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Judicial Stress and Resiliency Survey COVID-19 Update

Katheryn Yetter & David X. Swenson

Judges in the United States preside in many different courts, both on state and federal levels. Judges exercise a considerable amount of power as the ultimate decision makers in matters of legal controversy. However enviable this position may seem, the daily challenges of this role are stressful and can have an adverse effect on any judge's health and well-being. While some would argue that these challenges are part of the job, the judiciary, legal community, and public in general would be remiss not to recognize the strain that these challenges create. To shed light on the matter, the 2019 National Judicial Stress and Resiliency Survey was conducted. This survey helped identify: (1) stressors unique to the judiciary, (2) how those stressors affect individual judges, and (3) strategies that judges have used to mitigate these stressors. The results serve as the context for recommendations made to the multiple stakeholders who comprise, regulate, and support the U.S. judicial system.¹

In the months since this research was conducted, judges and the judicial system have been subjected to brand-new stressors and tests of their flexibility and adaptability. A global pandemic disrupted personal and professional lives, and judges, as people, were not exempt from this disruption. The impact of the pandemic has had ripple effects across much of our current way of life that affects not only judges but all the stakeholders in the courts (e.g., attorneys, parties, court staff, and service providers). Judges have been forced to reconsider the ways in which the system operates and balance the health and safety of themselves, their staff, and the public against access to justice. In addition, the pandemic has created unique stressors that are beyond the normal stressors of judicial work and require resiliency practices that may need daily use beyond our usual habits.

THE 2019 SURVEY RESULTS

To be sure, judges experience stress in their daily lives, and this survey bore that out: Over 1,000 judges of all jurisdictions (state, federal, tribal, military, administrative law) responding to this survey noted one or more stressors in their work life. Over 70% of those taking the survey were between the ages of 50 and 70, which can be a time of transition for people whether they're transitioning from bar to bench or from bench to retirement, or whether the transition is happening within their own family units.

Most stressors were directly related to the day-to-day realities of performing the tasks of the profession, but a few stressors out-

side of the job of judging (safety/security, running for election/re-election, attacks on social media) did exist for some. The top five sources of judicial stress reported were:

1. Importance/impact of decisions
2. Heavy dockets
3. Unprepared attorneys
4. Self-represented litigants
5. Dealing repeatedly with same parties without addressing underlying issues

Stress manifested itself in a host of physical and psychological symptoms. The top five effects of stress reported were:

1. Fatigue and low energy after hearing several cases in a row
2. Sleep disturbance (insufficient sleep, awakenings, daytime drowsiness)
3. Interference with attention and concentration; tend to be distracted
4. Ruminates or worry about cases after they are decided
5. Increased health concerns (high blood pressure, etc.)

To combat stress, judges reported that they regularly engage in helpful activities such as eating healthfully, doing physical exercise, reading educational materials, and seeking the support of trusted people. In fact, most judges answering the survey engage in at least one stress management activity, whether it was physical exercise, relaxation or mindfulness techniques, eating healthfully, or a faith/spiritual practice.

The survey did not find that most judges engage in problematic use of alcohol or other substances. Those judges who reported that they consume alcohol also reported that they are not daily drinkers, and two-thirds of those who do consume alcohol consumed one or two drinks at any given time. Of the more than 1,000 judges who took the survey, however, 20 individuals indicated that they did have six or more drinks at a time daily, almost daily, or weekly. A very small group experienced interference with their daily lives due to drinking, whether it was failing to do what was normally expected, needing a first drink in the morning to get going, experiencing blackouts, or feeling guilt or remorse around drinking.

Footnotes

1. David Swenson, Ph.D. L.P.; Joan Bibelhausen, J.D.; Bree Buchanan, M.S.F, J.D.; Hon. David Shaheed & Katheryn Yetter, J.D., *Stress and*

Resiliency in the U.S. Judiciary (publication forthcoming in *PROF. LAW.*, a journal of the American Bar Association's Center for Professional Responsibility).

