Elements of Judicial Excellence

A Framework to Support the Professional Development of State Trial Court Judges

December 2017

Elements of Judicial Excellence

A Framework to Support the Professional Development of State Trial Court Judges

December 2017

Project Director
Jennifer K. Elek, Ph.D.

Project Staff
David B. Rottman, Ph.D.
Shelley Spacek Miller, J.D.
Lydia Hamblin, Ph.D.

Research Division | National Center for State Courts

This report was developed under grant number SJI-15-N-108 from the State Justice Institute. The points of view expressed in this report are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute or the National Center for State Courts.

Elements of Judicial Excellence

Elements of Judicial Excellence is a framework designed to support the professional development of state trial court judges. It is intended as a resource for judges throughout their careers, as well as for court leaders, judicial educators, mentors, and others involved in judicial professional development.

The framework was *not* designed to inform judicial selection or retention decisions and is not recommended for use as a basis for judicial selection criteria or retention standards.

Developed by the National Center for State Courts (NCSC) with partial funding from the State Justice Institute and in collaboration with the Illinois Courts, the framework is the result of an intensive qualitative research process that included input from over one hundred respected circuit court and associate judges in Illinois. Twenty chief judges in circuits from across the state nominated 140 respected judges to participate in this initiative as exemplars of judicial excellence in their respective assignments. A maximum diversity sample of 103 judges drawn from this source list of nominees participated in confidential interviews, focus groups, and/or surveys conducted by the NCSC project team in 2016 and 2017. This framework is based on their input.

How to read this framework

For each element in the framework, the following information is provided.

1. Title & definition: A label for the element and a one- or two-sentence description of the scope of the element.

2. What do respected judges say? A section summarizing the general themes or types of knowledge, skills, abilities, or other individual characteristics that respected judges described as important to judicial excellence. It also summarizes variations noted by judicial assignment type or experience level.

3. What do respected judges do? A section providing examples of strategies and illustrative behaviors described by respected judges when discussing judicial excellence. It also includes general advice from judges about what judges can do to improve, including the types of judicial education courses that could be helpful.

4. Commentary: A section briefly identifying some of the key linkages between the topics judges identified in sections #2 and #3 above and other empirical research.

What is this framework?

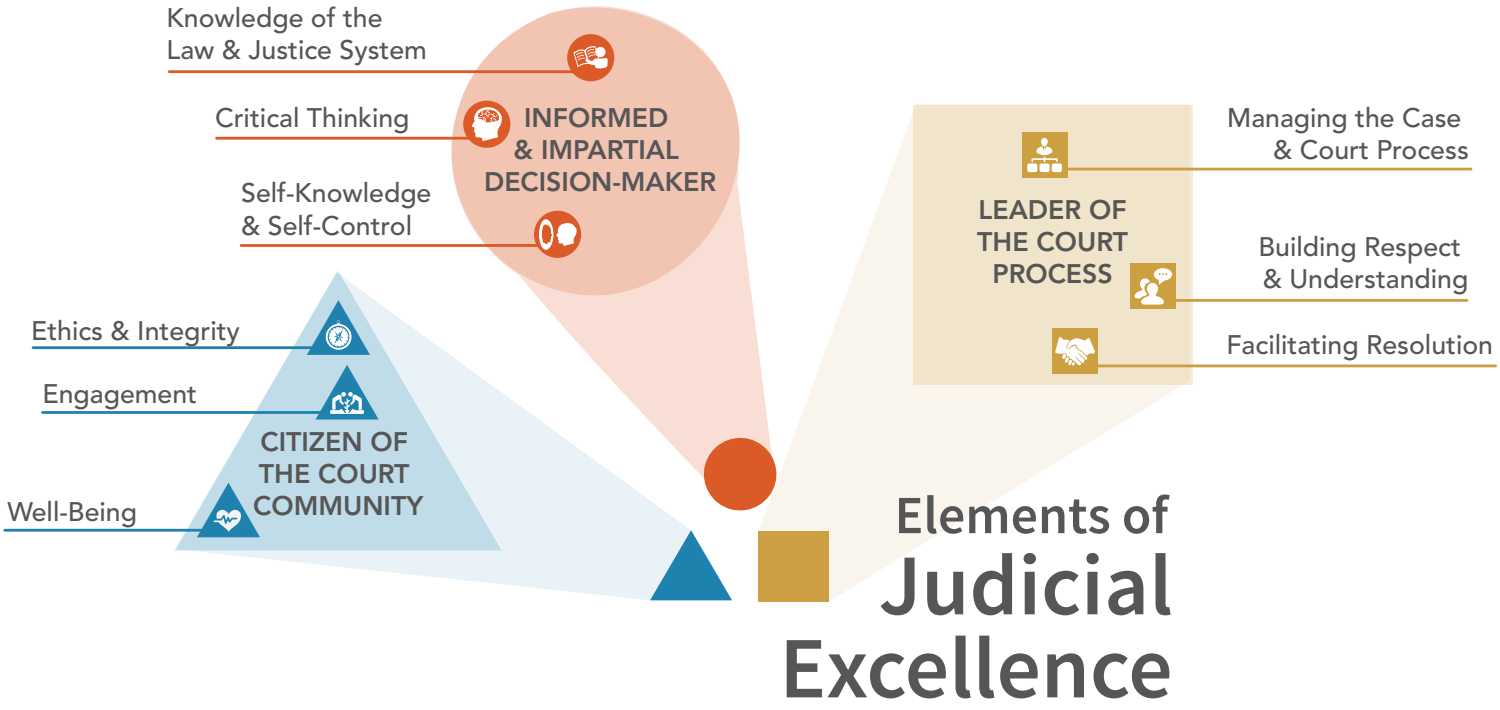
The *Elements of Judicial Excellence* is a roadmap of the general types of knowledge, skills, abilities, and other individual characteristics that respected judges described as important to judicial excellence. It was designed to support the professional development of judges throughout their careers.

Who can use this framework?

- ✓ State trial court judges interested in developing or honing their craft
- ✓ Court leaders, judicial educators, mentors, and others who support the professional development of judges

The resulting *Elements of Judicial Excellence* framework comprises nine elements. These nine elements capture the general types of knowledge, skills, abilities, and other individual characteristics described by judges as contributing to excellence in their roles as:

- a **CITIZEN OF THE COURT COMMUNITY**
  Ethics & Integrity, Engagement, Well-Being
- an **INFORMED AND IMPARTIAL DECISION-MAKER**
  Knowledge of the Law & Justice System, Critical Thinking, Self-Knowledge & Self-Control
- a **LEADER OF THE COURT PROCESS**
  Managing the Case & Court Process, Building Respect & Understanding, Facilitating Resolution



For more detailed information about the development of this framework and recommendations for its use, refer to the complete project final report at www.ncsc.org/judicialexcellencereport.

Ethics & Integrity

Understands the ethical challenges faced by judges and how to properly address them to uphold the actual and perceived integrity of the judiciary

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Respected judges described judicial excellence as adhering to ethical and moral values requiring that people be treated with respect, honesty, and dignity and demonstrating empathy, compassion, and a concern for public welfare (see also *Building Respect & Understanding*). Good judges uphold the integrity of the judiciary by setting a positive example for others (see also *Self-Knowledge & Self-Control and Engagement*), including local court staff and justice stakeholders, whose interactions with the public impact perceptions of the court.

Judges also described the importance of understanding values specific to the judicial role, including judicial independence, impartiality, and fairness. Respected judges consider all relevant evidence and arguments from both sides when making decisions (see also *Critical Thinking*). They also provide a fair legal process by consistently following and upholding the letter of the law to ensure that individuals' rights are protected (e.g., due process, HIPAA confidentiality) and that they have access to justice (see also *Knowledge of the Law & Justice System, Managing the Case & Court Process*). Judges emphasized the importance of maintaining propriety and the appearance of propriety by establishing appropriate personal relationship boundaries with others and not abusing the judicial office for personal or family gain.

In addition, good judges were described as knowledgeable about the state code of judicial conduct, judicial review processes, and disciplinary mechanisms. They are informed about the full array of ethical considerations specific to the judicial role. They are aware of the boundaries of ethical judicial behavior and the nature of inappropriate behaviors that may result in a disciplinary review. Judges explained that some of their peers have not read the judicial canons and may seek ethical guidance only after they have engaged in compromising behavior (see also *Self-Knowledge & Self-Control*). For example, they may have engaged in *ex parte* communications or found themselves in circumstances that created an otherwise avoidable conflict of interest.

Variations by assignment type or experience level

Respected judges acknowledged that some goals differed by judicial assignment. In some assignments, the purity of the adversarial process was valued, whereas other assignments involved a collaborative, therapeutic process in pursuit of restoration, reunification, or the best interests of a party (see also *Facilitating Resolution*). Judges noted that problem-solving court assignments carried greater risks of crossing ethical boundaries because of the long-term and individualized nature of cases on the call.

Judges described the need for all new judges to learn how to recognize potential ethical issues and avoid the "slippery slope" or "slow roll off a cliff" into judicial misconduct. Although the ability to identify and avoid potential ethical entanglements was thought to improve with experience on the bench, participants warned that experienced judges can become overconfident in their ability to effectively resolve ethical dilemmas in which they find themselves.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Read the state Code of Judicial Conduct in its entirety.[1] Review the canons periodically as a refresher to ensure that they are being followed in practice. Understand how the Code of Judicial Conduct is relevant at all times, including when off the bench and out in the community.

- Learn about the state judicial disciplinary body and the complaint process for judicial misconduct. Review summaries of and orders pertaining to complaints that have been filed. This knowledge may help judges better identify the circumstances and judicial behaviors that may result in censure or removal from office.

- Read the state Rules of Professional Conduct for attorneys. This may help judges identify and appropriately respond to or report attorney misbehavior.

- Regularly review the state bar association's ethics advisory opinions and ethics inquiry pronouncements to see what issues are creating problems in the profession and among those who appear before the court. Knowing about those issues will help the judge stay above the fray, focused on the case before the court.

- If motions for recusal are filed, thoroughly review the submitted documentation in considering the request to respond appropriately to the expressed concerns, regardless of case type or litigant status.

- Discuss ethical dilemmas with colleagues or mentors for guidance on how to properly respond to and address ethical issues that arise. These mentors or resource judges may be identified through a variety of strategies.

    - Contact judicial members of a state judicial conduct commission, ethics advisory committee, or other similar authority.

    - Ask colleagues who the "go-to" judge is in the jurisdiction for ethics advice.

    - Review prior educational conference materials for the names of judges who served as faculty on ethics-related educational sessions or panels.

Judges noted that engaging in more proactive efforts to learn about ethical judicial conduct, as in the strategies described above, may help judges better identify and prevent or avoid potentially compromising situations that reflect poorly on themselves and on the judicial office. In general, judges recommended taking all ethics courses offered and encouraged their peers not to limit themselves to the minimum required number of ethics courses or conference hours. Some judges described state judicial education seminars on how to appropriately interact with self-represented litigants as especially informative.

Commentary

Judicial ethics traditionally focuses on independence (freedom from external influences, such as minimizing conflicts of interest) and impartiality (freedom from personal biases that may affect judgments of and behavior toward others; see also *Self-Knowledge and Self-Control*).[2] Judicial ethics also emphasizes integrity and fairness, including legal fairness (efforts to uphold the law and legal precedent).[3]

A growing body of social science research identifies critical organizational and individual factors related to ethical or unethical conduct.[4] At the organizational level, contextual factors and social norms (aspects of what researchers refer to as an organization's *ethical infrastructure*) create expectations about appropriate behavior. These factors include, for example, the availability of formal ethics codes or other programs that offer formal behavioral guidance, and any social stigma associated with the use of available ethics-related resources.[5] Other interpersonal influences, such as the ethical behavior of leadership and peers and how management treats people within the organization, also play a role. Such interpersonal and contextual factors provide essential guidance about what constitutes propriety or impropriety that can help to promote ethical judgment and behavior.

In addition, numerous antecedents to unethical conduct are known to exist at the individual level.[6] Overconfidence is one. Individuals must be able to identify ethically compromising situations to avoid them. However, without the appropriate level of education and training, individuals may recognize the ethical implications of their behavior only after boundaries have been crossed.[7] People must also have the courage to take appropriate action in ethically compromising situations, which in part depends on the individual's willingness to take responsibility for their behavior in the situation and the belief that they can do what is necessary. This is one reason judges are required to remain abreast of legal, ethical, and constitutional requirements related to their area(s) of practice. As a research scholar observed, "ethical questions and conflicts anticipated and discussed tend to be ethical issues avoided."[8]

The Center for Judicial Ethics is a clearinghouse of information on judicial ethics and discipline. Resources include a quarterly newsletter that "summarizes recent decisions and advisory opinions, reports developments in judicial discipline, and includes articles on judicial ethics and discipline procedure topics." Judges can sign up to receive the newsletter by e-mail. For more information, see **www.ncsc.org/cje**.

Endnotes

[1] *See* MODEL CODE OF JUDICIAL CONDUCT (AM. BAR ASS'N, 2010) (many state judicial codes of conduct adopt, in some part, provisions of the Model Code).

