was when he managed to get assigned to his ancestral village outside Siem Reap. As refugees had been returning to the area, he hoped to find or learn the fate of his family.

I had learned enough about post-war Cambodia to know that bribery and corruption are rampant. Narith’s path would have required significant influence, financial or otherwise, to achieve. I also knew that judges are not paid a living wage and that driving a taxi or tuk tuk is a common sideline for the village judge. Part of Prof. Mundy’s planning began to dawn on me.

“Narith, are you a judge?”

“No,... no more.”

Private ownership of land is a relatively new phenomenon in Cambodia. A judge must approve any transfer of land to private hands. About two years ago, the leading family in the area brought a transfer of land to Judge Narith for approval. The transfer was corrupt and Judge Narith refused to approve it. The leader of the family, a former Khmer Rouge cadre, ordered this obstacle removed. In his part-time job as a taxi driver, Narith picked up three men the next week. Once Narith had taken them down a remote road, they jumped Narith and beat him savagely. He recalls that they took particular delight in clubbing him with his own prosthetic leg. They began to focus on his head, caving in his skull. They drove off in his taxi leaving him on the roadside to die. Narith awoke days later in an international hospital in Siem Reap with no idea how he got there.

No investigation was made. No person was prosecuted and no outrage, or even concern, was expressed. The national government declared Narith to be brain damaged after the “accident.” He was involuntarily retired from the bench with no benefits.

I sat back numbly trying to process all I had heard this morning. Narith matter-of-factly mounted the front motor bike again, twisted half around, and announced that we would now visit the stupa at Wat Thmei. I knew that a “Wat” could be the equivalent of a massive cathedral or a simple neighborhood church. I had no idea what a stupa was or why we were going. But this time when we set out, I had a different kind of reluctance. I fully trusted that if Narith were taking me there, it would be worthwhile. I also worried it may be too worthwhile. I began to feel like Scrooge anticipating the arrival of the third ghost.

We drove back into the city and arrived at the typical walled

grounds of an operating, modern Buddhist temple. This was Wat Thmei. Narith motioned me to go in. But this time it was clear he would stay with the tuk tuk and I would have to undertake this part of the journey on my own.

While surrounded by a bustling city, the spacious grounds inside the walls were deserted. I saw first the wat, the temple—beautiful but much like dozens of others I had seen. Then I saw the reason for the visit. The memorial is crudely assembled on the edge of the central plaza. There are two peeling sign boards with faded photographs under glass, looking much like an outdoor notice board. Next to that is a large kiosk, the stupa, more than a dozen feet tall with four or five foot wide side walls made of clear panels of glass.

The stupa is filled to a height of about ten feet with human bones. On one side are the long bones of the body from legs and arms. They are stacked neatly in alternating patterns to give the stack structural integrity as you might stack sticks of wood. On another side, a wall of skulls—mostly intact but with jagged gaps from the final killing blow—all facing you. After several minutes of staring at them, I found myself counting each inhabitant of the orderly rows. I counted 84 full skulls, but I wouldn’t swear to my accuracy.

Eventually, I made it to another side that was comprised of hip and jaw bones. I found the jaw bones particularly disturbing for some reason. I can’t think why—maybe because I had a toothache that would bloom to require a root canal on my return—but they seemed to be the most real, the most tangible, the most *alive*. I stood for a long time gazing at those jaw bones, bewildered by thoughts and emotions sparked by my time with Narith and thoughts of his family’s experiences. Foolishly, I wondered if any of Narith’s family happened to be among these bones chosen for display in the memorial and then I felt a tug on my hand. I looked down and watched as an orange robed monk lifted my hand and tied a braided red bit of string around my wrist. When he finished, he looked up into my face. I realized I was smothering in the weight of the sadness this place represented. After a long moment, he patted my hand and turned away, as silently as he had come.

Since then, I have asked several people about the meaning of the braided string. Some call it a “baci” and I was given many explanations ranging from a memorial or good luck talisman to a gimmick for tips. Given our times and profession, I prefer the explanation from a Reiki Master that it is a reminder to the wearer to show compassion to all.

Since my return, I have read obsessively about the Cambodian civil war. The reign of the Khmer Rouge killed one quarter of the population—that would be more than 60,000 people in my home town. The cadres killed anyone they deemed a threat to their radical ruralization plans—anyone with education, with authority in the old regime, who had been a factory worker, or who lacked the calloused hands of a farm laborer. The Khmer Rouge cadres were disastrously incompetent at all but destruction and killing. Nonetheless, Pol Pot managed to destroy the old society more completely and control the people more absolutely than any other modern revolutionary. Most of the survivors existed for years in near starvation and a state of stupor. People had no homes, no stores, no courts, no banks, no private possessions, no currency, no cars, no bicycles, not even their own hand tools.

After Siem Reap, I rejoined my host and we went to Phnom Penh to meet with members of Cambodia’s legal community. The people I met frequently told me a version of a central story. While the specific numbers changed, the thrust of the story remained the same: When Democratic Kampuchea was toppled, among the 6 million or so survivors, only 8 people with legal training remained alive in the entire country. In my modest community of a quarter million people in Colorado, we have about 50 judges alone and well over 1,000 lawyers—all would have been tortured and executed by the cadres in Democratic Kampuchea. While many people were killed for revenge, disobedience, or control, the Khmer Rouge particularly targeted lawyers, judges, and teachers because of the unique threats they posed. These groups shepherded a core dedication to ideals of fairness, the rule of law, and the potential of the individual. Worse, they had the abilities to infect others with these ideas and the latent skills to realize upon those ideas.

One can debate at length the cultural characteristics and specific triggers of the unique horrors of Cambodia’s modern history. But most societal breakdowns have a common foundation. When a critical mass of the population believe that they have no voice, that the society is fundamentally unfair operating at the whim of an insider elite rather than governed by accepted norms, and that they are being hurt as a result, an ugly backlash is likely. Pol Pot had no particular leadership gifts, was not uniquely charismatic, and had no compelling philosophy. What he had was the pain, disillusionment, and anger created by a system so unfair that it molded people into the raw material for his cadres that would practice nightmarish inhumanities at his direction.

As frightening as the stories from Narith were, our final conversation was more chilling. We talked of his world today. With furtive glances around us to ensure we were not overheard, he spoke with acidic bitterness of unfairness and the dominance of a disconnected, self-dealing, and uncaring elite. While he still saw his life as better than in the days of the killing fields, he likened it to the conditions that bred the overthrow of the old regime. In the harshness of his description of his family’s treatment today, it took little imagination to see the cold, hardened edge of a potential cadre forming anew.

Years ago, a mentor of mine told me that every person you meet in life has a lesson to teach you. “Your job is to learn it.” On my long return flight, I pondered the lessons Narith had to teach me. At its core, I think Narith’s lesson is the thread of our “why.” We in the judiciary are the gritty smithy in which the elegant theories called “rule of law” are wrought and merged into reality before daily break testing.

To function, a society must have a fair and *trusted* system for resolving disputes ranging from the most picayune of daily life to the most momentous. Without palpably fair rule of law in the resolution of those disputes, resentment, bitterness, and vendettas ultimately break a society down to the rule of tooth and claw that will quickly fill a stupa with bones. A civilized society’s very existence, with all the human potential it unlocks, turns not only on the quality of our work but, critically, also on the perception of the quality of that work. That’s the thread of our why.

I was full of good intentions on my return to work. But, as

I shouldered global jet lag to face a Monday morning criminal docket swollen by my absence, I found enthusiasm for time-consuming and personally draining “procedural fairness” ideas flagging. One of the first cases I called was a sentencing for a mature frequent flier in the system. I did not give him the sentence he wanted. As it was the start of the day, I still had the energy to explain my reasons as well as acknowledge his disappointment. As he shuffled over toward the other in-custodies, his body language became more agitated and I was suspecting my procedural fairness efforts likely accomplished nothing more than an increase in his anger. I had already announced the next case when he turned and announced loudly to me that he had something to say.

If you have experience in the criminal courts, you know how dicey a moment like this is. We had a courtroom overflowing with people and tension as well as a dozen people in custody and only two, already occupied, deputies to handle them. Every trial judge fears letting off the spark that will ignite the courtroom into a scene from the Jerry Springer show with chairs flying. I was about to cut off my defendant when I looked down at the card on my bench with the four pillars of procedural fairness on it: Voice, Neutrality, Respect, Trustworthy. To this old card I had just appended a new red braided string.

So I took a deep breath and said, “Mr. Jones, please go ahead.” What followed was truly unexpected. Mr. Jones launched into several minutes of high praise for the court that had just given him that disappointing sentence. He turned and addressed the other in-custodies, telling them how he had been in many courts and how different this one was. He said that here, he had always been called by name, had always been listened to, had had his questions answered, had always felt taken seriously, had always been treated fairly, and had always felt respected. For one of the few times in my life, I was left speechless.

I do not share this anecdote to brag for, in candor, I recognize the examples he gave as coming from mentors much wiser than me. But I share this as a reminder that what you do with every person in your courtroom and how you treat that person has a lasting impact. Most of us will likely never get a glimpse of that impact and we can easily doubt its existence. Each person that leaves your courtroom, whether participant or observer, leaves after an intimate experience with our rule of law. With each case you handle thoughtfully and fairly, you tip the scales a little more in favor of rule of law and the flourishing of human potential it permits. You also add one more pebble to the wall that holds back the creation in your community of that stupa filled with bones. Whether you are lucky enough to have a Narith or voluble Mr. Jones cross your path to point it out to you, what you do every day is important—even crucial.

In eighth-grade social studies, Mr. Keach would give us extra credit for watching Frank Capra’s *Why We Fight* films from World War II after school. The films explored not only the history that led to our involvement in the war, they tackled

“among the 6 million or so survivors, only 8 people with legal training remained in the entire country”

an express discussion of the core principles that compelled us to make personal sacrifices for the aid of others—the principles that we like to think make us who we are. In Cambodia, every member of the rebuilding legal profession told me that same story about lawyer genocide. I tend to think that was their version of *Why We Fight*, and they carry it with them every day.

I often wonder why we in the judiciary in this country so rarely take the time to consider why we do what we do, why we took those pay, prestige, and career-potential cuts. Just like everybody else, periodically we need to recharge, reenergize, and rededicate ourselves to our mission. As Anne Bradford and Rob Rebele explain in this issue, finding meaning and purpose in one's work has a host of benefits. I am lucky. After my visits with Narith and Mr. Jones, I carry my own *Why We Fight* film reel around in my head. All I have to do is glance down on my bench and look at a small braided red string to reconnect with my why. I urge you: Take some time to reconnect with *your* why, and you will find yourself healthier and happier for the effort. Then, take a moment to help one of your colleagues do the same. The civil in our society will be a good measure stronger for it.



In addition to being a trial judge in Colorado Springs, Colorado, David Prince serves as a co-editor of *Court Review* and is a member of faculty for the National Judicial College teaching primarily judicial leadership and management skills, as well as case management. David helped found an award-winning civics education program called *Judicially Speaking* and is a frequent writer and speaker on issues of interest to the judiciary. Relevant to this essay, Judge Prince teaches rule-of-law programs in developing nations of Southeast Asia through UNESCO.



MAKING BETTER JUDGES™



THROUGH THE PRESENTATION OF WHITE PAPERS
ADDRESSING KEY ISSUES OF INTEREST TO JUDGES



***Procedural Fairness:
A Key Ingredient in
Public Satisfaction***

Approved by the AJA 2007
<http://goo.gl/afCYT>



***The Debate over
the Selection and
Retention of Judges:
How Judges Can
Ride the Wave***

Approved by the AJA 2011
<http://goo.gl/981GN>



***Minding the Court:
Enhancing the
Decision-Making
Process***

Approved by the AJA 2012
<http://goo.gl/RrFw8Y>



***The Judge Is
the Key Component:
The Importance of
Procedural Fairness
in Drug-Treatment
Courts***

Approved by the AJA 2015
<http://goo.gl/XA75N3>

AMERICAN JUDGES ASSOCIATION FUTURE CONFERENCES

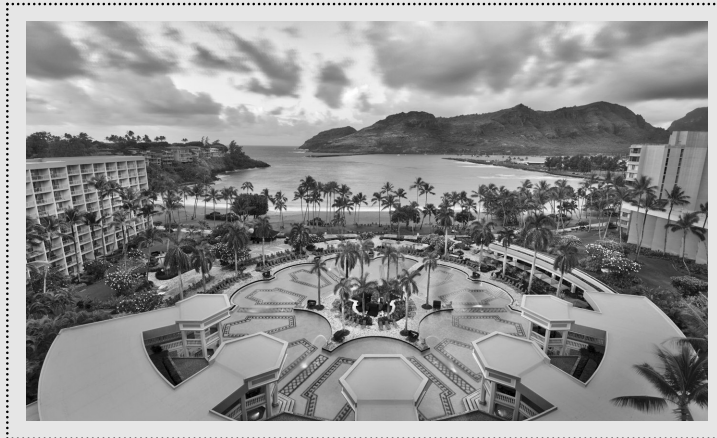
AMERICAN JUDGES ASSOCIATION 2018 ANNUAL CONFERENCE

LIHUE, HAWAII (ISLAND OF KAUAI)

Kauai Marriot Resort

September 23-28

\$219 single/double



AMERICAN JUDGES ASSOCIATION 2019 MIDYEAR MEETING

SAVANNAH, GEORGIA

Savannah Marriot Riverfront

April 11-13

\$189 single/double



THE AJA ANNUAL CONFERENCE: THE BEST JUDICIAL EDUCATION AVAILABLE ANYWHERE
For more information, go to <http://amjudges.org/conferences>.

Mindfulness Training for Judges: Mind Wandering and the Development of Cognitive Resilience

Scott L. Rogers, Chris McAliley & Amishi P. Jha

The benefits of mindfulness practices for lawyers have been the subject of broad discussion within the profession for a number of years. Increasingly, this discussion has expanded to include judges and the work of the judiciary. In this article we explore more deeply the relevance of mindfulness to judges, and in particular, how it can support their resilience, health, and well-being, as well as their cognitive functioning.

We hope to educate and support judges who would like to gain greater mastery over their cognitive capacity and emotional well-being. Recognizing that the full breadth of this subject is beyond an article of this length, we focus on a primary vulnerability to which we are all susceptible but which can be especially consequential for judges in their high-stakes world of decision making: mind wandering. We consider some ways this vulnerability may limit judges' performance and well-being and review a growing body of scientific research, which examines the benefits of mindfulness training to mitigate this vulnerability by helping to bolster attention and working memory capacity. We then offer simple mindfulness practices, which have been found to be useful in developing attention and working memory capacity, which we term "skills" as they may be developed through ongoing mindfulness practice.

A BRIEF HISTORY OF MINDFULNESS AND THE JUDICIARY

In 1987, Jon Kabat-Zinn, founder of the highly regarded mindfulness-training program known as Mindfulness-Based Stress Reduction (MBSR), taught an eight-week MBSR course to a group of trial judges from Western Massachusetts.¹ This may mark the first time mindfulness was offered specifically for members of the legal profession. That training focused on offering mindfulness-based tools for managing job stress. The program was well received and several judges who participated were inspired to write a book on judicial wellness.²

Notwithstanding this early introduction of mindfulness to judges, it took some twenty years for mindfulness training to more robustly emerge on the judicial scene. Meanwhile, some

judges took an early lead. In the 1990s, Ronald Greenberg, sitting on the Superior Court of California, penned a piece for the *New York Times* on the value of meditation for judges, and in 2002, law professor Evan Seamone wrote "Judicial Mindfulness" for the *University of Cincinnati Law Review*.³ In time, Alan Gold, a federal district court judge, Judge Greenberg, Thelton Henderson, a federal district court judge, Donn Kessler, an Arizona appellate court judge, and Michael Zimmerman, a former Utah Supreme Court Justice, began speaking about mindfulness with members of the legal profession, including judges, law faculty, and lawyers.⁴ Since 2015, Judge Carroll Kelly, administrative judge of the Domestic Violence Division of the Miami-Dade County Courts, has been coordinating programming and introducing mindfulness to judges.

