

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

---

Court Review: The Journal of the American  
Judges Association

American Judges Association

---

2021

## The Compassionate Court: Reforming the Justice System Inside and Outside

Jamey H. Hueston

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

---

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

# The Compassionate Court:

## Reforming the Justice System Inside and Outside

Jamey H. Hueston, Judge, Ret'd

There is growing scholarship and justice system attention regarding the quality and effect of court interactions on citizens who come before the bar, as well as court system employees. From this research and the impact of therapeutic court experience, the Compassionate Court is born. The Compassionate Court considers court matters from a wider perspective that factors human behavior and disabilities, as well as community and societal influences that caused conflicts, and encourages courts to formulate alternative therapeutic solutions. The Compassionate Court reflects a coherent, navigable, and humanistic judicial process no matter the severity of the matter or difficulty of the personalities involved. It embodies compassion as part of a cohesive, integrated structure at each door, floor, person, and component in the court. The result is a court system whose focus is on the well-being of its users, not just resolving the narrow issue at bar.

By integrating the tripartite practices of procedural fairness, therapeutic jurisprudence, and judicial engagement with all judicial system components, and with contributions from behavioral disciplines, courts will formulate creative solutions to hinder the revolving door of repeat litigation. In the end, the compassionate environment will positively affect the well-being of both judges and litigants alike.

This article paints a tableau of how court components can be enhanced and integrated to strengthen the systemic whole.

**Section I** describes compassion and its foundational underpinnings and explains its *raison d'être*—essential purpose in the enhanced court system. The section proposes that a Compassionate Court, which is reflected in all components of the court structure, will benefit its citizenry and the community while simultaneously manifesting core judicial values.

**Section II** proposes that the tripartite therapeutic components of procedural fairness, therapeutic jurisprudence, and judicial engagement form the central core of the compassion philosophy. Together, they will positively improve the quality of communications with the parties, increase respect for the justice system, and enhance a compassionate administration.

**Section III** explores the court's physical components—bricks and mortar, materials, and architectural elements—that tangibly convey openness, transparency, and compassion in the court. It also considers non-tangible elements—systems, processes, and services—that constitute a Compassionate Court. This section continues with a discussion on judicial wellness and scientific research that demonstrates the beneficial health benefits of compassion and related mindfulness and empathetic practices. Practicing compassion generates a more positive milieu for judges and those who support the administration of justice by reducing

daily stress and its harmful consequences. This occurs as they benefit from dynamically contributing to solution-driven, therapeutic processes.

**Section IV** explores the training requirements of building a Compassionate Court. As with any new comprehensive idea, creating a Compassionate Court requires training, thoughtful planning, and financial investment. Strategic planning develops the roadmap essential to establish a comprehensive design and determines numerous other details that comprise system change.

Ultimately, this article offers that a Compassionate Court begins from the moment the public enters the building and lasts until the litigation process ends with the gavel's final fall. Its synergism can improve public respect for the court system and improve the experience of court users at every intersection.

### SECTION I: THE COMPASSIONATE COURT

The judicial system, replete with its many components and complexities, can be intimidating and difficult to navigate for both novices and seasoned users alike. Many enter the court with psychological issues, physical disabilities, and societal influences that may have contributed to the court conflict. Individual tension, as well as general negativity in the court environment, can be palpable at times with often counterproductive consequences to judiciary goals of efficiency and quality of justice. However, the judicial system can transform this environment by improving the quality of human interactions, adopting therapeutic multifaceted approaches to resolving conflicts, and constructing a healthy court environment through principles of the *Compassionate Court*.

### THE COMPASSIONATE COURT CONCEPT

Compassion has been defined as “kindness or generosity of the heart,” “sympathy in action,” and “sympathy with another's distress combined with a desire to do something about it.”<sup>1</sup> It offers the means to confront difficult emotions of individuals and to understand events from their perspective with an “attitude of curiosity and care.”<sup>2</sup> Compassion is the glue, which connects individuals and validates our humanity. Demonstrating compassion during court interactions with litigants is the standard to which judges should strive. It is displayed by showing respect, civility, providing clarity of process and language, and easing stress. It is empathy with healing action and can be expressed in a myriad of ways.

A Compassionate Court requires a more expansive and creative way of administering the court system as a whole, and for each of its segments, than a traditional court. The Compassionate Court calls for a stylistic reorientation from merely resolving the narrow issues at bar to understanding the background of the parties and reasons of the legal action, and for constructing resilient,

### Footnotes

1. Anselm Eldergill, *Compassion and the Law: A Judicial Perspective*, INST. ADVANCED LEGAL STUD. 1 (2018), <https://www.slideshare.net/AnselmEldergill/compassion-and-the-law>.

2. Boris Borneman & Tanya Singer, *A Cognitive Neuroscience Perspective the ReSource Model*, in *COMPASSION: BRIDGING PRACTICE AND SCIENCE* (Tania Singer & Matthias Bolz eds., 2013) at 183.

long-term resolutions when possible.<sup>3</sup> The effectiveness of a remedy is increased by understanding the underlying causes of the problems.<sup>4</sup>

A Compassionate Court considers features from behavioral, psychological, neurological, criminology, social work sciences, and jurisprudential concepts,<sup>5</sup> and determines how they can be integrated into the legal system.<sup>6</sup> At the central core of the Compassionate Court is the tripartite philosophies of procedural fairness, therapeutic jurisprudence, and judicial engagement, which shelter under the overarching structure of compassion. Indeed, all segments of the court are embraced under compassion's framework for its unified operation.

Compassion is generally considered in context of human interactions and communications—how people treat each other. In the legal setting compassion is also typically associated with communications; how the court speaks to litigants, how the court considers and resolves legal issues, and the effect of its sentencing decisions. However, compassion is also displayed in numerous nonverbal ways. Every component in the court system, from security screening at the front door, signage throughout the building, availability of information, paperwork and forms, services, and court processes, to human interaction, and the physical courthouse structure should contribute to the positive compassionate setting, particularly when coalesced in a unified system. This broader characterization of compassion more aptly captures the scope of this systemic transformation. Its success depends on the breadth and creativity of its application.

## THE FOUNDATION OF THE COMPASSION MOVEMENT AND THE INFLUENCE OF DRUG COURTS

During the last three decades, legal and health system collaboration has led to sentencing reforms, which incorporate rehabilitation and social reintegration in lieu of traditional punishment.<sup>7</sup> Drug Courts emerged in the late 1980s from the burgeoning recognition that a fresh approach was needed to address crime caused by those suffering from drug and mental-health-related problems. The bold thinking and unconventional methods of early Drug Court judges heralded the beginning of the Compassionate Court movement. They normalized judging to encompass comprehensive, innovative, and compassionate methods of increasing compliance with court orders and improving offender

behavior. They recognized the need to engage offenders in drug treatment and afford support services at the earliest moment after arrest when offenders were most amenable to change, resistance was diminished, and the crises of the arrest was still fresh and motivating.