[2] *Id. See also* Marla Greenstein, *International Judicial Ethics*, 55 JUDGES' J. 40 (2016), http://www.americanbar.org/publications/judges_journal/2016/summer/international_judicial_ethics.html (discussing code of judicial ethics at the international level) .

[3] *See* MODEL CODE *at* Canon 2; Stephen Colbran, *Independence and Integrity as a Criterion for Judicial Performance Evaluation*, 5 U. NOTRE DAME AUSTRALIA L. REV., 15 (2003). *See also* BOLOGNA AND MILAN GLOBAL CODE OF JUDICIAL ETHICS (2015), http://www.icj.org/wp-content/uploads/2016/02/Bologna-and-Milan-Global-Code-of-Judicial-Ethics.pdf.

[4] Linda Trevino, Niki den Nieuwenboer, & Jennifer Kish-Gephart, *(Un)ethical Behavior in Organizations*. 65 ANN. REV. PSYCHOL. 635 (2014). *See also* Jennifer Robbennolt, *Behavioral Ethics Meets Legal Ethics*, 11 ANN. REV. LAW SOC. SCI. 75 (2015).

[5] Codes of conduct are a common institutional strategy for promoting ethical behavior, but because individuals are influenced heavily by other organizational and interpersonal factors, the creation of a code can sometimes do little to curb unethical conduct. *See* Jennifer Kish-Gephart, David Harrison, Linda Trevino, *Bad Apples, Bad Cases, and Bad Barrels: Meta-Analytic Evidence About Sources of Unethical Decisions at Work,* 95 J. APPLIED PSYCHOL. 1 (2010).

[6] For example, empathy toward others has been linked with ethical judicial conduct. *See* Maxine Goodman, *Three Likely Causes of Judicial Misbehavior and How These Causes Should Inform Judicial Discipline*, 41 CAP. U. L. REV. 949 (2013).

[7] *See* Tigran Eldred, *Insights from Psychology: Teaching Behavioral Legal Ethics as a Core Element of Professional Responsibility*, 2016 MICH. ST. L. REV. 757, 786-791 (2016) (for a summary of behavioral legal ethics research and recommended educational resources for attorneys).

[8] NAT'L RES. COUNCIL OF THE NAT'L ACADEMIES, NEW DIRECTIONS IN ASSESSING PERFORMANCE POTENTIAL OF INDIVIDUALS AND GROUPS: WORKSHOP SUMMARY 107 (2013) (quoting Professor Rodney Lowman).

Engagement

Engages in the work of the assignment, educates the local community, and supports colleagues in executing the mission of the court. Embraces performance feedback and seeks out opportunities for professional development.

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Engagement refers in part to a commitment to judicial work and a dedication to self-improvement. Good judges were described as those who take initiative to develop their craft by seeking feedback on their performance and guidance from others on how to improve. They also adopt a regular process for self-assessment and look to identify and leverage other available opportunities for personal and professional growth.

But respected judges defined engagement as extending beyond a strong work ethic and improvement orientation. While judges valued these self-directed efforts, judicial excellence to them included sensitivity to the consequences of their own professional development activities on peers. That is, a good judge was described as one who participates in self-improvement activities without neglecting essential duties. Absenteeism (e.g., traveling to attend conferences, committee meetings, classes) places a burden on judicial colleagues to carry the workload. Good judges return to the court ready to share lessons learned from their professional development experiences so that all (including those who covered work in the judge's absence) may benefit from his or her participation.

Respected judges also recognize judicial excellence in those who contribute to a positive and supportive court environment and help to improve the functioning of the judiciary. Good judges were described as those who engage in community outreach activities, such as representing the judiciary at local community events and educating the public about the justice system and justice-related topics (related to *Building Respect & Understanding*).

They are "team players" who pitch in to help colleagues address the day-to-day challenges that arise for the court. They fill in when needed for colleagues who are away or ill. They assist or provide guidance to peers and other court professionals who are new to their position or struggling with the work. They also facilitate court improvement by volunteering to develop or test promising court innovations or new approaches.

Variations by assignment type or experience level

There were few differences in how this element was valued or expressed across judicial assignments. However, judges often noted the importance of finding new ways to nurture engagement over the course of long careers to avoid complacency. For example, a new judge may primarily focus on seeking out developmental resources and feedback for self-improvement (e.g., by participating in a judicial mentoring program; by seeking out opportunities to observe the courtrooms of respected colleagues to inform self-reflection about personal strengths and weaknesses). Experienced judges may shift their energies toward leadership activities such as community outreach, court improvement committee work, and mentoring or educating other justice system professionals (e.g., as formal peer mentors; as faculty for state judicial education programming). In addition, judges were described as better able to cultivate engagement on assignments that match their individual preferences and are a good fit for their skill set.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Draft new or update existing bench books, scripts, or other judicial resources to assist colleagues and promote consistency.
- Share information (e.g., about changes in legislation, policy, resources, research; about court processes or to define role expectations or norms) or lessons learned (takeaways from experiences or events/trainings) with colleagues.
- Educate members of the public about court functions and programs (e.g., by hosting law student externships or by participating in local civic education and other community outreach programs such as Law Day, mock trial programs, school presentations, and local bar association programs).
- Participate in local not-for-profit organizations seeking to address community issues.
- Attend events of the local bar association and other groups to educate the legal community about court functions or programs.
- Attend events of community groups to educate the local community about court functions or programs.
- Meet with local service providers outside of the courtroom to build connections and share information that may inform system-level improvements.
- Participate on committees designed to improve the court and justice system.
- Help to create, test, or implement new court technologies.
- Pilot innovative new court programs.

Generally, respected judges stressed the importance of actively and continuously pursuing formal educational opportunities to address gaps in knowledge, to enhance skills in pursuit of mastery, or to adapt effectively to changes in law or policy. For this element, judges found leadership training courses and courses designed to improve interpersonal communication and listening skills (see also *Building Respect & Understanding*) beneficial.

Commentary

Judicial engagement in this framework reflects (a) a diligence in faithfully executing the case-related duties of the position, (b) efforts to inform and educate the local community about the court, and (c) a set of behaviors aimed at helping peers, attorneys, and other court community stakeholders perform well in their roles. In the aggregate, the latter discretionary behaviors (called *organizational citizenship behaviors* in the empirical research literature on job performance) generally contribute to improved working environments and more effective organizations.[9]

Generally, research has shown that employees with high levels of engagement ensure that their own duties are performed well, but go "above and beyond" to improve themselves, contribute to the development of others, and enhance the organization.[10] As the person develops and feels more competent and effective on the job, future engagement is stimulated, job satisfaction increased, and ultimately overall performance is improved.[11] Engaged employees tend to apply more mental energy to their work and pay greater attention on the job, which in turn has performance-enhancing effects (see also *Critical Thinking*).[12] They are also more likely to develop new, creative solutions to challenging workplace issues.[13]

Engaged judges may be more likely to elevate the performance of other court professionals and contribute meaningfully to a well-functioning justice system. They may help their colleagues complete daily work tasks, provide them with mentoring, and even build morale (see also *Well-Being*).[14] Judicial mentors may themselves reap benefits from their mentoring activities in the form of improved social integration, personal growth, and performance gains of their own.[15]

Developing and sustaining a high level of engagement can be challenging for judges because of the demands of the position, length of tenure on the job, and often stressful nature of the work (see *Well-Being*). Complacency or burnout may set in without efforts to nurture engagement.[16] Disengaged judges may invest less effort on the job, be less helpful and civil with colleagues, and be absent from the workplace – impacting peers, productivity, and quality of work. This may eventually lead to attrition in the judicial workforce, which can be damaging to the judiciary given the time and resources needed to develop skilled judges.[17] Thus there is good reason for both the individual judge and court leadership to identify ways to continuously promote judicial engagement.[18]

The National Association of State Judicial Educators offers curriculum designs and other resources to support education professionals that may also be helpful to judicial faculty. For more information, see **www.nasje.org/nasje-curriculum-designs**.

Endnotes

[9] Nathan Podsakoff et al., *Individual- and Organizational-Level Consequences of Organizational Citizenship Behaviors: A Meta-Analysis*, 94 J. APPLIED PSYCHOL. 122 (2009).

[10] Michael Christian, Adela Garza & Jerel Slaughter, *Work Engagement: A Quantitative Review and Test of its Relations with Task and Contextual Performance*, 64 PERSONNEL PSYCHOL. 89 (2011); Bruce Rich, Jeffrey LePine & Eean Crawford, *Job Engagement: Antecedents and Effects on Job Performance*, 53 ACAD. MGMT. J. 617 (2010).

[11] *See* Rich, LePine & Crawford, *supra* note 10.

[12] *See* Violet Ho, Sze-Sze Wong & Chay Hoon Lee, *A Tale of Passion: Linking Job Passion and Cognitive Engagement to Employee Work Performance*, 48 J. MGMT STUD. 26 (2011). *See also* Timothy Judge et al., *The Job Satisfaction-Job Performance Relationship: A Qualitative and Quantitative Review*, 127 PSYCHOL. BULL. 376 (2001).

[13] *See* Arnold Bakker & Evangelia Demerouti, *Job Demands-Resources Theory, in* WORK AND WELLBEING: WELLBEING: A COMPLETE REFERENCE GUIDE 37 (Peter Chen & Cary Cooper eds., vol. 3., 2014); Arnold Bakker, *An Evidence-Based Model of Work Engagement*, 20 CURRENT DIRECTIONS IN PSYCHOL. SCI. 265 (2011).

[14] *See* Dan Ciaburu & David Harrison, *Do Peers Make the Place? Conceptual Synthesis and Meta-Analysis of Coworker Effects on Perceptions, Attitudes, OCBs, and Performance*, 93 J. OF APPLIED PSYCHOL. 1082 (2008) (highlighting the well-documented connection between engagement and peer support). *See also* Christian, Garza & Slaughter, *supra* note 10; Podsakoff et al., *supra* note 9.

[15] *See* Sola Fajana & Mirian Gbajumo-Sheriff, *Mentoring: A Human Resource Tool for Achieving Organizational Effectiveness*, in MENTORING: A KEY ISSUE IN HUMAN RESOURCE MGMT. 420 (A. Olowu ed., 2011); Dong Liu et al., *What Can I Gain as a Mentor? The Effect of Mentoring on the Job Performance and Social Status of Mentors in China*, 82 J. OCCUPATIONAL & ORG. PSYCHOL. 871 (2009).

[16] Researchers concluded that "building engagement is the best approach to preventing burnout." Christina Maslach, *Burnout and Engagement in the Workplace: New Perspectives*, 13 EUR. HEALTH PSYCHOL. 44, 45 (2011).

[17] More engaged and experienced judges are typically more effective on the job. For example, drug courts with judges who voluntarily preside over the court and who have at least two years of experience on the call produced greater cost savings and better participant outcomes (i.e., reduced recidivism) than judges with less experience or who were placed on the assignment by their chief judge. ADULT DRUG COURT BEST PRACTICE STANDARDS 22 (Nat'l Ass'n of Drug Ct. Prof. 2014), http://www.nadcp.org/sites/default/files/nadcp/AdultDrugCourtBestPracticeStandards.pdf.

[18] Generally, although there are things that an individual can do to boost his or her own level of engagement, aspects of the workplace environment (e.g., organizational factors, leadership characteristics) can also influence employee engagement. *See, e.g.*, Arnold Bakker & Evangelina Demerouti, *Towards a Model of Work Engagement*, 13 CAREER DEV. INT'L 209 (2008); Jakub Brdulak & Przemyslaw Banasik, *Organizational Culture and Change Management in Courts, Based on Examples of the Gdansk Area Courts*, 14 INT'L J. CONTEMPORARY MGMT. 33 (2015); Karina Lloyd et al., *Is My Boss Really Listening To Me? The Impact of Supervisor Listening on Emotional Exhaustion, Turnover Intention, and Organizational Citizenship Behavior*, 130 J. BUS. ETHICS 509 (2014); Diana Strom, Karen Sears, & Kristine Kelly, *Work Engagement: The Roles of Organizational Justice and Leadership Style in Predicting Engagement Among Employees*, 21 J. LEADERSHIP & ORG. STUD. 71 (2014).

Well-Being

Engages in self-care practices to manage stress and maintain physical and psychological health

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Respected judges underscored the importance of developing preventive and protective self-care behaviors, both physical and psychological in nature, to build resilience and ensure optimal functioning on the job. They recognized the benefits of healthy lifestyle choices. Examples include eating well and getting adequate rest; establishing a regular exercise regimen; making time for peers, family, and community; and otherwise cultivating a healthy social support network. Nurturing hobbies to maintain work-life balance can also be important. Judges highlighted the importance of being able to "compartmentalize" and "let go" of work at the end of the day, and after resolution of a difficult case.

Judges acknowledged a tendency to focus so intently on the responsibilities of the position that they can lose sight of what is needed to care for themselves — until, perhaps, they realize that they are engaging in a lifestyle that is no longer sustainable.[19] Moreover, if the importance of judicial well-being is not reinforced in the local court culture, judges may be reluctant to take vacation or sick leave, or to seek assistance when well-being is compromised. In discussion, judges noted the wisdom from pre-flight airline safety briefings: In a crisis, when the oxygen masks are deployed and the cabin is in a panic, put your own oxygen mask on first before you turn to assist others.

