EMOTIONAL INTELLIGENCE IN THE LAW

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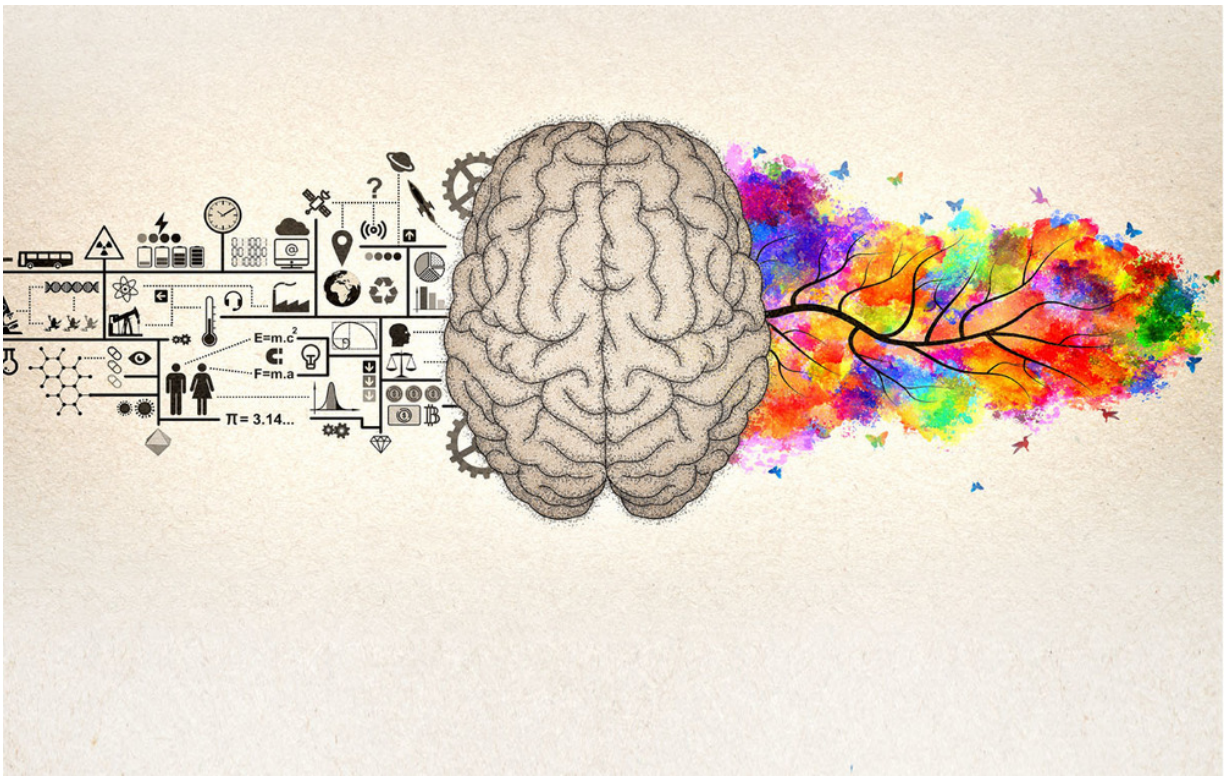
Emotional Intelligence in the Law

Tackling the Lawyer Mental Health Crisis

BY ESPERANZA FRANCO

Emotional Intelligence in the Law Featured



My dear reader, Please expect a non-legalish article. The truth is, we lawyers deserve a little break from the sometimes overly strict system we belong to. So, with that in mind, let us begin our *informal* discussion.

I'm about to share some grim statistics, but please don't let that deter you from our dialogue. After all, this is part 1 of two articles, and how could I shepherd you toward the good news if we don't take a cold, hard look at the outset? Pretend it's

IRAC, but for vital things like our well-being—here are the issues. Remember, it gets better!

Although it may come as a surprise for some, lawyers hold one of the highest rates of depression in the United States. One of the most comprehensive studies on lawyer mental health (2016) showed us that out of almost 13,000 attorneys, 11.4 percent felt that suicide could be a solution to their problems; 19 percent experienced severe anxiety; 28 percent suffered from depression; and more than 20 percent had alcohol- abuse patterns. [1]

Before that, in 1995, three scholars not only surveyed the level of distress in lawyers but also analyzed the why behind the data. In their quest, they found that the psychological distress symptoms found in lawyers were "directly traceable to law study and practice" and not exhibited when the lawyers originally had entered law school. Rather, these symptoms emerged shortly after law school enrollment and remained, at least in part, well after graduation. [2] They also noted:

> *The danger of psychological distress among members of the legal profession arises, at least in part, from two of the very elements that are traditionally associated with effective litigation strategy— directed anger and hostility.* [3]

So, if some traditional elements of "effective" lawyering can contribute to psychological distress,

PART 1: ROOTS & CAUSES

What other aspects of the *lawyer identity* could be detrimental to our mental health?

In my upcoming book *Emotionally Intelligent Lawyers*, I like to divide the lawyer-created identity, [4] or its social construct, into five traits or stereotypes that partially answer this question:

- **The "only rational, non-emotional, machine-like" lawyer**—*You must be empathic with your client, but you cannot let your empathic responses or emotions cloud or affect your thinking (let alone your billing)*.

That would be great if we were able to selectively switch off our emotional

intelligence skills that would be necessary to handle the emotional complexity present in legal practice.

Let's hypothetically imagine you are a public defender or prosecutor handling a child abuse case. The evidence and testimony presented at trial regarding the 7-year old victim are extremely graphic. Imagine you also happen to be a survivor of sexual abuse. [5]

How would you react to the emotional challenge of handling such a case? Let us consider the most common outcomes in this scenario.