In 2011, Judge Gold began writing and talking about the value of mindfulness to judges and lawyers, especially as it relates to their health and enhancing greater civility in the legal profession.⁵ Gold, inspired by the Ninth Circuit's focus on health and wellness,⁶ discussed the importance of mindfulness with Joel Dubina, then chief judge of the Eleventh Circuit Court of Appeals, who in 2013 included mindfulness training at that Circuit Court's annual judicial conference. Since then, mindfulness trainings have become a staple of many federal Circuits' annual conferences, including the First, Sixth, Ninth, and Tenth. The same has been true for bankruptcy court and federal district court judicial conferences, as well as those of many state and local courts. Notably, the National Judicial College regularly offers mindfulness training programs for judges, including its annual four-day "Mindfulness for Judges" program.⁷

Mindfulness became more firmly rooted in the judiciary in 2011 when federal judge Jeremy Fogel became the director of the Federal Judicial Center and facilitated the inclusion of mindfulness in many judicial programs, including some of those already mentioned. In 2016, he penned a flagship article, "Mindfulness and Judging," that thoughtfully sets forth the importance of mindfulness to the work of judges,⁸ which gar-

Footnotes

1. S. Rogers, *Mindfulness in Law*, in THE WILEY-BLACKWELL HANDBOOK OF MINDFULNESS 487 (Amanda Le et al. eds., 2014); L. KABAT-ZINN, COMING TO OUR SENSES (Hyperion ed., 2006).
2. JUDICIAL WELLNESS: A STRESS MANAGEMENT GUIDE FOR AND BY JUDGES (National Judicial College eds., 2d ed. 1996).
3. E. Seamone, *Judicial Mindfulness*, 70 U. CIN. L. REV. 1023 (2002).
4. S. Rogers, *Mindfulness in Law*, in THE WILEY-BLACKWELL HANDBOOK OF MINDFULNESS 487 (Amanda Le et al. eds., 2014); Many of these events were in conjunction with the Center for Contemplative Mind in Society and the Florida and Arizona state bar associations.
5. A. Gold, *Mindfulness: A Challenge for our Times*, DADE COUNTY BAR ASS'N. BULL., May 2012.
6. Ninth Circuit Wellness Committee, *A Wellful Guide for Judges of the Ninth Circuit Courts*, https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_2015_Wellness_Guide.authcheckdam.pdf.
7. *Mindfulness for Judges*, <http://www.judges.org/mindfulness-for-judges/> (last visited June 16, 2017).
8. J. Fogel, *Mindfulness and Judging*, Federal Judicial Center (2016), <https://www.fjc.gov/sites/default/files/2016/Mindfulness%20and%20Judging.pdf>.

nered the attention of the *Wall Street Journal's* Law Blog.⁹ Other articles on mindfulness have appeared from time to time that were directed to judges,¹⁰ including those written by judges who practice mindfulness.¹¹ A complete treatment of the history and present-day state of mindfulness training for judges is beyond the scope of this article. Rather, we set forth these instances to offer a general sense of the judiciary's accelerating engagement in the subject.

Some judges who have been introduced to mindfulness training have returned to their courts wanting to share that information with their colleagues and court staff. Federal district court judge Casey Rogers, for example, participated in a mindfulness training at the 2013 Eleventh Circuit conference and thereafter initiated similar training for judges and court staff at the Northern District of Florida's biannual retreat and for the chapter of the American Inns of Court in that district. Judge Laurel Isacoff, a bankruptcy court judge, has collaborated on mindfulness presentations at national bankruptcy court conferences and coordinated a mindfulness workshop for members of her court. Judges engaged in the practice of mindfulness have also pondered ways to bring its benefits into the courtroom. Some judges who practice mindfulness aspire to model some of its benefits and to help foster a more "compassionate courtroom."¹² Judges have reported practicing mindfulness before entering the courtroom, during recess, and even, as is discussed below, while on the bench.

On at least one occasion, a judge expressly introduced mindfulness into the courtroom in a legal context. In 1987 while presiding over the high-stakes prosecution of Amy Carter and Abbe Hoffman, Judge Richard Connon, who had been among the group of judges trained by Kabat-Zinn in 1987, included a mindfulness instruction in the jury charge:¹³

*It is important that you understand the elements of the case. It is also important that you pay attention with the terminology that I became aware of some time ago of mindful meditation. Mindful meditation is a process by which you pay attention from moment to moment.*¹⁴

THE IMPORTANCE OF CLARITY TO JUDICIAL DECISION MAKING

People long for clarity, clarity of thought and emotion. This is certainly true for judges. They are charged with discerning what happened (the facts) and what the law says about what happened. Almost by definition, lawsuits arise when the facts, the law, or both are unclear. Judges search for clarity in the

midst of conflict between litigants and lawyers, as well as contradictory and emotionally charged evidence. This search is a cognitive, analytical process; one that requires an ordered review and sorting of the facts and the law, with great attention to detail. But it can call on more than the intellect. Often judges must check with their gut. What is fair? Who should be believed? Do the circumstances call for mercy or punishment?

Judges are, of course, human and their search for clarity can be clouded by their own emotional responses to disturbing evidence or behavior, frustration with lawyers, feelings of stress, and being overwhelmed with their workload and deadlines. And, like everyone else, emotions from judges' personal lives can follow them to work. Physical limitations and discomforts can further draw attention away from the tasks at hand.

A mindful state can be understood as "a mental mode characterized by attention to present moment experience without conceptual elaboration or emotional reactivity."¹⁵ Conceptual elaboration refers to the unbidden internal narrative that often accompanies an experience. If, for example, an attorney's closing argument made reference to a scene in *To Kill a Mockingbird*, a listener might have any number of gratuitous thoughts, such as "you've got to be kidding me," or "this guy wishes he was Gregory Peck," or "I've been meaning to read *Go Set a Watchman*." Mind wandering like this distracts the listener from the intended focus and is rarely helpful. Moreover, these gratuitous thoughts can carry an emotional charge. For example, a flash of memory from an inspiring scene of the movie could cause a spontaneous elevation of mood, or negative judgments of a litigant could lead to feelings of aversion toward them.

The mindfulness practices discussed below are intended to enhance the ability to sustain one's focus on the task-at-hand and be less likely to carry on an internal dialogue or become immersed in a charged emotional state, borne by a wandering mind. By "slowing down one's mental processes enough to allow one to notice as much as possible about a given moment or situation, and then to act thoughtfully based on what one has noticed,"¹⁶ emotional tugs and impulses are recognized as such and are less likely to lead to biased and unwarranted assumptions and decisions. As the mindfulness teacher and

"Judges search for clarity in the midst of conflict . . . and emotionally charged evidence"

9. J. Gershman, *Federal Judge Preaches the Value of Mindfulness*, WALL ST. J. (Mar. 23, 2016), <https://blogs.wsj.com/law/2016/03/23/federal-judge-preaches-the-value-of-mindfulness/>.
10. APA Judicial Notebook, *Could Mindfulness Improve Judicial Decision Making?* (2014).
11. C. McAliley, *Mindfulness on the Bench*, 90 FLA. BAR J. 4 (April 2016); G. Rohr, *The Mindful Judge*, LION'S ROAR (Nov. 6, 2017), <https://www.lionsroar.com/the-mindful-judge/>; W. Caprathe, *The Mindful Lawyer and Judge*, 18 JUD. DIVISION REC. 35 (2014).
12. N. Koppings-Pavars, *Mindfulness for Judges Promotes Compassion in Courtrooms*, ADVOC. DAILY, <https://www.advocatedaily.com/>

[nicolle-kopping-pavars-mindfulness-for-judges-promotes-compassion-in-courtrooms.html](https://www.advocatedaily.com/nicolle-kopping-pavars-mindfulness-for-judges-promotes-compassion-in-courtrooms.html).
13. J. KABAT-ZINN, *COMING TO OUR SENSES*, (Hyperion, 2005), www.themindfuljudge.com/charge.html.
14. *Id.*
15. A.P. Jha et al., *Examining the Protective Effects of Mindfulness Training on Working Memory Capacity and Affective Experience*, 10 EMOTION 54 (2010).
16. J. Fogel, *Mindfulness and Judging*, Federal Judicial Center 2 (2016).

“by devoting some time to mindfulness practices, judges may be able to increase their cognitive capacity”

author Sharon Salzberg offers, “[m]indfulness is being able to tell the difference between the story we are telling ourselves of what is taking place and what is actually taking place.”¹⁷

Mindfulness practices cultivate skills and capacities that are associated with clarity and are unquestionably useful to decision makers. As previously noted, one such skill is the abil-

ity to *focus and sustain attention* on an object, such as a testifying witness, with minimal distraction. A second skill involves working memory and is the ability to *hold in awareness* one’s experience as it is happening. As an example, when a judge listens to a witness she might maintain awareness not only of her evaluation of the credibility and legal significance of that testimony but also any internal emotional reaction to that testimony and any intervening irrelevant thoughts.

The development of these skills is, of course, easier said than done. Mindfulness practices may seem incongruous to judges, who by necessity prize efficiency. Stressed and overworked judges may understandably feel they do not have the time — *the luxury* — of slowing down their thinking, much less sitting still in meditation, and doing “nothing.” But, the experience of many in the legal profession, and a growing body of science, suggests that by devoting some time to mindfulness practices,¹⁸ judges may be able to increase their cognitive capacity, in particular their capacity for clarity of thought and the regulation of emotion, and enhance their sense of well-being in ways that support their professional performance.¹⁹

MINDFULNESS

Mindfulness has been described as the awareness that arises from “paying attention in a particular way: on purpose, in the present moment, and non-judgmentally.”²⁰ Mindfulness practices, which help cultivate a mental mode of mindfulness, can be understood as “a set of attention-based, regulatory and self-inquiry training regimes cultivated for various ends, including well-being and psychological health.”²¹ The mindfulness practices introduced below deliberately engage the cognitive resources of attention by narrowly directing attention to a spe-

cific object, such as the breath, or more broadly to a field of larger expanse. Through regular engagement in these practices, many of the benefits of mindfulness may be realized.

The practice of mindfulness is easy to learn. It calls for a deliberate engagement of attention and steady cultivation of awareness to what you are experiencing, moment by moment. Although the instruction is simple, many find it exceedingly difficult to sustain this attentional focus beyond a few moments. To offer an example, while you have been reading this article you likely have been distracted, perhaps by people, sounds, physical sensations. and, of course, your own wandering thoughts; yet you probably are not aware of all instances when you shifted your attention away from the article. This experience of “mind wandering” is commonplace, it happens more often than most people realize and is consequential to focus and to well-being.²² Mindfulness practices strengthen our ability to notice that our mind has wandered away from the object of attention, e.g., *this article*, and deliberately redirect our attention back to the intended object. And, with practice, we strengthen our ability to sustain our focus, with less distraction, on the task at hand.²³

You may have also experienced *perspective narrowing* as you have read this article. This is associated with mind wandering and can be more subtle, often completely escaping our recognition. That is, as you have been reading this article, thoughts probably arose about its content that you automatically accepted, in a fixed way, as true or false, without your conscious recognition that you assigned those values to the content. The same may have been true with any feelings you may have about the content. Mental and emotional events often take place “in the background,” beyond our awareness, yet they may play a role in our decision making. When this happens, our perspective is narrower.

Mindfulness practice can address this by developing *meta-awareness*, which is an explicit noticing of the processes of thinking, feeling, and perceiving.²⁴ With greater meta-awareness, we mentally “step back,” like a third-party witness to our own thoughts, feelings, and sensations and note them arising and passing away. This recognition, or *noticing*, of thoughts and feelings is a prerequisite to one’s ability to investigate them and to choose what truth to assign them. Thoughts are not facts²⁵ and feelings are not always a reliable basis on which to judge people and circumstances. As judges perceive litigants, legal arguments, and evidence, their capacity to hold in aware-

17. S. SALZBERG, REAL HAPPINESS: THE POWER OF MEDITATION (Workman Publishing Company, Inc. eds., 2010).

18. P. Singerman, *The Return on Investment from My Study and Practice of Mindfulness*, 90 FLA. BAR J. 26 (2016).

19. A. Gold, *The Art of Being Mindful in the Legal World: A Challenge for Our Times*, 90 FLA. BAR J. 16 (2016).

20. J. KABAT-ZINN, WHEREVER YOU GO THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE (Hyperion eds., 1994).

21. A. Lutz et al., *Investigating the Phenomenological Matrix of Mindfulness-related Practices from a Neurocognitive Perspective*, 70 AMER. PSYCHOLOGIST 632 (2015).

22. M. A. Killingsworth & D. T. Gilbert, *A Wandering Mind Is an Unhappy Mind*, 330 SCI. 932 (2010).

23. It is important to distinguish mind wandering that is unintentional and the subject of this paper from day dreaming, which can have its own benefits. See P. Seli, et al., *On the Necessity of Distinguishing Between Unintentional and Intentional Mind Wandering*, 27 PSYCHOL. SCI. 685 (2016). See also, B. Baird, et al., *Inspired by Distraction: Mind Wandering Facilitates Creative Incubation*, 23 PSYCHOL. SCI. 1117 (2012).

24. C. Dahl, A. Lutz & R. Davidson, *Reconstructing and Deconstructing the Self: Cognitive Mechanisms in Meditation Practice*, 19 TRENDS IN COGNITIVE SCI. 515 (2015).

25. Segal, et. al., *Mindfulness Based Cognitive Therapy for Depression*, Breathing Space p. 262 (2002), <http://www.breathingspacelondon.org.uk/resources-for-teachers/?cmd=download-file&vpath=/mbct/participant-course-notes/&vfile=all-handouts-for-session-6.pdf>.

ness the fullness of their experience fosters clarity of thought and depth of analysis.

The following two foundation-level mindfulness practices have been found to be helpful in mitigating these vulnerabilities. The first, a “focused-attention” practice, involves focusing attention on an object, like the breath,²⁶ and when one realizes that the mind has wandered, bringing attention back to the object. The second exercise, “open monitoring,” involves expanding the field of awareness in an effort to notice whatever passes through the senses (touch, taste, smell, vision, and hearing) and the mind (thoughts and feelings). It can be quite challenging to simultaneously hold in awareness those experiences that arise through the various channels of perception and cognition, and therefore, for most people, this is a more advanced practice. Practitioners typically begin with the “focused attention” exercise, as it is a more readily achievable way of stabilizing attention. There are any number of variations on these practices, a few of which we offer later in this article. These practices can be self-guided, that is, done on one’s own, or may be guided by another. Below are brief instructions to self-guide each practice. You can find a list of mindfulness resources by following this link: <http://theminfuljudge.com/courtreview.html>.

MINDFULNESS PRACTICE

For both practices, it can be helpful to begin by establishing a comfortable sitting posture, one that is upright and stable, and to lower or close the eyes, whichever is preferred.

Focused Attention Practice Instructions

1. Bring your attention to the sensations of the breath, flowing through the body—following the in-breath, following the out-breath.
2. Rest your attention on the flow of the breath, with the intention of keeping it there.
3. When you notice your mind wandering, bring your attention back to the breath.
4. Do this for a few moments or for as long as a you choose, after which you can lift your gaze or open your eyes.

Key to this practice is noticing when the mind wanders. As we will explain below, research has found this practice to help develop concentration and focus and reduce mind wandering. When mind wandering is reduced, one can better regulate the emotional ups and downs that can accompany unbidden thoughts of future and past.²⁷

People new to mindfulness often have the mistaken belief that the purpose of mindfulness meditation is to gain the capacity to eliminate all thought; that is, to “empty the mind.” To the

contrary, this is not possible. Mindfulness practices involve noticing and observing the activity of the mind, not eliminating it.