Variations by assignment type or experience level

The perceived importance of well-being varied somewhat across assignment types. Judges assigned to high-volume dockets pointed to the stamina required to manage a rapid-fire call, indicating the importance of physical self-care activities. Judges with substantial workloads or on assignments with emotionally charged cases (e.g., criminal, family, juvenile/child protection) described the risk of vicarious trauma as a significant issue and thus a greater need for effective stress management strategies. In addition, problem-solving court judges described themselves as closer to clients than in a traditional adversarial case. They frequently discussed how emotionally challenging it can be for the judge and the rest of the team when clients fail. Finally, judges who are placed on traveling assignments or who work in rural jurisdictions with few local colleagues may experience more isolation on the job than judges in urban areas. Some judges described their involvement in project-oriented court improvement efforts (see *Engagement*) as one strategy for coping with their isolation.

In addition, the transition from bar to bench may represent a substantial lifestyle change for new judges. Some judges reflected on how they were not fully prepared for the sedentary nature of the job and until health concerns prompted action, did not attend adequately to their physical self-care needs. Judges often pointed to the isolating nature of the position which, as prescribed by the state Code of Judicial Conduct, requires that relationship boundaries be set between a judge and other justice system stakeholders to preserve judicial impartiality and protect against the appearance of impropriety. Judges explained that new social connections must be forged to build a healthy and appropriate social support network, as previous relationships (e.g., with

members of the bar) often dissolve or change substantially following appointment or election.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Participate regularly in activities with judicial colleagues. Any opportunity to engage with colleagues was described as beneficial, whether formal (e.g., roundtable sounding board discussions, judicial education conferences or seminars, state bar association meetings, other court community events) or informal (e.g., morning breakroom conversation; routine gatherings of local judges such as lunch or dinner outings).
- Build and maintain a healthy social support network of family and friends outside of the profession.
- Learn how to use formal stress management and relaxation techniques.
- Eat well, get enough sleep, and make time for regular exercise.
- Take regular breaks from work to recharge.
- Use personal time to explore and savor hobbies or other restorative activities.
- Take earned vacation leave to decompress and refresh.
- Consult with medical professionals for routine wellness checkups and guidance on shaping healthy lifestyle habits.

In addition, judges found judicial education on topics related to stress and stress management to be directly beneficial to their lives on the bench. This included sessions on topics such as vicarious trauma, meditation and relaxation techniques, yoga, work-life balance, and personal health.[20]

Commentary

Personal well-being has been shown in a variety of professional contexts to affect work performance. It is associated with improved performance on essential tasks and behaviors that go "above and beyond" job requirements to enhance the workplace (see *Engagement*).[21] When well-being suffers (e.g., due to high levels of stress or poor self-care), work performance can be compromised.

Stress management skills may be particularly important for judges, who face a diverse array of work-related stressors in a complex work environment.[22] Although moderate levels of stress can have performance-enhancing advantages, high levels of stress can impair cognitive and social functioning and result in increased difficulty concentrating or focusing on work, recalling or processing new information, and making decisions. A stressed judge, for example, may not evaluate evidence as thoroughly, render just decisions, or communicate effectively with others, which may in turn elicit poorer performances from other justice system stakeholders.[23] High levels of stress may also adversely impact the physical and psychological health of the judge.[24] American trial court judges in a 2009 study reported experiencing symptoms of stress such as anger or irritability, anxiety, depression, exhaustion or fatigue, sleep disturbances, eating problems, muscle tension, headaches, rashes, and back, chest, or muscle pain.[25] One promising approach to reducing stress and improving coping skills of new judges is to connect them with experienced and well-trained judicial mentors.[26]

Relatedly, poor self-care can impair job performance. Sleep deprivation has been shown to impair communication and emotion management, lead to errors in decision-making (particularly in responding to unexpected events or revising plans), and result in more negative responses to punishable behavior.[27] Similarly, pushing through cases without a break for rest or a meal results in fatigue that can lead to unfair decisions. One study found that parole boards were more likely to grant parole (65% of the time) when fresh off of a food break, but were increasingly less likely to grant parole as time went on without such a break (down to nearly 0%).[28] These studies and others like them illustrate the importance of not only good stress management skills but also positive lifestyle choices and self-care habits.

The Judicial College of Victoria (Australia) maintains a curated list of a variety of American and Australian resources on **Judicial Wellbeing**. *The website includes links to multimedia resources (e.g., smartphone apps, podcasts, videos), publications (such as a fact sheet on workplace and personal stress for judges), and self-assessment checklists. For more information, see* **www.judicialcollege.vic.edu.au/judicial-wellbeing**.

Endnotes

[19] Respected judges also described what they thought colleagues who struggle in this area might look like: They may display sudden changes in mood (e.g., lashes out, appears withdrawn), isolate themselves from colleagues, demonstrate insecurity in decision-making (e.g., by postponing decisions or continually second-guessing their actions), fall behind in their work, be increasingly absent from the courthouse, or show physical symptoms of tension, fatigue, or poor health.

[20] Vicarious trauma (VT) refers to "the experience of a helping professional personally developing and reporting their own trauma symptoms as a result of responding to victims of trauma. VT is a very personal response to the work such helping professionals do." Peter Jaffe et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 2 JUV. & FAM. CT. J., 1, 2 (Fall 2003). *See also* Deborah Smith, Secondary or Vicarious Trauma Among Judges and Court Personnel, TRENDS IN ST. CTS. (April 2017), http://www.ncsc.org/sitecore/content/microsites/trends/home/Monthly-Trends-Articles/2017/Secondary-or-Vicarious-Trauma-Among-Judges-and-Court-Personnel.aspx.

[21] *See, generally*, Russell Cropanzano et al., *The Relationship of Emotional Exhaustion to Work Attitudes, Job Performance, and Organizational Citizenship Behaviors*, 88 J. APPLIED PSYCHOL. 160 (2003); Mihaela Man & Constantin Ticu, *Subjective Well-Being and Professional Performance*, 2 MGMT & ECON. 211 (2015); Thomas Wright & Russell Cropanzano, *Psychological Well-Being and Job Satisfaction as Predictors of Job Performance*, 5 J. OCCUPATIONAL HEALTH PSYCHOL. 84 (2000). One recent study compared businesses that invested in workplace wellness programs to improve employee health and well-being with those that did not. Researchers found that "health conscious" companies with well-designed and well-implemented wellness programs (i.e., C. Everett Koop Award winners) significantly outperformed other companies (as measured by stock returns in this study). Authors hypothesized that an organizational commitment to employee well-being may result in improved recruitment, retention, and productivity of staff, with downstream organizational performance benefits. Ron Goetzel et al., *The Stock Performance of C. Everett Koop Award Winners Compared with the Standard & Poor's 500 Index*, 58 J. OCCUPATIONAL & ENVTL. MED. 9 (2016).

[22] Judges often face heavy workloads, long hours, and professional and social isolation. They routinely make decisions in high-pressure environments regarding issues that may have significant consequences for others and that may have no satisfactory resolution. They sometimes manage disrespectful or ill-prepared parties, are subject to intense public scrutiny, face repeated exposure to disturbing or traumatic events, and even receive threats to physical safety. This is in addition to the inevitable personal stress (e.g., from financial, health, family, or other life challenges) that may periodically arise in daily life outside of work. *See* Tracy Eells & C. Robert Showalter, *Work-Related Stress in American Trial Judges*, 222 BULL. AM. ACAD. PSYCHIATRY & L. 71 (1994).

[23] *See* Jared Chamberlain & Monica 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 (2009).

[24] Stress predicts negative lifestyle choices, such as poor eating habits and substance abuse (including smoking, alcohol consumption, and illicit drugs), which can contribute to declines in health and functioning. *See* Rajita Sinha, *How Does Stress Increase Risk of Drug Abuse and Relapse?* 158 PSYCHOPHARMACOLOGY, 343 (2001). Rajita Sinha & Ania Jastreboff, *Stress as a Common Risk Factor for Obesity and Addiction*, 73 BIOLOGICAL PSYCHIATRY, 827 (2013). Chronic stress is a risk factor for physical disease (e.g., cardiovascular and autoimmune diseases), declines in mental health, and mortality. *See* Sheldon Cohen, Denise Janicki-Deverts & Gregory Miller, *Psychological Stress and Disease*, 298 J. AM. MED. ASS'N. 1685 (2007); Mariefrance Marin et al., *Chronic Stress, Cognitive Functioning, and Mental Health*, 96 NEUROBIOLOGY LEARNING & MEMORY 583 (2011); Carol Graham, *Happiness and Economics: Insights for Policy from the New 'Science' of Well-Being*, 1 J. BEHAV. ECON. POL'Y 69 (2017).

[25] *See* David Flores et al., *Judges' Perspectives on Stress and Safety in the Courtroom: An Exploratory Study*, 45 CT. REV. 76 (2009).

[26] C. F. Bremer, *Reducing Judicial Stress Through Mentoring*, 87 JUDICATURE 244 (2004). *See also* B. Rouse & J. Bouch, COACHING BETTER JUSTICE (Reno, NV: National Judicial College 2016), *available at* http://www.judges.org/coaching-better-justice/. Generally, positive, supportive interactions with colleagues is one stress management strategy that can help to combat emotional exhaustion. Jonathon Halbesleben & William Bowler, *Emotional Exhaustion and Job Performance: The Mediating Role of Motivation*, 92 J. APP. PSYCHOL. 93 (2007).

[27] *See* Larissa Barber & Christopher Budnick, *Turning Molehills into Mountains: Sleepiness Increases Workplace Interpretive Bias*, 36 J. ORG. BEHAV. 360 (2015); Kyoungmin Cho, Christopher Barnes & Cristiano Guanara, *Sleepy Punishers are Harsh Punishers: Daylight Saving Time and Legal Sentences*, 28 PSYCHOL. SCI. 242 (2017); Andrea Goldstein & Matthew Walker, *The Role of Sleep in Emotional Brain Function*, 10 ANN. REV. CLINICAL PSYCHOL. 679 (2014); Yvonne Harrison & James Horne, *The Impact of Sleep Deprivation on Decision Making: A Review*, 6 J. EXPERIMENTAL PSYCHOL. APP. 236 (2000).

[28] Shai Danziger, Jonathan Levav & Liora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, 108 PNAS 6889 (2011).

Knowledge of the Law & Justice System

Understands the legal and operational matters relevant to the assignment. Builds knowledge from relevant disciplines and understands their implications in daily work.

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Respected judges stressed the importance of getting the ruling "right" (see *Critical Thinking*). To do so requires a strong foundation of knowledge about the laws, policies, best practices, and resources of the local justice system as well as the organizations providing services.

A judge must first know the law to rule on cases correctly. Good judges have strong legal research skills and keep up-to-date with new legislation, appellate opinions, and other recent legal developments relevant to the assignment. Judges who possess a relevant and current body of legal knowledge were described as better able to rule promptly from the bench or with minimal delay if matters must be taken under advisement (see *Managing the Case & Court Process*).

Respected judges also explained the need for several other types of knowledge to inform sound judicial decision-making.

First, good judges understand the administrative processes of the court, as well as how justice system agencies and other stakeholder organizations operate (such as community-based agencies that provide services used or ordered by the court). Respected judges gave examples of how an awareness of the procedures law enforcement officers follow when transporting incarcerated individuals to and from the courthouse informed their docket management practices (see *Managing the Case & Court Process*). Judges described the utility of specific operational knowledge about the justice system environment, including but not limited to the array of services available as dispositional options. This extended to knowing the number of beds or spaces open for use, formal or informal policies or practices dictating the availability of those resources, and what agency representatives have the authority to do as compared to what is needed from the court. Judges also pointed out that colleagues who possess strong operational knowledge about other stakeholder agencies and community resources (e.g., interpreter services, legal services, and treatment programs) may be better able to construct informed and effective rulings for all parties.[29]

Second, respected judges highlighted the value of understanding the best or evidence-based practices known to promote positive case outcomes. This may include an understanding of the conceptual underpinnings of those practices, how those practices differ from traditional or "business as usual" practices, what objectives those practices are designed to achieve, and any pertinent evaluation of the efficacy of those practices. It may extend to evidence-based knowledge developed in specialized disciplines that provide insights about a type of case, litigant, or social problem.[30]

Third, judges noted the large number of tools and court technologies available to support judicial decision-making. Child support calculators, offender risk and needs assessment instruments, presentence investigation reports, and other tools or decision aids are designed to inform decision-making and improve the administration of justice. Good judges know about these tools and use them correctly.

A strong knowledge base requires continuous learning. Respected judges highlighted the importance of staying current with legal knowledge, as well as exploring complementary areas that, while not necessarily legal in nature, play an important role in judicial work (e.g., forensic science). In addition, they described a good judge as one who recognizes the limits of his or her knowledge on certain issues and knows how to manage that lack of knowledge effectively.