One, the attorney has mastered the ability to numb himself over the years as a survival mechanism. Or two, the attorney will be emotionally affected by the facts of this case (and may or may not have the emotional skills or support system to process those emotions in a healthy way). If you were that attorney, would you tell your boss that this case is affecting you emotionally, or would you just *suck it up* and continue? Which option is likely to prevail in your mind? What's expected of you? And if you tell your boss (who might or might not be sympathetic to this), is it possible that this will be seen as a sign of weakness within the office, and thereby impact your next promotion?

- **The "perfect in all tasks" lawyer—** *Don't you dare make a mistake, perfection will be expected out of you always, and, for God's sake, did you seriously forget the comma and capital letter on that email?*

Imagine you and I are associates who have been working on that circuit case for months. We've analyzed the ins and outs of our legal arguments. The chances of us winning the case are so incredibly high. I mean, the brief is close to perfection —quite literally. *But the night you submitted the brief, you forgot to sign it*. The clerk sends us an email stating your mistake and citing to Rule 32(d) of the Federal Rules of Appellate Procedure: "Every brief, motion, or other paper filed with the

You've never made this mistake before, but you've also been under so much pressure lately. Yet, it's a circuit case … and such an important case for the firm. So, the real question for our lovely—and perfectionist—legal minds is this:

> *How much importance will we give to that mistake versus the incredible substance of the brief? Will we focus on the signature mistake and see it as a normal human mistake (because we all make mistakes at some point), or will we silently judge it a little? Better yet, will we get triggered by thinking we're truly in that poor associate's shoes?*

- **The "highly productive and busy" lawyer**—*You get unlimited vacations at the firm.*

Sure, I only have to bill 1,800+ hours per year, so that should give me enough space to suddenly get sick, grieve the loss of a loved one, or compete with the rest of my colleagues for that bonus to pay off my debt. I have a feeling most of us have felt the anxiety, guilt or fear of going on a vacation misat some point in our careers.

- **The "24/7 available, never gets sick, no time off" lawyer**—*Look, you received an email yesterday from the client at 10:00 p.m. and didn't reply until 9:30 a.m. the next morning … . Well, let's see how the partner takes it.* [6]

A childhood friend just gave birth to a beautiful baby. She works in Biglaw, as does her husband. Though they're both on paternity leave, they continue to check emails every day and every night. And here's the uncomfortable truth: *Everybody* at the firm *knows* that if you suddenly "check out" or "disappear" for too long, your career will be frozen— or at least, you will be at risk of being demoted (let alone remaining on partner track). While this will differ depending on the firm/job, how many times have you had to reply to an email or answer a call when you were supposed to be in your own/ mily/personal time? And did you do it because you truly wanted to, or because it was what was *expected of you* as an attorney? And yes, there is a gift in flexibility—sometimes things are really urgent; but really, is this a one-time thing or an established pattern?

> ***One thing we know for sure: Decreasing unwarranted aggressiveness could benefit our overall mental health and, more important, our legal environments.***

- **The "zealous, win-at-allcosts" lawyer**—*Assume at all times that the other side is trying to trick you, even if they're nice. Always expect the worst, and attack as soon as you can*.

Last year, one of my best friends from law school called me for advice. She is a criminal defense attorney and was dealing with a very aggressive opposing counsel. Among others, this older attorney would laugh at her during depositions (literally interrupt and mock her as she was questioning the witness). On another occasion, she traveled to the opposing counsel's state for a deposition, only to have the attorney cancel it just two hours before it was scheduled to start. And all forms of communications from this individual—by phone or email— were hostile and psychologically abusive. And guess what's really interesting in this scenario? My friend happens to be a very empathetic and kind person (and lawyer). She is extremely collaborative and collegial with all other parties she has encountered.

So, with that information in mind, was the aggressiveness, trickery and hostility necessary for that lawyer to *effectively represent* [7] his client?

One thing we know for sure: Just by using her brain (and without the exercise of any aggressive or hostile treatment), she ended up winning the case. [8] There are, of course, very litigious scenarios in our field, but decreasing unwarranted aggressiveness could benefit our overall mental health and, more important, our legal environments. This same logic applies to certain law firms—especially those that foster aggressive competition inside the firm and where many associates

culture. While not every law firm or job embraces every single trait or stereotype mentioned here, can we honestly say we have never been subjected to any of these throughout our legal careers?

But let's say you never have or ever will be. Imagine you are a current law student who plans on working for a startup or some really cool tech company with the most relaxed and friendly legal department. Even if that were the case:

> *What happens inside the mind of a lawyer?*

In other words, how do our brains change when we receive legal training? Can our way of thinking and seeing the world some-how change? I like to refer to this phenomenon as the *Legal Mind* (though in law school we called it *Thinking like a Lawyer*); and it goes like this:

A good lawyer is able to master …

- **Fault-finding thinking:** That is, identify who is at fault in any given situation. Yes, there always will be someone to blame.
- **Error-finding thinking:** Identify (or obsess about) all errors or mistakes for both sides—develop an incredible eye for detecting errors, not only on paper, but in every situation (even if it's your partner's imperfect way of washing the dishes).

- **Hypothetical negative thinking:** Identify all potential pitfalls, risks or negative scenarios that may arise in a given case, even if they have not happened or will likely not happen—that is, visualize all the potential things that can go wrong.
- **Defensive and adversarial thinking:** Anticipate what the other side's conduct and attack will be. Adopt a defensive and adversarial posture against counsel (and normally expect the worst out of people and situations).
- **Highly competitive thinking:** Acknowledge that you're always competing— it started with your classmates, and it probably continues with your colleagues at the firm (even though the latter is done somewhat more silently, i.e., bonuses and secret promotions).

One might think, *oh well, those are essential skills for a lawyer*. Yes—they absolutely are. In fact, they're what make the legal mind so incredibly brilliant at what it does. However, if we are not given the emotional intelligence skills to offset the side effects of our legal mind, we run the risk of having it spill over into our personal lives, loved ones and overall well-being.