Over time, Drug Courts have continued to evolve and refine their therapeutic approach. They provide comprehensive services for each participant to address their particular needs and sustain recovery. Drug Courts provide intensive supervision and oversight and demand accountability of both the offender and participating agencies. Generations of subsequent Drug Court judges, and those who sit in the many iterations of problem-solving courts, acknowledge the salient healing benefits of addressing fundamental problems that give rise to aberrant behavior. They use the power of the courts to corral resources, encourage collective problem solving among justice system partners, and employ sustainable, therapeutic approaches. Above all, the hallmark of a successful Drug Court is the relationship between the offender and the judge—the critical factor in reducing substance abuse and the success of the program.<sup>8</sup>

Problem-solving judges routinely transport the techniques they employ in Drug Courts to their traditional courtrooms and readily utilize learned skills and strategies in various courtroom settings and venues.<sup>9</sup> The key to their success is effective communication. They learn the language of compassion, called judicial engagement.

## SECTION II: THE COMPASSION CORE AND COMMUNICATION

### THE TRIPARTITE CORE

The core of the Compassionate Court is therapeutic jurisprudence, procedural fairness, and judicial engagement. Successful communication of these core principles is a critical trademark of the Compassionate Court. It allows the court to connect with the

**“Every component in the court system ... should contribute to the position compassionate setting ....”**

3. See Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J., reprinted in *RESOLVING FAMILY CONFLICTS* (Jana Singer and Jane Murphy, eds., 2008) (proposes an interdisciplinary approach, which considers influences on human behavior and social science to craft solutions in family law matters).

4. Eldergill, *supra* n. 1.

5. David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 COOLEY L. REV. (2001) (article is a revised version of a public lecture presented on Oct. 29, 1999 at the Thomas Cooley law review disabilities law symposium).

6. David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 TOURO L. REV. 17-30 (2008).

7. Jamey H. Hueston, Caroline S. Cooper & Richard Bennett, *The Crucial Role of the Justice System in Addressing the Use of Drugs: An Introduction*, in *Future of Drug Policy: Real Solutions Grounded in Global Evidence*, in *DRUG POLICY FUTURES* 113-129, 114 (Linda Nilsson & Erik

Leijonmarck eds., 2015).

8. Shannon M. Carey, Michael W. Finigan & Kimberly Pukstas, *Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs* (report submitted to the U.S. Dept. of Justice by NPC Research, 2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>; Shelli B. Rossman et al., *The Multi-Site Adult Drug Court Evaluation: Executive Summary* (report submitted to the U.S. Dept. of Justice by Urban Institute, 2011), <https://www.ncjrs.gov/pdffiles1/nij/grants/237108.pdf>; Brian MacKenzie, *The Judge Is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Courts*, 52 CT. REV. 8-34 (2016).

9. See Jamey H. Hueston & Kevin Burke, *Exporting Drug Court Concepts to Traditional Courts: A Roadmap to an Effective Therapeutic Court*, 52 CT. REV. 44 (2016), <http://aja.ncsc.dni.us/publications/courtrv/cr52-1/CR52-1AHueston.pdf>.

**“Therapeutic justice is available in many legal settings.”**

parties, influence behavior, and resolve issues, which can promote respect for the judicial system and compliance with its orders. Communication, be it verbal, written, or atmosphere, must be effective at every juncture. These three cogent philosophies offer structure and

direction regarding how courts can effectively interact with litigants and use the law to further therapeutic ends.

### **THERAPEUTIC JURISPRUDENCE—A VEHICLE OF THE COMPASSION TRIPARTITE**

Therapeutic jurisprudence was conceived within the disciplines of psychology and mental health law in the 1990s and considers the law as a social force and a therapeutic agent.<sup>10</sup> It studies the extent to which substantive rules, legal procedures, and the actions of legal practitioners produce therapeutic or anti-therapeutic consequences for individuals involved in the legal process.<sup>11</sup> Courts accustomed to traditional judicial roles may fail to consider the textured nature of problems and miss opportunities for creative, robust remedies. In contrast, therapeutic jurisprudence emphasizes using the law and process to promote healing by considering underlying issues and dysfunctions that contribute to problems in a non-coercive, non-paternalistic manner. At no time does therapeutic jurisprudence advocate relinquishing legal application of the law to the facts. However, instead of narrowly employing the legal process, it indorses court involvement and originality in resolving issues where suitable. This approach is accomplished by understanding interdisciplinary sciences and using therapeutic techniques and viewing judging with a more extensive eye.

Therapeutic jurisprudence is available in many legal settings. Bail hearings, sentencing decisions, probation violations, and family and juvenile courts provide many suitable opportunities for its use. Therapeutic jurisprudence is also closely aligned with Drug Courts. Utilizing routine Drug Court offender reviews as a model, targeted defendants are placed on “personal probation” in traditional courts and required to return for periodic appearances before the judge.<sup>12</sup> Therapeutic jurisprudence is reflected in innovative collaboration between justice partners, as well as private and community sectors where appropriate. By example, the Maryland Parole Board ceded supervisory power of parolees to the Baltimore City Drug Court during their participation in the program in place of rapid offender revocations for minor parole infractions.<sup>13</sup> As well, therapeutic jurisprudence principles reflected in court process and procedures in family violence and child sexual abuse matters can be beneficial where

shared respect between the judge and the defendant may be instrumental in achieving defendant compliance with court orders.<sup>14</sup> Therapeutic jurisprudence also promotes meaningful results by educating the parties to listen carefully and to consider the position of the opposing side while emphasizing healthy aspects of a relationship.<sup>15</sup>

There are multiple ways to resolve conflicts and court systems are extending therapeutic procedures and related concepts in other modalities, such as alternative dispute resolution, mediation, restorative and transformative justice, teen courts, talking circles, and pretrial judicial involvement. External third parties often supervise these interventions, but judges too can take an active role in alternative solution methods. Ultimately, the success of these programs depends on judges and their court administrations to promote and facilitate modalities. It requires an openness to different methods of judging, communicating, and understanding human behavior instead of examining a slice of conduct in one moment in time. Therapeutic judging involves a comprehensive approach that considers the whole person with genuine concern and caring. Over time, judicial approaches have progressed to embrace the needs and requirements of its users—judging adapts.

### **PROCEDURAL FAIRNESS AS A VEHICLE OF THE COMPASSION TRIPARTITE**

Tom Tyler’s body of work on procedural fairness, the second Compassionate Court core principle, has greatly contributed to raising the consciousness of court systems and judges regarding fairness that is due the public. Tyler offers a template as to how to conduct a fair court and effectively communicate with the public to garner their respect. Specifically, procedural fairness recognizes that affording voice, respect, trustworthiness, and neutrality are essential elements to improve the experience of litigants.<sup>16</sup> People want a voice—the opportunity to fully air their grievances, be heard and understood—and it is one of the most important considerations of court users and their willingness to accept court decisions.<sup>17</sup> Respect and politeness shown the parties during the process by a judge who has allowed appropriate time and listened thoughtfully are important elements. Trustworthiness speaks to the magistrate who is benevolent toward the litigants and their cases and treats them fairly, with dignity and respect. Finally, the public wants to understand the court processes and expects that decisions are clear and transparent from a judge who is neutral, fair, and balanced.