Open Monitoring Practice Instructions

1. Bring your attention to the sensations of the breath, flowing through the body—following the in-breath, following the out-breath.
2. Rest your attention on the flow of the breath.
3. When you feel your attention has stabilized on the breath, expand your awareness and notice sensations arising in the body.
4. When you feel your attention stabilized on the sensations of the body, expand your awareness and notice whatever arises in the field of awareness—sounds, temperature, aroma, even thoughts and feelings. As thoughts arise try to notice and then release them.
5. Observe when your attention is drawn, ideally without engaging in an internal commentary about this. Your attention is fluid and open to whatever arises in the field of awareness.
6. Do this for a few moments or for as long as a you choose, after which you can bring your attention back to your breathing and then, after a few moments, lift your gaze or open your eyes.

This exercise is also known as “choiceless awareness” as there is no pre-determined object of attention. It is a practice that can be helpful for the cultivation of resilience. By developing the ability to be attentive, with equanimity, to whatever passes through the senses,²⁸ one becomes less reactive in the face of distressing and undesirable stimulation (including thoughts) that might otherwise result in emotional reactivity and lead to unhelpful conduct and speech. The exercise develops our capacity to stay steady and present amid the variability of thoughts, feelings, and sensations, including those that are uncomfortable. Any experience that arises becomes the object of attention.²⁹

The following discussion on the science of mindfulness addresses research findings on the efficacy of these and other mindfulness practices and their relationship to mind wandering.

THE SCIENCE OF MINDFULNESS

Research on mindfulness training has had exponential

“Mindfulness practices involve noticing and observing the activity of the mind, not eliminating it”

26. The object of attention, either in formal practice or everyday experience, can be anything you choose, such as listening to a witness or music, tasting and enjoying food, and sensing one’s footsteps or other sensations of the body.

27. A. B. Morrison et al., *Taming a Wandering Attention: Short-form Mindfulness Training in Student Cohorts*, 7 *FRONTIERS IN HUMAN NEUROSCIENCE* 897 (2014); J. Rooks et al., *We Are Talking About Practice: The Influence of Mindfulness vs. Relaxation Training on*

Athletes’ Attention and Well-being over High-demand Intervals, 1 *J. OF COGNITIVE ENHANCEMENT* 141 (2017).

28. See L. Riskin, *Knowing Yourself: Mindfulness*, in *THE NEGOTIATOR’S FIELDBOOK* 245 (Christopher Honeyman & Andrea K. Schneider eds., American Bar Association 2006).

29. A. Lutz et al., *Attention Regulation and Monitoring in Meditation*, 12 *TRENDS IN COGNITIVE SCI.* 163 (2008).

“Mind wandering . . . dampens the sensory input that is received from the environment, sours mood, and increases errors on the task-at-hand.”

psychological disorders such as depression, anxiety,³⁴ and PTSD.³⁵ There has also been recent interest in investigating the benefits of mindfulness training on social and relational dynamics, such as those found in workplace settings.³⁶ While the range of benefits are quite broad and may leave one questioning the apparent panacea-like claims made regarding mindfulness training, cognitive neuroscientists are actively seeking to uncover the brain mechanisms by which such a broad range of benefits may arise.³⁷ In our treatment of this topic, the broad scientific literature is presented in a narrowed and more directed form.

Mind Wandering and Mindfulness Training

Research is exploring the extent to which the mind wanders, with some research suggesting that mind wandering comprises as much as 50% of waking life.³⁸ Mind wandering, defined as having off-task thoughts during an ongoing task or activity, dampens the sensory input that is received from the

growth over the past 10 years.³⁰ There are now thousands of research studies and federal grants devoted to understanding if and how mindfulness training may benefit the mind, the body, and relationships. Reported benefits have been quite wide-ranging, from reductions in physiological symptoms of somatic disorders such as chronic pain,³¹ fibromyalgia,³² and arthritis,³³ to diminution in the severity and recurrence of

environment,³⁹ sours mood,⁴⁰ and increases errors on the task-at-hand.⁴¹ Stress can increase the frequency of mind wandering.⁴²

Several studies have addressed the effect of mindfulness training on mind wandering. In one study conducted on undergraduate cohorts,⁴³ fifty-eight participants were recruited and split into two groups. One group received mindfulness training and the other did not. To make the program accessible for busy students, it was purposefully kept quite short, with the total training time of only seven hours over seven weeks. At the start of the semester and before the training began, all students were asked to complete a computerized test to index their attention and mind wandering. Intermittently, the task was interrupted by a question on the screen asking if their attention was “on-task” or “off-task.” All of the students performed at roughly the same level. Nine weeks later, when the students were tested again, performance gaps emerged between those who received mindfulness training and those who did not. The control group who received no training fared worse than they had originally. They had more performance errors and reported greater mind wandering while the students who received mindfulness training had fewer performance errors and reported less mind wandering.

There were two surprising results of this study. The first was that the pressures of the academic semester seemed to degrade attention over the course of nine weeks. While other studies had reported that mood and well-being decline in students over the semester,⁴⁴ this was the first study to track changes in the neurocognitive system of attention, and it found that this too degraded over the semester. This pattern of attentional degradation over high-stress intervals has also been observed in predeployment soldiers,⁴⁵ athletes during pre-season train-

30. N. T. Van Dam et al., *Mind the Hype: A Critical Evaluation and Prescriptive Agenda for Research on Mindfulness and Meditation*, 13 PERSP. PSYCHOL. SCI. 36 (2018).
31. F. Zeidan & D.R. Vago, *Mindfulness Meditation-based Pain Relief: A Mechanistic Account*, 1373 ANNALS N. Y. ACAD. SCI. 114 (2016).
32. A. L. Adler-Neal & F. Zeidan, *Mindfulness Meditation for Fibromyalgia: Mechanistic and Clinical Considerations*, 19 CURRENT RHEUMATOL REP. 59 (2017).
33. F. A. Fogarty et al., *The Effect of Mindfulness-based Stress Reduction on Disease Activity in People with Rheumatoid Arthritis: A Randomized Controlled Trial*, 74 ANNALS RHEUMATIC DISEASES 472 (2015).
34. S. B. Goldberg et al., *Mindfulness-based Interventions for Psychiatric Disorders: A Systematic Review and Meta-analysis*, 59 CLINICAL PSYCHOL. REV. 52 (2018); M. Goyal et al., *Meditation Programs for Psychological Stress and Well-being: A Systematic Review and Meta-analysis*, 174 JAMA INTERNAL MED. 357 (2014); S. G. Hofmann & A.F. Gomez, *Mindfulness-Based Interventions for Anxiety and Depression*, 40 PSYCHIATRIC CLINICS N. AM. 739 (2017).
35. T. L. Hopwood & N.S. Schutte, *A Meta-analytic Investigation of the Impact of Mindfulness-based Interventions on Post-traumatic Stress*, 57 CLINICAL PSYCHOL. REV. 12 (2017).
36. D. J. Good et al., *Contemplating Mindfulness at Work: An Integrative Review*, 42 J. MGMT 114 (2016).
37. A. Lutz et al., *Investigating the Phenomenological Matrix of Mindfulness-related Practices from a Neurocognitive Perspective*, 70 AM. PSYCHOLOGIST 632-58 (2015).
38. M. A. Killingsworth & D. T. Gilbert, *A Wandering Mind Is an*

Unhappy Mind, 330 SCI. 932 (2010).

39. J. W. Kam & T.C. Handy, *The Neurocognitive Consequences of the Wandering Mind: A Mechanistic Account of Sensory-motor Decoupling*, 4 FRONTIERS IN PSYCHOL. 725 (2013).
40. F. J. Ruby et al., *How Self-generated Thought Shapes Mood—The Relation Between Mind-wandering and Mood Depends on the Socio-temporal Content of Thoughts*, 8 PLOS ONE (2013).
41. Day-dreaming, referred to in the psychological literature as *conscious internal reflection*, refers to consciously and willfully directing one’s attention to the free flow of spontaneous thoughts, whether about the past or the future. It is well-established that this type of mental meandering boosts positive mood and creativity. See R. L. McMillan et al., *Ode to Positive Constructive Day-dreaming*, 4 FRONTIERS IN PSYCHOL. 626 (2013).
42. J. B. Banks & A. Boals, *Understanding the Role of Mind Wandering in Stress-related Working Memory Impairments*, 31 COGNITION & EMOTION 10231030 (2017).
43. A. B. Morrison et al., *Taming a Wandering Attention: Short-form Mindfulness Training in Student Cohorts*, 7 FRONTIERS IN HUMAN NEUROSCIENCE 897 (2014).
44. R. W. May et al., *School Burnout: Diminished Academic and Cognitive Performance. Learning and Individual Differences*, 42 LEARNING & INDIVIDUAL DIFFERENCES 126 (2015).
45. A. P. Jha et al., *Minds “at Attention”: Mindfulness Training Curbs Attentional Lapses in Military Cohorts*, 10 PLOS ONE (2015) ; A. P. Jha et al., *Practice Is Protective: Mindfulness Training Promotes Cognitive Resilience in High-stress Cohorts*, 7 MINDFULNESS 1(2016).

ing,⁴⁶ and youth incarcerated over the course of several months.⁴⁷ While no studies have yet tracked the costs of a long trial to lawyers' and judges' attention, one may reasonably expect that their ability to sustain attention may also be depleted over time, with an increase in mind wandering.

The second result of note was that the mindfulness program, it seemed, protected participants from the inevitability of worsening attention and mind wandering as the semester went on. Mindfulness training strengthened attention and protected against increases in mind wandering. In line with these results, other recent studies conducted with active-duty military service members have found that those who engaged in mindfulness practices for twelve minutes or more every day kept their focus and mood stable over eight weeks of pre-deployment training.⁴⁸ The more an individual practiced, the better he or she fared, with those who practiced the most showing the most robust improvements in cognitive functioning and mood by the end of the study.⁴⁹ Thus, mindfulness training may strengthen voluntary sustained attention and protect against mind wandering.⁵⁰

Many studies have also been conducted to determine if brain structure and function are altered by mindfulness training. There is, for example, growing evidence that mindfulness training produces tractable changes in key nodes of brain networks involved in attention.⁵¹ In one recent study,⁵² participants completed a five-minute functional brain scan one month before and two weeks after receiving a three-day intensive mindfulness-training program or a comparison relaxation training program. While in the scanner, participants' only instruction was to rest. Brain scans showed that the ebb and flow of brain activity in two brain regions was more synchronized after training for only the mindfulness-training group. The two regions were the left dorsolateral prefrontal cortex, a region known to be involved in attentional control, and the posterior cingulate cortex, a region frequently activated during episodes of mind wandering. The authors concluded that brain networks of attention may be strengthened and better able to dynamically control mind wandering. This study did not explicitly index attentional functioning or inquire about participants' mind-wandering and thus more study is needed. Nonetheless, collectively the research litera-

ture examining attentional task-performance and brain-imaging metrics is gathering evidence that mindfulness training strengthens attention and reduces performance errors associated with mind wandering.⁵³

Performance errors may not be the most troubling consequence of mind wandering. One study suggests that the tendency of the mind to get hijacked away from the present moment may have costs for the body as well. A 2013 study⁵⁴ reported that people who self-reported a greater propensity toward mind wandering had shorter telomeres, which are caps at the ends of chromosomes, than those whose minds were more often anchored in the present. Shorter telomeres are associated with shorter lifespans. Thus, mind wandering may have life-and-death consequences for our cells. A recent study examined whether mindfulness training may influence telomere length. The logic was that if mindfulness training reduces the mind's tendency to wander, perhaps the biological cascade that may relate mind wandering to shortening of telomeres could be thwarted. Indeed, this is what was observed.⁵⁵

Thus, there is growing evidence that mindfulness training may protect brain functions tied to performance, attention, mood, as well as cell longevity. This has significance for judges whose work stress is likely to spur mind wandering. Engaging in mindfulness training may be particularly beneficial for judges who labor to maintain clarity and avoid error.

Mindfulness Training and Working Memory

Attention is part of a larger family of brain processes known as executive control. These processes ensure that current behavior aligns with one's goals. Another key system of executive control is working memory. This is the ability to maintain and manipulate information over very short intervals. It allows us to maintain our train of thought in a conversation, do simple math in our heads, regulate our mood, and keep differing perspectives in mind during decision mak-

“Mindfulness training strengthened attention and protected against increases in mind wandering.”

46. J. Rooks et al., *We Are Talking About Practice: The Influence of Mindfulness vs. Relaxation Training on Athletes' Attention and Well-being over High-demand Intervals*, 1 J. COGNITIVE ENHANCEMENT 141 (2017).
47. N. R. Leonard et al., *Mindfulness Training Improves Attentional Task Performance in Incarcerated Youth: A Group Randomized Controlled Intervention Trial*, 4 FRONTIERS IN PSYCHOL. 792 (2013).
48. A. P. Jha et al., *Practice Is Protective: Mindfulness Training Promotes Cognitive Resilience in High-stress Cohort*, 7 MINDFULNESS 1 (2016); A. P. Jha et al., *Examining the Protective Effects of Mindfulness Training on Working Memory Capacity and Affective Experience*, 10 EMOTION 54 (2010).
49. A. P. Jha et al., *Examining the Protective Effects of Mindfulness Training on Working Memory Capacity and Affective Experience*, 10 EMOTION 54 (2010).
50. A. Lutz et al., *Attention Regulation and Monitoring in Meditation*, 12 TRENDS IN COGNITIVE SCI. 163 (2008); A. B. Morrison & A.P. Jha,

- Mindfulness, Attention, and Working Memory*, in HANDBOOK OF MINDFULNESS AND SELF-REGULATION 33-45 (Springer ed., 2015).
51. J. D. Creswell et al., *Alterations in Resting-State Functional Connectivity Link Mindfulness Meditation with Reduced Interleukin-6: A Randomized Controlled Trial*, 80 BIOLOGICAL PSYCHIATRY 53 (2016).
52. *Id.*
53. A. Lutz et al., *Investigating the Phenomenological Matrix of Mindfulness-related Practices from a Neurocognitive Perspective*, 70 AM. PSYCHOLOGIST 632 (2015); P. Malinowski, *Neural Mechanisms of Attentional Control in Mindfulness Meditation*, 7 FRONTIERS IN NEUROSCIENCE 8 (2013).
54. E. S. Epel et al., *Wandering Minds and Aging Cells*, 1 CLINICAL PSYCHOL. SCI. 75 (2013).
55. Q. A. Conklin et al., *Insight Meditation and Telomere Biology: The Effects of Intensive Retreat and the Moderating Role of Personality*, 70 BRAIN, BEHAVIOR & IMMUNITY 233 (2018).

“Under stress, working memory capacity is reduced so that less information can be kept in mind.”

ing.⁵⁶ In addition, higher working memory storage capacity corresponds with greater cognitive and emotional empathy.⁵⁷ Clearly, working memory is critical to the work of judges—to absorb, retain, and manipulate considerable information, often in real time, on the bench.