IMPLICATIONS FOR COVID-19-RELATED JUDICIAL STRESS AND RESILIENCY

The COVID-19 pandemic has upended the lives of most people, and judges are not exempt from the tolls the pandemic has taken on personal and professional lives. Courts have had to adapt to state-mandated shutdown and distancing orders, whether by taking staff work and court proceedings online or by altering operations to comply with COVID mitigation recommendations.² Additionally, the economic and social strains of the pandemic create further layers of stress beyond current court duties and issues, and can have an unconscious undercurrent that affects attention, thinking and judgment, mood, and behavior. The pervasiveness of these effects may require judges to be even more diligent in self-care than usually practiced. Several faculty of the National Judicial College were interviewed to see whether the same pre-COVID stressors reported during the 2019 survey applied since the pandemic hit, whether there were any new and previously unanticipated stressors, and whether they were mitigating the effects of stress by engaging in healthful activities.³

As courts have had to rapidly redesign their service delivery, judges have had to rapidly learn how to competently conduct hearings and other court proceedings through Zoom and other platforms. While converting to an online format may have some positive aspects as outlined below, consensus among the judiciary is that online hearings can take longer and that the effects of many of the pre-COVID stressors, such as unprepared attorneys and distracted parties, are exacerbated. Orienting parties to the court and the court proceeding has evolved into directing parties to online platforms and how to behave online (no smoking during the proceeding, no outside persons in the area of the camera, proper attire, and the like), which adds time to each hearing or trial. Fatigue from online proceedings affected all the judges, one stating that “Zoom fatigue’ is real; It’s much more taxing, exhausting, and draining to do virtual court for 7+ hours every day.”

Confirming such opinions, research on Zoom fatigue is showing that there are neurological processes at work producing the fatigue. For example, even a few milliseconds’ delay in verbal responses can affect our interpersonal perceptions.⁴ Other factors include the inefficiency and effort of multitasking, the lack of balance between effort and reward in using the technology, fatiguing requirements on alertness and motivation, loss of eye contact and nonverbal behavior for important cues, and lack of physical activity that can exacerbate fatigue effects.⁵ Multi-person or “gallery-viewing” screens make it more demanding to scan faces meaningfully and results in continuous partial attention.⁶ While any one of these could be singularly managed by judges, the combination and interaction of them appears to be frustrating

and exhausting for people across a wide range of professions.

Judges are also staring down a backlog of cases, or they are already pushing through the backlog that has built up in the last several months. One judge reported that “without the pressure of a trial date, attorneys in criminal matters have no pressure to move their case forward—no discovery happens, there are no plea offers; cases languish.” Another judge noted that he used to do “up to 150 traffic cases in a day and now it takes three hours just to do a handful.”

Shut-down or restricted community programs and services, especially for judges presiding in therapeutic courts or juvenile courts, added to stress. Services that judges might generally order, such as group counseling for youth or treatment programs for people who have addiction, especially those in rural areas with very limited resources, were canceled or extremely limited. Moreover, the sheer number of changes that must be adapted to and the speed at which they must be adapted to—whether changes to the technology used, or to the tolling of statutes of limitation, or court rules related to speedy trial, to where the mail is picked up—can add to stress.

COVID-19 has brought with it stress symptoms of depression, anxiety, and worsening of existing health and mental health symptoms.⁷ Emerging research on the effects of the pandemic also

“ZOOM FATIGUE” IS REAL, ACCORDING TO RESEARCH

The effect of constant Zoom cases is similar to the results of a study of parole judges seeing a long docket of cases.

A study of 1,112 judicial rulings on parole requests over a ten-month period showed that fatigue clearly affected the favorability of the rulings toward the parolee.*

Starting in the morning the favorability was at about 65% and it steadily declined to nearly zero until the court mid-morning recess. After that, it returned to about 65% and again declined until noon recess. Again, in the afternoon, favorability started out high and declined until mid-afternoon recess, then following recess it was high and declined.

These results were present in rulings before COVID, and it is very likely that the fatigue from COVID’s impact will affect such rulings even more.

* S. Danziger, J. Levav & L. Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, PROC. NAT’L. ACAD. SCI., Apr. 2011, available at <https://www.pnas.org/content/108/17/6889>

- For a brief outline of some of the measures that state and federal courts have taken to adapt, please see this Brennan Center for Justice analysis at <https://www.brennancenter.org/our-work/analysis-opinion/courts-continue-adapt-covid-19>.
- The authors wish to thank Hon. Sherri Collins (Florida), Hon. Emily Miskel (Texas), Hon. Curtis Bell (Michigan), Hon. Anthony Capizzi (Ohio), Hon. Margaret Guzman (Massachusetts), Hon. Robert Anchondo (Texas), and Hon. William Kelly (Michigan) for their contributions to this article.
- F. Roberts & A. L. Francis, *Identifying a Temporal Threshold of Tolerance for Silence Gaps After Requests*, 133 J. ACOUSTICAL SOC. AM.

471 (2013).