Communication is a two-way street with the court respectfully listening and fully hearing litigants in one direction. From the other direction, the court disseminates important information and orders. The court can demonstrate effective listening skills and promote discourse through open, nonverbal behaviors,

10. See International Society of Therapeutic Jurisprudence, <https://www.intlj.com/>; LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE (David B. Wexler & Bruce J. Winick eds., 1996).

11. *Id.*; DAVID WEXLER & BRUCE WINICK (eds.), JUDGING IN A THERAPEUTIC KEY (Carolina Academic Press, 2003).

12. Hueston & Burke, *supra* n. 9.

13. Baltimore City Drug Treatment Court and Maryland Parole Commission Protocol Agreement.

14. Carrie J. Petrucci, *Respect as a Component in the Judge-Defendant Interaction in a Specialized Domestic Violence Court That Utilizes Therapeutic Jurisprudence*, 38 CRIM. L. BULL. 263 (2002).

15. See Nathalie Des Rosiers, *From Telling to Listening: A Therapeutic Analysis of the Role of Courts in Minority-Majority Conflicts*, CT. REV., spring 2000, at 62.

16. TOM R. TYLER, WHY PEOPLE OBEY THE LAW (2006).

17. Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26 (2007).

body language, expressions. When delivering information tone, manner, and method are important indicators of how the hearer will perceive the message.<sup>18</sup> Communication skills, therefore, are critical to successful interactions with litigants. Additionally, the court has didactic opportunities to connect with the entire courtroom as communications from the bench are often absorbed effectively by those who are not immediately experiencing the stress of directly facing the judge awaiting judgment, sentencing, or other responses.

Procedural fairness ensures that individuals and their cases are treated justly, and not only as numbers, even amid busy dockets and strenuous time restraints. Indeed, winning one's case is not the final predictor of case satisfaction—fairness in the process is,<sup>19</sup> and leads to greater satisfaction and respect for the court system.<sup>20</sup> Shared respect between the judicial officer and the parties may serve to encourage compliance with sentencing requirements.<sup>21</sup> These positive reactions to the justice system flow directly from the communication skills of the judge in conveying important principles.

### JUDICIAL ENGAGEMENT AS A VEHICLE OF THE COMPASSION TRIPARTITE

Judicial engagement is the third prong of the tripartite relationship, which focuses on the power of communications themselves, their potency, and therapeutic quality in providing lasting and impactful impressions on court users. Procedural fairness provides methods for conducting court fairly and respectfully. Its essential feature is **How** judges afford litigants their “voice.” The **How** requires providing ample time for parties to explain their versions of the case and the effect on their lives. The **How** involves court demeanor, tone of voice, and communication techniques. Judicial engagement more fully describes **What** is the communication that creates a human connection. Judicial engagement is **What** the judge says to convey empathy, understanding, cultural sensitivity, motivation, genuine interest in the parties to promote dialogue, rehabilitation, and resolution. The judge is the face of the courthouse and its most important conveyor of inherent fairness. Judicial communications demonstrate the court's concern for the individuals who rely on its wisdom and the desire to alleviate suffering. The judge's ability to resonate with the parties can be the difference between success or failure in changing the dynamics in difficult situations or quelling tensions between the parties.

Drug Court research supports that the relationship between the judge and the participant is the critical factor in reducing substance abuse and improving the program's chances for success,<sup>22</sup> which laid the groundwork for effective judicial engagement. Drug Court judges routinely display empathy, care, and compassion,<sup>23</sup> and sincere concern for the welfare and success of their charges. They also utilize therapeutic techniques such as motivational interviewing and nontraditional avenues to penetrate destructive thinking and establish the trust needed to build

positive relationships and remove barriers to success. Drug Court judges, though not therapists, call upon their understanding of interdisciplinary behavioral techniques to advance the court's goals of participant recovery and public safety. Judicial engagement is the essence of their communications—the core of **What** they say.

Meaningful discussions take time, which traditional courts with crowded dockets often lack. As demonstrated in Drug Courts, judicial engagement techniques are varied and creative, and transportable to every court. Judges in the Compassionate Court can stimulate meaningful exchanges with the parties to determine how together they can tackle underlying issues and promote positive outcomes. It starts by slowing the court process to allow sufficient time to engage the offender and to encourage dialogue. Prompts and artful questioning techniques aid the court's search for understanding offender conduct. Encouraging alternative forms of expression such as photography, artwork, poetry, music, and written essays assignments, borrowing from the Drug Court playbook, are additional creative methods to encourage meaningful communication. In other settings, judges' thoughtful judicial engagement skills can often diffuse disruptive individuals with sensitive and compassionate intervention, instead of reactive detention, which can activate distressed persons and heighten courtroom tensions. Keeping the best interests of the child in mind, judges are able to guide parents to reach reasonable visitation arrangements during temporary child visitation hearings while fashioning appropriate child exchanges to protect the parties. The judge can even motivate defendants sentenced to jail to utilize their time productively by obtaining an education or skill. The examples of compassionate judicial engagement interchanges are infinite.

Communication, through the power of judicial engagement, is the bridge that links the interdisciplinary practices of therapeutic jurisprudence and procedural fairness completing the compassion triangle and fortifying the Compassionate Court framework as a whole. Judicial engagement requires sincere and meaningful communication between the judge and parties—skills that can be learned. It is compassion in action.

### SECTION III: TANGIBLE AND INTANGIBLE ASPECTS OF COMPASSION

#### THE COMPASSION OF BRICKS AND MORTAR

##### *Shaping the Physical Courthouse Landscape*

The foundation of any structure is the key to its stability. Both the internal and external building where the court resides, and

**“Meaningful discussions take time, which traditional courts with crowded dockets often lack.”**

18. Michael King, *Applying Therapeutic Jurisprudence from the Bench: Challenges and Opportunities*, 28 ALTERNATIVE L.J. 172 (2003).

19. Tom R. Tyler, *The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings*, 46 SMU L. REV. 433 (1992).

20. *Id.*

21. Petrucci, *supra* note 14, at 263, 295 (2002).

22. See *supra* n. 8.

23. James L. Nolan, *Therapeutic Adjudication*, 39 Soc. 29-38 (2002).

**“The  
Compassionate  
Courthouse  
environs ...  
like the cover  
of a book,  
convey what  
lays within.”**

the contents inside, speak to the goals of the local justice system, and the image and values it wishes to convey. A poorly designed courthouse environment and atmosphere can be intimidating and cause anxiety.<sup>24</sup> A Compassionate Courthouse, in contrast, incorporates accommodating and supportive architectural design and flow, which will minimize stress and improve the user

experience.

In a 2012 *New York Times* interview of Associate Supreme Court Justice Stephen Breyer on courthouse architecture, he stated:

The point of all these projects is to say to people—through the architecture of the building and the construction of the building and the use of the building—that the government is you. There isn’t a wall of separation. It’s very important to break the idea of the wall down because otherwise people think this is a foreign entity. But this is a democracy, and the government is the community.<sup>25</sup>

Preliminarily, the Compassionate Court will undertake a thorough inventory of the justice system from the ground up by examining the visible courthouse landscape, from its exterior to its interior physical structure and environment.