Years ago, one of my coaching clients was "laid off" [9] from a top law firm. He had been there for almost 10 years, starting right after law school, and would work a minimum of 10 to 12 hours per weekday (plus weekends). As you can imagine, the firm kind of became his whole identity, so when he was let go, his sense of worth suddenly plummeted. Luckily, instead of suffering in silence, his brother advised him to get some help. The bulk of our work consisted in reframing some of the typical negative thoughts many highly perfectionist overachievers go through:

- "The fact that the firm let me go (or fired me) is because I am not smart/brilliant enough after all."
- "Deep down, this means I am a failure."
- "What if I don't find a job after this? In fact, what will the next employer think of this? I'm done."
- "Why would I submit this article for publication? Other people have

And so on. I invite you to try to place those phrases under some of the aforementioned categories of legal thinking.

It's not that the *legal mind* is a *bad* thing we need to eradicate. We just must find a way to complement it with a growth mindset, self-compassion, and the self-awareness to identify our own sabotaging inner dialogues. And once we've done that, we also can integrate a more aligned mindset that serves us in the long run as well: *What is it that I truly want out of life? What type of job would make me happy inside?* [10] It sounds cliché, I know. But deep down, we know that we deserve to be happy, just like everybody else.

In the next part, we'll dive into some of the emotional intelligence skills that can help us compartmentalize the way we think as lawyers. I hope to see you in Part II!

Thank you for reading,

Espy

endnotes

1. Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016) (analyzing the landmark study regarding substance use and behavioral health concerns among American lawyers).

2. Connie Beck, Bruce Sales & Andrew Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J. LAW & HEALTH 1, 2 (1995) (emphasis added). This is a great reading if you wish to dive into the root of our current mental health crisis.

3. *Id.* at 2.

4. Note that this lawyer persona or identity was created around the 19th century, when the American legal educational system was consolidated—and when we had very little information on neuroscience or positive psychology.

5. Over half of women and almost one in three men have experienced sexual violence involving physical contact during their lifetimes. *See Fast Facts: Preventing Sexual Violence*, Center For Disease Control & Prevention (June 22, 2022), **www.cdc.gov/violenceprevention/pdf/sv/SV-factsheet_2022.pdf**.

6. I highly recommend reading *The Lawyer, The Addict* by Eilene Zimmerman in the *New York Times*, available at **www.nytimes.com/2017/07/15/business/lawyers-addiction-mental-health.html**. One hell of a story—and so beautifully written

7. Remember the quote on how hostility and aggressiveness are historically seen as "key" elements behind effective litigation strategy? *See supra* note 2, at 2.

8. And no, it wasn't the typical easy case that you would have to mess up in order not to win it.

9. I say "laid off" though the firm wasn't undergoing financial difficulties and this person hadn't done anything wrong; they just decided to let him go without any further justification.

10. If you're curious, he found a job at a midsized law firm, and he is very happy.

ESPERANZA FRANCO is a U.S.–Spanish immigration attorney, writer and emotional intelligence educator. Based in the Canary Islands, Espy writes immigration appeals on a freelance basis and provides coaching on emotional intelligence and legal writing to law students (www.esperanzaishope.com). She is also a certified mindfulness teacher at the Google-born SIY Leadership Institute and an active advocate for lawyers' mental health. Espy earned her J.D. from the University of Arizona, writing her law review note on the psychological impact of law school education and receiving the Dean's Achievement Award for community engagement.

LIST OF FEELING WORDS

PLEASANT FEELINGS

OPEN	HAPPY	ALIVE	GOOD	LOVE	INTERESTED	POSITIVE	STRONG
understanding	great	playful	calm	loving	concerned	eager	impulsive
confident	joyous	courageous	peaceful	considerate	affected	keen	free
reliable	lucky	energetic	at ease	affectionate	fascinated	earnest	sure
easy	fortunate	liberated	comfortable	sensitive	intrigued	intent	certain
amazed	delighted	optimistic	pleased	tender	absorbed	inspired	rebellious
free	overjoyed	impulsive	encouraged	devoted	inquisitive	determined	unique
sympathetic	gleeful	free	clever	attracted	engrossed	excited	dynamic
interested	thankful	animated	surprised	passionate	curious	enthusiastic	tenacious
satisfied	important	spirited	content	admiration	drawn toward	bold	hardy
receptive	festive	thrilled	quiet	warm		brave	secure
accepting	ecstatic	wonderful	certain	touched		daring	confident
kind	glad		relaxed	close		optimistic	challenged
	cheerful		serene	comforted			
	elated		reassured	loved			
	jubilant						

UNPLEASANT FEELINGS

ANGRY	DEPRESSED	CONFUSED	HELPLESS	INDIFFERENT	AFRAID	HURT	SAD
irritated	lousy	upset	incapable	insensitive	fearful	crushed	tearful
enraged	disappointed	doubtful	alone	dull	terrified	tormented	sorrowful
hostile	discouraged	uncertain	paralyzed	nonchalant	suspicious	deprived	pained
insulting	ashamed	indecisive	fatigued	neutral	anxious	pained	grief
annoyed	powerless	perplexed	useless	reserved	alarmed	tortured	anguish
upset	diminished	embarrassed	inferior	weary	panic	dejected	desolate
hateful	guilty	hesitant	vulnerable	bored	nervous	rejected	desperate
offensive	dissatisfied	shy	empty	preoccupied	scared	injured	pessimistic
bitter	miserable	stupefied	forced	cold	worried	offended	unhappy
aggressive	detestable	disillusioned	hesitant	disinterested	frightened	afflicted	lonely
resentful	repugnant	unbelieving	despair	lifeless	timid	aching	grieved
inflamed	despicable	skeptical	frustrated		shaky	victimized	mournful
provoked	disgusting	distrustful	distressed		restless	heartbroken	dismayed
incensed	abominable	misgiving	woeful		doubtful	agonized	
infuriated	terrible	lost	pathetic		threatened	appalled	
cross	in despair	unsure	tragic		cowardly	humiliated	
worked up	sulky	uneasy	in a stew		quaking	wronged	
boiling	bad	pessimistic	dominated		wary	alienated	
fuming		tense					