- J. Lee, *A Neuropsychological Exploration of Zoom Fatigue*, PSYCHIATRIC TIMES, Nov. 17, 2020, <https://www.psychiatristimes.com/view/psychological-exploration-zoom-fatigue>.
- J. Sklar, *Zoom Fatigue Is Taxing the Brain: Here’s Why That Happens*, NAT’L. GEOGRAPHIC, Apr. 24, 2020, <https://www.nationalgeographic.com/science/2020/04/coronavirus-zoom-fatigue-is-taxing-the-brain-here-is-why-that-happens/>.
- See, *Coping with Stress* from the Centers for Disease Control and Prevention.

show that the use of alcohol, sleep aids, and other medications is increasing for the public, and judges are not immune to these effects. Alcohol sales have increased by 262% from sales in 2019 with the increase related to social isolating during COVID.⁸ Although the 2019 survey showed a mild rate of alcohol misuse, these exceptional circumstances make it more likely that substances will be used to deal with the isolation, anxiety, depression, low energy, and sleeplessness that our current circumstances produce. During isolation, the support systems for judges who may abuse alcohol are not as available and they may relapse.⁹

HOW JUDGES ARE COPING WITH COVID-RELATED STRESS

To bolster their own wellness and reduce stress, almost without exception the judges interviewed started or enhanced a walk-

ing program—walking to work, walking in the morning before work, or taking breaks to walk with their court colleagues. Judges reported that they were eating more healthfully, although some not by choice: their favorite restaurants had ceased operations and social events with drinks and appetizers that the judges regularly attend were canceled.

While most of the judges interviewed focused on their physical health, several also prioritized their mental and emotional health by developing a formal judge-to-judge outreach program or other networking. Others intentionally limited their use of social media or developed an intention-based gratitude practice. One judge started a journal to remind himself of new and positive things he was doing in court.

Despite the negatives of the pandemic, judges reported that there are some positives from the disruption; that reimagining the

DAILY RESILIENCY PRACTICES FOR JUDGES

Mindfulness is nothing more than paying attention to our current experience without judging it or getting stuck on thinking about it. It is more like observing a stream and noticing its flow and the leaves that may be drifting along its current. Research is very clear that such momentary but intentional “timeouts” can have benefits to stabilizing moods, focusing attention, improving memory, and reducing tension.

Gratitude is an attitude that research and clinical work shows to be uplifting and supports optimism. A Gratitude Journal can be used to create a collection of appreciations that can be reviewed and remembered when thinking becomes dull and one feels isolated. Gratitude can be expressed in many ways: reflect on the good things that have happened in your life; call, write, or mentally thank others such as mentors who have helped or become role models for you; or reflect on experiences and what you learned from them.

Family interaction is important as families become more isolated and have much closer proximity while under stress. However, this is also an opportunity for families to reexamine some of the habits and norms—how do they spend time together and share support at an important time. Examples of healthy practices include family movies and games, home projects, attentively listening to each other, and learning how to interact and be engaged without over-relying on technology and social media.

Social support was one of the major deficiencies judges noted in the national survey. As social beings it is important to share experiences, emotions, and ideas with another person who listens and is not judgmental and can reduce high levels of stress. CoLAP and community hotlines are available for talking and referral when everything seems overwhelming or depressing. Use social media to maintain contact with friends but don’t use it excessively and be cautious about social media that posts complaints or compares you to others.

Physical activity is one of the more strongly recommended resiliency practices. Jogging and biking, on treadmills or stationary bikes when weather does not allow such can enable regular workouts.

Yoga, ‘ai chi, and Pilates can provide slow stretching and conditioning as well as enhance body awareness. Yard work, building projects, painting, and remodeling also involve a low but beneficial degree of activity. Even if TV is a pastime, one can do push-ups, sit-ups, and other brief calisthenics during commercials.

Sleep is essential for emotional, mental, and physical health. Studies of restricted sleep duration and quality (e.g., less than 8 hours over two weeks) has been shown to affect mental performance as much as .08 blood alcohol from drinking (See generally, A. M. Williamson & A. M. Feyer, *Moderate Sleep Deprivation Produces Impairments in Cognitive and Motor Performance Equivalent to Legally Prescribed Levels of Alcohol Intoxication*, 57. OCCUP. ENVIRON. MED. 649 (2000)). Recommendations for better sleep (called sleep hygiene) includes setting a regular sleep schedule, avoiding large or spicy meals a couple of hours before bedtime, avoiding the “blue screen” and bright lights of devices that delay melatonin production in the brain that signals sleep, developing a ritual for sleep preparation (brushing teeth, bathing, reading), and eliminating any sources of light and noise in the bedroom by using dark curtains and covering all lights and using white or brown sound to mask noises.