### **The External Courthouse Environment**

The Compassionate Courthouse environs—pathways, sitting areas, and gardens—like the cover of a book, convey what lays within. As the saying goes “you never get a second chance to make a good first impression.” Contrast the impression conveyed by courthouses that incorporate large windows and ample outdoor green spaces, pathways, and sitting and eating areas with heavy, seemingly impenetrable, imposing monolithic structures typical in older traditional buildings that offered limited

access to the outside. A therapeutic Compassionate Courthouse would incorporate outdoor views and access to nature, along with entrees to gardens and restful areas.<sup>26</sup> The notion is to create more psychologically healthy, lower-stress environments. While one cannot always judge a book by its cover in the courthouse context, consistency and “transparency in justice and community ownership”<sup>27</sup> are indeed worthy values. Ideally, the environment will project a sense of fairness and openness, and a design that promotes the importance of the people within the institution.

### **The Internal Courthouse Environment**

Access and transitions from external to internal courthouse areas will connect the public to both environments. Internal spaces and offices would be visible and accessible to the public. Port Augusta Courthouse in Australia, for example, positioned courtrooms adjacent to courtyards utilizing lightweight materials and glass areas.<sup>28</sup> Notable exceptions to open vistas would be quiet rooms reserved for jurors, private spaces to meet with lawyers, and specialized or restricted areas for individuals attending domestic violence matters, with children’s playrooms next to security and visible by their guardians.<sup>29</sup>

Long waits, often in crowded areas, lack of familiarity with processes, dark corridors, difficult cases, and possible threats from others can also intensify unease and frustration.<sup>30</sup> In the process of resolving conflicts, courts can improve the sense of safety and security by minimizing perceived threats in and near the court. Separate courthouse circulation routes and courtroom access, for example, would aid in reducing stressful situations for victims, witnesses, and those involved in other combative or dangerous matters.<sup>31</sup> Incorporating abundant natural lighting, nature views, gardens, and water elements,<sup>32</sup> as well as interior colors to reflect the landscape, will also help to decrease stress in therapeutic court waiting areas.<sup>33</sup>

Safety must always be a primary mandate of a court system, and separate prisoner, public, and judge circulation routes are necessary to protect the public and employees and decrease risk and anxiety.<sup>34</sup> However, the Compassionate Courthouse would

24. Katherine A. Kirkpatrick, *Healing Justice: A New Architecture for Therapeutic Justice Administration in Kentville* (2019) (submitted in support of Master of Architecture degree), at 97, 101 (hereinafter, *Healing Justice*).

25. Justice Stephen Breyer, *Breyer Invited to Make a Case for Architecture*, interview by Robin Pogrebin, *N.Y. TIMES*, Oct. 6, 2012, <https://www.nytimes.com/2011/10/06/arts/design/stephen-breyer-pritzker-prize-jury-architecture.html>.

26. *Healing Justice*, *supra* n. 24, at 99, 101.

27. *Id.* at 81 (describing the Collingwood Neighbourhood Justice Centre, Melbourne, Australia).

28. *THE HANDBOOK OF CONTEMPORARY INDIGENOUS ARCHITECTURE* (Elizabeth Grant et al. eds., 2018) (hereinafter *Indigenous Architecture*) (describing the Port Augusta Courthouse at 505); *See also Id.* at 508 (describing connections between the internal/external environments using tilt-up glass doors and folding wood panels at the Kalgoolie Courthouse), [https://books.google.de/books?hl=en&lr=&id=rS9iDwAAQBAJ&oi=fnd&pg=PR9&dq=The+Handbook+of+Contemporary+Indigenous+Arch,+Editors+Elizabeth+Grant+&ots=MQf3FGEOBR&sig=9WzI0iseyYJnn547dY00AK9bTk&redir\\_esc=y](https://books.google.de/books?hl=en&lr=&id=rS9iDwAAQBAJ&oi=fnd&pg=PR9&dq=The+Handbook+of+Contemporary+Indigenous+Arch,+Editors+Elizabeth+Grant+&ots=MQf3FGEOBR&sig=9WzI0iseyYJnn547dY00AK9bTk&redir_esc=y#v=onepage&q&f=true)

[#v=onepage&q&f=true](https://books.google.de/books?hl=en&lr=&id=rS9iDwAAQBAJ&oi=fnd&pg=PR9&dq=The+Handbook+of+Contemporary+Indigenous+Arch,+Editors+Elizabeth+Grant+&ots=MQf3FGEOBR&sig=9WzI0iseyYJnn547dY00AK9bTk&redir_esc=y#v=onepage&q&f=true).

29. *Healing Justice*, *supra* n. 24, at 81 (describing the NJC Neighbourhood Justice Centre).

30. David Tait et al., *Fortress or Sanctuary? Enhancing Court Safety by Managing People, Places and Processes* (report on study funded by Australian Research Council, 2014), at 8, [https://courtofthefuture.org/wp-content/uploads/2014/12/140924\\_FORTRESS-OR-SANCTUARY-low-res.pdf](https://courtofthefuture.org/wp-content/uploads/2014/12/140924_FORTRESS-OR-SANCTUARY-low-res.pdf).

31. *Indigenous Architecture*, *supra* n. 28, at 500 (describing the Judicial Council on Cultural Diversity report, *The Path to Justice: Aboriginal and Torres Strait Islander Woman’s Experience of the Courts*). *See also Indigenous Architecture*, *supra* n. 28 at 505 (describing several courthouse entrance paths at the Port Augusta Courthouse to avoid conflicts).

32. Tait et al., *supra* n. 30, at 75.

33. *Indigenous Architecture*, *supra* n. 28 at 509.

34. *See Alva James-Johnson & Tim Chitwood, Mayor’s Commission Makes Recommendation on Government Center Building Project*, *LEDGER-ENQUIRER*, Dec. 12, 2017 (describing risk to judges and general population when transporting inmates through same elevators), <https://www.ledger-enquirer.com/news/local/article189346689.html>.

also consider the dignity and psychology of holding offenders in more environmentally positive courthouse detention cells in contrast to isolated and often outdated basement detention cells.<sup>35</sup>

### **The Courtroom Environment**

The courtroom, as the heart of the courthouse, should convey an atmosphere of respectability. Some older courtrooms and courthouses, however, suffer a panoply of serious visual aging and disrepair. Peeling paint, warped wood, missing tiles, frayed furniture, leaking roofs and water-stained ceiling tiles, duct tape patches on stairwells, and inadequate climate control are but a few building infirmities.<sup>36</sup> Shabby conditions and a depressing atmosphere create an undesirable milieu that will affect the mood and distress of both citizens and employees alike.

Justice Stephen Breyer stated that buildings, like life, are surrounded by color, sounds, and atmosphere that reflect feelings about one's self and what one thinks about the government in whose building they stand.<sup>37</sup> The Compassionate Courtroom will integrate lighter woods and other sustainable materials in lieu of dark traditional wooden wall panels, heavy dark carpeting, and drapery that convey a more imposing atmosphere. Courtrooms that incorporate recessed and natural lighting can reduce anxiety and improve the internal environment, as does artwork, photos, and projects that integrate the courtroom with the local community.<sup>38</sup> Glass doors can also offer direct views into the courtroom, augmenting transparency and openness.