Adapted from the "List of Feeling Words" on PsychPage.
http://www.psychpage.com/learning/library/assess/feelings.html

The Emotionally Intelligent Judge:

A New (and Realistic) Ideal

Terry A. Maroney

As a Supreme Court Justice once wrote, "dispassionate judges" are "mythical beings," like "Santa Claus or Uncle Sam or Easter bunnies."[1] Judges have emotions, and emotions influence decision making. These observations may seem obvious, even banal. But their implications are broad-reaching. Judicial emotion is more common than most people—certainly laypeople, and perhaps judges as well—would like to believe. Further, emotion almost certainly has a substantial impact on judicial decision making and behavior—and that is not necessarily a bad thing.

The ideal of the emotionless, "dispassionate" judge has a very long pedigree. More than three centuries ago, Thomas Hobbes wrote in *Leviathan* that the ideal judge is "divested of all fear, anger, hatred, love, and compassion."[2] To a modern ear such a blunt statement sounds, perhaps, antiquated. To the extent this is so, it is because the Legal Realists of the early twentieth century largely convinced us of the importance of the person wearing the robe. Law is not certain, and judges have discretion, within which space ostensibly "alogical" or "non-rational" forces have room to operate.[3] As the great Benjamin Cardozo once mused, "Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge."[4]

In our post-Realist world, such frank acknowledgment of judges' humanity is relatively commonplace. As other contributions to this special issue make clear,[5] judges are affected by factors as diverse as fatigue and life experiences, and they deploy common (but sometimes misleading) decision-making shortcuts known as heuristics. Judges are likely no better than ordinary humans at multitasking or truth-telling. An entire academic cottage industry is devoted to ascertaining the decisional influence of personal characteristics such as gender and political party.

But we still seldom talk about the *emotional* aspect of judges' humanity. And when we do, we run into a fairly solid wall of opposition. Judicial emotion generally is seen as an unfortunate consequence of having to populate the legal system with fallible, biased, real people. Indeed, emotion traditionally has been counted among the primary sources of fallibility and bias. A Maryland judge expressed this well: "Judges, being flesh and blood, are subject to the same emotions and human frailties as affect other members of the species."[6] The task of the legal system, under this contemporary view, is to systematically reduce the opportunities for judicial emotion to insert itself; the task of the good judge is to prevent emotion from exerting any influence wherever such opportunities remain.

We saw this view vividly articulated during the 2009 nomination of now-Justice Sonia Sotomayor, who some feared would have an overly "empathic" judging style. One senator implied that judges' emotions posed a threat to liberty;[7] a prominent professor declared that a "compassionate, empathetic judge was very likely to be a bad judge";[8] a journalist noted that the mere suggestion that emotion might affect judging was "radioactive."[9] Even among Sotomayor's supporters, defense of empathy (or any emotional influence) was tepid at best. She was finally able to put the issue to rest by offering a standard post-Realist narrative: that while judges are not "robots" and do have feelings, a good judge recognizes those feelings and puts them aside.[10]

Certainly, judges are *not* robots, so the first half of that story is correct. But what if the latter part is wrong? What if emotion—at least sometimes—offers something of value to judicial decision making? Judge Richard A. Posner has suggested as much, writing that judges ought not try to become "emotionless, like computers," because feelings might sometimes be necessary to good judging.[11] Justice William J. Brennan similarly asserted that good judgment flows from a "dialogue of

Footnotes

Many of the ideas expressed in this article are explored in much greater depth in my prior works, all of which are available at my Vanderbilt Law School faculty website and on SSRN. *See* Terry A. Maroney, *Angry Judges,* 65 VAND. L. REV. 1207 (2012); *Emotional Regulation and Judicial Behavior,* 99 CAL. L. REV. 1485 (2011); and *The Persistent Cultural Script of Judicial Dispassion,* 99 CAL. L. REV. 629 (2011). This article is by design lightly footnoted; I refer the interested reader to the extensive citations in those longer publications.

1. United States v. Ballard, 322 U.S. 78, 93-94 (1944) (Jackson, J., dissenting).
2. THOMAS HOBBES, LEVIATHAN 203 (A.R. Waller ed., 1904) (1651).
3. Roscoe Pound, *The Call for a Realist Jurisprudence*, 44 HARV. L. REV. 697, 706 (1931).
4. BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 167-68 (1921).
5. *See* Pamela Casey, Kevin Burke & Steve Leben, *Minding the Court: Enhancing the Decision-Making Process*, 49 CT. REV. 76 (2013); Eyal Peer & Eyal Gamliel, *Heuristics and Biases in Judicial Decisions*, 49 CT. REV. 114 (2013).
6. State v. Hutchinson, 271 A.2d 641, 644 (Md. 1970).
7. Confirmation Hearing on the Nomination of Hon. Sonia Sotomayor, To Be an Assoc. Justice of the Supreme Court of the United States: Hearing Before the S. Comm. On the Judiciary, 111th Cong. 13 (2009) (statement of Sen. Orrin Hatch). *See also id.* at 17 (statement of Sen. Lindsay Graham) (a judge's most critical qualification is "the capacity to set aside one's own feelings so he or she can blindly and dispassionately administer equal justice for all").
8. John Yoo, *Closing Arguments: Obama Needs a Neutral Justice*, PHILA. INQUIRER, May 10, 2009, at C3.
9. Peter Baker, *In Court Nominees, Is Obama Looking for Empathy by Another Name?*, N.Y. TIMES, Apr. 26, 2010, at A12.
10. Sotomayor Confirmation Hearings, at 71, 120 (statement of J. Sonia Sotomayor).
11. RICHARD A. POSNER, FRONTIERS OF LEGAL THEORY 226 (2001).

reason and passion."[12] If that is so, what might that dialogue sound like?