Variations by assignment type or experience level

The relative importance of different types of knowledge varies based on the assigned area of law. Civil court judges may spend more time researching complex legal issues. Knowledge of child welfare issues and child development was often cited as helpful to support more informed decision-making in cases with juveniles. Different procedural matters, such as jury selection procedures, are implicated in jury trials (see also *Managing the Case & Court Process*). Some criminal court judges discussed knowledge about the risk-need-responsivity model that is the foundation for evidence-based sentencing and community corrections practices. Family and problem-solving court judges prioritized knowledge about local treatment providers, evidence-based treatment programs, and other services available in the community. Problem-solving court judges emphasized knowledge about the state problem-solving court certification standards and, for judges working in specialty courts focused on substance abuse issues, the National Association of Drug Court Professionals' (NADCP) Adult Drug Court Best Practice Standards.[31] They also stressed the critical importance of routine refresher training on evidence-based practices.

Judges across different assignments (e.g., criminal, family, and juvenile/child protection) discussed the importance of understanding the nature of addiction and mental illness, and associated best practices in the treatment process (e.g., trauma-informed care).

Judges offered comments that reflect other differences by position or experience level. Associate judges may not require the same level of knowledge about the roles and functions of justice system stakeholder agencies as circuit court judges to perform their work. Needing continual prompting by parties (e.g., on the applicable law, appropriate procedure, and/or relevant legal resources) was viewed by some as symptomatic of a lack of legal or justice system knowledge. A good judge should be at least, if not more, knowledgeable than the attorneys who appear before him or her. These comments may reflect differences between early-career judges and more senior judges, whose library of knowledge has grown over time and with experience. It may also reflect a difference between "specialist" judges who preside over a court or docket dedicated to a specific category of cases (e.g., a family court judge) and "generalist" judges who hear many different types of cases (e.g., as may be the case in rural circuits with a smaller bench), where breadth of knowledge must be prioritized over depth.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Review the judicial bench book for assigned area of law.
- Review existing statutes applicable to assigned area of law.
- Spend time daily or weekly reviewing legal updates relevant to assigned area of law (e.g., new statutes, appellate court decisions and other case law).
- Conduct legal research on each case (and particularly on those presenting new or different legal issues) to improve knowledge of a newly assigned field.

- Discuss cases or specific issues with judicial peers within the same division of law.
- Participate in or establish a regular discussion group with judicial colleagues in which each shares a short presentation on a recent development in case law.
- Interact and stay engaged with other justice system stakeholders, who can be invaluable sources of justice system knowledge (e.g., knowledge about agency operations or new programs or services). For example:
  - Attend meetings of a practice group section of the local bar association to listen and learn more about the challenges attorneys wrestle with.
  - Coordinate periodic (e.g., quarterly) meetings of key court community stakeholders or informational brown bag sessions featuring representatives of key agencies (e.g., a Department of Children & Family Services representative could explain what the agency is legally able to do).
- Cite precedent and authority through rulings on the bench or in written opinions.
- Adhere to court rules and procedures during a docket.
- Refer eligible defendants or cases to available community services or programming.
- Write articles on a special topic for publication.

Generally, respected judges found issues related to fundamental legal and practical judicial knowledge well-covered by existing state and national educational resources, and sought out more advanced education on specialized topics relevant to their assignment type.

Commentary

The law, policy, and best practices in judicial decision-making constantly evolve. This has important implications for any program of continuing judicial education, which must prioritize acquisition and retention of new information but at the same place weight on revising and correcting outdated knowledge.[32] Without essential current knowledge about statutes, case law, legal rules and procedures specific to the assignment, a judge may make decisions that harm litigants, the community, or even the judiciary as an institution.

To render informed and effective judgments, judges are also often called on to understand extra-legal topics and concepts for which they have no prior formal training. Judges may need to develop more than a surface-level understanding of complex non-legal issues related to, for example, organizational management, forensic science, behavioral and social sciences, and medical sciences.[33] Knowledgeable judges ultimately produce better outcomes. For example, drug court programs produce significantly better outcomes in the form of reduced recidivism and reduced substance abuse when led by judges knowledgeable about substance abuse disorders and treatment processes.[34]

When done well, training may accelerate learning, provide much-needed guidance on complex topics, and increase perceptions of self-efficacy and confidence when managing challenging issues. But the efficacy of formal learning programs to acquire knowledge about complex legal and extra-legal concepts alike can be problematic. To acquire and maintain a broad and highly technical knowledge base takes much time and effort. Contemporary state judicial education programs have limited resources to provide for this on their own. Primarily lecture-based programs offered infrequently with no planned follow-up to reinforce learning (e.g., conference seminars) frequently fail to achieve educational objectives. A meta-analysis of several years of research on training and coaching programs in another field found that, among training programs that focused only on conveying theory and engaging participants in discussion, only about 10% of trained material was retained, and 0% of trained

content was applied in regular practice.[35] Knowledge and skill transfer appear to be significantly more likely when educators provide trainees with meaningful opportunities to apply those concepts in directed practice, followed by performance feedback and on-the-job coaching. When lectures and discussion are supplemented with demonstration, practice, feedback, and coaching, 95% of trained material was found to be retained and put into practice. This type of ongoing training and coaching can help to preserve knowledge gains and avoid a phenomenon commonly referred to as *drift*, which occurs when knowledge gets distorted over time and unintended variations in the application of that knowledge emerge.[36]

The National Association for Court Management (NACM) Core offers curricula and other resources tailored to court management professionals that may also be helpful to judges in or seeking management roles. For more information, see **www.nacmcore.org**.

Endnotes

[29] Relevant justice system knowledge includes a familiarity with local alternatives to incarceration and community-based supervision and treatment options in criminal cases. Knowledge about the design and efficacy of such options, as well as how they differ from one another, can inform pretrial release decisions, sentencing decisions, and decisions about referral to special programs (e.g., pre-trial diversion, problem-solving court). In the family law context, a judge crafting a family reunification order may issue a ruling that results in better outcomes for all parties when equipped with a full understanding of the scope of social and treatment services offered by local providers and any formal requirements or informal hurdles that serve to restrict access to those services. This knowledge can include the cost of services, which might inform interactions with indigent litigants through referral to certain providers, altered timelines for completion, or creative uses of other resources to meet needs of the case, the litigant, or both. Knowledge of funding available to cover fees related to services or program participation was also discussed as particularly helpful information for problem-solving court judges.

[30] For example, an understanding of science and technology best practices may be helpful in a medical malpractice case or when considering forensic evidence.

[31] ADULT DRUG COURT BEST PRACTICE STANDARDS (Nat'l Ass'n of Drug Ct. Prof. 2014), http://www.nadcp.org/sites/default/files/nadcp/AdultDrugCourtBestPracticeStandards.pdf.

[32] Major policy change represents one example. Cook County, for instance, recently implemented a risk-based system of pretrial release. A 2016 review by the Cook County sheriff's office found that local judges were making decisions that differed from the bail guidelines that were based on the new pretrial risk assessment process in 85% of their cases. *See* Frank Main, *Cook County Judges Not Following Bail Recommendations: Study*, CHICAGO SUN TIMES, July 3, 2016, http://chicago.suntimes.com/news/cook-county-judges-not-following-bail-recommendations-study-find/; Crime and Justice News, *Chicago Judges Spurn Risk-Assessment System in 85% of Bail Cases*, CRIM. REP., July 5, 2016, https://thecrimereport.org/2016/07/05/chicago-judges-spurn-risk-assessment-system-in-85-of-bail-cases-2/.

[33] Researchers in one study concluded that judges were not effective gatekeepers of the court when it came to discerning the quality of scientific evidence. They found that some judges reported distrust of social science generally and were unlikely to admit such evidence regardless of its validity; others said they would admit evidence regardless of whether it was internally invalid or flawed. However, authors also suggested that judges could be trained to better evaluate scientific evidence and discern the difference between sound research and "junk science." *See* Margaret Kovera & Bradley McAuliff, *The Effects of Peer Review and Evidence Quality on Judge Evaluations of Psychological Science: Are Judges Effective Gatekeepers?*. 85 J. APPLIED PSYC. 574 (2000). Others have argued that "an effective trial judge needs more than a conventional legal understanding of the problems associated with" eyewitness-identification and confession evidence, stating that "a mature social science literature has emerged that shows a tendency for conventional legal understandings (a) to fail to appreciate the power of suggestive procedures, (b) to rely too much on eyewitness-identification certainty, (c) to have faulty views of factors that impair memory, and (d) to generally fail to create disincentives for suggestive procedures." Laura Smalarz & Gary Wells, *Eyewitness-Identification Evidence: Scientific Advances and the New Burden on Trial Judges*, 48 CT. REV. 14, 21 (2012). *See also* S. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUMAN BEHAVIOR (2010).

[34] *See* Donald Farole & Amanda Cissner, *Seeing Eye to Eye: Participant and Staff Perspectives on Drug Courts, in* DOCUMENTING RESULTS: RESEARCH ON PROBLEM-SOLVING JUSTICE 51 (Greg Berman et al., eds. 2007); Janine Zweig et al., *Drug Court Policies and Practices: How Program Implementation Affects Offender Substance Use and Criminal Behavior Outcomes*, 8 DRUG CT. REV. 43 (2012).

[35] BRUCE JOYCE & BEVERLY SHOWERS, STUDENT ACHIEVEMENT THROUGH STAFF DEVELOPMENT (3d ed. 2002).

[36] DEAN FIXSEN ET AL., IMPLEMENTATION RESEARCH: SYNTHESIS OF THE LITERATURE (2005), http://nirn.fpg.unc.edu/sites/nirn.fpg.unc.edu/files/resources/NIRN-MonographFull-01-2005.pdf (last visited October 16, 2017).

Critical Thinking

Uses analytical and problem-solving skills to evaluate the available information and take the best action possible in a timely manner.

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Respected judges described a range of cognitive skills related to critical thinking ability as important for judicial excellence.

First, good judges were described as effective information gatherers. They develop a solid understanding of the case history and context from available case files and other relevant documents. They may also seek out pertinent information and input from the perspective of multiple stakeholders in a case and experts as appropriate to support informed, balanced, and fair decision-making. They engage in dialogue to understand others' perspectives on key issues, including the significance of social and cultural norms that may be at play. Input from clinical professionals and other experts on the needs or challenges of special populations or about difficult technical issues in a case may be helpful. Outside of the courtroom, judges can observe or engage with community groups to get a better understanding of local justice issues. Such information gathering activities are facilitated by strong interpersonal communication and listening skills (see *Building Respect & Understanding*).

Second, respected judges described an ability to analyze and synthesize information effectively. This includes the ability to analyze the quality of evidence and legal arguments to weigh their merits. Judges described how they are called upon to assess evidence from different sources that may have different strengths and weaknesses. They also must synthesize sometimes conflicting evidence into a holistic, coherent narrative that constructs the most objective possible account of events.[37] Judges also described how they must be able to discern the key issues in a case or argument, recognize discrepancies or points of disagreement, and identify missing information needed from parties to comply with appropriate legal procedures (e.g., adhere to statutory requirements regarding record to permit case progress or to render a decision).

Third, respected judges highlighted the importance of an ability to apply the law (see *Knowledge of the Law & Justice System*) and exercise sound judgment in rendering the best decisions possible given the available information. This included the need to conduct a methodical and thorough analysis of the facts admitted in each case and to issue well-reasoned decisions sensitive to short-term and long-term impacts on parties. Good judges, for example, understand how to identify behavioral indicators of a party's substance addiction or mental health need in early stages of a case and, on that basis, order appropriate next steps (e.g., referral for a mental health assessment or competency evaluation) to minimize case delay (see also *Managing the Case & Court Process*). Respected judges pointed to the value of problem-solving skills: They viewed good judges as those taking the initiative to identify creative approaches within prescribed law or policy to address challenges in court operations or in a specific case.[38] This, for example, may involve novel uses of available technology, funding, interagency or community provider partnerships, or other resources to achieve better justice outcomes. They discussed the need to "think on one's feet" and adapt processes or decisions to appropriately account for new evidence, changes in schedules, or other unexpected circumstances in cases.

Finally, judges acknowledged the need to arrive at decisions as expeditiously as possible (see also *Managing the Case & Court Process*). Judges frequently mentioned the tension between rendering timely decisions and rendering fair, effective decisions. In many cases time is required for careful reflection, research, and/or deliberation. Good judges were described as those who first and foremost issue decisions that promote the best possible justice outcomes while still adhering to prescribed time constraints. However, they were also described as willing to take extra time (perhaps more than suggested at first glance or by the parties) when needed to dig deeper into challenging or complex issues and ultimately get the decision right.