The actual courtroom configuration can impact the Compassionate Courtroom and communicate impartiality—or not. Designs that promote collaboration and fairness are particularly fitting in problem solving, mediation, alternative dispute resolution, or restorative hearings. Curved or round tables that seat both the court and parties reinforce the cooperative nature of therapeutic court programs.<sup>39</sup> Another innovative design element is reducing the distance between the parties and the judge and lowering the elevation of the bench.<sup>40</sup>

Conversely, implicit bias of court attitudes or stereotypes that affect understanding, decision making, and behavior, for example, might be conveyed to the public by the practice of reserved police seating in the front of the courtroom or closest to the judge or jury. Law enforcement personnel and attorneys are often permitted to sit in an empty jury box while the public may not. Defendant seating, in contrast, is generally positioned furthest

from the judge or jury. This practice silently signals favoritism and greater access (arguably influence) to the court by those who work in the justice system.

Safety concerns motivate jail guards or sheriffs to prematurely hover behind offenders who may be detained. This custom suggests that the court has already determined the outcome of the matter and may have a chilling effect on offenders, particularly before they have had an opportunity to address the court. Fairness is paramount to the process, and law enforcement officials should maintain a respectful distance from offenders until instructed by the court or safety is an issue. Another common practice occurs when lawyers request informal conversations with the judge at the bench after their matters are concluded. While seemingly innocuous, this custom might convey uneven access or equality and should be discouraged.

The courtroom that reflects a compassionate, fair, and positive atmosphere will improve the psychological impact on the citizenry and their regard for the judicial system. It must robustly extend in both design and structure beyond common areas into the courtroom.

### **SHAPING PROCESSES, PROCEDURES, AND TECHNIQUES**

The myriad of processes, components, and divisions constituting a courthouse must contribute to and enrich the Compassionate Court environment. However, many litigants do not fully understand court processes and find the experience taxing, which may hinder their ability to successfully process the proceedings. Self-represented litigants, in particular, may experience stress in this foreign environment due to their lack of legal knowledge. Even represented individuals need to be clear regarding courtroom procedures that affect their future. The Compassionate Court will provide sufficient information to the parties and take steps to ensure their comprehension. Not all parties will be pleased with the outcome of their case, but they should not leave the court confused about the process, outcome, or the next steps. This demands that court procedures are clarified at each stage

**“The courtroom, as the heart of the courthouse, should convey an atmosphere of respectability.”**

35. Healing Justice, *supra* n. 24, at 82 (quoting Inglauer 1981) (describing archaic conditions of basement holding cells). See also Indigenous Architecture, *supra* n. 28, at 510-511 (describing inclusion of holding cell windows to the external environment).

36. See Guillermo Contreras, *San Antonio's Federal Courthouse Held Together by Duct Tape and Hope*, SAN ANTONIO EXPRESS NEWS, Oct. 7, 2015, <https://www.expressnews.com/news/local/article/San-Antonio's-federal-courthouse-held-together-6557444.php>; Chuck Williams, *Displaced Judges, Unusable Courtrooms has Columbus Justice System in a State of Flux*, LEDGER-ENQUIRER, Sept. 4, 2018, <https://www.ledger-enquirer.com/latest-news/article/217636110.html>; Walls Stand in Disrepair Outside the Courtroom at the Monroe County Courthouse in Clarendon, Arkansas, U.S., Oct. 1, 2013, <https://www.gettyimages.co.uk/detail/news-photo/walls-stand-in-disrepair-outside-the-courtroom-at-the-news-photo/186435503>; Jonathan Bandler, *State Seeks to Withhold Money*

*Over Mount Vernon City-Court Conditions*, ROCKLAND/WESTCHESTER JOURNAL NEWS, June 12, 2019, <https://eu.lohud.com/story/news/local/westchester/mount-vernon/2019/06/11/mount-vernon-city-court-conditions/1423110001/>.

37. Justice Stephen Breyer on Boston's New Moakley Courthouse, interview by Martin Pedersen & Susan Szenasy, METROPOLIS MAG., Nov. 20, 2012, <https://vimeo.com/53460779>.

38. Keith Fentress, *Is Your Courtroom Design Intimidating?*, FENTRESS BLOG, June 22, 2017, <https://blog.fentress.com/blog/is-your-courtroom-design-intimidating>.

39. Healing Justice, *supra* n. 24, at 131.

40. Healing Justice, *supra* n. 24, at 57, 80 (referencing NJC Neighbourhood Justice Centre 2019). See also Justice Breyer, *supra* n. 37 (commending the placement of lawyers in the center of the courtroom at the same level of judges to focus attention on those making the presentation).

**“Access to justice ... must be visually accessible and navigable to all users.”**

through written materials, verbal explanations, or both.

In civil court, judges can begin the education process as early as the opening statement by

- 1) explaining how cases will be called, e.g., complexity, length, age, and stipulations;
- 2) describing how to prepare matters for hearing, e.g., marking and preparing exhibits and notes on salient points, proving damages, and speaking with the opposing side to refine issues, stipulations, exhibits; and
- 3) explaining the trial process, e.g., order of trial events, motions, presentation of evidence, objections, and opening and closing arguments.

In criminal matters, judges must ensure that either the lawyer or the court properly explains the process and due-process rights, again especially crucial for self-represented individuals. Judges should also be mindful to consider that witnesses and victims comprehend the proceedings in which they are involved. A useful practice is for the court to encourage questions and request the parties to paraphrase or repeat specific orders and requirements.

### **Courthouse Signage and Services**

Access to justice in the Compassionate Courthouse must be visually accessible and navigable to all users. The court will afford abundant signage with clear directions to courtrooms, offices, services, cafeterias, and lounges. Support services such as help desks and legal service areas are extremely important. Public courthouse computers and Internet services, which provide video links to legal forms, laws, statutes, regulations, and other help resources and websites, will improve customer experience. Additionally, easy-to-use remote access to online services and court information are especially important as court systems limit access to the courthouse and employ electronic hearings in view of COVID-19 restrictions. In all matters, the court should make available abundant written and electronic explanatory materials, e.g., pretrial brochures and instructions regarding preparing and presenting cases, motions, forms and legal processes, as well as posttrial procedures, including appeals, post-judgment collection, and mediation. Interpreter services should be available, as well as written materials in plain and community-representative languages. Coordinated services and availability of free, pro bono, and low-cost civil legal assistance will be important for targeted populations such as the elderly, veterans, youth, and those with mental health disabilities. Even small conveniences, such as pens, papers, and evidence stickers, in the courthouse should be considered. These efforts will help

shape a helpful environment, demystify the court experience, and convey respect for court users.