These are questions that law need not—indeed, cannot—answer on its own. A rich and fast-growing body of literature on the role of emotion in human life offers insight and guidance. Indeed, the study of emotion is one of the fastest-growing sectors within psychology and neuroscience. This explosion in the "affective sciences" joins a resurgence of interest in the topic within philosophy, history, and sociology. The consensus from outside law is clear. Emotion's impact on decision making and behavior can be (and usually is) positive, even indispensible. Emotion's impact can also be detrimental, depending on factors such as intensity, duration, and—most critically—context. Drawing on these interdisciplinary insights, we can think in a coherent way about when emotion might help a judge perform her job better, when it might hinder job performance, and how a judge might tell the difference.

This short article offers the judge a roadmap for thinking about the role of emotion in judicial decision making. It first presents the limited empirical evidence drawn from judges themselves, demonstrating that coping with emotional challenges is an unrecognized aspect of judges' work. It goes on to describe what the affective sciences teach us about emotions' impact on human decision making and behavior. To make the discussion concrete, the article periodically applies those insights to the phenomenon of judicial anger. Finally, an analysis of emotional regulation strategies offers a concrete path by which judges can learn to maximize helpful iterations of emotion and minimize destructive ones.

COPING WITH EMOTIONAL CHALLENGES: AN UNDERAPPRECIATED ASPECT OF JUDGING

Judges, particularly trial judges, often have to manage the emotions of other people. Distraught victims and witnesses have to be attended to; disruptive family members or criminal defendants must be cautioned, disciplined, or removed; angry disputes between lawyers need to be mediated or broken up.[13] Judges are asked to filter out emotional influences, such as disturbing evidence and provocative buttons or t-shirts worn by spectators, if there is a risk that a jury's emotions might be manipulated or inflamed.[14] Indeed, trial judges may be called upon to instruct jurors about how to handle their emotions during deliberations.[15]

While the legal system recognizes that handling the emotions of others is part of a judge's job, it tends to ignore something just as important: the fact that judges, too, have emotions to handle.[16] Misbehaving lawyers and litigants can make judges angry. Disturbing evidence may affect a judge as much as it does a juror. The stories of litigants' unhappy lives can trigger sadness. Judges might feel frustrated, even depressed, when they are unable to fix all the ills paraded before them. As one has written, "[S]ometimes [the judge] has to just sit up there and watch justice fail right in front of him, right in his own courtroom, and he doesn't know what to do about it, and it makes him feel sad. . . . Sometimes he even gets angry about it."[17] Litigation generally follows harm or grievance, meaning that such unpleasant emotions are nowhere in short supply.

Because our legal culture expects judicial "dispassion," . . . judges do not often disclose their emotional reactions . . . .

Fortunately, judges also experience more pleasant emotions. They may feel joy when a suffering child is placed with a family, or hope when a drug-court defendant completes treatment and begins to turn his life around. Presiding over naturalization ceremonies for new Americans is an occasion for gratitude, even a soaring feeling that psychologists call "elevation."[18] Crafting a tightly reasoned, well-written opinion can generate pride. Simply feeling like you are doing a good job, even under trying circumstances, can be a source of deep satisfaction. The emotions a judge feels will be as varied as the cases she hears.

Because our legal culture expects judicial "dispassion," however, judges do not often disclose their emotional reactions or discuss how they process them. As that taboo breaks down, we may see increased space for much-needed empirical work exploring those issues. As things stand today, we must glean clues from rare moments of candor.

Those moments show that emotion infuses many aspects of judges' work. Judges sometimes note their emotions before declaring an intention to override them.[19] With the proliferation of cameras in courtrooms, coinciding with the growth of social-media outlets, the public has developed an appetite for intemperate displays, gleefully referred to as "benchslaps." In burial disputes, which often involve grisly details and vitriolic

12. William J. Brennan, *Reason, Passion, and "The Progress of the Law,"* 10 Cardozo L. Rev. 3 (1988).
13. *See, e.g.*, Lydia Polgreen, *In Affidavit at Bail Hearing, Track Star Denies He Intended to Kill Girlfriend*, N.Y. Times, Feb. 20, 2013, at A9 (describing how the Olympian Oscar Pistorius broke down at his bail hearing: "Magistrate Desmond Nair called a recess to allow Mr. Pistorius, who was sobbing loudly, his face contorted, to regain his composure. 'My compassion as a human being does not allow me to just sit here,' Magistrate Nair said.").
14. Carey v. Musladin, 549 U.S. 70, 76 (2006).
15. California v. Brown, 479 U.S. 538, 542-43 (1987); Saffle v. Parks, 494 U.S. 484, 493 (1990).
16. Arlie R. Hochschild, The Managed Heart: Commercialization of Human Feeling 7 (1983) (defining sociological concept of "emotional labor").
17. Carrington v. United States, 503 F.3d 888, 899 (9th Cir. 2007) (Pregerson, J., dissenting) (quoting Gerry H. Spence, Of Murder and Madness: A True Story, 490 (1983)).
18. Jonathan Haidt, *Elevation and the Positive Psychology of Morality*, in Flourishing: Positive Psychology and the Life Well-Lived 275-89 (C. L. M. Keyes & J. Haidt eds., 2003)
19. *See, e.g.*, States v. Cutts, No. 2008CA000079, 2009 WL 2170687 (Ohio App. 5 Dist. Jul. 22, 2009) (Delaney, J. concurring) ("I am saddened by the tragic loss of life this case presents and sympathize with the families of all involved. But, when I put on the robe as judge, I must not let my feelings, my emotions … influence my review and application of the law.").