Variations by assignment type or experience level

There were differences across assignments in the relative importance of various critical thinking skills. Judges viewed information-processing and decision-making speed as especially important in bond court and other high-volume dockets, where caseloads do not provide the luxury of a slower or more deliberative approach. Procedures in these courts are structured to facilitate rapid decision-making (e.g., based on bond schedules). Litigants in specialty dockets with a focus on case planning, such as problem-solving courts or juvenile/child protection dockets, may benefit from a judge's creative problem-solving skills in the form of improved longer-term outcomes. The problem-solving efforts of a good judge may include a case review (e.g., of risk and needs assessment; case history information) to determine whether the litigant may benefit from treatment interventions or other services. Analytical and reasoning skills are at the forefront of bench and jury trials that include evidentiary rulings, determinations of witness veracity, and interactions with legal counsel and litigants. For jury trials, judges must be sufficiently familiar with a case and relevant evidentiary issues to be able to rule from the bench. Judges who struggle in this area may contribute to delays in case processing by taking too many matters under advisement or taking too long to render a final decision. Judges described how parties may bring frequent but unnecessary attempts at impeachment and the judge must know when an issue is relevant to the case to avoid delay, move the trial forward, and keep the jury focused (see also *Facilitating Resolution*). In addition, some judges recommended that every new judge address this element because a judge's objectives differ from those of a practicing lawyer.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Seek exposure to a broad base of new ideas and perspectives in critical analysis relevant to the assignment by reading extensively on non-legal national and international, social, ethical, environmental, health, and technological issues.

- Regularly engage in active conversation with people outside of one's typical social circle to better understand the diversity of others' views (e.g., values, perspectives, opinions, beliefs) and experiences in their daily lives (including the social and cultural norms that affect them, the privileges they benefit from, and/or the challenges they face).

- Take time before issuing a ruling to specifically reflect on one's decision-making process. Examine whether a methodical process was followed to arrive at a decision before committing to it. Examine if there was point in time during the case when an argument, statement, or review of notes triggered the ultimate decision, rather than reaching a decision following reflective contemplation of all evidence, arguments, case law, and other relevant information.

- When matters must be taken under advisement, take the time to work through them. If more information is needed, schedule a time for the parties to present case law and arguments.

- Ask questions of parties from the bench to learn more about the circumstances of the case. Think through the long-term consequences that a decision might have on litigants, and what a good legal decision would be, based on what is heard.

- Attend to key behavioral indicators communicated by parties to inform analysis (e.g., in assessing the veracity of statements or possible need for a clinical evaluation). This requires the judge to know what behavioral indicators to look for, and what behaviors may not be diagnostic.

Respected judges most valued courses that incorporated critical thinking skill-building activities (role-play exercises with feedback, dissection of case scenarios) and that offered models for how to think through and evaluate complex questions of law. Some judges indicated that courses on alternative dispute resolution could be helpful in this regard. Others found taking or teaching college courses to be beneficial for enhancing critical thinking skills.

Commentary

Judges are frequently challenged to diagnose and solve problems that stretch their knowledge and skill base (see *Knowledge of the Law & Justice System*). One study of judges considered by their peers to be "wise" judicial decision-makers concluded that "wise judges" are not only excellent legal analysts of the evidence on record, they also are adept systems thinkers.[39] These "wise judges" gather, clarify, and assimilate information from multiple perspectives into a balanced, holistic understanding of a case. They are able to understand the perspectives of others, which may reflect values, experiences, social norms, or cultural beliefs that differ from their own. Ultimately, they synthesize these varied perspectives to make informed decisions within the confines of the law. In this way, they craft decisions to best address the problems that led to legal matters before the court. This definition of "judicial wisdom" seems to overlap in many ways with what respected judges had to say above about judicial excellence.

Limited insight into the cognitive processes relied upon to make important decisions presents another significant challenge for judges. A substantial body of scientific research on human information-processing reveals that people, judges included, are less likely to use logical, ordered, rational, systematic decision-making processes than they believe (see also *Self-Knowledge and Self-Control*).[40] Decisions that allow for greater discretion (such as those guided by legal standards) can be more susceptible to influence by stereotypes or other biases than decisions with more formal structure (such as those governed by legal rules).[41] The factfinder may seek out information in ways biased by intuition (as suggested in one recent study of Supreme Court decisions), and s/he may be more easily persuaded by information that supports an intuitive conclusion than information that contradicts it (even when the intuitive conclusion is erroneous).[42] Although judicial discretion is a necessary ingredient for "tailor[ing] outcomes to achieve justice and equity," it is important for judges to consider that "there is a tradeoff: the more discretion, the more risk of bias."[43] A recent American Judges Association white paper calls for judges who "aspire to be great – not just good – at their profession [to] focus on how to become better at making good decisions."[44]

The Federal Judicial Center provides a curated list of resources on Mindfulness and Judging. The list includes the American Judges Association white paper, **Minding the Court: Enhancing the Decision-Making Process**. *See* **www.fjc.gov/content/321599/mindfulness-and-judging-resources-judges**.

Endnotes

[37] For example, witnesses or litigants may attempt to deceive the judge or may simply recall events incorrectly; forensic evidence may be unreliable depending on whether proper protocols were followed. Judges must make factual and evidentiary determinations accordingly.

[38] Respected judges described the importance of problem-solving and creativity in judicial excellence. In individual cases, for example, it may mean structuring a sentence to balance punishment objectives in accordance with community values and public safety with rehabilitative or recidivism reduction objectives by allowing for a defendant to enroll in treatment services. Good judges have an ability to take a big-picture view of a case, consider the ramifications of decisions for the parties in a case and the community at large, and identify different ways of achieving desired outcomes when troubleshooting is necessary (e.g., due to limited resources).

[39] Heidi Levitt & Bridget Dunnavant, *Judicial Wisdom: The Process of Constructing Wise Decisions*, 28 J. CONSTRUCTIVIST PSYCHOL. 243 (2016).

[40] *See, e.g.*, Shai Danziger, Jonathan Levav & Liora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, 108 PROC. NAT'L ACAD. SCI. 6889 (2011), http://www.pnas.org/content/108/17/6889; B. Englich, T. Mussweiler, & F. Strack *Playing Dice with Criminal Sentences: The Influence oflrrelevant Anchors on Experts' Judicial Decision Making,* 32 PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN 188-200 (2006); Andrew J. Wistrich, Chris Guthrie & Jeffrey J. Rachlinski, *Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding*, 153 U. PA. L. REV. 1251 (2005), http://scholarship.law.upenn.edu/penn_law_review/vol153/iss4/2. *See also* Gerd Gigerenzer & Wolfgang Gaissmaier, *Heuristic Decision Making*, 62 ANN. REV. PSYCHOL. 451 (2011); Jennifer Lerner et al., *Emotion and Decision Making,* 66 ANN. REV. PSYCHOL. 799 (2015); Raymond Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCHOL. 175 (1998).

[41] *E.g.*, Erik Girvan, *Wise Restraints? Learning Legal Rules, Not Standards, Reduces the Effects of Stereotypes in Legal Decision-Making*, 22 PSYCHOL. PUB. POL'Y & L. 31 (2016).

[42] Daniel Molden & E. Tory Higgins, *Chapter 13: Motivated Thinking, in* THE CAMBRIDGE HANDBOOK OF THINKING AND REASONING 295 (Keith Holyoak & Robert Morrison eds. 2005); Daniel Molden, *Motivated Strategies for Judgment: How Preferences for Particular Judgment Processes Can Affect Judgment Outcomes*, 6 SOC. & PERSONALITY PSYCHOL. COMPASS 156 (2012); Katarzyna Jasko et al., *Individual Differences in Response to Uncertainty and Decision-Making: The Role of Behavioral Inhibition System and Need For Closure*, 39 MOTIVATION & EMOTION 541 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4508368/; Allison Orr Larsen, *Confronting Supreme Court Fact Finding*, 98 VA. L. REV. 1255-1312 (2012).

[43] Andrew Wistrich & Jeffrey Rachlinski, *Implicit Bias in Judicial Decision Making: How It Affects Judgment and What Judges Can Do About It, in* ENHANCING JUSTICE 87, 111 (Am. Bar Ass'n 2017), https://ssrn.com/abstract=2934295.

[44] *See, e.g.* PAMELA CASEY, KEVIN BURKE & STEVE LEBEN, MINDING THE COURT: ENHANCING THE DECISION-MAKING PROCESS 3 (2012), http://aja.ncsc.dni.us/pdfs/Minding-the-Court.pdf.

Self-Knowledge & Self-Control

Understands how one's personal perspective, values, preferences, mental state, and way of thinking can impact decision-making and others' perceptions of fairness. Develops and applies strategies to manage emotions and address biases in judgment and behavior.

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Respected judges stressed the critical role of self-management skills in ensuring fair processes, impartial decisions, and just outcomes. Judges attuned to their personal values, preferences, expectations, mental and emotional states, and way of thinking – and how their personal experiences and background play a role in shaping them – may be better able to avert misunderstandings. They also may be better at addressing unintended biases that could otherwise arise in one's perceptions about, reactions to, and analysis of a case.

Respected judges valued a heightened awareness of and knowledge about the factors that can limit their understanding in a case, influence how they perceive and interpret information, and impact their decision-making (see also *Critical Thinking*). They stressed the need to engage in thoughtful self-reflection and monitoring practices helpful in identifying and assessing potential risks (e.g., personal views, experiences, biases, emotions, and "hot button" issues) to impartiality. A judge with inadequate self-knowledge, for example, may make implicit assumptions about parties or the dynamics of an interpersonal conflict based on personal views not applicable to the case being heard. This may lead the judge to an incorrect understanding of a case or even to seek out and interpret new evidence in ways that confirm his or her existing assumptions.

A judge equipped with self-knowledge may take corrective actions to produce a fairer decision and better court outcomes. Good judges, for example, should be aware of the emotions they are experiencing and how those emotions may be expressed in ways that affect public perceptions of the judge (e.g., judicial demeanor or temperament) and court. Good judges should be able to anticipate how they may feel or react in certain situations. Doing so allows them to establish a plan to effectively manage anticipated emotions. Judges commented extensively on the importance of emotion management skills in maintaining impartiality and the perception of impartiality in the courtroom.[45] Some expressed the belief that judges who lack self-control in this regard would also be more likely to lose control of the courtroom (see *Building Respect and Understanding*).

Finally, good judges know that self-knowledge and self-control can be maintained only through constant vigilance. They are aware that new biases can develop over time with respect to, for example, certain case types or litigants. Without continuous self-monitoring, judges may find it difficult to maintain a grounded perspective, a sense of humility as a public servant, and an awareness of their own fallibility. This occurs in part because of the judge's position of power and the relatively few readily available opportunities to receive honest performance feedback. Judges urged their colleagues to remember that "you are no smarter, funnier, or better looking than before you became a judge."

Variations by assignment type or experience level

The general sense among the participating judges was that the fit between the individual and the judicial assignment was important to the self-management approach. A good judge possesses the self-awareness and knowledge to (a) adapt his or her approach

to fit the needs of the assignment, (b) recognize his or her own limitations to seek development where needed for the assignment, or (c) to the degree that judge has input about his or her assignment, communicate a poor fit to the chief or presiding judge. For example, the emotionally charged nature of many cases in family and child protection assignments may require heightened emotion regulation and stress management skills (see *Well-Being*). Problem-solving court judges, often described as the ringleader of status hearings, may need to express more emotion to build rapport with and motivate clients (see *Building Respect & Understanding*) than judges on traditional assignments. With respect to jury trials, several judges commented on the importance of a judge who "isn't seen"—that is, a judge who presides over the court process, but is not the focus of the jury's attention. Jury trial judges felt they should always strive to portray objectivity and refrain from expressing or otherwise communicating opinions or beliefs that may be detected by the jury.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Set aside time for daily reflection to detect emotions, observe thinking patterns, and identify personal triggers.
- Use techniques such as mindfulness or other form of meditation to raise self-awareness.
- When difficult emotions "start to get the better of you," take short recesses as needed to regain composure, use deep or diaphragmatic breathing techniques to settle your acute emotions, or "take a deep breath and count to 10" before responding.
- Engage in perspective-taking to consider how one's behavior may be perceived by others. That is, think about how others may see and interpret your behavior or statements. Recall how you perceived judges when you were a practicing attorney to keep perspective and a sense of humility.
- Consult with respected colleagues on sensitive decisions to help identify personal biases or blind spots.
- Schedule cases on the docket in a strategic order to help disrupt or minimize the effects of one's known personal biases (e.g., against specific case types or types of litigants).

Many of the specific strategies listed above for developing self-knowledge and maintaining self-control were also described by judges as helpful for promoting *Well-Being* (e.g., exercise, using techniques such as mindfulness or other form of meditation). In addition, respected judges described courses on implicit bias and decision-making as illuminating ("it really made me stop and question how I make my decisions").[46] Some believed every new judge should seek intensive training on the topic, as it "would make for a much better judge from the start."

Commentary

Professionals in all fields benefit from self-knowledge and self-control, but these self-management skills are of particular importance to judges, who are called upon to act as fair and impartial decision-makers. Judges are better equipped to operate in this capacity when they have a strong understanding of the inner workings of their mind and how subtle influences can shape those mental processes, both cognitive and emotional, to affect judgment and behavior.