Nutrition is the major source of energy during stressful periods. The disruptive effects of COVID-19 on our routines and emotional health can affect appetite and lead to loss of appetite and reliance on low nutritional meals. Such meals contribute to poor sleep, weight gain, low energy, and mental dullness as well as poor immune response (For an exploration on nutrition, eating habits, and the COVID-19 pandemic, see L. Di Renzo et al., *Eating Habits and Lifestyle Changes during COVID-19 Lockdown: an Italian Survey*, 8 J. TRANSL. MED. 229 (2020)). It is important to counter this by healthy eating that includes regular balanced meals of nutritional food. Fruits, vegetables, grains, and nuts are highly recommended. Minimize sweets, highly salted foods, and heavy fats. Since stress can also dehydrate the body, be sure to drink 8-10 glasses of water a day. This can also be a time for families to cook together and try new recipes.

8. M. S. Pollard, J. S. Tucker & H. D. Green, Jr., Changes in Adult Alcohol Use and Consequences During the COVID-19 Pandemic in the U.S., JAMA Network Open (Sept. 29, 2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2770975>.

9. G. Polakovik, *Pandemic Drives Alcohol Sales—And Raises Concerns About Alcohol Abuse*, USCNEWS, Apr. 14, 2020, <https://news.usc.edu/168549/covid-19-alcohol-sales-abuse-stress-relapse-usc-experts/>.

way courts operate was uncomfortable but necessary. This from one judge: “Though the pandemic has created havoc for our community, nation and the world, there have been some positive changes made to the judiciary’s functioning as a result. For over a decade there have been calls to better utilize technology to improve court operations for the people we serve. The pandemic has forced some of these improvements.” Judges are reporting greater participation among certain segments of the people whom they serve, and most plan to recommend keeping some of the online proceedings once the threat of the pandemic has ended.

PROMOTING JUDICIAL WELLNESS AMONG THE PROFESSION

A 2018 survey of judges conducted by the National Judicial College related to the “pain points” of being a judge revealed that these challenges were divided roughly into two categories: those related to one’s comfort level in this role and those related to the body of knowledge a judge must have. By and large, judges struggle with their judicial *identity*: the isolation that comes with being a judge, the fear of appearing incompetent, and the difference between what the judge thought she or he would be doing and the realities of the job. To address these challenges, the NJC embedded (and recommends that states embed) topics into their educational programs such as judicial wellness, including stress management and dealing with burnout; understanding bias; coping with the isolation that comes from cutting ties with social circles and friends; and vicarious trauma.

In 2017 the National Center for State Courts released *Elements of Judicial Excellence: A Framework to Support the Professional Development of State Trial Court Judges*.¹⁰ Included in the framework were recommendations for judicial well-being and the ways in which state court leaders can structure the professional development of judges to include information on wellness and stress management. Some ideas are formal mentoring and coaching programs, regular engagement with judicial colleagues, and intentional use of personal time to refresh and recharge.

The 2019 National Judicial Stress and Resiliency Survey was discussed during that year’s National Conference for Lawyer Assistance Programs and participants had the opportunity to consider the implications of the survey results for professional development, court culture, and peer/family support. A full set of recommendations for judges, lawyer/judge assistance programs, judicial membership organizations, judicial educators, and other stakeholders is enumerated in the forthcoming article in *The Professional Lawyer*.

CONCLUSION

Brief and situationally limited stress is something that people can deal with until it is over or they leave that situation, but pervasive stress that is significant and involves multiple situations is more difficult to adjust to or escape from. The impact of COVID-19 is more the latter. The pandemic has affected all levels of our economy, health and healthcare, social interactions, efficiency and trust of many of our institutions, family and community life, and workplace norms and culture.

As noted above, judges usually participate in some form of self-care for stress management and resiliency. Yet, most of them also expressed the opinion that they needed to do more. During the stress of a pandemic, this attention to self-care is crucial to maintain physical, emotional, and cognitive health and may require additional attention to engage in such methods. Key areas include:

- Sufficient duration and quality of sleep (modifying sleep hygiene practices)
- Maintaining contact with social support networks (learning how to engage more family activities that we may have lost touch with; Zoom time with close friends)
- Physical exercise (short periods of exercise, stretching, movement (e.g., yoga, t’ai chi, Pilates))
- Focusing on positive experiences (movies and videos involving family, humor, nature; news about generosity during COVID-19)
- Mindfulness (turning off mental chatter, reflections, or anticipations that continue to stress the body)



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10. See, <https://www.ncsc.org/judicialexcellence>.