### **Access to Court Supervision, Treatment, and Other Services**

Defendants are routinely placed under court supervision or ordered to obtain treatment for addiction or anger management. Others may seek assistance, such as domestic violence protection, housing assistance, and other social resources. Courts should be mindful that users frequently suffer from cognitive, physical, and other disabilities and are frequently confused and overwhelmed after court hearings. They often reenter dysfunctional or negative environments and have limited transportation and childcare resources. These and numerous other obstacles can hamper their ability to comply with court orders and navigate in the community to obtain needed services, particularly common with substance abusers.<sup>41</sup>

The Compassionate Court would conduct assessments in appropriate cases to identify social, health, educational, and court supervision requirements. Ideally, there would be a range of available services and agencies integrated under the courthouse roof or within close vicinity. Removing distance from the courthouse as a barrier will simplify access to services, consolidate resources, and improve compliance with court orders to more quickly address the cycle of negative behavior.<sup>42</sup>

### **JUDICIAL WELLNESS**

The adage “physician heal thy self” is apropos to the Compassionate Court. The daily effects of substantial caseloads, time restraints, and, importantly, difficult case content and decisions often have deleterious effects on the well-being of judges, including vicarious trauma, Posttraumatic Stress Disorder, and other disturbing symptoms.<sup>43</sup> The results of a 2019 study surmised that judicial stress, burnout, and secondary trauma can lead to elevated psychological distress and problematic alcohol use.<sup>44</sup>

The vitality and health of courtroom decision makers are imperative to rendering quality decisions and for the effectiveness of the justice system. Achievement of a healthy working environment requires identifying and promoting wellness factors that provide meaning, fulfillment, satisfaction, and protection to the very judges and employees who are tasked with administering justice and protecting the public safety. That is the responsibility of a Compassionate Court.

### **Wellness Strategies and Self-Compassion**

It is well accepted that proper nutrition; routine physical fitness including exercise, yoga, and Tai Chi; adequate sleep; nature immersion; meaningful relationships; and social activities can aid in physical, psychological, and brain health. Many court systems now acknowledge the real threat caused by judicial stress and provide training, materials, and services to support judicial

41. Richard C. Rapp et al., *Treatment Barriers Identified by Substance Abusers Assessed at a Centralized Intake Unit*, 30 J. SUBSTANCE ABUSE TREATMENT 227-235 (2006)(discussing barriers to treatment among substances abusers).

42. Healing Justice, *supra* n. 24, at 95.

43. See Jared Chamberlain & Monica K. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous*

*Group of Judges in a Single Jurisdiction*, 37 J. AM ACAD. PSYCHIATRY & LAW, 214 (2009); Peter G. Jaffee et al., *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, 54 JUV. & FAM. CT. J. 1 (2003).

44. Carly Schrever, Carol Hulbert & Tania Sourdin, *The Psychological Impact of Judicial Work: Australia’s First Empirical Research Measuring Judicial Stress and Wellbeing*, 28 J. JUD. ADMIN. 141-168 (2019).



employees.<sup>45</sup> Other courts are specifically including programs and initiatives to enhance the well-being of the workforce as a strategic plan strategy.<sup>46</sup> The Australia Judicial College of Victoria, in particular, has taken substantial supportive steps by affording information regarding warning signs and causes of stress, resources, checklists, well-being trainings, and a confidential judicial officers counselling assistance program.<sup>47</sup> They also provide a Coronavirus and Judicial Wellbeing website.<sup>48</sup>

Despite difficult judicial assignments, job satisfaction that comes from helping those in court is an important factor for maintaining judicial wellness,<sup>49</sup> and judicial compassion is a powerful vehicle to achieve that result. Judicial compassion allows judges to expand their perspective and acknowledge another's suffering to more effectively resolve conflicts.<sup>50</sup> Importantly though, judges must be able to show themselves the same kindness that they express to others.

Self-compassion is showing kindness to one's self during difficult life moments and challenges. It teaches us to treat ourselves with the warmth, tenderness, understanding, and encouragement that we give others. It encompasses three main components—self-kindness, common humanity, and mindfulness.<sup>51</sup> The role of self-empathy and the empathetic care of others has gained substantial purchase in neurobiological fields. Neurological research demonstrates changes in brain activity that occur while rendering aid to others while concomitantly self-regulating emotions.<sup>52</sup> Research has also acknowledged the beneficial connections between self-compassion and physiological and psychological benefits, including better health and lower perceived stress.<sup>53</sup> It is a skill that can be learned.

The Compassionate Court will ensure that multi-prong, mental, physical, and emotional health strategies and services are available to nurture the well-being of their judicial officers. One particularly cogent and resilience strategy is meditation.

## Meditation

Meditation has long been practiced throughout the world to promote physical, emotional healing and well-being. It can school judges how to navigate difficult and challenging conduct in court without emotional involvement. Disruptions can challenge the patience and skill of even the most seasoned jurist and add to a stressful court ambiance. Learning to diffuse contentious conduct calmly, with equipoise, will support judicial health. Meditation can help achieve that goal.

The popular mindfulness meditation is the art of being unconditionally present in the moment, paying attention with intent, and assessing physical and emotional feelings without reactivity or judgment. It is freeing the mind from constant inner chatter and achieving calm and control.<sup>54</sup> Research in psychology, neuroscience, and medical disciplines indicates that meditation and other mindfulness practices also have substantial recuperative benefits, and can improve various physical health problems, such as pain reduction, blood pressure, heart disease, Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome, and cancer.

Meditation also positively impacts overall human functioning and emotional and behavioral symptoms. Importantly, studies suggest that meditation improves the immune system<sup>55</sup> and helps to manage Posttraumatic Stress Disorder.<sup>56</sup> Mindfulness-based relapse meditation reduces drug cravings and substance abuse problems to achieve calmness that facilitates receptivity to treatment.<sup>57</sup> Even drug treatment programs and Drug Courts

**“[J]ob satisfaction that comes from helping those in court is an important factor for ... judicial wellness....”**

45. See National Judicial College, *Mindfulness for Judges* (2020); National Judicial Academy India, *National Seminar for Principal District and Sessions Judges on Stress Management* (2017); New York State Magistrates Association Conference, *Judicial Wellness* (2015); Florida Judicial Wellness Program (2019); Judicial Institute of Maryland, *The Importance of P.L.A.Y. (Prolonging Life and Youthfulness)* (2014); National Judicial College, *Stress Management* (2009).

46. Strategic Plan of the District of Columbia Courts, 2018-2022, [https://www.dccourts.gov/sites/default/files/matters-docs/2018-2022\\_StrategicPlan.pdf](https://www.dccourts.gov/sites/default/files/matters-docs/2018-2022_StrategicPlan.pdf).

47. Judicial College of Victoria, *Judicial Wellbeing Resources*, <https://www.judicialcollege.vic.edu.au/resources/judicial-wellbeing-resources>.

48. Judicial College of Victoria, *Coronavirus and Judicial Wellbeing*, <https://www.judicialcollege.vic.edu.au/coronavirus-and-judicial-wellbeing>.

49. See Deborah J. Chase & Peggy Fulton Hora, *The Best Seat in The House: The Court Assignment and Judicial Satisfaction*, 47 *FAM. CT. REV.*, 209 (2009) (problem-solving court judges were more likely to report being happy in their assignments and to believe that these assignments have a positive emotional effect).

50. Olga Klimecki, Ricard Matthieu & Tanya Singer, *Empathy Versus Compassion: Lessons from 1st and 3rd Person Methods*, in *COMPASSION: BRIDGING PRACTICE AND SCIENCE* (Tania Singer & Matthias Bolz eds., 2013), at 279.

51. Kristin J. Homan & Fuschia M. Sirois, *Self-compassion and Physical*

*Health: Exploring the Roles of Perceived Stress and Health-Promoting Behaviors*, 1 *HEALTH PSYCHOL. OPEN* (2017).