Data from two small case studies further illuminate the reality of judicial emotion.

family dynamics, judges have voiced the "dismay," "sympathy," and "difficulties and embarrassment" with which they grapple.[20] Recently, several prominent federal judges have disclosed that they find criminal sentencing to be particularly infused with emotion.[21]

While trial-level work in the state criminal and family courts may provide the steadiest flow of emotion-triggering situations, no judge is immune. Highly publicized instances of intra-court animosity, including in the appellate courts, sometimes shine an unflattering light on the role of personal feelings.[22] Even the highly cloistered appellate environment of the U.S. Supreme Court has an emotional life. Justice David Souter reportedly cried during the process of deciding *Bush v. Gore*,[23] and Justice Clarence Thomas, not known for public displays of emotion, has said that "some cases . . . will drive you to your knees."[24]

Data from two small case studies further illuminate the reality of judicial emotion. In the first, Australian magistrate judges answered a survey about various aspects of their work.[25] Much like state trial-court judges in the U.S. system, Australian magistrates handle the majority of civil and criminal actions. These judges reported expending significant effort to manage their emotions, most of which were negative. One, for example, characterized his work as "seeing absolute misery passing in front of you day in, day out, month in, month out, year in, year out."[26] Another reflected thus on working with child-welfare cases:

> I have a problem walking away and just erasing everything I've heard about families and the stress that they're under, the treatment children have been dished out, what will happen to them for the rest of their lives. I just find it difficult to walk away from that and go home to my own children and look at them and think "Oh, God", you know. I usually find I try to be more patient with my own children when I go home after a day in the [family court]. So it's just the sadness; there is no good news.[27]

Similar sentiments were expressed by a small group of Minnesota state judges asked to reflect on victim-impact statements.[28] The researchers described one response thus:

> One judge . . . recalled a DWI case in which a young child [had] almost lost his life. His mother delivered an impact statement in which she described how she thought her son was going to die. "I remember thinking," the judge said, "I am going to cry." But he regained what he thought was necessary composure because "you are not supposed to cry on the bench when you are a judge."[29]

Other Minnesota judges reported feeling frustration, anger, and compassion, emotions prompted both by the underlying facts and by the victim-impact statements.

Importantly, both the Australian and Minnesotan judges reported that they found the work of regulating their emotions to be difficult. One magistrate offered a particularly stark assessment:

> Now, there's two things that can happen to you. Either you're going to remain a decent person and become terribly upset by it all because your emotions—because your feelings are being pricked by all of this constantly or you're going to become—you're going to grow a skin on you as thick as a rhino, in which case I believe you're going to become an inadequate judicial officer because once you lose the human—the feeling for humanity you can't really—I don't believe you can do the job.[30]

This perception of nothing but bad options was, unfortunately, echoed by the Minnesota judges. Some reported feeling that, as the legal system tends "to strip away emotions," they were "working in a factory of sorts in which we are just grinding these cases out," causing them to worry that they were becoming "insulated and numb" in the process.[31]

These windows into judges' experience suggest that their work often prompts an emotional response; that such responses are often unpleasant; that managing those emotions is difficult; and that these challenges have an impact on how the judge acts in the moment and on how she feels about her work in the longer term. These voices also strongly suggest that judges feel inadequately trained and supported in this aspect of their work.

Fortunately, insights from the affective sciences can help change this rather bleak assessment.

20. Heather Conway & John Stannard, *The Honours of Hades: Death, Emotion, and the Law of Burial Disputes*, 34 U. South Wales L.J. 860 (2011).
21. *See* Benjamin Weiser, *Madoff Judge Recalls Rationale for Imposing 150-Year Sentence,* N.Y. Times, at A1, A19 (Jun. 29, 2011) (interview with Judge Denny Chin); Del Quentin Wilber, *Judge Who Had 'No Passion for Punishment' Retires After 31 Years*, Wash. Post, June 1, 2012 (interview with Judge Ricardo Urbina).
22. *One Federal Judge Does Battle with 19 Others*, N.Y. Times, May 1, 1996, at B6.
23. Douglas W. Kmiec, *The Case for Empathy: Why a Much-Maligned Value Is a Crucial Qualification for the Supreme Court*, America Magazine (May 11, 2009).
24. Adam Liptak, *Justice Thomas, 5 Years Slient: There's No Arguing with Him*, N.Y. Times, Feb. 13, 2011, A1 (also quoting Thomas as saying that cases can make him "morose").
25. Sharyn Roach Anleu & Kathy Mack, *Magistrates' Everyday Work and Emotional Labour*, 32(4) J. Law & Society 590-614, 614 (2005).
26. *Id.* at 611.
27. *Id.* at 613.
28. Mary Lay Schuster & Amy Propen, *Degrees of Emotion: Judicial Responses to Victim Impact Statements*, 6 Law, Culture & Humanities 75 (2010).
29. *Id.* at 89.
30. Anleu & Mack, *supra* note 25, at 612.
31. Schuster & Propen, *supra* note 28, at 89.

EMOTION AND DECISION MAKING: INSIGHTS FROM PSYCHOLOGY AND NEUROSCIENCE[32]

The first insight the legal system would do well to internalize is that we need not ask judges to "strip away" their emotions, because those emotions offer something of value.

Contemporary scholarship outside of law has generated a consensus that emotion is an evolved, adaptive mechanism, necessary for survival, social cohesion, and practical reason. This consensus is rapidly eroding the stark division between reason and emotion that traditionally has held sway in both the sciences and in law. As I explain briefly below, emotion reveals reasons, motivates action in service of reasons, and enables reason.