Unfortunately, working memory, like attention, is highly vul-

nerable to stress. Under stress, working memory capacity is reduced so that less information can be kept in mind,⁵⁸ and information processing becomes more susceptible to distraction and irrelevant information. There is growing evidence that over high-demand and high-stress intervals, working memory capacity is reduced. For example, in a 2017 study in pre-deployment soldiers, working memory was reduced over an eight-week interval. With reduced working memory, the ability to hold key information in mind for the task at hand may be compromised. Restrictions in the ability to maintain such information may lead to narrowing of perspective and emotionally reactive decision making.⁵⁹ In addition, decision making may become more reliant on pre-determined or past assumptions versus adaptive considerations of newly learned information.⁶⁰ Given the importance of working memory, there has been great interest in determining if it can be strengthened through mindfulness training, and several studies that found that, indeed, this training improves working memory and protects against its stress-related decline.⁶¹

MINDFULNESS ON AND OFF THE BENCH

The salutary effects of mindfulness practices on cognitive function, emotional balance, and our health and well-being has obvious relevance for judges, of whom much is expected. Judges know the stakes are high for the litigants and try to adjudicate lawsuits in a manner that leaves litigants with a sense of fairness.⁶² Yet in many instances there is no clear winner, and judges understand that, at most, they can reach their

“best” decision, not an objectively “right” decision. When trial judges must decide a credibility contest, in the absence of objective corroboration, they must choose who to believe, because finality is essential, all the while knowing they may get it wrong. And, because judicial demeanor and temperament are highly prized qualities of judges, they are expected to be even-tempered, to not get caught up in the emotionality of the parties, to accurately perceive (and convey their perception of) the positions of the parties, and to dispassionately assess the evidence and arguments without the distortion of habit, assumptions, and bias.

Judges do all of this keenly aware of the responsibility that comes with the privilege of their position. While most report feeling great satisfaction to participate in our judicial system and for the opportunity to positively impact others, they do work under stress. And, as we know all too well, persistent stress can take a toll on one’s physical and emotional well-being, lead to burnout, job dissatisfaction, and apathy, as well as erode performance and negatively impact professional and personal relationships.⁶³

So how might mindfulness practices help judges manage their duties? Below are two vignettes that illustrate some of the challenges common to judges. These are followed by suggested mindfulness practices that, with repetition and patience, can alter how judges navigate those challenges. Judges may find it particularly effective to engage in these practices daily, before the start of the work day, and we suggest they devote between 10 and 30 minutes to daily practice. There is no one universal prescription for the length or nature of an effective practice. As the Vietnamese Buddhist monk Thich Nhat Hanh said: “I do whatever works and change it when it no longer works.”⁶⁴ Mindfulness practitioners do report, however, that they greatly benefit from some form of regular practice, and that, generally speaking, they realize more benefit when they devote more time to the practice. Fortunately, mindfulness practices are very customizable.

It can also be quite helpful to briefly “drop into” these practices in the midst of the day, especially in challenging moments. The ability to benefit from these shorter practices

56. A. P. Jha, *Tracking the Time-course of Attentional Involvement in Spatial Working Memory: An Event-related Potential Investigation*, 15 COGNITIVE BRAIN RES. 61 (2002).

57. Z. Gao et al., *Working Memory Capacity of Biological Movements Predicts Empathy Traits*, 23 PSYCHONOMIC BULL. REV. 468 (2016).

58. K. Klein & A. Boals, *The Relationship of Life Event Stress and Working Memory Capacity*, 15 APPLIED COGNITIVE PSYCHOL. 565 (2001).

59. J. M. Hinson et al., *Impulsive Decision Making and Working Memory*, 29 J. OF EXPERIMENTAL PSYCHOL.: LEARNING, MEMORY, & COGNITION 298 (2003).

60. W. Hofmann et al., *Working Memory Capacity and Self-regulatory Behavior: Toward an Individual Differences Perspective on Behavior Determination by Automatic Versus Controlled Processes*, 95 J. OF PERSONALITY & SOC. PSYCHOL. 962 (2008).

61. A. P. Jha et al., *Examining the Protective Effects of Mindfulness Training on Working Memory Capacity and Affective Experience*, 10 EMOTION 54(2010); A. P. Jha et al., *Short-Form Mindfulness Training Protects Against Working Memory Degradation over High-Demand Intervals*, 1 J. OF COGNITIVE ENHANCEMENT 154 (2017); M. D.

Mrazek et al., *Mindfulness Training Improves Working Memory Capacity and GRE Performance While Reducing Mind Wandering*, 24 PSYCHOL. SCI. 776 (2013).

62. P. Casey, K. Burke & S. Leben, *Minding the Court: Enhancing the Decision-Making Process*, 49 CT. REV. 76 (2013); C. McAliley, *Mindfulness on the Bench*, 90 FLA. BAR J. 4 (2016).

63. J. Bendery, *Federal Judges Are Burned Out, Overworked and Wondering Where Congress Is*, HUFFINGTON POST, (Oct. 21, 2015), https://www.huffingtonpost.com/entry/judge-federal-courts-vacancies_us_55d77721e4b0a40aa3aaf14b; S. Lustig et al., *Burnout and Stress Among United States Immigration Judges*, 13 BENDER’S IMMIGR. BULL. 22 (2008). See also, M. Krasner et al., *Association of an Educational Program in Mindful Communication with Burnout, Empathy, and Attitudes Among Primary Care Physicians*, 302 JAMA 1284 (2009).

64. N. Goldberg, *Rules for a Long-term Relationship: Do Whatever Works Until It No Longer Works*, TRICYCLE MAG., (Summer 2016), <https://tricycle.org/magazine/rules-for-a-long-term-relationship/>.

typically depends on the regularity of one's mindfulness practice. In this regard, the metaphor of working out at a gym, practicing scales on a musical instrument, or practicing one's golf swing or tennis stroke is apt. By doing so, we develop and reinforce the very skills we draw upon when it is time to perform.

Focused Attention

The judge is presiding over a lengthy trial or hearing. The evidence is technical in nature, the presentation of it is tedious and difficult to attend to, and the law is complex. The judge finds her mind wandering, and this is stressful, as the judge knows she must, in the end, have a command of the evidence and the law to make her ruling. The hearing is also taking longer than it should, and this further distracts the judge, who worries about how this will affect her schedule; she is feeling increasingly stressed.

Here, in addition to the challenge of the legal task at hand, the judge has the added challenge of staying focused. Further complicating matters, she is feeling worried about losing focus and not comprehending the material and feels pangs of unease at the thought of not managing her workload. The judge's capacity to analyze the evidence and argument, and to make a decision, would certainly be enhanced if she could keep her focus.

The "focused-attention" practice described above, when repeated over time, strengthens the judge's capacity to remain attentive in this setting. This practice is one of repeatedly placing our attention right . . . *here*. When our thoughts take us away from *here*, we notice the thoughts (without being engaged by them), release the thoughts (without engaging in conceptual elaboration about the thought), and return our focus to *here*. We do this over and over again.

A helpful variation on this practice, especially when one experiences agitating emotions, involves labeling one's experience when mind wandering and emotions are noticed. When unbidden thoughts distract us from our focus, as they repeatedly will, we can silently label them in a simple way that acknowledges their content (e.g. "planning," "worrying," "remembering," "excited") and then return to the object of attention. With repetition, this can help us become more skillful at regarding thoughts as . . . thoughts, which come and go. The act of labeling our experience in this way has been found to diminish the response of brain regions activated by emotional agitation and to increase activity in a regions in the cortex associated with cognitive control.⁶⁵ Below is a brief instruction that follows from the "focused attention" instruction provided above.

Labeling Instruction

1. Bring your attention to the sensations of the breath, flowing through the body—following the in-breath, following the out-breath.
2. Rest your attention on the flow of the breath, with the

intention of keeping it there.

3. When you notice your mind wandering, reflect on whether a thought, feeling, or body sensation draws your attention from the breath, and silently say to yourself either "thoughts," "feeling," or "sensation" and bring your attention back to the breath.⁶⁶
4. Do this for as long as you choose, after which you can lift your gaze or open your eyes.

"A post-it note on the bench with the STOP mnemonic might be a useful reminder that this is always available."

This exercise offers a nod to the *arising of agitating content* by acknowledging it in a more cognitive form, and then, through the awareness that accompanies that acknowledgment, returning the attention to the object at hand, *without engaging in the content*. You will likely find that by practicing either the "focused attention" or the "labeling practice," on a regular basis, your concentration will improve, you will be better adept at catching your mind as it begins to wander, and you will experience less emotional agitation.

Along with more "formal" practices, engaged in on a regular basis for a set period of time, very short "informal" practices can also be useful. As noted above, the impact of these very practical and shorter practices will be strengthened by having a daily sitting practice. As you can see from the below example, they are merely variations on the longer themes yet contain the heart of what makes them useful.

A Short Practice: "S.T.O.P."

A short mindfulness practice that many find helpful when they notice their mind wandering or they are feeling agitated is known by the helpful mnemonic "STOP." It stands for:

Stop
Take a Breath
Observe, and
Proceed

A post-it note on the bench with the STOP mnemonic might be a useful reminder that this is always available. When attention is flagging, or agitation is rising, one may find it helpful to practice this short exercise. Importantly, the "taking of a breath" is especially useful when one brings a deliberate and intentional awareness to the sensations of breathing. The "observe" instruction calls for the deliberate resting of attention on an external object (e.g., people in the courtroom, the sounds of talking, and the courtroom architecture) or toward an internal object (e.g., thoughts, feelings, sensations). It can help reclaim focus, regulate emotions or behavior (such as interrupting out

65. M. Lieberman et. al., *Putting Feelings into Words: Affect Labeling Disrupts Amygdala Activity in Response to Affective Stimuli*, 18 PSYCHOL. SCI. 421 (2007).

66. As noted, you may silently label what you detect more specifically, in a simple manner that resonates for you, e.g., "worry." The key is to tag and return, and not get lost in the mental experience.

“There is considerable evidence that mindfulness training benefits judges in their resilience, physical health, well-being, and cognitive functioning.”

of irritation or boredom), or more thoughtfully make a decision, such as calling a recess. This short exercise can be practiced at any time.

Open Monitoring

The judge is presiding over a sentencing. The defendant’s family and victims are present and they pour their hearts out. The defendant’s criminal conduct is also upsetting, as is some of the evidence about the defendant’s childhood experiences, and how his own young children will suffer

when he is incarcerated. The judge wants to acknowledge these emotions and the legitimate competing concerns, while keeping his own emotions in check as he aims to reach and convey a considered decision that meets the governing legal standard.

Like the previous vignette, the judge must contend with both the external information (evidence and argument) as well as his own internal emotional response. A judge who has developed some skill at an open-monitoring practice may find that he feels more settled and clear when he engages in this multi-channel processing of information and feelings.

In this practice we widen our attention from a fixed object, such as the breath, in an effort to notice all thoughts, feelings, and sensations of our body. We practice doing this without being drawn into our narratives about our experiences. Again, we may find it helpful to simply label what we notice and return to our open awareness. In this practice we remain curious about body sensations associated with emotion along with the mental narrative that accompanies the emotion. While attention to the body may seem unimportant to judges and lawyers, who are trained in a more cerebral process, this has deep significance for our capacity to perceive clearly, as a felt sense in the body is often a gateway to identifying thoughts and emotions which might influence our decision making and actions.

This repeated practice expands our capacity to be present for the life that is before us without being driven by our desire to hold onto the enjoyable moments and resist the unhappy moments. That is not to say that we suspend preference (we remain human). It is to say that we expand our tolerance for simply being present and aware in joy, sorrow, boredom, and everything in between. The STOP practice described above can serve as a short “open monitoring” practice by being especially engaged amid, and perhaps prolonging, the “Observe” step.

A Short Practice: “Drop the Story, Feel the Energy”

Mindfulness practices are available to us at any moment. At its most simple, we can simply stop and take three conscious breaths. This interruption of the discursive mind can reset our attention to our present experience and dial back any emotional reactivity. It can create a “wedge of awareness” that allow for a more skillful response amid a challenging experience or interaction.⁶⁷

A variation on this practice, popularized by the mindfulness teacher, Pema Chodron,⁶⁸ is particularly useful when we feel agitated. We stop, stand, or sit still; consciously “drop the story” that is the narrative running through our minds; and “feel the energy” in the body. When we are agitated there often is a repetitive loop of thought that is unproductive. We try to redirect our awareness from our thoughts (our head) down to the sensations of our body. Even when used as a brief practice, it can interrupt the tendency to reinforce and build upon the story. The experience is a reminder that thoughts are . . . just thoughts. When we allow for a short break during a continuous stream of thoughts and connect with the body, often our perspective broadens, we establish a steadier cognitive and emotional stance, and sometimes this makes room for new insights. At the very least, we create the potential to catch mind wandering and return to the task at hand.

CONCLUSION

The work of judges is highly consequential for the litigants, lawyers, and society as a whole. Judges are expected to maintain clarity of perception and cognition, accuracy, and judicial temperament while managing large caseloads and performing under deadlines and in the midst of human drama. There is considerable evidence that mindfulness training benefits judges in their resilience, physical health, well-being, and cognitive functioning. Mindfulness practices can meaningfully enhance their capacity for attention and meta-awareness, their working memory, and thus their cognitive function. Engagement in daily mindfulness practice is key, and the practices provided have direct application to some of the vulnerabilities judges encounter and serve as a primer so that judges may begin their own mindfulness practice and judge for themselves the benefits they may offer, personally and professionally.

67. L. Riskin, *Awareness and Ethics in Dispute Resolution and Law: Why Mindfulness Tends to Foster Ethical Behavior*, 50 S. TEX. L. REV. 493 (2009).

68. S. Rogers, *Mindfulness, the Holidays and the Stories We Tell Ourselves*, DADE COUNTY BAR ASS’N BULL., (Dec. 2017), at 5.



Chris McAliley is a United States Magistrate Judge in the U.S. District Court in the Southern District of Florida, Miami, and she has served in this position since 2004. Judge McAliley is a graduate of the NYU School of Law. Before she joined the Court, Judge McAliley worked as an Assistant U.S. Attorney; she also practiced criminal defense and commercial civil litigation, and she worked as a mediator and special master. Judge McAliley has had a mindfulness practice since 2009 and regularly speaks to members of the legal profession about the benefits of mindfulness meditation.



Amishi Jha, PhD, is Associate Professor of Psychology at the University of Miami, and Director of Contemplative Neuroscience for the University of Miami Mindfulness Research and Practice Initiative, prior to which she was an Assistant Professor at the Center for Cognitive Neuroscience at the University of Pennsylvania. She received her PhD from University of California–Davis in 1998, and received her postdoctoral training in the Brain Imaging and Analysis Center at Duke University in

functional neuroimaging. Her laboratory studies the neural bases of attention and the effects of mindfulness-based training programs on cognition, emotion, and resilience. With grants from the Department of Defense and several private foundations, she has been systematically investigating the potential applications of mindfulness training in education, corporate, elite sports, and the military contexts.



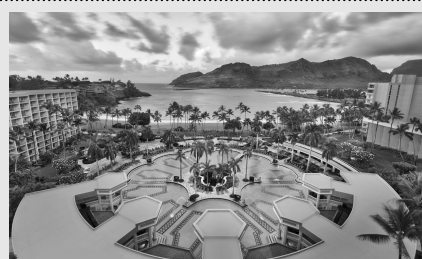
Scott Rogers, M.S., J.D., is a nationally recognized leader in the area of mindfulness in law. He is Founder and Director of the University of Miami School of Law's Mindfulness in Law Program and is Director of Programs and Training for the University of Miami Mindfulness Research and Practice Initiative. Professor Rogers is the creator of Jurisight®, one of the first CLE programs in the country to integrate mindfulness and neuroscience, and he conducts workshops and presentations on the role of mindfulness across the legal profession. Professor Rogers has been sharing mindfulness with judges in state and federal courts across the country for more than 10 years. He is author of the recently released, "The Elements of Mindfulness."