52. Helen Y. Weng et al., *Compassion Training Alters Altruism and Neural Responses to Suffering*, 24 *PSYCHOL. SCI.* 1171 (2013); Helen Y. Weng et al., *Visual Attention to Suffering After Compassion Training Is Associated with Decreased Amygdala Responses*, 9 *FRONTIERS PSYCHIATRY.* 771 (2018).

53. Homan & Fuschia, *supra* n. 51, at 7.

54. Jamey H. Hueston, *The Mindful Court: Mediation for Substance Abusers*, A.B.A. *CRIM. JUST. MAG.*, fall 2015, at 36, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2708023](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2708023).

55. David S. Black & George M. Slavich, *Mindfulness Meditation and the Immune System: A Systematic Review of Randomized Controlled Trials*, 1373 *ANNALS N.Y. ACAD. SCI.* 13 (2016); Nicole Thibodeaux & Matt J. Rossano, *Meditation and Immune Function: The Impact of Stress Management on the Immune System*, *OBM INTEGRATIVE & COMPLEMENTARY MEDICINE* 3, no. 4 (2018).

56. Anthony P. King et al., *A Pilot Study of Mindfulness-Based Exposure Therapy in OEF/OIF Combat Veterans with PTSD: Altered Medial Frontal Cortex and Amygdala Responses in Social-Emotional Processing*, 7 *FRONTIERS PSYCHIATRY* 154 (2016).

57. S. Bowen et al., *Relative Efficacy of Mindfulness-Based Relapse Prevention, Standard Relapse Prevention, and Treatment as Usual for Substance Use Disorders A Randomized Clinical Trial*, 71 *JAMA PSYCHIATRY* 547 (2014).

**“Not every case ... is suited for innovative sentencing solutions....”**

have incorporated mindfulness meditation as an additional tool to aid calm and focus.<sup>58</sup>

Meditation is not simply visualizing or calm breathing; it is learning to accept stressful situations both internally and externally to one's life. Meditating daily over eight weeks is associated with positive changes in regions in the brain

involved in learning, memory processes, and emotion regulation.<sup>59</sup> Importantly with regards to judicial functioning, compassion meditation training helps individuals stay tranquil in the face of suffering and more readily able to engage in prosocial action.<sup>60</sup> It beneficially reduces mind wandering that may promote well-being, longevity, and lifespan.<sup>61</sup> Simply put, meditation can help judges regulate emotions and manifest self-compassion, and by so doing, improve the quality of their lives, their judging, and the beneficial impact on their Compassionate Courts.

We cannot always predict the events in our lives, but we are in charge of our responses. Meditation is now integrated into the wellness networks of many major corporations, medical, legal, law enforcement, religious, and academic professions. Why not the courts?

#### **SECTION IV: APPLICATION, TRAINING, AND PLANNING**

##### **APPLICATION**

Judges are duty bound to uphold the law and ensure its logical and precise application to the facts. Employing a compassionate approach does not endorse bending the law, but it does surpass mechanical and linear application of judging. Modern judging presents numerous opportunities if not the need for fertile and innovative approaches to achieve justice goals of resolving conflicts, decreasing the revolving door of repeat litigation, and increasing public confidence in the courts.<sup>62</sup> Alternative resolu-

tions are particularly suited for *pro se*, small claims, and nonviolent criminal matters. Judges should vigilantly capitalize on these occasions to positively influence behavior and impact outcomes by healing disputes where suitable and circumstances permit.

Not every case though is suited for innovative sentencing solutions, such as perhaps for violent criminals. However, compassion is applicable in all cases no matter the seriousness or complexity. In the least, every person before the court is entitled to respect, politeness, and courtesy.

##### **THE COURTS—TRAINING AND REFORM**

Creating a Compassionate Court requires robust judicial training and skills development in fields not traditionally included in judicial curriculum. Analytical, substantive law, and other technical training, while necessary, will not adequately equip modern judges to address the complicated and varied array of issues and circumstances that may have taken months if not years to create, but for whom the court is called to quickly resolve, often within the course of one case. Judges will need effective communication, interpersonal, and motivational skills if they are to influence meaningful behavioral change. The study of human nature and behavior, implicit bias, emotional regulation, and trauma should be standard in training curricula. Significantly, a trauma-informed court is a critical brick in a Compassionate Court structure. The extent that many litigants suffer from past emotional and physical trauma is noteworthy,<sup>63</sup> and one can extrapolate that untreated issues may contribute to the volume of litigation. Trauma does not excuse negative or criminal behavior but offers a possible basis for addressing the conduct and responding thoughtfully to prevent its future occurrence.<sup>64</sup> Trauma training will enhance the sensitivity of judges to ensure a safe environment, and avoid exacerbating re-traumatization while supporting recovery of vulnerable constituents.<sup>65</sup>

In the medical field, compassionate and empathetic care leads to increased health provider/patient satisfaction, greater adherence to treatment recommendations, and improved health out-

58. OFFICE OF PROBLEM-SOLVING COURTS, MARYLAND'S GUIDELINES FOR PLANNING AND IMPLEMENTING, ADULT DUI/DWI MARYLAND DRUG COURTS, vol. 4, <https://www.courts.state.md.us/sites/default/files/import/opsc/dtc/pdfs/manuals/adultduidwidrugtreatmentmanual.pdf>; Gennaro F. Vito & Richard A. Tewksbury, *The Impact of Treatment: The Jefferson County (Kentucky) Drug Court Program*, FED. PROBATION, December 1998, at 47, [https://www.uscourts.gov/sites/default/files/62\\_2\\_7\\_0.pdf](https://www.uscourts.gov/sites/default/files/62_2_7_0.pdf).

59. Britta Holzel et al., *Mindfulness Practice Leads to Increases in Regional Brain Gray Matter Density*, 191 PSYCHIATRY RES. NEUROIMAGING 36 (2011).

60. Helen Y. Weng et al., *Visual Attention to Suffering After Compassion Training Is Associated with Decreased Amygdala Responses*, FRONTIERS PSYCHOL., May 22, 2018, <https://doi.org/10.3389/fpsyg.2018.00771>.

61. E.S. Epel et al., *Wandering Minds and Aging Cells*, 1 CLINICAL PSYCHOL. SCI., 753 (2012) (mind wandering found associated with shorter telomeres, a predictor of biological aging and severe stress); Q. A. Conklin et al., *Meditation, Stress Processes, and Telomere Biology*, CURRENT OPINION PSYCHOL. 28 (2019) (meditation training can improve telomere regulation, which may ultimately contribute to healthy aging).

62. Michael S. King, *Realizing the Potential of Judging*, 37 MONASH U. L.

REV. 171-186 (2011).

63. See National Center for Mental Health and Juvenile Justice, *Trauma Among Youth in the Juvenile Justice System*, <https://www.ncmhjj.com/wp-content/uploads/2016/09/Trauma-Among-Youth-in-the-Juvenile-Justice-System-for-WEBSITE.pdf>; Karen M. Abram et al., *PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth*, 61 ARCHIVES GEN. PSYCHIATRY 403 (2003); Lena J. Jäggi et al., *The Relationship between Trauma, Arrest, and Incarceration History among Black Americans: Findings from the National Survey of American Life*, 6 SOC. MENTAL HEALTH 187 (2016) (trauma exposure and trauma-associated psychopathology are associated with increased likelihood of arrest and incarceration in adulthood among Black Americans).