Emotion reveals reasons. This insight flows from what psychologists refer to as the "cognitive-appraisal" theory. This theory focuses on the "aboutness" of any given emotion. Emotions are not random; rather, they are directed at objects. We love our mothers, for instance, and the specificity of that love is how we experience the concept of "love." Further, every emotion has a basic underlying thought and belief structure—an "appraisal"—which is an important way in which we distinguish them from one another. Anger, for example, reflects a judgment that someone has wrongly threatened or damaged something or someone that we value. In contrast, we feel sad when we perceive an irreversible loss, or guilty when we perceive ourselves to have done wrong.

It is helpful to think of appraisal structure as akin to the theory of universal grammar. Human language is built of a relatively constrained set of grammatical elements—nouns versus verbs, function versus lexical words, and so on—but different cultures fill in different content, making our languages distinct. Similarly, all humans appear to have a common core of basic emotions underlain by highly similar appraisal structures, but how we fill in those structures can vary. What makes one person afraid might make another person happy. This is not because these two people have radically different concepts of fear and happiness; rather, they have radically different ideas as to what states of the world satisfy the conditions that trigger those emotions.[33] In the case of anger, what constitutes a perceived wrong will vary; who we consider part of the group on whose behalf it is right to be angry will vary; even the proper goal to be advanced by anger—for example, vindicating honor or broadcasting moral judgment—will vary.

Thus, emotion embodies thought, often complex and even culturally scripted thought, and those thoughts can be evaluated just like any others.[34] Again, the example of anger is helpful. Whether we approve or disapprove of an angry person depends on whether we think her perception of the triggering event is accurate—that is, whether the event really occurred as she believes it did—and whether her judgments strike us as warranted—that is, whether the event really constitutes a wrong of which a person rightfully should disapprove.

[W]e need not ask judges to "strip away" their emotions, because those emotions offer something of value.

Thus, emotion reveals what a person is thinking. It reveals her reasons.

Emotion motivates action in service of reasons. Emotions do not simply reflect passive assessment of what we perceive to be happening in the world; they prompt us to respond to that world. The idea in the sciences is that we evolved capacity for emotion in order to maximize survival chances, and we now use that capacity to propel us in the direction of a wider variety of goals. Fear provides a nice example. If you perceive that a grizzly bear is approaching, your perceptions and resulting thoughts will spur fear. Fear will focus your attention on the bear and prompt you to evaluate its relevance to your goals—for example, the desire not to be mauled or killed. Fear then enables responsive action, including patterns of bodily response (like fleeing), as well as typified facial expressions (grimacing) and verbalizations (screaming) that signal your emotional state to others. This is a rather primal example, but the same principle holds for all emotions. Feeling love toward an infant, for example, tends to motivate actions designed to keep the baby alive and thriving, and feeling guilty about having wronged a friend tends to show itself in a pained face, which can communicate a desire to repair the relationship.

Thus, emotion not only reflects thoughts; it serves as an adaptive signal that something of import to a person's flourishing is at stake and activates a real-time response.

32. The following discussion is drawn primarily from the following scientific sources: THE OXFORD COMPANION TO EMOTION AND THE AFFECTIVE SCIENCES (David Sander & Klaus R. Scherer eds., 2009); REGULATING EMOTIONS (Marie Vandekerckhove et al. eds., 2008); PSYCHOLOGY OF EMOTION: INTERPERSONAL, EXPERIENTIAL, AND COGNITIVE APPROACHES (Paula M. Niedenthal et al. eds., 2006); HANDBOOK OF AFFECTIVE SCIENCES (Richard J. Davidson et al. eds., 2003); HANDBOOK OF EMOTIONS (Michael Lewis & Jeannette M. Haviland-Jones eds., 2d ed. 2000); COGNITIVE NEUROSCIENCE OF EMOTION (Richard D. Lane & Lynn Nadel eds., 2000); JOSEPH LEDOUX, THE EMOTIONAL BRAIN: THE MYSTERIOUS UNDERPINNINGS OF EMOTIONAL LIFE (1996); THE NATURE OF EMOTION: FUNDAMENTAL QUESTIONS (Paul Ekman & Richard J. Davidson eds., 1994); ANDREW ORTONY ET AL., THE COGNITIVE STRUCTURE OF EMOTIONS (1988); Keith Oatley & P.N. Johnson-Laird, *Toward a Cognitive Theory of Emotions*, 1 COGNITION & EMOTION, 29-50 (1987).
33. Though evolved "biological universals link the *if* with the *then*," individual and cultural factors "affect the *if*" by determining what circumstances are thought to constitute, for example, "a demeaning offense" (for anger) or an "irrevocable loss" (for grief). Richard S. Lazarus, *Universal Antecedents of the Emotions*, *in* THE NATURE OF EMOTION, *supra* note 32, at 167-68.
34. JOHN DEIGH, EMOTIONS, VALUES, AND THE LAW 12 (2008) (emotions "are on a par with beliefs and judgments, decisions and resolutions," for they are "states that one can regard as rationally warranted or unwarranted, justified or unjustified by the circumstances in which they occur or the beliefs on which they are based").

Not only does reason facilitate and shape emotion, but each plays a vital role in our ability . . . to navigate the world . . . .

Emotion enables reason. Finally, one of the most cutting-edge implications of modern research is that emotion and reason are intertwined, such that the latter can't fully be realized without the former. Neuroscience, for example, has shown that people with particular sorts of brain disease and injury show a decline in both emotional capacity and substantive rationality.[35] Extreme emotional deficits in such people are strongly correlated with inability to engage in vital forms of reasoning—evidenced, for example, by inability to make appropriate, self-interested choices in a simple gambling task. They become unable to suppress inappropriate actions, to understand and respond to social cues, and to advance their own interests and preferences. In other words, social and emotional competence can be devastated while more purely cognitive capacities, like logic, remain intact.