One self-management challenge for judges stems from how hard they have worked to develop their

analytical and reasoning skills and eliminate undue influences on their decision-making. Because of this effort, judges may assume that they do not allow emotion or other extra-legal factors to color their judgments. But while people may easily identify bias in others' judgments and behavior, they often struggle to detect their own biases.[47] Judges are not exceptions. Research has shown judges to be susceptible to many of the same biases as the general population.[48] Emotional states, even those unrelated to the case at hand, may exacerbate the expression of such biases. These effects can be subtle: One recent study found that judges punished juvenile offenders, particularly African-American juveniles, with harsher sentences in the days following a disappointing loss by the local football team. Other research has found judges' decisions to be especially influenced by their stereotypes toward and emotional reactions to litigants in situations when "the law is unclear, the facts are disputed, or [they] possess wide discretion."[50]

Traditional views in the legal profession characterize good judges as emotionless and dispassionate, but to even approximate such a state requires hard work.[51] In one recent study, judges explained that "to be a really good judge" one must constantly inventory one's own thoughts and emotional states.[52] Accurate self-knowledge is essential to a judge's ability to manage the influence of these factors on the way s/he decides a case (see *Critical Thinking*), interacts with litigants, court professionals, and the general public (see *Building Respect & Understanding*), and generally conducts him or herself in judicial office (see *Ethics & Integrity*).

A 2012 UCLA Law Review article on **Implicit Bias in the Courtroom** *explains implicit bias and identifies several promising interventions to reduce the influence of such biases on judgment and behavior. See* **https://www.uclalawreview.org/implicit-bias-in-the-courtroom-2/**.

Endnotes

[45] Judges described numerous situations in which their patience was tested or they lost their temper in court. This included examples of self-represented litigants who simply did not understand the legal process, of defendants' or litigants' combative behavior toward the judge, and incidents of egregious behavior between parties that ran contrary to the judge's personal values or shocked the judge's moral sensibilities.

[46] Implicit bias is bias that results from the stereotypes, attitudes, and other associations a person has between a particular social group and a quality (e.g., "elderly" and "frail") that can operate automatically, without conscious awareness or intent, to influence perception of, judgments about, and behavior toward others. For more information, see www.ncsc.org/ibeducation.

[47] *See* Emily Pronin, *How We See Ourselves and How We See Others*, 320 SCIENCE 1177 (2008). In addition, engaging in introspection does not always produce accurate self-knowledge. *See* Timothy Wilson & Elizabeth Dunn, *Self-Knowledge: Its Limits, Value, and Potential for Improvement*, 55 ANN. REV. PSYCHOL. 17.1 (2004). *See also* Jennifer Robbennolt & Matthew Taskin, *Can Judges Determine Their Own Impartiality?* 41 MONITOR ON PSYCHOL. 24 (2010).

[48] For a recent review of the research literature generally, including emotional biases in judicial decision-making and biases based on race and other group membership, see Jeffrey Rachlinski et al., *Judging the Judiciary by the Numbers: Empirical Research on Judges*, 13 ANNU. REV. LAW SOC. SCI. 203 (2017).

[49] Ozkan Eren & Naci Mocan, *Emotional Judges and Unlucky Juveniles* (National Bureau of Economic Research Working Paper No. 22611 2016), http://www.nber.org/papers/w22611.

[50] Andrew Wistrich, Jeffrey Rachlinski & Chris Guthrie, *Heart Versus Head: Do Judges Follow the Law or Follow Their Feelings?,* 93 TEX. L. REV. 855, 911 (2015).

[51] *See, generally*, Sharyn Roach Anleu, David Rottman & Kathy Mack, *The Emotional Dimension of Judging: Issues, Evidence, and Insights*, 52 CT. REV. 60 (2016); Terry Maroney, *The Emotionally Intelligent Judge: A New (And Realistic) Ideal*, 49 CT. REV. 100, 100 (2011); Terry Maroney, *Emotion Regulation and Judicial Behavior*, 99 CAL. L. REV. 1485 (2011). For a recent review of empirical research on emotion and decision-making, see Jennifer Lerner et al., *Emotion and Decision Making*, 66 ANN. REV. PSYCHOL. 66, 799 (2015).

[52] Heidi Levitt & Bridget Dunnavant, *Judicial Wisdom: The Process of Constructing Wise Decisions*, 28 J. CONSTRUCTIVIST PSYCHOL. 243, 256 (2016), at 256. As one judge participating in the study noted, "Judges are not robots... they are products of their environments, their upbringings, their religion, their culture, all the things that impact a personal and develop personality, character, outlook on life and so forth... [They may] look at the same factual situation [and] may draw different inferences." Researchers concluded that "judges could never be divorced from their emotions or cultural perspectives, but they could carefully engage their histories to generate deeper understandings."

Managing the Case & Court Process

Directs docket and courtroom operations by planning and coordinating schedules, managing case processing timelines, and facilitating information exchange between parties in a case, court staff, and other stakeholders.

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Respected judges described several characteristics as contributing to an ability to productively and efficiently manage the case and court process. In particular, they emphasized the importance of effective time management. This includes efforts to promote punctuality, adhere to prescribed schedules, and reinforce deadlines with litigants, attorneys, and other court stakeholders. This also means managing one's own time and workload effectively, despite multiple demands and competing priorities. Respected judges described how they used technological solutions to save time, such as by using Dragon Speak software to add information directly into the case management system. Effective time management was also defined as being prepared for court. Judges described their efforts to develop management strategies in advance of court hearings (e.g., general guidelines and if-then contingency plans for handling assigned case types efficiently). In some assignments, judges emphasized the amount of time they devoted to reviewing case files as important to being knowledgeable about the details of each case being heard.[53] In addition, the hours a judge is physically present in the courthouse was also discussed as an important factor. Judges commended peers who make themselves accessible to court community stakeholders to address court- related issues as they emerge.

Respected judges also described the value of organizational skills that support effective case, docket, courtroom, and jury management. Many judges follow intensive process and docket management protocols. This requires them to juggle many moving parts. When coordinating schedules and courtroom operations between multiple court stakeholders for a hearing, for example, judges may need to consider whether and how to permit media access, if additional security is needed, the timing and logistics of jail transfers, and the availability of parties and program team members. Judges also described case monitoring activities as helpful in keeping track of the status of each case and its progress toward resolution. Some described creative uses of available technologies (e.g., case management systems, Excel workbooks, or Outlook calendars) for this purpose. Case management conferences with parties also helped to ensure that all stakeholders have access to pertinent information. In that way, parties and the court can anticipate and address challenges to prevent or minimize case processing delays. Judges described a careful, deliberative approach to court calendaring compatible with the scheduling needs of others and that ensures realistic scheduling estimates for each case based on their anticipated complexity. Judges observed that parties often underestimate the time they will need to address issues, so a good judge will set a realistic schedule and enforce deadlines. Some assignments may need to devote a substantial portion of their call to managing scheduling issues and defining deadlines. Judges emphasized that these and other effective case and docket management practices are essential to facilitate meaningful hearings and timely case processing.

There was a clear tension between timely dispositions, on one hand, and fairness, on the other. In a sense, a fair court process is a timely one. Judges recognized the need to be decisive and move cases, but this was

described as the result of diligent case preparation and the use of effective courtroom management strategies. Good judges guide cases to disposition as efficiently as possible, but first ensure that each case is heard properly and decided fairly (see *Critical Thinking; Building Respect & Understanding*).

Variations by assignment type or experience level

Time management was described as an essential skill across all assignment types. Some assignments, however, require greater organizational skills related to status monitoring, case management, and courtroom management. A judge in a bond court, for example, may focus more strictly on time management to maintain the flow of cases. In these and in high-volume calls where many judges often are assigned at the start of their careers, efficient courtroom management was described as very important, especially in dockets with self-represented litigants. Similar considerations arise for jury management. For jury trials, judges may need to prepare extensively for individual cases and coordinate a detailed plan with court personnel to ensure fluid courtroom operations (e.g., compile and review jury instructions to make sure there are no errors; schedule the jury's time efficiently to eliminate long waiting periods). One judge described cases in some assignments as "transaction-oriented," in which the judge may sit and rule on case-related issues in court (e.g., criminal, bond court). Other assignments were described as more project-oriented, requiring the judge to keep up-to-date on the details of the individual and the case through personal notes and other case documentation (e.g., child protection, problem-solving court).

Judges explained that chief or presiding judges may implement an assignment rotation strategically to develop new judges' skills in this area. Several judges mentioned that an initial assignment in traffic court is a "great lesson" in court management and "the best initiation" to court and calendar management that a new judge can have. Such assignments teach how to work proactively with court personnel to manage a large volume of cases.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Work predictable hours at the courthouse to be accessible to court staff and other stakeholders when needed to answer questions or address issues.
- Start and conclude the docket on time.
- Take breaks as needed to keep courtroom participants fresh (e.g., regular breaks for jurors).
- Focus communication on information relevant to the day's hearing. Judges who are more verbose or who are unprepared or disorganized may find it difficult to keep the call moving.
- Keep cases moving by ruling from the bench when possible and by ruling promptly when a written order is required.
- Give parties reasonable time to prepare, but schedule end dates to keep continuances short and set deadlines that are agreed upon by parties.
- Manage deadlines realistically (i.e., one at a time rather than setting them all at once so the next approaching deadline fits the case).
- Post upcoming trial settings on a website to remind attorneys of the schedule.
- Use case management conferences and other hearings with attorneys and litigants to monitor and discuss case progression and compliance with judicial order(s).

- Use case management tools such as monthly planning charts and trial readiness checklists to aid in scheduling and case monitoring.

- Triage cases or prioritize the order in which cases are heard to make the docket run smoothly (e.g., hear jail transfer cases first in coordination with law enforcement; hear cases which typically require more time, such as sovereign citizen cases, last).

- Talk with court personnel to better understand what practices they employ to represent the court and ultimately to understand how these practices may impact your cases. In some cases, personnel working alongside judges on the docket may have helpful input about challenging management issues or insights about how the call could be improved. For example, talk to the jury commissioner to better understand the jury selection and orientation processes. Information sharing efforts may identify common concerns about the process and serve as an opportunity to exchange ideas about potential improvements.

- Establish, with input from key personnel, a set of coordinated protocols for courtroom operations (e.g., working with the clerk to streamline the order of cases on the docket) and contingency plans for special circumstances (e.g., taking someone off the floor) so the team can function as a unit in responding to those situations.

- Review available court metrics to determine whether cases are moving within prescribed timeframes and, if not, promptly explore and address reasons behind delay.

Respected judges described how they sought out practical procedural tutorials for developing case management skills. They valued educational experiences that, for example, provided a walk-through of best practices for handling specific issues (e.g., how to pick a jury, how to handle high profile cases), offered videotaped examples of do's and don'ts in the courtroom, built in time for practice (e.g., with scenario-based learning activities), and offered practical support tools for future use (e.g., decision aids, bench cards, and reusable templates).

Commentary

Constitutional protections and state laws require timely and conclusive resolution of legal matters.[54] This is reflected in trial court performance standards that call for compliance with "recognized guidelines for timely case processing while, at the same time, keeping current with [the] incoming caseload."[55] This poses a challenge for judges expected to manage heavy caseloads of increasingly complex cases with limited time and resources. Judges must balance timeliness and efficiency against quality to provide speedy access to justice.

Given limited budgets and resource constraints, state court leaders have promoted more efficient and effective case management solutions. In the civil context, for example, the Conference of Chief Justices recognized that courts must be more active in their approach to case and court management to fairly and efficiently administer justice.[56] Strategies include implementing case-disposition time standards and leveraging innovations in court technology to track cases. This promotes setting realistic, meaningful, and productive schedules to move cases forward.[57] Executing these and other often sophisticated process management practices requires teams of court stakeholders to work together, often with the leadership of a knowledgeable judge.[58]

Judicial education programs are widely available to educate judges about best practices in case, docket, courtroom, and jury management. But to process cases most efficiently, judges must understand how to control distractions in an unpredictable work environment. Judges may use a comprehensive case-flow management system most productively if they are clear about their judicial priorities and can focus their attention accordingly.[59] Focusing attention is important. Although lay beliefs about multitasking suggest it is a skill that allows people to get more done, research demonstrates otherwise: Multitaskers show impaired performance and their rapid attention-switching appears to result from lower self-control (see also *Self-Knowledge & Self-Control*).[60]

Excellence in this element may facilitate excellence in other areas.[61] Productivity skills may enable individual judges to contribute more as a citizen of the court community (e.g., in committee work, mentoring colleagues, pilot testing new initiatives), for example, without reducing the quality or timeliness of work on essential duties (e.g., see *Engagement*).

The National Center for State Courts published the Model Time Standards for State Trial Courts in 2011 and maintains a database on Case Processing Time Standards by state at **www.ncsc.org/cpts**.

Endnotes

[53] This excludes bond court and other dockets for which case files are generally not available for advance review.

[54] The Sixth Amendment of the United States Constitution and many state laws guarantee the right to a speedy trial in criminal proceedings. U. S. CONST. amend. VI. A number of states also have speedy trial statutes or rules. *See, e.g.*, Cal. Penal Code §1382 (2016); 725 ILL. COMP. STAT. § 5/103-5; Mass. Crim. P. R. 36(b). Similarly, federal and state rules of civil procedure contain provisions that require consideration of timely resolution in rule construction. FED. R. CIV. P. 1; 735 ILL. COMP. STAT. § 5/1-106 (stating that the Illinois Code of Civil Procedure should be "liberally construed, to the end that controversies may be speedily and finally determined according to the substantive rights of the parties"); ARIZ. R. CIV. P. 1.