AJA FUTURE CONFERENCES

2018 ANNUAL CONFERENCE

LIHUE, HAWAII
(ISLAND OF KAUAI)

Kauai Marriot Resort
September 23-28
\$219 single/double



Courtesy of Kauai Marriott Resort

2019 MIDEAR MEETING

SAVANAH, GEORGIA

Savannah Marriot
Riverfront
April 11-13
\$189 single/double

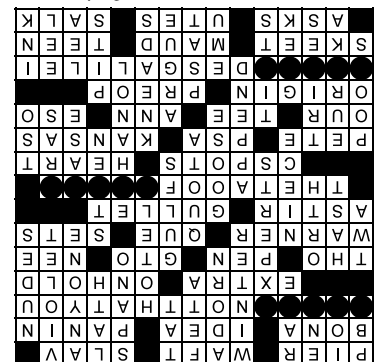
2019 ANNUAL CONFERENCE

CHICAGO, ILLINOIS

The Drake Hotel
September 15-20
\$245 single/double

For more information, go to <http://amjudges.org/conferences>

Answers to Crossword from page 95



Reducing Judicial Stress through Reflective Practice

Jennie Cole-Mossman, Elizabeth Crnkovich, Lawrence Gendler & Linda Gilkerson

Stress and vicarious trauma are frequently discussed as a problem for frontline workers who do trauma work. When we say frontline workers, people often think of emergency medical professionals, law enforcement, child welfare caseworkers, therapists, and residential staff for mental health facilities or prisons. Rarely do people think of the often quiet and even-tempered people who wear robes and sit behind a bench for a living: judges. Our public perceptions of the judge are as a person of ultimate neutrality who dispenses justice. But in reality judges also experience not only stress, but also vicarious trauma.

Vicarious trauma refers to distress associated with working directly with traumatized people.¹ Professionals who work with traumatized people and traumatizing situations experience symptoms of trauma, including re-experiencing, avoidance, numbing, and persistent arousal.² In 2008, the National Child Traumatic Stress Network's system brief reported that judges feel overwhelmed by the amount of trauma in the courtroom, the vast needs of the children and families who appear before them, system issues, and the overarching task of balancing the best interest of the child with the law.³ Judges are exposed to the details and emotions of traumatic situations, including significant physical or emotional harm caused by individuals or divorce.⁴ In addition to the exposure, they are asked to apply the law, remain neutral, engage the court participants, and make life-altering decisions, all while putting aside any conflicting personal beliefs. Judges are asked to do all of this without any system of impartial feedback, and many without any formal training about the various duties of their role.⁵ Judge Bremer calls it a "sudden metamorphosis from Perry Mason to Solomon" and points out that this occurs in relative isolation in her article about reducing judicial stress through mentoring.⁶ Judges are also asked to be empathic listeners for families with trauma. Yet it is the empathy in response to the traumatic events that itself can cause vicarious trauma for the judge.⁷

In an informal panel in 2007, the National Council of Juvenile and Family Court Judges found that judges had common concerns related to vicarious trauma. These concerns included: the nonjudgmental role that a judge has to take, loneliness, not being able to take cases home to get support, not feeling safe to say they need help or are having problems, difficulty opening up about personal issues, anger, hopelessness, helplessness, depression about cases, and the stress of managing large case-loads.⁸ Similarly, in a study of 105 judges, 63 percent reported symptoms of vicarious trauma, including interpersonal problems, emotional distress, physical symptoms, cognitive symptoms and actual mental health diagnoses.⁹

Judges are working under "emotional labor."¹⁰ They have to manage not only their emotions, but also the emotional content of the cases while balancing the law. These emotional pressures make emotional regulation, the awareness of implicit bias, and provision of procedural fairness important in their work.¹¹ Increasing the ability of judges to regulate emotions can help in difficult courtroom situations, increase perceptions of fairness, and decrease inappropriate judicial behavior.¹² Judges who have the opportunity and ability to calm themselves are less likely to react to situations. They can be proactive and thoughtful in their interactions with people in their courtroom. They can listen without distraction, giving their full attention to the court proceedings in front of them.

Supportive social relationships are a buffer for stress and vicarious trauma. Healthy relationships can reduce harmful aspects of stress and increase job satisfaction. Even the perception of these supportive relationships can act as a buffer regardless of whether the judge engages in the relationship.¹³ However, while other professionals may rely on their co-workers, family, and friends to debrief after stressful work experiences, the role of the judge prohibits almost all such interactions. Loneliness and fear for one's safety and the safety of their family are factors that can cause additional stress for judges.¹⁴ Judges reported being less likely to discuss their stress or vicar-

Footnotes

1. P. Vrkleviski & John Franklin, *Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material*, 14 *TRAUMATOLOGY* 106 (2008).
2. Peter G. Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 *JUV. & FAM. CT. J.* 1, 2 (2003).
3. Joy D. Osofsky et al., *How to Maintain Emotional Health When Working with Trauma*, 59 *JUV. & FAM. CT. J.* 91, 98 (2008).
4. Jared Chamberlain & Monica K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 *J. AM. ACAD. PSYCHIATRY & L.* 214, 215 (2009).
5. Celeste F. Bremer, *Reducing Judicial Stress through Mentoring*, 87 *JUDICATURE* 244, 244 (2004).

6. *Id.* at 245.
7. Jaffee, *supra* note 2, at 2.
8. Osofsky, *supra* note 3, at 98.
9. Jaffee, *supra* note 2, at 4.
10. Sharyn Roach Anleu, David Rottman & Kathy Mack, *The Emotional Dimension of Judging: Issues, Evidence, and Insights*, 52 *CT. REV.* 60, 60 (2016).
11. *Id.*
12. *Id.* at 61.
13. Sheldon Cohen & Thomas Ashby Wills, *Stress, Social Support, and the Buffering Hypothesis*, 98 *PSYCHOL. BULL.* 310, 349 (1985).
14. Chamberlain & Miller, *supra* note 4, at 219.

ious traumatization with colleagues from their jurisdiction. This type of sharing was perceived as weak and vulnerable.¹⁵

Reflection is seen as an important part of legal education. Timothy Casey, the Director of the Skills Training for Ethical and Preventative Practice and Career Satisfaction (STEPPS) Program at California Western Law School, developed a model for increasing reflective capacity for law students.¹⁶ He argues, “The concept of reflective practice applies to the legal profession. A conscious and deliberate analysis of lawyering performance can provide the new lawyer with insights into what choices were available, what internal and external factors affected the decision making process, and what societal forces affected the context of the representation.”¹⁷ Casey’s model uses self-reflection to help new lawyers make the best possible decisions by slowing down, considering all the options, and examining how their biases are impacting their decision. When making decisions about cases, judges could adopt a similar, reflective approach. Additionally, reflective practice can be used beyond decision making to address other elements of judicial stress. Reflective practice can address the emotional and interpersonal aspects of judging that are often not directly part of the case.

THE FAN: FACILITATING ATTUNED INTERACTIONS

Building upon the work of the Erikson Institute and their model of Facilitating Attuned INTERactions, or the FAN, the Nebraska Center on Reflective Practice has applied this supervisory model to the work of judges to help reduce stress and vicarious trauma. The FAN is a conceptual model and a tool for understanding how people relate to each other, both when interactions are working, as well as when the interactions are strained. The FAN supervisory model originally looked at the dual roles of mentoring and monitoring in supervision. The model strives for attunement and parallel processing between supervisor and supervisee to provide effective and responsive supervisory relationships.¹⁸ It helps people to know why it is that some interactions flow and others are strained.

The FAN relies on five core processes to guide interactions in the supervisory relationship.¹⁹ These five core processes are mindful self-regulation, empathic inquiry, collaborative exploration, capacity building, and integration. The processes are related but not necessarily linear. Understanding and matching happens when we meet the person in the core process they are in at that moment.

MINDFUL SELF REGULATION

Mindful self-regulation assists judges in conscious attunement to their own mental state and the state of those around them to facilitate more peaceful interactions. This core process also includes the use of tested strategies, such as mindfulness, self-talk, and breathing to regulate emotions. Mindfulness can be used to help judges become aware of what is happening in themselves with a goal of regulating emotions to think more clearly.

EMPATHIC INQUIRY

Empathic inquiry acknowledges and validates feelings both in the judge and the participants so they can be regulated and feel understood. This is the core process of feelings. It asks for genuine curiosity about the feeling states of the other person. For example, in the courtroom, a judge may note that a participant’s anxiety is likely causing their seemingly rude behavior.

Containment statements such as, “It seems like these recommendations come as a surprise to you. Perhaps you need a moment,” validates the feelings and allows for regulation. In consultation an example would be when the judge talks about what feelings are produced when an attorney isn’t prepared.

COLLABORATIVE EXPLORATION

Collaborative exploration seeks to further define and have a shared understanding of the issue causing the stress or friction. This is the thinking part of the FAN process. This happens after feelings are well regulated. An example is asking, “What do you think is preventing us from moving forward here?” or “What do you think is working even just a little bit? What is not working?” This example could be in the courtroom or in consultation. For example, in consultation, collaborative exploration can investigate what is preventing the judge from trying new strategies learned in problem-solving-court training.

CAPACITY BUILDING

Capacity building allows the judge to access any missing information or highlight important insights that may be helpful in making decisions or resolving conflicts. This is the practice of “doing” in the FAN. Here we highlight what is going well. We also give information that is essential to move forward. For example, in the courtroom, “Sometimes these court orders look overwhelming at first. For this 3 month review, I would like you to focus on getting into substance abuse treatment, attending your visits, and going to AA meetings.” In consultation, an example of building capacity may be asking, “What would it sound like if you approached your colleague in that way? What would you say first?”

INTEGRATION

Finally, integration helps the judge take away key insights that were gleaned from the process for future use or action. This is the core process that pulls everything together. This is the “ah ha” of the process. Not every consultation session or court hearing reaches integration, but it strives to do so. When an

“FAN relies on five core processes . . . mindful self-regulation, empathic inquiry, collaborative exploration, capacity building, and integration”

15. Osofsky et al., *supra* note 3, at 100.

16. Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 317, 334 (2014).

17. *Id.* at 319.

18. Linda Gilkerson & Mary Claire Heffron, *Facilitating Attuned Interactions: FAN Framework for Reflective Supervision*, 1.

19. *Id.* at 2.

“attunement enables the supervisor and the supervisee to get on the same page and develop parallel processing”

integration happens, it should be highlighted. For example, in the courtroom, “I heard you say that what you learned in your domestic violence class is really working. That is so important that these classes are taking hold in your life. I am so glad to hear about your hard work.” An example in consultation, “After our discussion it is clearer to me that my agitation with the new attorney isn’t helping

her speak more clearly. I was new once too and thankful for people who weren’t overly harsh with me.”

These core processes can be used during interactions with professionals as well as those appearing in court cases as defendants. The core processes of reflective practice help the judge to balance their personal concerns with their duty to the law, as well as the concerns of those in their courtroom, including professionals and defendants. They facilitate the judge in examining their interactions for attunement through matches and mismatches, which may relieve or cause stress.

Attunement refers to the process of matching supervisor responses to supervisee processing cues. This requires the supervisor to be able to detect which core process is guiding the supervisee’s problem solving and allow them to complete that process. For example, if a supervisee is stuck in the frustration of a problem, the supervisor should recognize this and validate those feelings through empathic inquiry. Once the supervisee is ready, they can move past the feelings and onto collaborative exploration to identify and understand the stressor. If a supervisor attempts to identify the stressor before the supervisee is ready, they are mismatched and, therefore, not attuned. The absence of attunement results in misunderstanding and frustration. Often, misunderstandings between legal parties and clients happen when emotional states are intense. Using the FAN can help the judge not only recognize but assist in defusing some of the tension. The judge can increase communication by acknowledging the emotional states and allowing others to regulate themselves.

The attunement enables the supervisor and supervisee to get on the same page and develop parallel processing. Parallel processing refers to mirrored affects, cognitions, and behaviors that develop when two or more people or systems have significant relationships.²⁰ Therefore, when a supervisor is able to regulate their own emotions and reactions to their supervisee they are better able to hear the issues and guide the supervisee to a solution. The supervisee develops trust that their supervisor will respond in a calm, intentional way and begin to respond similarly. In systems, parallel processes can move to other levels of the system, from supervisor to supervisee to client.²¹

For example, in the courtroom, attorneys, caseworkers, and defendants react to the judge. If the judge is emotional and confrontational, there will likely be more conflict and less collabo-

ration. However, if the judge is able to remain calm and open to hearing the issues and potential solutions, the participants will be better able to express their concerns. The judge and participants will develop parallel processes, which can also trickle down to how attorneys and caseworkers interact with their clients or parents interact with their children.

THE FAN IN JUDICIAL PRACTICE: A CASE STUDY

The Nebraska Center on Reflective Practice provides training and consultation in the FAN model in collaboration with Linda Gilkerson, Ph.D., creator of the FAN. It has used the FAN in two ways to ease judicial stress: providing reflective consultation to a juvenile court judge and mentoring a juvenile court judge to provide reflective consultation. The Honorable Elizabeth Crnkovich, juvenile court judge in Douglas County, Nebraska, receives reflective consultation using the FAN from Jennie Cole-Mossman, co-Director of the NCRP, in an effort to reduce stress and help her apply the principals to her courtroom practices to increase attuned interactions. The Honorable Lawrence Gendler has been trained to provide reflective consultation through the NCRP and receives ongoing mentoring as part of that training. He relies on reflective practice and the FAN in a small group consultation with judges and during court proceedings. Both judges entered into reflective practice training using the FAN because they were exploring ways to improve their courtroom for families and professionals. They both acknowledge that the adversarial nature of the courtroom and nature of child welfare work are stressful. Both judges have reported that attuned communication, enhanced trust, and improved self-regulation decreased their judicial stress, consistent with the findings of existing research.²²

Judge Crnkovich is experimenting with a less adversarial court process at this time. She has presided over a problem-solving court in the past, but wanted to adopt a therapeutic approach in more cases. Her “FIRST Court” is receiving technical assistance from the Nebraska Resource Project for Vulnerable Young Children, where the Nebraska Center on Reflective Practice is housed. Judge Crnkovich reports, “As a court and as a system, I have long believed that we cannot do any less than what we expect our families to do. That means that we must periodically review our practices and core beliefs to make changes as needed to be as effective as possible to help our families.” This most recent review and update included using the FAN to help the attorneys and caseworkers in this new court collaborate more effectively and deal with the growing pains of trying a new way of practicing. For example, after several reflective consultation sessions with each group, the attorneys and caseworkers met to discuss how to increase effective and respectful communications. After some discussion of the process, Judge Crnkovich decided that she could also benefit from some reflective consultation. Judge Crnkovich uses this time to gain insights into her practices. For example, she has slightly changed her comments from “I think” to “I am wondering about” in an effort to open more

20. Kenwyn K. Smith, Valerie M. Simmons & Terri B. Thames, “Fix the Women”: An Intervention into an Organizational Conflict Based on Paralle Process Thinking, 25 J. APP. BEHAV. SCI. 11, 13 (1989).

21. *Id.*

22. Jaffe et al., *supra* note 2.

discussion in the meetings rather than seem like she is making a directive. She has also recognized how her training in law school and communications formally in court may not translate to caseworkers, making them feel cross-examined when this is not the intention.

Judge Gendler was asked to participate in reflective practice training, as well as use reflective practice with a small group of judges. He also uses some different techniques from the FAN core processes in his court room. Using the core process of self-regulation, when he notices strong emotional reactions from participants in court, he takes a recess to help participants have time to deal with these emotions. He uses the core process of collaborative exploration by asking questions that elicit joint understanding of the issues and joint problem solving. He engages parents in juvenile court cases by making sure they feel fully heard in his courtroom to lessen the adversarial nature of the work. This strategy is consistent with the processes of mindful self-regulation and empathic inquiry. He is currently facilitating a group of three newer judges using the FAN as the model for reflective consultation.

Both judges find the traumatic stories and the adversarial nature of the work to be personally and professionally demanding. The FAN has helped them enhance their own self-regulation and be aware of the heightened emotional states around them. During reflective practice mentoring, Judge Gendler revealed, "I am now more mindful of the FAN and give parents (or their children) a chance to go through the various stages which may include re-scheduling the hearing in order to provide them a better opportunity of understanding why professionals are making certain recommendations." Judge Crnkovich receives twice monthly reflective consultation sessions with Jennie Cole-Mossman. During those sessions the FAN is used to help develop new insights into how she responds to intensely emotional situations, especially in her less traditional collaborative hearings. She says, "I take the reflective practice insights and utilize them in my approach to the team, in my effort to allow others to weigh in and be heard, and not just rule on high as the judge. Try to guide thinking, rather than dictate it." The parallel process developed with Jennie during reflective consultation or learned through training is spreading into the courtroom. Both judges are able to identify the core processes of the court participants and match with them. Mindful self-regulation allows them to slow themselves down, identify how the participants are responding, and match them. This allows for a more open, collaborative problem-solving environment.

