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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.



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