[55] TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY, CASE PROCESSING 2.1 (U. S. Bureau of Just. Assistance 1997).

[56] *See* CONFERENCE OF CHIEF JUSTICES CIVIL JUSTICE IMPROVEMENT COMMITTEE, CALL TO ACTION: ACHIEVING CIVIL JUSTICE FOR ALL 12 (2016) (Formally adopted by the Conference of Chief Justices by Resolution 7, 2016).

[57] *See* DAVID STEELMAN, JOHN GOERDT & JAMES MCMILLAN, CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM (2000), http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/ctadmin/id/1498/rec/2; RICHARD VAN DUIZEND, DAVID STEELMAN & LEE SUSKIN, MODEL TIME STANDARDS FOR STATE TRIAL COURTS (2011), http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1836. *See also* NATIONAL CENTER FOR STATE COURTS, CASEFLOW MANAGEMENT RESOURCE GUIDE, http://www.ncsc.org/Topics/Court-Management/Caseflow-Management/Resource-Guide.aspx (last visited July 6, 2017).

[58] For example, jury trials require extensive coordination between parties, experts and witnesses, court stakeholders, and citizens to ensure that everyone's time is used efficiently to provide for a speedy trial and positive juror experience. The judge is a figurehead for that process. For more information about effective jury management practices, *see* NATIONAL CENTER FOR STATE COURTS, CENTER FOR JURY STUDIES, www.ncsc-jurystudies.org (last visited July 6, 2017).

[59] Maura Thomas, *Time management training doesn't work,* HARVARD BUS. REV. (2015), https://hbr.org/2015/04 time-management-training-doesnt-work.

[60] *See* Eyal Ophir, Clifford Nass & Anthony Wagner, *Cognitive Control in Media Multitaskers*, 106 PROC. NAT'L ACAD. SCIEN. 15583 (2009).

[61] *See, e.g.*, Adam Rapp, Daniel Bachrach & Tammy Rapp, *The Influence of Time Management Skill on the Curvilinear Relationship Between Organizational Citizenship Behavior and Task Performance,* 98 J. APPLIED PSYCHOL. 668 (2013).

Building Respect & Understanding

Interacts effectively with all those who work in or appear before the court in a manner conducive to a fair process and just outcomes. Listens attentively to others and provides clear and effective communication to ensure a shared understanding of the issues in the case, court processes, and decisions.

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Respected judges described several types of interpersonal and communication skills as critical to judicial excellence. They especially emphasized the importance of social awareness, behavioral management skills, and two-way communication skills. Each skill may be applied in ways that help to facilitate perceptions of procedural fairness.[62]

A good judge was described as displaying a heightened social awareness or sensitivity to others' emotions and needs in the moment. One judge offered the following perspective on litigants in the courtroom: "For you, it's Tuesday. For them, it's the worst day of their lives." Judges with heightened social awareness are aware of the interpersonal dynamics of a given social situation or setting, understand the influence of social and cultural norms on behavior, and can anticipate others' emotional responses to events. Respected judges valued the curiosity and interpersonal skills necessary to seek out and develop a more complete understanding of the case. Judges indicated that social awareness helped them make use of available information (including verbal and nonverbal cues) to inform analysis and decision-making (see *Critical Thinking*).[63] They observed that this facilitated a more nuanced grasp of the issues in a case and the possible long-term effects of a given decision.

Respected judges valued behavior management skills because judges often manage the behavior of others (including emotional reactions in court). They defined judicial excellence as being able to anticipate, prevent or defuse others' emotional outbursts, and enforce the behavioral expectations of the court (i.e., maintain decorum, promote honesty, and discourage deception or manipulation). Judges also valued the ability to motivate attitude and behavior change. This happens, in part, by encouraging active participation from litigants in the court process (i.e., *giving voice*, one of the key principles of procedural fairness). In interviews, respected judges frequently touched on the importance of treating others with respect and compassion: They recognized, for example, that acknowledging litigants' emotional experiences and viewpoints when communicating the case decision facilitated acceptance of the outcome (see *Facilitates Resolution*).

Finally, respected judges prioritized strong two-way communication skills. Good judges were characterized as explaining every ruling using language that all those present can understand. They deliver that content effectively to the intended audience using clear oral, written, and nonverbal communication. And importantly, they recognize what content is important to share or to explain in more detail and to whom. Good judges are consistent in what they say and convey it in a respectful manner.

Good judges are not simply skilled conveyors of information. They are also skilled listeners. Respected judges distinguished truly listening to and understanding the message communicated by parties, witnesses, and others from simply hearing what was being said. Indeed, some judges described listening as the first and, for some, most difficult communication skill to master on a path to judicial excellence. They valued a more active form of listening in which the judge engages with others (e.g., through

nonverbal cues and follow-up responses or questions) to demonstrate that s/he is fully attending to and absorbing the story being shared. In addition to being attentive listeners, good judges were described as patient, open, friendly, and accessible, thus empowering parties to participate in the process. Participation builds respect for the law and leaves people with a feeling that the system works. Judges who struggle in this area were described as condescending, talking too much, not listening enough, and as having a "my way or the highway" approach or "because I said so" authoritarian attitude.

In sum, good judges were described as those who treat others with respect and dignity, provide transparent and honest communication, give participants a voice in court proceedings, and maintain civility in the courthouse. In doing so, they seek to create a positive environment that promotes productive dialogue, mutual understanding, and acceptance.

Variations by assignment type or experience level

Judges noted differences in the importance and application of interpersonal and communication skills by judicial assignment. Some civil court assignments, for example, require advanced written communication skills. Family court and child protection judges described the importance of relating well with courtroom participants and providing them with an opportunity to talk about sometimes difficult or emotional issues. Similarly, problem-solving court judges viewed these skills as paramount for building rapport with clients. This includes efforts to ensure that clients are motivated to fully engage in the behavior change process and effectively communicate expectations of program participation, a process requiring consistent reinforcement. In criminal court dockets this was less of an issue but became more important in cases with self-represented litigants. Judges emphasized the importance of interpersonal and communication skills when interacting with self-represented litigants, who require a more patient, detailed explanation of processes. Some felt this skill set is of particular importance for bond court judges, as they are the first point of contact defendants have with the court. In their view, respectful and courteous treatment, such as by making eye contact with the defendant, builds initial trust in the system. Trial judges may require specialized communication skills and strategies for communicating with jurors and/or dealing with the media.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Use motivational interviewing techniques to engage parties more fully in the court process.
- Use active listening strategies to demonstrate attentiveness (e.g., make eye contact with speaker, use appropriate facial expressions or gestures as others speak) and to ensure a shared understanding of the message communicated by parties (e.g., ask follow-up questions to clarify points of confusion, summarize the story heard to confirm understanding, take notes as appropriate).
- Give courtroom participants (e.g., jury, litigants) breaks when needed to minimize fatigue and manage behavior in the courtroom.
- Share expectations for your courtroom with attorneys by creating a standing decorum order or authoring an article for the local bar newsletter.
- Deliver clear, concise communication in person (i.e., verbal and nonverbal interpersonal communication). Communicate information at a level appropriate for the target audience.

- Prepare clear, concise written communication. Ask respected colleagues for templates or examples of written opinions and decorum orders that could serve as useful reference materials.

- Find ways to make court users feel more at ease to engage in the court process. For example, some judges set a less formal tone in their courtroom by opting not to wear judicial robes for select court assignments.

- With self-represented litigants, ensure that all communication with attorneys occurs openly in the courtroom (e.g., not privately in chambers or in sidebar conversations) to avoid an appearance of favoritism.

- Share information about what litigants can expect from the process and of the court. Relevant behaviors include:
    - letting litigants know what is expected of them and setting expectations about next steps in the court process;
    - explaining deadlines in the case and the consequences for missing them; and
    - giving reasons for decisions in the case (including an explanation on the applicable laws that the court must enforce, and if perceived to be unfair, how those laws may be changed through legislative action).

- Acknowledge and apologize for one's mistakes.

- Encourage litigants to share their perspective as an active participant in the proceedings and acknowledge their emotions in explanations of decisions.

- Reinforce the behavioral expectations of the court by consistently upholding established rules for decorum (e.g., admonishing attorneys who mistreat witnesses or lash out at each other over apparent personal issues).

- Follow through with the expected consequences for violating court rules or decisions.

Judges viewed specialized training on how to effectively manage self-represented litigants increasingly useful as self-representation becomes more common. Such training could be helpful for guiding appropriate interactions and decision-making not only with self-represented litigants but also with other subgroups of litigants (e.g., sovereign citizens; unions; individuals with substance abuse or mental health disorders). Generally, judges found courses that incorporated communication skill-training exercises (e.g., role-play with evaluation & feedback) and that offered videotaped examples of poor vs. effective communication to be most helpful. Courses on mediation and motivational interviewing (MI) were described as beneficial. With respect to MI, these were often judges who had served on a problem-solving court assignment and first learned about MI techniques through specialized problem-solving court educational courses or conferences. They believed MI skills to be beneficial for all judges who seek to improve interpersonal communication skills or get better at managing challenging interpersonal situations (e.g., disarming a hostile party, deescalating emotional outbursts in court).

Commentary

Judges rely extensively in their daily work on interpersonal and communication skills.[65] A wide-ranging body of empirical research on these skills demonstrates their general value in effective work performance. Nonverbal communication cues (e.g., facial expressions, eye contact, gestures) and vocal communication cues (e.g., pitch rate & variability, pauses, amplitude) are correlated with supervisor ratings of

job performance.[66] Individuals who are more skilled at empathizing with others and adapting communication to reach their intended audience perform better on the job.[67] One study, for example, revealed that attorneys equipped with strong professional listening skills felt more confident about their ability to manage interpersonal interactions.[68] This also helped to alleviate work-related stress and positively impacted well-being.

Judicial skills that build mutual respect and understanding between parties and the court are increasingly valued across the country. Public opinion polls document declining levels of public trust in all three branches of government.[69] Research and theory on the importance of public perceptions of procedural fairness have guided efforts by the court community to enhance judicial skills in this area, and in this way improve public trust in the courts. Parties are more likely to develop positive perceptions of their experience in court if they feel they were treated with dignity, had an opportunity to express their views and be heard in the process, and view decision-makers as neutral, honest, motivated to treat them fairly, and sincerely caring.[70] When parties perceive the process as fair, they are more likely to regard the court's authority as legitimate, comply with court orders, and engage in future law-abiding behavior.[71] Thus, interpersonal and communication skills, when applied by the judge in accordance with procedural fairness principles and other evidence-based practices (see *Knowledge of the Law & Justice System*), can improve justice system outcomes.[72]

Several web resources on procedural fairness are available, including the Center for Court Innovation's Procedural Fairness website **(http://www.courtinnovation.org/topic/procedural-justice)** *and the National Center for State Courts' Procedural Fairness for Judges and Courts website* **(http://proceduralfairness.org).** *The National Center for State Courts' Center on Court Access to Justice for All also offers a free curriculum on effective courtroom management with self-represented litigants* **(http://www.ncsc.org/microsites/access-to-justice/home/Curriculum.aspx)**.

Endnotes

[62] Procedural fairness refers to how fairly parties believe they have been treated in the process used to arrive at substantive outcomes. *See, e.g.*, Steve Leben & Alan Tomkins, Eds, *Special Issue On Procedural Fairness*, 44 CT. REV. (2008).

[63] For example, a judge who has a better understanding of the stories and experiences of those appearing before the court may be better able to evaluate various ways in which a legal problem could be framed.

[64] Motivational interviewing is an interactional approach designed to facilitate or engage a litigant's internal motivation to change behavior.

[65] To render informed decisions, for example, judges ask questions to facilitate disclosure (interviewing skills), listen to the shared information to derive meaning (listening skills), and assess the mental state and motives of witnesses to determine the value of information shared (social awareness). They convey information and expectations to courtroom participants (verbal and nonverbal communication skills) and issue opinions to explain their decisions (writing skills). Judges use such skills to advance cases toward resolution in a manner that facilitates compliance with court decisions.

[66] *See* Timothy DeGroot & Stephan Motowidlo, *Why Visual and Vocal Interview Cues Can Affect Interviewers' Judgments and Predict Job Performance*, 84 J. APPLIED PSYCHOL. 986 (1999).