Judge Gendler has observed that the core processes can increase trust among parties. He reports this is the way he uses the FAN reflective practice model to reduce conflict and miscommunications caused by the emotional nature of many of the proceedings. He reflects, "Almost all who appear before us have experienced unfair treatment in a courtroom, by the system, or know someone who has. With the exception of an adoption hearing or an occasional guardianship, nobody goes to the courthouse expecting to have fun. By giving everyone a fair opportunity to be heard, we are hopefully decreasing the stress level which, in and of itself, creates an environment where folks are more comfortable expressing their concerns and ideas." These more attuned interactions decrease conflict

among the parties and therefore make his work as the judge less stressful.

Judge Crnkovich has participated in reflective practice sessions both individually and in collaborative sessions with attorneys and caseworkers during the formation of her FIRST Court. She feels that stress is reduced with reflective practice because she gains new insights. She is able to find ways to enhance her communication with the professionals and the families in a more cooperative way. She reports that it has "helped guide my approach to things in the areas where I may struggle with the perception or behavior of others." In parallel process, this new way of perceiving the behavior of others in a less adversarial way creates a more collaborative courtroom for participants. She reports that her frustration is reduced by gaining a different kind of insight through her reflective consultation sessions.

Though other types of reflective practice and the FAN have been used with various groups, applying this model to judges and to their courtroom practice is a new solution to the old problem of reducing stress for both the judge and the participants. The FAN enhances communication for the judges, professionals, and the participants in their courts. Enhanced communication can also help everyone in the court process feel more prepared, which reduces judicial stress. It also builds trust and allows for the expression and processing of difficult emotions. This processing of difficult emotions can ease the secondary trauma of working in family courts. Reflective consultation can also ease some of the feelings of loneliness that produce distress for judges. Using the FAN in reflective consultation allows for new insights. Reflective practice does not in any way change the role of the judiciary (judge) nor does it detract from the court's neutrality and protection of due process. Instead, reflective practice assists in this weighty judicial responsibility by providing an outlet for stress and renewed insight in what remains a challenging and isolating, but very rewarding profession.

"Try to guide thinking, rather than dictate it"



Judge Lawrence Gendler has been a Separate Juvenile Court Judge in Sarpy County, Nebraska since his appointment in 1992. He is Project Chair of the Nebraska Supreme Court's Through the Eyes of the Child Initiative. He is the recipient of numerous awards including the 2006 Nebraska Supreme Court Distinguished Judge for Service to Community.

He is active in many committees, including the Supreme Court Commission on Children in the Courts, and Committee on Problem-Solving Courts, and was the past Judicial Ethics Committee Chair.



Linda Gilkerson, Ph.D., LSW, is a professor at Erikson Institute where she directs the graduate training programs in infancy and infant mental health. Dr. Gilkerson is the developer of the FAN (Facilitating Attuned Interactions), an approach that is used widely in home visitation, early intervention, early childhood mental health consultation programs, and physician training to facilitate parent engagement and reflective practice. Her research and publications focus on relationship-based approaches and reflective supervision in a range of settings.



Judge Elizabeth G. Crnkovich was appointed to the Douglas County, Nebraska Separate Juvenile Court in January of 1994. In addition to her judicial duties, Judge Crnkovich has presided over a Juvenile Delinquency Drug Court and a Family Drug Court, both of which sought to address youth and adult addictions. In 2010, she established a truancy diversion project, which, as part of a collaborative community effort, led to the creation of the Greater Omaha Attendance and Learning Services (GOALS) Center. Over the years, Judge Crnkovich has served on numerous boards and committees relating to issues of juvenile justice and child welfare.



Jennie Cole-Mossman LIMHP, is Co-Director of the Nebraska Resource Project for Vulnerable Young Children. She is a licensed independent mental health practitioner with extensive training and experience in early childhood trauma, child parent Psychotherapy, parent child relationship assessments, and Reflective Practice. She is currently one of only four trainers for child parent psychotherapy in Nebraska. She is also a trainer for the FAN model of Reflective Practice. In her current role, she provides system and case-level consultation on issues related to early childhood trauma and the infusion of early childhood well-being into court systems, provides reflective consultation and training to various groups, and trains on a number of early childhood topics.

Court Review Author Submission Guidelines

Court Review, the quarterly journal of the American Judges Association, invites the submission of unsolicited, original articles, essays, and book reviews. *Court Review* seeks to provide practical, useful information to the working judges of the United States and Canada. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court, or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work.

Court Review is received by the 2,000 members of the American Judges Association (AJA), as well as many law libraries. About 40 percent of the members of the AJA are general-jurisdiction, state trial judges. Another 40 percent are limited-jurisdiction judges, including municipal court and other specialized court judges. The remainder include federal trial judges, state and federal appellate judges, and administrative-law judges.

Articles: Articles should be submitted in double-spaced text with footnotes in Microsoft Word format. The suggested article length for *Court Review* is between 18 and 36 pages of double-spaced text (including the footnotes). Footnotes should conform to the current edition of *The Bluebook: A Uniform System of Citation*. Articles should be of a quality consistent with better state-bar-association law journals and/or other law reviews.

Essays: Essays should be submitted in the same format as articles. Suggested length is between 6 and 12 pages of double-spaced text (including any footnotes).

Book Reviews: Book reviews should be submitted in the same format as articles. Suggested length is between 3 and 9 pages of double-spaced text (including any footnotes).

Pre-commitment: For previously published authors, we will consider making a tentative publication commitment based upon an article outline. In addition to the outline, a comment about the specific ways in which the submission will be useful to judges and/or advance scholarly discourse on the subject matter would be appreciated. Final acceptance for publication cannot be given until a completed article, essay, or book review has been received and reviewed by the *Court Review* editor or board of editors.

Editing: *Court Review* reserves the right to edit all manuscripts.

Submission: Submissions should be made by email. Please send them to Editors@CourtReview.org. Submissions will be acknowledged by email. Notice of acceptance, rejection, or requests for changes will be sent following review.

OXYMORONIC MENTAL FUNCTION by Judge Victor Fleming

Across

- 1 "The Thin Man" pooch
- 5 Gratified
- 10 Actress Perlman
- 14 Knightly titles
- 15 Absolut alternative, familiarly
- 16 "Mistress of Mellyn" author Victoria
- 17 Start of an observation
- 19 Protomatter of the universe
- 20 Biggest bone in the body
- 21 Bottled (up)
- 22 Switzerland-based business conglomerate
- 23 Nashville-based awards org.
- 25 Looked for
- 27 Part 2 of the observation
- 31 One of the Khans
- 33 Good name, casually
- 34 "Last Supper" city
- 35 What some hearing-impaired folk do
- 38 Bawdy
- 40 Take away, at law
- 41 Certain standardized test, for short
- 42 Gillespie, to fans
- 43 Part 3 of the observation
- 48 Become a member again
- 49 Paving stuff
- 50 "Star Wars" heroine
- 52 "___ Clock Jump" (Basie tune)
- 54 Get the last drop of, as gravy
- 58 ___'acte
- 59 End of the observation
- 61 Focus group?
- 62 "It is ___ wind that ..."
- 63 Barely squeezed by, with "out"

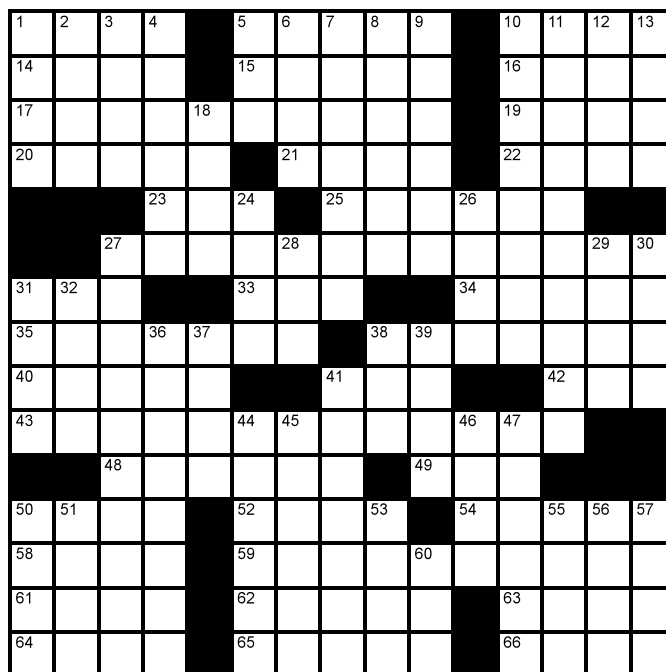
64 Hard to find

65 Meet expectations?

66 More, it's been said

Down

- 1 "In your dreams!"
- 2 Construction area
- 3 Light haircut request
- 4 Per se
- 5 Ukr. or Lith., once
- 6 At the acme of
- 7 Firms, as abs
- 8 "Sense and Sensibility" sister
- 9 Non-binding portion of a judicial opinion
- 10 Like rock and roll
- 11 "Unbelievable!"
- 12 TVA product
- 13 Sphere leader?
- 18 "Joy of Cooking" author Rombauer
- 24 Popular shaver brand
- 26 Amethyst and tourmaline
- 27 Author's antique, perhaps
- 28 Brit. word reference
- 29 Asian princess
- 30 California's Santa ___ Mtns.
- 31 Jai ___
- 32 Batter's tools?
- 36 Get ready to open
- 37 Key with four sharps (abbr.)
- 38 Tulsa sch.
- 39 Second to none
- 41 Pharmacy option
- 44 Going ___
- 45 Ryder of film



- 46 Toward dawn
- 47 Bricklayer's need
- 50 Look like a wolf
- 51 "A Day Without Rain" artist
- 53 Gaze wantonly
- 55 Gefilte fish fish
- 56 All-purpose trucks
- 57 Full profs usually hold them
- 60 Loop loopers of Chicago

Vic Fleming is a district judge in Little Rock, Arkansas.

Answers are found on page 89.

AMERICAN JUDGES ASSOCIATION FUTURE CONFERENCES

2018 ANNUAL CONFERENCE

LIHUE, HAWAII
(ISLAND OF KAUAI)

Kauai Marriot Resort
September 23-28
\$219 single/double

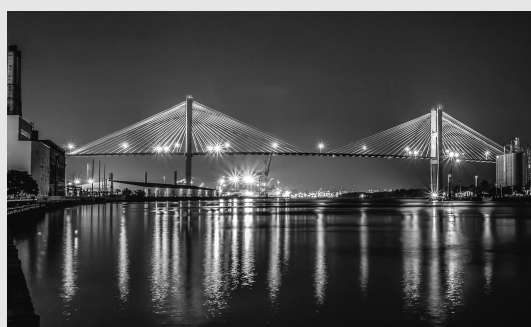


Courtesy of Kauai Marriot Resort

2019 MIDYEAR MEETING

SAVANNAH, GEORGIA

Savannah Marriot Riverfront
April 11-13
\$189 single/double



Adobe Stock

THE AJA ANNUAL CONFERENCE: THE BEST JUDICIAL EDUCATION AVAILABLE ANYWHERE
For more information, go to <http://amjudges.org/conferences>.

The Power of Compassion in the Court: Healing on Both Sides of the Bench

Jamey Hueston & Miriam Hutchins

Every day in courtrooms around the globe, judges face a regular diet of difficult and emotional cases involving human misery and heart-wrenching circumstances that wear on a judge's psyche and tolerance. Despite the nature of the cases, judges are expected to remain stoically neutral and unemotional to render fair and unbiased decisions. However, it is unreasonable to expect a human being, who happens to be a judge, to be emotionally unmoved by the plight of a young mother who turns to shoplifting and prostitution to feed her children; or the young man, raised in foster homes, with little education, guidance or hope, who deals street drugs to survive. Judges cannot help but absorb the despair they hear and be affected by the suffering around them.

Research has established the detrimental impact on an individual's health, relationships, professional performance, and long-term quality of life from continued exposure to dramatic accounts of cruelty and harm in other professions. Judges should be aware, they are not immune, and are in fact at risk for developing secondary trauma. Large caseloads and the inherent isolation of life on the bench can also contribute to trauma. Training in the use of therapeutic and compassionate approaches will enable judges to craft healthier outcomes for those appearing before the court while cogently relieving judicial trauma.

THE IMPACT OF SECONDARY TRAUMA

Secondary traumatic stress is the phenomena of emotional duress that results from an individual hearing firsthand trauma experiences from another. Efforts to study this phenomenon

have primarily focused on first responders, e.g., police, firefighters, social workers, and mental health providers.¹ However, judges, while not "in the direct line of fire," also suffer from the same debilitating effects because of persistent exposure to heartbreaking and traumatic cases.² The traumatic response can be severe and associated with post-traumatic stress disorder (PTSD).³

Research in the legal field regarding secondary trauma has shown that lawyers in domestic violence and criminal courts suffer from secondary trauma at higher rates than mental health professionals.⁴ Several decades of studies provide numerous examples of psychiatric disorders and stress among law students and members of the legal profession,⁵ including public defenders, who met the criteria for secondary traumatic stress and functional impairment.⁶ Although studies examining the effects of judicial trauma are scant, one study examining the effects of judicial trauma found that 63% of 105 judges interviewed suffered from one or more symptoms of vicarious trauma⁷ related to work.⁸ The indicators may be external or internal and include intolerance of others, irritability, and anger. Internal indicators include a sense of isolation, eating and drinking issues, anxiety, and depression,⁹ as well as forgetfulness and an inability to separate private from professional life.¹⁰ The list of symptoms continues, but any of these effects can have an upsetting impact on the personal and professional life of a judge.

COMPASSION

Compassion is the awareness of suffering coupled with the desire to provide relief.¹¹ It offers the means to confront diffi-

Footnotes

1. Susan L. Ray, Carol Wong, Dawn White & Kimberly Heaslip, *Compassion Satisfaction, Compassion Fatigue, Work Life Conditions, and Burnout Among Frontline Mental Health Care Professionals*, 19 *TRAUMATOLOGY*, 4, 255 (2013).
2. Jared Chamberlain & Monica K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 *J. of AM. ACAD. PSYCHIATRY & LAW*, 214 (2009).
3. BETH H. STAMM, *THE CONCISE PROQOL MANUAL*, 2nd Ed. Pocatello, ID:ProQOL.org., 21 (2010) (a survey tool used to measure levels of negativity and positivity from work-related, secondary exposure while helping people who have experienced extremely stressful events); Peter G. Jaffee, Claire V. Crooks, Billie L. Dunford-Jackson & Michael Town, *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 *JUV. & FAM. CT. J.* 4 (2003).
4. Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 *PACE L. REV.* 245 (2003).
5. Marc Trabsky & Paula Baron, *Negotiating Grief and Trauma in the Coronial Jurisdiction*, 23 *J. L. & MED.* 582 at FN 44 (2016).
6. Andrew P. Levin, Linda Albert, Avi Besser, Deborah Smith, Alex Zelenski, Stacey Rosenkranz & Yuval Neria, *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 *J. NERVOUS & MENTAL DISEASE* 12, 946 (2011).
7. Secondary trauma is also interchangeably called vicarious trauma, compassion fatigue, or insidious trauma in various articles. See Peter G. Jaffee, Claire V. Crooks, Billie L. Dunford-Jackson & Michael Town, *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 *JUV. & FAM. CT. J.* 4 (2003); Stamm, *supra* note 3. Susan A. Bandes, *Empathetic Judging and the Rule of Law*, *CARDOZO L. REV. DE NOVO* 133 (2009).
8. Jaffee et al., *Id.*
9. Jaffee et al., *Id.* at 5
10. Stamm, *supra* note 3, at 21.
11. MERRIAM WEBSTER'S COLLEGIATE DICTIONARY, 303 (5th ed. 2016).

cult emotions of others and to understand events from their perspective with an “attitude of curiosity and care.”¹² The concept and exercise of compassion is grounded in all spiritual traditions, though it is not limited to religion. It is, according to the Dalai Lama, “beyond religion and necessary for life.” He expands, “Every human being has the same potential for compassion; the only question is whether we really take any care of that potential, and develop and implement it in our daily life.”¹³

Despite the oft trying nature of judicial service, judges are in the enviable position of being able to affect positively the life conditions of those who come before them. Judicial compassion is a tool to accomplish that desired positive result and a way to understand another’s suffering with the desire to relieve it, while experiencing positive emotions.¹⁴ Once put into practice, compassion can be a healing mechanism enabling judges to expand their perspective that allows connection and recognition of another’s anguish to resolve more effectively conflicts before the court.