64. Nicole C. McKenna & Kristy Holtfreter, *Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness*, 29 J. AGGRESSION, MALTREATMENT & TRAUMA 1-21 (2020), <https://doi.org/10.1080/10926771.2020.1747128>.

65. Substance Abuse and Mental Health Services Administration (SAMHSA), *Essential Components of Trauma-informed Judicial Practice* (draft for review and comment, 2013), [https://www.nasmhpd.org/sites/default/files/DRAFT\\_Essential\\_Components\\_of\\_Trauma\\_Informed\\_Judicial\\_Practice.pdf](https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf).

comes. Understanding that self-empathy is necessary to provide empathic care to others is a vital part of wellness programs that are growing in popularity in medical education.<sup>66</sup> In the court milieu, compassion competency education will illuminate concepts regarding compassion in human interactions and the role of empathy to self and others and lead to revitalizing “a vital human competency.”<sup>67</sup> Empathy training should be standard in judicial wellness programs. Additionally, training in behavioral and neurological sciences, effective communication, motivational competency, wellness, and meditation will support the transformation of the courts. Compassion and empathy are skills that can be learned.<sup>68</sup>

The success of a Compassionate Court will depend on the cohesive integration of all its parts. The laudable goal is to do no harm, and training must extend to the entire staff who individually represent the face of the court during their interactions with the public. It starts with security personnel at the courthouse entrance where the screening process, though necessary, is invasive and connotes a power differential. Training for all employees must include dealing with difficult personalities and addressing behavioral issues and challenges. Maintaining a nonjudgmental, polite, and professional demeanor is essential, and projecting a positive and helpful tone must be standard procedure. Those who work in the courts should provide the best service and achieve the optimum outcome at each desk, station, courtroom and office—this time, every time. Achieving this level of professionalism and compassion generates a healthier environment for judges and employees and creates a substantially better atmosphere for all within its walls.

### THE BROADER JUSTICE SYSTEM—TRAINING AND REFORM

Compassion training does not stop at the courthouse. It should begin in law schools to develop a new age of attorneys who consider healing alternatives before justice system involvement.<sup>69</sup> Law enforcement personnel, as first responders, would benefit from compassion training as their decisions regarding the path of a matter into the justice system can have significant consequences. Compassionate law enforcement approaches can also manifest in a variety of circumstances, such as diffusing volatile situations, particularly those rooted in addiction, mental health, trauma, and related disorders; helping the needy locate treatment instead of detention; and resolving juvenile misbehavior through innovative neighborhood involvement. Multidisciplinary partnerships between the legal, public health, social service, and other community entities present avenues for system reform while saving money improving public health and fostering human rights. The American public, as well, favors alternative

therapeutic approaches for those charged with drug, minor, and non-violent offenses.<sup>70</sup> Ultimately, interdisciplinary and therapeutic training should extend throughout the entire justice system, with the courts advancing healing and restoration to better serve litigants and communities.<sup>71</sup>

**“Compassion training does not stop at the courthouse.”**

### ORGANIZATIONAL PLANNING

Aspects of the Compassionate Court already exist in many court systems. However, as with any extensive idea, its development will require thoughtful strategic planning to create a comprehensive design and chart short- and long-term priorities, implementation requirements, and time frames. Organizational change is a process beginning with describing the current situation, creating a vision and strategy, and clearly communicating the need for change. Court administration, as the guiding force for change, will establish a representative coalition including different levels of management to create buy-in, to empower those who will be affected by the change and to address barriers to resistance. The process will also require funding initiatives to operationalize plans, training, and structural changes. Tracking and evaluating the impact of the implemented changes through process, outcome, and cost-benefit analyses must also be included in the strategic plan.

### CONCLUSION AND THE CORONA JUSTICE SYSTEM

As a result of the coronavirus pandemic, many courts are relying on electronic hearings to conduct court business. Justice and fairness are without boundaries, be it in a courtroom or virtually. The principles of a Compassionate Court remain the same and are, arguably, more essential when health, economic, and emotional strains take their toll. Indeed, judges will need even greater judicial vigilance and therapeutic tools to resolve issues that have become more challenging due to the lack of traditional opportunities for discussion and resolution. In addition to their own personal challenges, judges will be called upon to navigate the angst and layering of virus-related problems that citizens face in this new reality. Now, more than ever, is the time to integrate and apply compassion into the judicial fiber.

The Compassionate Court responds to the clarion call to modernize and humanize the justice system by considering the broader underlying causes and societal problems of the citizenry and the matters they bring to court. It requires judges to play more expressive roles by employing resources, knowledge, and skills to promote healing of the parties seeking justice while concomitantly supporting those who work for the court. Problem-

66. Helen Riess, *The Science of Empathy*, 4 J. PATIENT EXPERIENCE 74-77 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5513638/>.

67. *Id.*

68. *See Id.* at 77; Olga M. Klimecki et al., *Differential Pattern of Functional Brain Plasticity after Compassion and Empathy Training* 9 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 873 (2014); Tania Singer & Olga M. Klimecki, *Empathy and Compassion*, 24 CURRENT BIOLOGY R875 (2014).

69. See MARJORIE SILVER, TRANSFORMING JUSTICE, LAWYERS, AND THE PRACTICE OF LAW (Carolina Academic Press 2017).

70. See *Americans Favor Expanded Pretrial Release, Limited Use of Jail*, PEW RESEARCH CENTER (jail is inappropriate for minor offenses, detention for misdemeanors, nonviolent offenses, and some violent charges), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/11/americans-favor-expanded-pretrial-release-limited-use-of-jail>.

71. Hueston et al., *supra* n. 7.

solving courts have revolutionized court hearings into non-adversarial, collaborative vehicles for productive exchanges and curative venues. The lessons learned from these courts provide fertile ground for innovative and successful evidence-based transferable practices. Additionally, emerging science regarding the neurobiology and brain/behavior connections of empathy and compassion are demonstrating positive benefits and healing for both the giver and the receiver.

The concept embodied in a holistic court adopts an empathetic role beyond routine dispensing of judgments—to one that heals, not just rules. The vision is a justice system that reflects an integrated, compassionate approach of all components under one structure whose whole is greater than the sum of its parts. The culmination is the Compassionate Court as a vital force in improving the lives of the individuals served, those who serve, and, ultimately, the community in which the court resides.



Jamey Hueston is the founding judge of the Baltimore City Drug Treatment Court. She administered the program for over 20 years and has hosted hundreds of national and international visiting judges and others seeking to observe its operations and adapt them to their respective jurisdictions. She also founded and chaired the Maryland Office of Problem-Solving Courts, one of the first statewide drug-court-oversight offices in the country, for over a decade and is a pioneer founder of the National Association of Drug Court Professionals. Judge Hueston lectures and consults throughout the U.S. and internationally regarding drug courts and court justice.

## Court Review Author Submission Guidelines

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

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

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

state-bar-association law journals and/or other law reviews.

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

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

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

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

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