[67] *See* Holly Payne, *Reconceptualizing Social Skills in Organizations: Exploring the Relationship Between Communication Competence, Job Performance, and Supervisory Roles*, 11 J. LEADERSHIP & ORG. STUD. 63 (2005). For research-based examples of competent listening attributes and behaviors, see Graham Bodie et al., *The Role of "Active Listening" in Informal Helping Conversations: Impact on Perceptions of Listener Helpfulness, Sensitivity, and Supportiveness and Discloser Emotional Improvement*, 79 WESTERN J. COMM. 79, 151 (2015); Graham Bodie et al., *Listening Competence in Initial Interactions I: Distinguishing Between What Listening is and What Listeners Do*, 26 INT'L J. LISTENING 1 (2012); David Bednar, *Relationships Between Communicator Style and Managerial Performance in Complex Organizations: A Field Study,* 19 J. BUS. COMM. 51 (1982); Larry Penley et al., *Communication Abilities of Managers: The Relationship to Performance*, 17 J. MGMT 57 (1991). A seminal study of patient-centered communication skills revealed that the communication behaviors used by physicians predicted patients' reactions to their care, as measured by the number of medical malpractice claims filed against them. Primary care physicians who spent more time with patients in routine visits

informing them about the process and what to expect, who used more humor, and who encouraged more patient engagement (e.g., by encouraging them to talk, asking about their opinions, verifying understanding) had significantly fewer medical malpractice claims filed against them than physicians who did not engage in these behaviors. *See* Wendy Levinson et al., *Physician-Patient Communication: The Relationship with Malpractice Claims Among Primary Care Physicians and Surgeons*, 277 JAMA 553 (1997). In another study, surgeons' tone of voice (i.e., perceived as more dominant and less concerned) in routine patient visits was also found to be related to malpractice claim history. Nalini Ambady et al., *Surgeons' Tone Of Voice: A Clue to Malpractice History*, 132 SURGERY 5 (2002).

[68] *See* Sanna Ala-Kortesmaa & Pekka Isotalus, *Professional Listening Competence Promoting Well-Being at Work in the Legal Context,* 29 INT'L J. LISTENING 30 (2015).

[69] *See* PEW RESEARCH CENTER, BEYOND DISTRUST: HOW AMERICANS VIEW THEIR GOVERNMENT (2015), http://www.people-press.org/2015/11/23/1-trust-in-government-1958-2015/; Jeffrey Jones, *Trust in U.S. judicial branch sinks to new low of 53%*, GALLUP, September 18, 2015, http://www.gallup.com/poll/185528/trust-judicial-branch-sinks-new-low.aspx.

[70] *See* David Rottman & Tom Tyler, *Thinking About Judges and Judicial Performance: Perspective of the Public and Court Users*, 4 ONATI SOC.-LEG. SERIES 1046 (2014).

[71] *See* TOM TYLER & YUEN HUO, TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS (2002). *See also* Denise Gottfredson et al., *How Drug Treatment Courts Work: An Analysis of Mediators*, 4 J. RES. CRIME & DELINQ. 3 (2007); CYNTHIA LEE ET AL., A COMPREHENSIVE EVALUATION OF THE RED HOOK COMMUNITY JUSTICE CENTER: A COMMUNITY COURT GROWS IN BROOKLYN (2013); ROSSMAN ET AL., EDS. THE MULTI-SITE ADULT DRUG COURT EVALUATION (2011).

[72] Several national online resources have been developed to provide judicial officers and other court practitioners with information about procedural fairness as it relates to professional practice. Two such examples are PROCEDURAL FAIRNESS FOR JUDGES AND COURTS, www.proceduralfairness.org (last visited October 1, 2017) and PROCEDURAL JUSTICE, www.courtinnovation.org/topic/procedural-justice (last visited October 1, 2017).

Facilitating Resolution

Engages with parties and stakeholders to build consensus on matters that will allow for forward case progress and a focus on reaching a resolution.

What do respected judges say?

General themes from judicial interviews, focus groups, and surveys

Respected judges associate an ability to facilitate case resolution with judicial excellence. They emphasized the value of team management and conflict management skills that enhance the quality of case resolution.

Respected judges frequently described ways in which consensus building skills added value in their daily work with other judges, attorneys, and court staff. They highlighted situations that called for the judge to manage teams of representatives from other court community stakeholder agencies (e.g., those providing resources to court programs) and described judicial excellence in this context as an ability to run effective meetings. Judges who run effective meetings are able to (1) keep the team focused on its shared objectives and involved in generating solutions to emergent issues, (2) broker compromise when needed to arrive at consensus decisions as appropriate, and (3) make final decisions in a manner that reflects team input, thereby promoting a sense of procedural fairness within teams. This builds on other elements related to case management, listening and other interpersonal skills, and problem-solving skills (see also *Managing the Case & Court Process, Building Respect & Understanding*, and *Critical Thinking*).

Respected judges valued the ability to manage sometimes combative interpersonal dynamics between the attorneys, court staff, and other professionals within the court or on a court team. They described the ways in which interpersonal conflicts arise, such as when team members have strong but competing opinions about the best next steps in a case, making consensus elusive. Attorneys in a case may have interpersonal conflicts and allow those conflicts to influence their professional behavior. In situations such as these, effective conflict management will refocus attention away from personal issues irrelevant to the case and toward substantive legal matters before the court. Doing so may require emotional intelligence and interpersonal skills (see also *Building Respect & Understanding*) to facilitate collaboration and cooperation between multiple stakeholder agencies and representatives, with individuals who may or may not naturally work well together.

Judges differed in their opinions about their role in the settlement process. Some judges viewed mediation services as valuable resources but did not actively raise the possibility of settlement with parties. Others were uncomfortable raising the question of settlement, believing it inappropriate for the court (and particularly for inexperienced judges) to play such a role. Yet another group of judges explained how they proactively seek to determine whether parties had discussed the possibility of settlement or are amenable to mediation. These judges described their philosophy at length: They sought to facilitate conversations between parties in a manner allowing for points of agreement, if any, to be identified to inform case progress. They acknowledged that parties may not be amenable to a resolution by agreement. However, in some cases, neither party may wish to "show weakness" by raising the possibility of settlement but if asked are nevertheless open to mediation. Judges believed that asking parties whether they have considered settlement options and, if not, whether they wish to discuss settlement, is an important step in

the "pre-flight checklist" before a case goes to trial. If parties agree, judges may conduct pretrial settlement conferences or refer cases out to certified professionals providing mediation or arbitration services.[73]

Variations by assignment type or experience level

Judges described the resolution of legal matters through mediation or settlement as more relevant for cases with self-represented litigants and for both high-volume and complex calls (like civil and family court). These were described as less relevant for non-adversarial or problem-solving court calls (including child protection dockets) and for criminal dockets (including bond court and jury trials). Judges noted, however, that activities like case triaging at the pretrial stage can play an important role in facilitating case resolution. Similarly, they believed that trial judges can and should pose proactive questions to motivate resolution on minor issues that impact the flow of a trial. Some of the more experienced judges who believed the court had a role to play in determining amenability to resolution by agreement completed training to become certified mediators.

Judges indicated that consensus building and conflict resolution skills are particularly important in problem-solving court, family court, and certain juvenile dockets. Judges on these dockets typically direct a therapeutic and team-oriented approach with representatives from a variety of stakeholder agencies. These agency representatives provide input to identify needs of parties and address them through the formulation of sometimes complex and lengthy case plans (potentially including supervision requirements, therapeutic treatment interventions, and other services). Teams discuss, and may disagree about, how to construct case plans and respond to client issues effectively. Here, the objective is to achieve a positive outcome for the individual or family, as opposed to seeking resolution of a specific legal issue to move to case closure. The judge may frequently encounter other situations or issues between colleagues or agencies that may benefit from these skills.

What do respected judges do?

Respected judges offered the following examples of helpful strategies and illustrative behaviors when discussing this element of judicial excellence.

- Explore whether settlement is a consideration by asking questions of parties and listening closely to their responses. Examples of the questioning they use include asking attorneys whether the case will benefit from a day or two with a mediator, asking whether the parties wish to discuss settlement, and asking whether an offer has been made and rejected or withdrawn without hope of reinstatement.

- Issue consistent decisions and stand by those decisions so attorneys get a sense of how their case will be handled. Predictable judicial ruling may motivate parties to resolve cases earlier in litigation without involving the judge.

- Break the ice between attorneys who do not speak with one another voluntarily; for example, create opportunities to meet to discuss trial ground rules.

- Manage interpersonal conflict outside of the courtroom by pulling parties aside to address issues directly (within ethical boundaries) and refocus attention on the case.

- Engage attorneys, court staff, and others in collaborative conversations about case-related issues to identify challenges and opportunities, address issues constructively, and decide next steps.

- Seek guidance from experienced colleagues for ideas about how to effectively address the possibility of settlement without appearing coercive, how to manage pretrial conferences, and on scheduling of pretrial conference dates.

Judges valued courses on negotiation, mediation, conflict resolution, or alternative dispute resolution, as well as education on the appropriate role of a judge in the settlement process. One civil court judge found the Civil Mediation course provided by the National Judicial College to be excellent. Others found training on effective pretrial methods to be helpful. Problem-solving court judges found offerings from the National Association of Drug Court Professionals (training, conferences, and publications) valuable for developing team management and consensus building skills. However, respected judges viewed the combination of practical training and guidance from a good mentor as essential for effective development in this area.

Commentary

State trial court judges work with others to facilitate the resolution of legal conflicts between parties. Judges may be called upon to manage interdisciplinary teams of stakeholders both internal (e.g., clerks, court staff, bailiffs) and external (e.g., local agency representatives or treatment service providers) to the court who work together to inform decisions about litigants, their cases, or court programs. Interpersonal and task-related conflicts invariably arise between team members behind the scenes and even in the courtroom. Judges must manage that conflict effectively. Generally, effective conflict management predicts successful organizational outcomes.[74] Task-related conflict can be healthy for teams if managed well, as it is associated with more innovative team member behaviors and more creative solutions, particularly when institutional support for innovation is available.[75]

In facilitating the resolution of legal conflicts, judges may seek to determine whether settlement is an option of interest to parties, conduct settlement conferences, and refer cases out to a mediator or arbitration service. Mediation is intended to provide parties with an opportunity to examine their own views and engage in a facilitated conversation about possible points of agreement.[76] Use of such approaches can benefit the court and court users: In complex civil litigation dockets, for example, use of mediation services can reduce costs of litigation and result in more timely disposal of cases.[77] However, attention must be paid to ensure that mediators are properly trained on the skills and ethical responsibilities of the role.[78]

Judges who ascribe to more therapeutic philosophies or approaches to judging may also consider ways to facilitate resolution of the underlying issues or interpersonal conflicts in the legal matters before the court.[79] Addressing underlying issues may help parties forgive and heal, improve perceptions that justice was done, reduce the likelihood of future recidivism, and promote public safety.[80]

The National Judicial College offers an array of courses for judges, including programs on civil mediation. For more information, see **www.judges.org**.

Endnotes

[73] Judges described conducting pretrial settlement conferences on the record in open court. Some judges felt it was important to be willing to mediate their own cases if parties agreed; some explained that they preferred not to mediate their own cases but would accept referrals.

[74] Team leaders may find greater success when they (a) limit interpersonal conflicts between team members and (b) encourage team members to share substantive input and engage in task-oriented conflicts or debate. This can be facilitated by, for example, establishing a focus on commonly agreed-upon team goals, sharing more factual information with the team, and developing and exploring multiple possible alternative solutions in discussions. *See* DAVID WHETTEN & KIM CAMERON, DEVELOPING MANAGEMENT SKILLS (8th ed. 2011). Authorities who manage teams with lower levels off procedural fairness, on the other hand, may not be as successful. Under leadership with lower levels of procedural fairness, team members view the leader as more responsible for unfavorable team outcomes. *See* Joel Brockner et al., *Procedural Fairness, Outcome Favorability, and Judgments of an Authority's Responsibility*, 92 J. APPLIED PSYCHOL. 1657 (2007).

[75] *See* Richard Posthuma, *Conflict Management and Performance Outcomes*, 22 INT'L. J. CONFLICT MGMT. 108 (2011).

[76] Mediation is defined as "a process in which an impartial third party acts as a catalyst to help others constructively address and perhaps resolve a dispute, plan a transaction, or define the contours of a relationship." CARRIE MENKEL-MEADOW, DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL 223 (2d ed. 2011).

[77] *See, e.g.*, Robert Wissler, *The Effectiveness of Court-Connected Dispute Resolution in Civil Cases*, 22 CONFLICT RESOLUTION Q. 55, 70-75 (2004).

[78] In August of 2005, the American Bar Association published model standards of conduct for mediators. AMERICAN BAR ASSOCIATION, MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005), https://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf.

[79] One study exploring what judges believe constitutes "judicial wisdom" found that judges nominated by their peers for their legal wisdom not only addressed the legal matters in a case, but also sought to facilitate a resolution to the underlying issue or interpersonal conflict that led to the specific legal action. Heidi Levitt & Bridget Dunnavant, *Judicial Wisdom: The Process of Constructing Wise Decisions*, 28 J. CONSTRUCTIVIST PSYCHOL. 243 (2015).

[80] *See, e.g.*, M. Wenzel, & T. Okimoto *On the Relationship Between Justice and Forgiveness: Are All Forms of Justice Made Equal?* 53 BRITISH J. OF SOC. PSYCHOL. 463-483 (2013). E. Latessa, & C. Lowenkamp, *What Works in Reducing Recidivism?* 3 U. ST. THOMAS L. J. 521-535 (2006). Roger Warren, *Evidence Based Practice to Reduce Recidivism: Implications for State Judiciaries* (2007), http://www.ncsc.org/~/media/Microsites/Files/CSI/Reduce-Recidivism.ashx. *See also* Adam Benforado, *Can Science Save Justice?* 101 JUDICATURE 24, 31-2 (2017).

Elements of Judicial Excellence