Compassion satisfaction in the work arena is defined as positive feelings from caregiving derived from the ability to help others.¹⁵ Research supports that *helping* behavior is associated with beneficial health outcomes to the helper, including reduced mortality.¹⁶ Importantly, connecting with others, or prosociality, may help in developing a buffer or resilience to stress.¹⁷

Compassion is like salve on a wound.

THE DRUG COURT MODEL

Drug courts, a unique judicial approach to problem solving, demonstrate the positive impact of judicial compassion at work. These courts regularly employ compassion techniques to change positively the behavior of seriously addicted drug offenders by becoming drug-free and contributing members of society. Drug courts are therapeutic in focus and create an alliance between the courts, health systems, and offenders to achieve wellness. Drug courts achieve this result by identifying and addressing the underlying issues that prompted offender criminality, and ensuring that they receive appropriate treatment and support services needed for recovery.¹⁸

Judicial involvement is considered one of the seminal fac-

tors to the success of the drug court and to the participant’s recovery.¹⁹ The drug court judge learns the background, strengths, and challenges of each offender (commonly known as a participant) and develops a relationship of trust during frequent review hearings through the course of the program. The judge plays a critical role in therapeutically motivating and encouraging participant improvement and sobriety, and in removing barriers to achievement of goals while demanding behavioral accountability of each offender through intense supervision. Some techniques include behavior modification methods, incentives and therapeutic sanctions, enhanced per-

THE TRANSFORMATIVE PROCESS OF COMPASSION

The drug court graduates — each dressed in their best — sat in the front of the courtroom; with proud family and friends crowding the back. Their presence on this day was proof of their hard work, the effectiveness of drug treatment, and the patience and compassion of the drug court staff to transform lives.

Each graduate received a diploma and recounted tales of loss, failure and regeneration after firm, but caring intervention by their judge.

“I was so mad when you sent me to treatment, judge, but you saved my life”, said one.

“I lost my son years ago, but now I’m back in his life,” said another defendant.

“This is the first time I ever finished anything in my life”, said the third, proudly holding up his certificate for all to see.

Although the judge and staff had heard similar testimonials at other graduations, the sense of accomplishment and gratitude they received was profound. They knew that tomorrow would bring new challenges of the seriously addicted, but the knowledge of hope and renewal was more powerful.

12. Boris Borneman, & Tanya Singer, *A Cognitive Neuroscience Perspective the ReSource Model*, in *COMPASSION: BRIDGING PRACTICE AND SCIENCE* (Tania Singer & Matthias Bolz eds., 2013), at 183.
13. DALAI LAMA, *HEALING ANGER: THE POWER OF PATIENCE FROM A BUDDHIST PERSPECTIVE* (1997).
14. Olga Klimecki, Ricard Matthieu & Tanya Singer, *Empathy Versus Compassion: Lessons from 1st and 3rd Person Methods*, in *COMPASSION: BRIDGING PRACTICE AND SCIENCE*, (Tania Singer & Matthias Bolz eds., 2013), at 279.
15. Stamm, *supra* note 3.
16. Michael J. Poulin, Stephanie L. Brown, Amanda J. Dillard & Dylan M. Smith, *Giving to Others and the Association Between Stress and Mortality*, 103 *AM. J. PUB. HEALTH*, 9, 1649 (2013).
17. Klimecki et al., *supra* note 14, at 284.
18. Risk assessments evaluate the likelihood that the person will offend, which is measured by examining the severity of substance

- use and other static, or historical information; e.g., age, age at first arrest and criminal history. Criminogenic needs assessments measure dynamic risks, which can be changed through interventions. Factors include anti-social or criminal attitudes, beliefs, personality or temperament, peers, substance-use severity, education level, employment, family/social supports, prior mental health problems, or past history of violating terms of supervision See Roger H. Peters, Marla G. Bartoi & Pattie B. Sherman, *Screening and Assessment of Co-Occurring Disorders in the Justice System*, Delmar, NY: CMHS Nat GAINS Center (2008); Douglas B. Marlowe, *Drug Court Practitioner Fact Sheet: Targeting the Right Participants for Adult Drug Courts Part One of a Two-Part Series*, Nat’l Drug Court Inst., Vol. III. (I) (2010).
19. Craig G. Jones & Richard I. Kemp, *The Strength of the Participant-Judge Relationship Predicts Better Drug Court Outcomes*, 21 *PSYCHIATRY PSYCHOL. & L.* (2014).

sonal supervision of offenders, creative resolutions, and procedural fairness to all parties.²⁰

The achievements of drug courts are well documented and success rates of the participants are substantially higher than the traditional defendant population.²¹ As a result of the drug court therapeutic approach, they remain sober for longer periods of time in comparison to non-drug-court offenders, obtain jobs, and become productive citizens. Remarkably, the judges and the court staff are also uplifted by aiding offender's transform from deep despair to hope and renewal.²²

DRUG COURT AND COMPASSION SATISFACTION

Drug courts, and the judges who run them, find—on a macro-level—creative ways to improve the judicial and support systems when needed, e.g., efficient drug-testing protocols, effective inter-agency information sharing and management systems, and quicker, more efficient ways to identify target population/candidates. On a micro-level, judges discover methods to motivate individual participants and innovatively resolve their problems, e.g., attract outside agencies and support groups for resources, provide non-traditional support programming, and create wellness, nutritional education, job training, and transportation alternatives. This problem-solving approach empowers judges to find solutions to difficult personal and social issues instead of blindly practicing case-processing business as usual. It leads to solution-oriented, relational judging, instead of linear judicial administration. It is compassion at work.

Judicial job satisfaction and praise in the drug court assignment is high. Many have expressed informally that drug court has been the highlight of their judicial careers and has defined their judicial styles. A survey of drug court and unified family court judges reported that they were happier in their assignments than those in other more traditional assignments, such as family law and criminal courts.²³ They expressed a sense of pride in their job and a brighter outlook.²⁴ Drug court judges stated that their courts helped participants resolve problems and had a positive emotional impact.²⁵ In turn, this helping relationship contributed to the judge's and staff's sense of job satisfaction,²⁶ instead of feeling raw from the bombardment of tragic accounts and suffering with little healing resolution.

The vast majority of drug courts only operate part-time or in addition to regular court dockets, leaving the judges to

shoulder their share of other judicial assignments and court work where they are exposed to the daily delivery of tragic events and misery. The creative and consistent healing processes, common in drug court, are not typically part of the traditional courtroom. However, it is common for drug court judges to transport the valuable skills of compassion to their traditional assignments.

Compassion techniques need not be the exclusive property of drug courts.

THE SCIENCE OF COMPASSION AND TRAINING

Literature offers a compendium of various wellness and coping mechanisms practiced by judges to manage burnout and stress. These include proper sleep, nutrition, exercise, hobbies, and relaxation.²⁷ Compassion, as of yet, is not included as one of the tools. Social sciences, humanities, and legal disciplines have not focused on the utilization of compassion in court as a means to diminish negative emotions and traumatic effects experienced. However, neuroscientific research provides compelling evidence to support the use of compassion as a viable strategy. Neuronal imaging has identified regions in the brain related to understanding the suffering of others²⁸ where the effects of compassion training can be charted.

Compassion-training activates opioids related to feelings of warmth and calm and stimulates the neurotransmitter dopamine associated with pleasure and reward.²⁹ Subjects who viewed videos of persons experiencing pain demonstrated increased neural activity related to positive emotions after receiving compassion training.³⁰ Another study confirmed that those trained in compassion for only two weeks were more altruistic toward a victim of an unfair social interaction than the control group.³¹ Utilizing compassion may also reduce stress-related immune and behavioral responses,³² thereby aiding judges in developing a buffer to constant courtroom tensions. Importantly, researchers have charted measurable changes in neural responses and activations in brain functions reflecting increased abilities to help others while governing individual emotions, indicating that compassion is a trainable strategy.³³ In other terms, compassion training strengthens resilience and improves positive emotions, even when exposed to the distress of others, without denying the suffering.³⁴

20. Jamey H. Hueston & Kevin Burke, *Exporting Drug Court Concepts to Traditional Courts: A Roadmap to an Effective Therapeutic Court*, 52 CT. REV. 44 (2016).

21. U.S. Gov't Accountability Off., GAO-12-53, *Adult Drug Courts: Studies Show Courts Reduce Recidivism, but DOJ Could Enhance Future Performance Measure Revision Efforts* (2011).

22. Deborah J. Chase & Peggy Fulton Hora, *The Best Seat in The House: The Court Assignment and Judicial Satisfaction*, FAM. CT. REV., 47(2), 209 (2009).

23. *Id.*

24. *Id.* at 216.

25. *Id.* at 231.

26. *Id.* at 233.

27. Jaffee et al., *supra* note 7, at 6.

28. Helen Y. Weng, Andrew S. Fox, Alexander J. Shackman, Diane E.

Stodola, Jessica Z.K. Caldwell, Matthew Olson, Gregory M. Rogers & Richard J Davidson, *Compassion Training Alters Altruism and Neural Responses to Suffering*, 24 Psychol. Sci., 1171–1180 (2013).

29. Borneman, & Singer, *supra* note 12, at 186.

30. Klimecki, *supra* note 14, at 282.

31. Weng et al., *supra* note 28.

32. Thaddeus W.W. Pace, Lobsang Tenzin Negi, Daniel D. Adame, Steven P. Cole, Teresa I. Sivilli, Timothy D. Brown, Michael J. Issa & Charles L. Raison, *Effect of Compassion Meditation on Neuroendocrine, Innate Immune and Behavioral Responses to Psychosocial Stress*, PSYCHONEUROENDOCRINOLOGY, 34(1), 87-98 (2009).

33. Weng et al., *supra* note 28.

34. Klimecki et al., *supra* note 14.

Effective use of compassion in the court requires training, effort, and focus to harness the desire to help into a potent and impartial channel for administering justice, while avoiding patronizing or unwanted help. Judges can be educated as to how their emotions can be strategically directed. Compassion training, in particular, can enhance cognitive understanding of the perspectives of others and strengthen resilience to difficult experiences.

There are a variety of compassion and emotional well-being trainings available to judges, including mindfulness, loving-kindness, and compassion meditations.³⁵ A key component shared by these trainings is the emphasis on mindfulness meditation, which instructs us to observe our feelings without self-criticism and focus upon identifying thoughts and behaviors that will be helpful in the moment.³⁶ Loving-kindness, meditation, and compassion training go beyond self and focus on extending feelings of kindness and caring to all human beings. Compassion training continues even further as it develops sympathy for the misfortunes of others and promotes behaviors to relieve their distress.³⁷

Compassion training can help judges focus on the humanity of the parties and remain solution focused when they struggle to find patience in contentious matters or seek the right words to explain a decision or ruling. It may be as simple as offering water to an agitated witness or offering a disabled or frail person to sit at counsel table. It is listening with intent, paying attention,³⁸ being respectful, and ensuring that the parties have an opportunity to be heard.³⁹ Compassion is also demonstrated when artfully questioning parents in a custody battle about their child's interests to redirect their energy and help them resolve their differences more amicably. It is acknowledging the impact of a traumatic event on a party, when the decision is unfavorable to them.

Years of contemplation and study to cultivate meditation and compassion techniques are not required; just the willingness. Even brief trainings in these techniques of several weeks have produced positive results.⁴⁰ In return, the rewards are substantial.

GROWING FIELD OF STUDY AND NEXT STEPS

Legal culture considers that judges be dispassionate arbiters.⁴¹ As a result, judges are often reticent to share their feelings or vulnerabilities, and remain stoic. Judges cannot help but absorb the despair they hear and be affected by the

suffering around them. Professional counseling, debriefing, and other mental health support are not standard in the courthouse environment. Consequently, many judges do not perceive or ignore the impact that this judicial work has on their mental well-being and physical health. They neither seek nor receive needed help and, in many instances, are unaware that they are even at risk. It is incumbent on judicial administration to provide judges with education and training regarding potential hazards and consequences of secondary trauma, as well as strategies to counter its insidious effects.

The study of judicial secondary trauma is a growing field, and greater research and action is required to:

- 1) Define and measure the range of experiences that lead to judicial stress and trauma
- 2) Develop a regime of judicial education programs, trainings, workshops, and resources regarding stress and trauma and wellness responses
- 3) Institute supportive institutional environments, prevention measures, interventions, debriefing, coping strategies, and treatment programs in judicial workplaces
- 4) Provide mindfulness and other similar trainings and routine practice opportunities
- 5) Develop robust judicial compassion training curriculum education seminars
- 6) Study the effects of secondary trauma on judges and the impact of judicial compassion training to relieve its effects

THE POWER OF COMPASSION

Judges are the ultimate arbiters of conflicts and guardians of the judicial system upon which the citizenry depends for dispensing justice. The public deserves our best decisions, uncompromised by occupational hazards. It serves no benefit for judges to become ill, over time, as a result of the enervating matters before them. Judges can disregard their vulnerability engendered by workplace stress and the traumatic assault to their psyche or they can respond in positive, constructive and compassionate ways, which can significantly affect litigants and, importantly, themselves. The potential benefits of using compassion techniques with other therapeutic strategies far outweigh the comfort of the status quo.

Employing compassion can neither replace nor excuse

35. See for review of meditation literature: Xianglong Zeng, Cleo P. K. Chiu, Rong Wang, Tian P. S. Oei & Freedom Y. K. Leung, *The Effect of Loving-Kindness Meditation on Positive Emotions: A Meta-Analytic Review*, FRONT PSYCHOL. 6: 1693 (2015); Inga Boellinghaus, Fergal W. Jones & Jane Hutton, *The Role of Mindfulness and Loving-Kindness Meditation in Cultivating Self-Compassion and Other-Focused Concern in Health Care Professionals*, MINDFULNESS 5(129) (2014); Emma M Seppala, Cendri A Hutcherson, Dong TH Nguyen, James R Doty & James J Gross, *Loving-Kindness Meditation: A Tool to Improve Healthcare Provider Compassion, Resilience, and Patient Care*, J. COMPASSIONATE HEALTH CARE, 1(5) (2014); S.G. Hofmann, P. Grossman & D.E. Hinton, *Loving-Kindness and Compassion Meditation: Potential for Psychological Interventions*, CLINI-

CAL PSYCHOL. REV. 31(7), 1126-32. (2011).

36. Jeffrey M. Greeson, *Mindfulness Research Update: 2008*, 14 COMPLIMENTARY HEALTH PRAC. REV., 1 (2009).

37. Hofmann et al., *supra* note 35.

38. Anthony Hopkins, *Compassion as a Foundation for Promoting Equality Before the Law*, presentation at XXVth International Congress on Law and Mental Health, Faculty of Law, Charles University, Prague (2017).

39. Tom R. Tyler, *Procedural Justice and the Courts*, 44 Ct. Rev. (2007).

40. Greeson, *supra* note 36.

41. Terry A. Maroney, *The Ideal of the Dispassionate Judge: An Emotion Regulation Perspective*. 6 EMOTION REV., 142-151 (2014).

application of the law, consideration of the facts, or due process. Compassion is not ruling based on instinct, nor is it judicial activism; rather, it is the mark of a more expansive approach to enrich judicial decision making and impartiality. A compassionate, integrative method in the appropriate cases and situations yields important benefits to the litigants by fostering confidence and satisfaction in the judicial process, and are equally helpful to the judge who seeks to decide cases fairly, while maintaining emotional well-being. These skills are trainable, and judicial administration should provide opportunities for judges to recognize the potential negative effects of constant exposure to their psyches and their health. Leadership must also help judges develop the ability to understand and connect with those before them. Secondary trauma is a real part of judicial life and can seriously affect the health of judges. It should not be ignored.

Compassion strategies counter hopelessness and provide alternatives to suffering for litigant and judge alike. The opportunities to integrate compassion are limitless and present at almost every stage of a case for judges who choose to solve and not just resolve.



Jamey Hueston is a retired judge of the District Court of Maryland, Baltimore City after twenty-five years of service. Judge Hueston is the founding judge and administrator of the Baltimore Drug Court for over 20 years and has hosted hundreds of national and international judges and visitors to observe its operations and adapt them to their respective jurisdictions. She founded and chaired the Maryland Office of Problem-Solving Courts, and is a pioneer founder of the National Association of Drug Court Professionals. Judge Hueston has presided over hundreds of family-involved and domestic violence cases. She lectures and consults throughout the United States and internationally regarding drug courts, court management, and justice reforms.



Miriam Hutchins is a retired judge of the District Court of Maryland, Baltimore City after sixteen years. Before her judicial tenure, she was a Domestic Equity Master for the Baltimore City Circuit Court. As a Domestic Equity Master she presided over numerous cases involving custody and visitation disputes, and as a judge, domestic violence, drug abuse, and mental health issues. Her experience presiding in problem-solving courts, and first-hand observations of the commitment required of the judges who preside on those dockets, inspired her exploration of secondary trauma and burnout among judges and strategies to address it. She is a graduate of Goucher College and Georgetown University Law Center.



WANTED:

A JUDGE WHO WOULD LIKE TO JOIN THE TEAM OF EDITORS FOR COURT REVIEW, THE QUARTERLY JOURNAL OF THE AMERICAN JUDGES ASSOCIATION

Between now and September 15, we are accepting applications to join our editing team. Our plan is generally to have each of the Court Review editors take responsibility for one issue per year, while also participating in quarterly conference calls and helping to coordinate content. We hope to add one or two additional judges to our team starting in January 2019. This is a great way to stay on top of issues of interest to judges and to help shape the information flow going to other judges throughout the United States and Canada.

Please send your expression of interest to Editors@courtreview.org. If you have a CV or resume, please enclose it—and let us know of any experience you have in writing and editing.



Effective Adjudication *of* Domestic Abuse Cases



Online Education

comprehensive curriculum

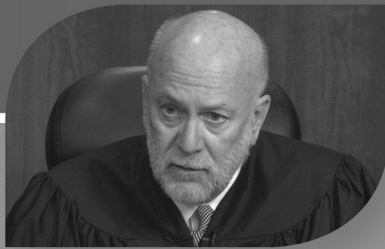
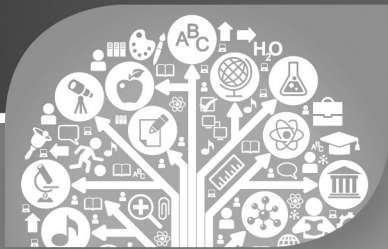
This new and innovative online resource for handling civil and criminal domestic violence cases explores the unique dynamics of domestic violence, including assessing lethality and dangerousness, custody and protective orders, special evidentiary issues, and effective sentencing.

prominent faculty

Each training module concentrates on key issues in domestic violence cases which allow both new and experienced judges to learn from some of the leading, and most prominent, national experts that judges might not otherwise have the time, opportunity or funding to experience and learn from in person.

innovative delivery

Using innovative and interactive educational delivery methods such as courtroom based scenarios, interactive exercises, dynamic panel discussions, and other interactive web-based content, this educational opportunity will both engage the user, and facilitate the absorption of knowledge.



education.amjudges.org

Now available!



Appropriate Action

Cynthia Gray

Each year, there are judicial discipline cases that illustrate the adverse effect of mental disorders on individual judges and the judiciary.¹ These proceedings also demonstrate the need for the judiciary to address judges' wellness issues sooner, when remediation may be possible, rather than later, when removal may be unavoidable.

The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, released by the National Task Force on Lawyer Well-Being in 2017,² included several recommendations specifically for the judiciary:

- Communicate that well-being is a priority;
- Develop policies for impaired judges;
- Reduce the stigma of mental health and substance use disorders;
- Conduct judicial well-being surveys;
- Provide well-being programming for judges and staff; and
- Monitor lawyers' performance for signs of impairment and partner with lawyer assistance programs.

The report referred approvingly to Rule 2.14 of the *Model Code of Judicial Conduct*, added in 2007 by the American Bar Association to encourage "judges to address impairment problems when they arise." It provides:

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Approximately 25 states have adopted the rule and comments with little or no change.

Comments explain that "appropriate action" is "action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system." What action is "appropriate" depends on the circumstances, but the code lists as examples:

- "Speaking directly to the impaired person";
- "Notifying an individual with supervisory responsibility over the impaired person"; or
- "Making a referral to an assistance program."

Thus, the code requires action by a judge in response to evidence that a colleague or attorney has a disorder but does not necessarily require reporting to a conduct commission, at least not as a first option. However, comment 2 emphasizes that, although "referral to an assistance program may satisfy a judge's responsibility," if the conduct is sufficiently grave, "the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body."

The task force report also recommended that courts consider adopting policies such as a diversion rule for judges and ensure that judges "feel comfortable referring members to judicial or lawyer assistance programs." Such efforts in some states may provide the basis for more systematic, transparent, and widespread practices.

Several judicial conduct commissions have express authority to enter into an agreement with a judge to defer formal disciplinary proceedings pending "specified rehabilitation, treatment, education or minor corrective action," as the Nevada statute governing the Commission on Judicial Discipline provides, for example.³ The Pennsylvania Judicial Conduct Board has adopted special procedures "to encourage affected members of the judiciary to seek help at the earliest possible moment so as to ensure maximum protection to the public against misconduct resulting from their impairment."⁴ The policy allows a judicial officer to "petition the Board for permission to enter a rehabilitative diversion program" before the filing of formal charges.

Reliance on assistance programs as corrective action or a mitigating factor can be found in many judicial discipline cases. For example, the Ohio Supreme Court suspended a judge for two years for a demeaning attitude toward counsel and litigants in two matters but stayed the suspension on the condition that he commit no further misconduct and comply with a contract with the Ohio Lawyer Assistance Program (OLAP).⁵ The Court credited the judge for his commitment to a course of psychological and psychiatric treatment designed to control his anger, stress, and anxieties and his decision to enter into a four-year OLAP contract.

Most if not all lawyers assistance programs provide services for judges as well as lawyers; for example, the Texas Lawyer Assistance Program states that it "helps judges with issues related to substance use or mental health disorders and maintains a list of volunteer judges who are interested in providing support to peers in crisis." Indeed, at least seven lawyer assistance programs include "judges" in their name. In February

Footnotes

1. See, e.g., *In re Turner*, Order (Illinois Courts Commission December 1, 2017) (<https://tinyurl.com/y8wn3k89>) (retirement of judge found mentally unable to perform her duties due to Alzheimer's after news reports that the judge had allowed a person who was not elected or sworn in as a judge to preside over matters).
2. <https://tinyurl.com/y9etefcz>. The task force was established by the American Bar Association Commission on Lawyer Assistance Pro-

grams, the National Organization of Bar Counsel, and the Association of Professional Responsibility Lawyers.

3. NRS 1.468 (<https://tinyurl.com/ybuc6t29>).
4. Chapter 11, Pennsylvania Judicial Conduct Board Rules of Procedure (<https://tinyurl.com/y9y4qljj>).
5. *Disciplinary Counsel v. Weithman*, 34 N.E.3d 865 (Ohio 2015).

2017, in West Virginia, where not all judges are lawyers, the Supreme Court of Appeals amended the assistance program's rules "to incorporate confidential assistance" to all judges, as well as lawyers, law students, and bar applicants.⁶

The Kansas Supreme Court has created a separate seven-judge Judges Assistance Committee to provide assistance to any Kansas judge who has a mental or physical disability or an addiction to or excessive use of drugs or intoxicants" by developing a program that "will generate confidence to warrant early referrals and self-referrals to the committee so that impairments may be avoided, limited, or reversed." ⁷ The objectives of the committee, whose work is usually confidential, include intervention, recommending treatment, providing "a program of peer support, acting as an advocate of judges," and educating the public and the legal community. A judge may communicate with the committee on his or her own behalf, any person may suggest the need to intervene on a judge's behalf, and the Commission on Judicial Qualifications may refer a judge to the committee. The committee may refer a judge to the Commission if "the judge fails or refuses to address the issues of concern."

Anticipating an impairment issue by having processes in place demonstrates a judiciary's commitment to the wellness of its members that not only benefits individual judges, the judicial community, and the public it serves but also prevents confidence-eroding conduct and headlines.



Since October 1990, Cynthia Gray has been director of the Center for Judicial Ethics, a national clearinghouse for information about judicial ethics and discipline that is part of the National Center for State Courts. (The CJE was part of the American Judicature Society before that organization's October 2014 dissolution.)

She summarizes recent cases and advisory opinions, answers requests for information about judicial conduct, writes a weekly blog (at www.ncscjudicialethicsblog.org), writes and edits the Judicial Conduct Reporter, and organizes the biennial National College on Judicial Conduct and Ethics. She has made numerous presentations at judicial-education programs and written numerous articles and publications on judicial-ethics topics. A 1980 graduate of the Northwestern University School of Law, Gray clerked for Judge Hubert L. Will of the United States District Court of the Northern District of Illinois for two years and was a litigation attorney in two private law firms for eight years.

6. <https://www.wvbar.org/wv-lawyers-assistance-program-website/>.

7. Rule 640, Kansas Supreme Court Rules (<https://tinyurl.com/ycu57m3k>).



PROPOSED BYLAW AMENDMENT

This AJA Bylaws amendment proposal has been submitted by the Bylaws Committee for consideration at the AJA Annual Conference in Hawaii this September. The proposed change is shown as a strikethrough.

.....
(b) President-Elect. The President-Elect shall:

In the absence, incapacity or illness of the President, either as certified by a majority vote of the Executive Committee or upon the written request of the President, preside at meetings of the General Assembly, Board of Governors and/or Executive Committee. The duration of these duties shall be specified either in the President's written request or by the Executive Committee.

Perform such administrative functions as may be directed by the President and/or the Board of Governors.

Assist the President in facilitating and coordinating the activities of the Association committees.

~~Serve as chairperson of the Conference Committee.~~

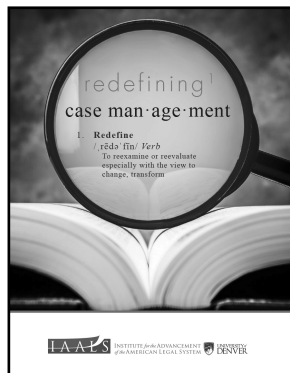


The Resource Page



NEW PUBLICATIONS

INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, *REDEFINING CASE MANAGEMENT* (2018) (32 pp.). <https://bit.ly/2JZbYda>



The Institute for the Advancement of the American Legal System (IAALS) is a national independent research center at the University of Denver, a “think tank” that seeks to create practical solutions for the challenges in the American legal system. IAALS has pursued a number of research projects addressing civil case management. In their latest report, *Redefining Case Management*, IAALS draws on their accumulated experience and tackles some of the cultural and systemic changes needed to implement more pervasive and effective case management. In addition to research, IAALS and its partners, such as the American College of Trial Lawyers and the National Center for State Courts, have been assisting jurisdictions with pilot reform projects since 2009. They have identified ten guidelines for case management and, through nearly a decade of experience, built on them:

- Case management (CM) should be right-sized to each case.
- CM should begin at filing and be ongoing.
- Processes should be consistently applied and systematized.
- An early CM conference is key.
- CM conferences should be used to address critical issues throughout the case.

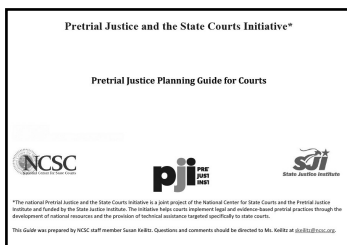
- Set a trial date early.
- Judges must be active in CM.
- Rule promptly.
- Discuss the ADR plan early.
- Monitor and measure your CM program for continuous improvement.

The full report provides detailed discussion of the role of civil CM and developments, as well as insights about the practical challenges of implementing a new CM program.

SUSAN KEILITZ, *PRETRIAL PLANNING GUIDE FOR COURTS, PRETRIAL JUSTICE AND THE STATE COURTS INITIATIVE* (2018) (37 pp.). <https://bit.ly/2K5BfhF>

SUE FERRERE, *ESTIMATING THE COSTS OF IMPLEMENTING PRETRIAL ASSESSMENT AND MONITORING SERVICES* (2018) (9 pp.). <https://bit.ly/2Ibc77D>

Pretrial practices in criminal courts, particularly pretrial detention decisions, are rapidly gaining in importance and attention. Efforts are underway across the country to invalidate or restrict the traditional bail systems and bond schedules. What has your jurisdiction done to prepare for the future of criminal pretrial services? The *Pretrial Justice and the State Courts Initiative* is a joint project of the National Center for State Courts and the Pretrial Justice Institute funded by the State Justice Institute. The Initiative seeks to help courts implement evidence-based pretrial practices for criminal cases.

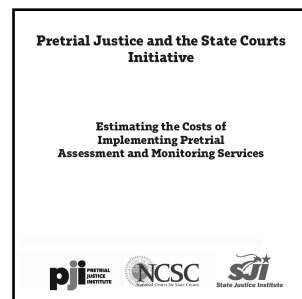


In this recently released publication pair, the Institute provides guidance for judges and court managers seeking to improve pretrial justice practices on a local or statewide level.

The Planning Guide describes a framework for assessing a jurisdiction’s current pretrial practices, identifying areas in need of change, identifying actions that

may be needed, and accessing resources to guide implementation. The Planning Guide provides a simple and easy-to-follow roadmap to strategic planning and implementation. It is organized in a series of worksheets laid out in a grid format with detailed descriptions of the steps to be taken. The worksheets also provide extensive examples of the steps along the path. Whether you have prior experience in project management or are new to this type of undertaking, the Planning Guide has plenty of value to offer specifically to help you analyze your court’s criminal pretrial practices and pursue changes.

A critical element of any new justice services undertaking is cost. However, few judges have much training or experience in estimating costs. In the context of an issue like criminal pretrial release, realistic cost estimation is particularly important because of the degree of



involvement of other community stakeholders—and outside funding sources that are political bodies. The Institute has provided a helpful report explaining how to estimate the costs of a pretrial assessment and monitoring-services program. Costs can vary widely depending on the nature of the program and the nature of the stakeholder involvement. For example, my home district has seen its budget for these services change over the years from over \$300,000 per year to a net zero budget to \$80,000 per year, all with increasing pressure to provide more services to more participants. Knowing how the numbers are likely to work and where the money goes is key when talking to your funding source and critical stakeholders. The Institute has produced a helpful guide to identifying the functions, needs, factors, and costs of the components of a pretrial system budget.