Emotion also appears necessary to moral judgment. A creative series of experiments involving the classic philosophical "trolley problem" illustrate that phenomenon.[36] In the trolley problem people are asked to choose between two options. The first is to flip a switch to divert an out-of-control trolley, killing a worker on the diversion track but saving five people in its original path. The second option is to push a human being off a bridge so that he lands in front of the trolley, saving the five but killing him. In either case the cold calculation is the same: save five lives by sacrificing one. Most normal people, though, think option one is moral, even necessary, while option two is immoral. The differential? Emotion. The heightened emotional salience of person-pushing accounts for an overwhelming preference for switch-flipping. Psychopathy provides another example of emotion's relevance to morality. The antisocial and amoral behavior typifying serial murderers and other psychopaths correlates at the neural level with a lack of normal emotional response.[37] Psychopaths' moral indifference mirrors their emotional indifference.

In short, emotion is not the enemy of reason. They are interdependent. Not only does reason facilitate and shape emotion, but each plays a vital role in our ability competently to navigate the world, including our capacity for substantive rationality and moral judgment. This is as true for judges as it is for human beings generally.

Emotion is not always a positive force. The prior discussion has highlighted the overall positive contribution of emotion. Given the generally negative narrative we have inherited in our legal culture, it is important to spell out the parameters of that contribution. But, of course, the negative narrative has to have *some* truth to it.

Indeed, it often has a lot of truth to it. Another insight from the sciences is that all human tendencies and capacities that are adaptive most of the time are maladaptive some of the time. The common decisional heuristics described elsewhere in this special issue fit into that category: quick, efficient guides to judgment that work quite well in many situations but predictably lead to error in a small set of others. This is certainly true of emotion.[38]

By way of illustration, recall the story of the approaching grizzly bear. Fear quickly narrows attention to sources of threat (the bear) and opportunity (escape routes), to the exclusion of other stimuli. That attentional effect is vital, but it has costs. For example, you will be far less able to perceive and remember less emotionally vivid aspects of the situation, like an important conversation you were having just before you saw the bear. The emotion needs to be intense to do its job, but as a result you might not notice the ditch standing between you and the escape route.

Similarly, different emotionally infused mood states tend to dispose us to different decisional styles, which might be disadvantageous in particular situations. Moods are experiential states that are more generalized, longer-lasting, and less object-driven than emotions: think of the difference between feeling "down" and being concretely sad about the death of a beloved pet. Because emotions and moods are so closely related, though, they often are studied together. Often what starts as a discrete emotion will morph into a mood (you are sad that your dog died, and it makes you feel down for a long time for no particular reason), or our moods predispose us to experience discrete emotions (you feel down, so you find more things to be sad about). Moods, unfortunately, can be mismatched with the decisional demands we face at any given moment. This, too, is a nice insight raised elsewhere in this special issue, in which it is noted that certain moods "are best suited for decision-making tasks that are interesting or require creativity or efficiency," while others are "best suited for decision tasks that are effortful and/or require careful consideration and analysis."[39] In an example of particular relevance to judges, people in sad moods tend to scrutinize evidence more carefully than do happy or angry people, meaning that happiness, anger, and their associated moods can sometimes contribute to blind spots. This is why Judge Posner once warned

35. S. W. Anderson et al., *Impairments of Emotion and Real-World Complex Behavior Following Childhood- or Adult-onset Damage to Ventromedial Prefrontal Cortex*, 12 J. INT. NEUROPSYCHOL. SOC. 224 (2006); Bechara et al., *Characterization of the Decision-Making Deficits of Patients with Ventromedial Prefrontal Cortex Lesions*, 123 BRAIN 2189 (2000).
36. Joshua Greene et al., *An fMRI Investigation of Emotional Engagement in Moral Judgment*, 293 SCI. 2105, 2105-07 (2001).
37. Kent A. Kiehl, *Without Morals: The Cognitive Neuroscience of Criminal Psychopaths,* in 3 MORAL PSYCHOLOGY: THE NEUROSCIENCE OF MORALITY: EMOTION, BRAIN DISORDERS, AND DEVELOPMENT 120-49 (Walter Sinnott-Armstrong ed., 2008).
38. Paul Slovic et al., *The Affect Heuristic*, *in* HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 397, 397-420 (Thomas Gilovich et al. eds., 2002).
39. Kimberly D. Elsbach & Pamela S. Barr, *The Effects of Mood on Individuals' Use of Structured Decision Protocols*, 10 ORGANIZATION SCI. 181, 193 (1999).

that we ought to "beware the happy or the angry judge!"[40]

Finally, very intense emotion can sometimes lead us astray and even defeat our goals. Fear can paralyze; sadness can overwhelm; love can blind. This reality is so evident from our lives that it needs no further comment here.

A full understanding of emotion's impact, then, requires us to consider both what it offers and what it might take away. Recognizing emotion's value is critical, given how thoroughly we've disparaged it to date. That does not mean we should give it free rein. The capacity to *regulate* emotion is a skill every bit as critical as is the capacity to *feel* emotion.

A full understanding of emotion's impact . . . requires us to consider both what it offers and what it might take away.

THE PLUSES AND MINUSES OF EMOTION FOR JUDGES

These fundamental understandings about the nature and function of emotion clearly matter to judges as people. An emotionally well-adjusted judge is likely to have better physical health, happier work-life balance, and more functional personal relationships. Like caring for the body, caring for emotional health helps us achieve more satisfying lives.

The remainder of this article, though, focuses how these insights affect judges as judges—that is, in the concrete context of judicial work settings. After extending the prior discussion to judicial emotion, using anger as the primary example,[41] the article goes on to explain how judges can most effectively regulate the emotions they are bound to have.

First, one benefit of an emotion for judges is that it signals seriousness, both internally and externally. Consider anger. Angering events are vivid, which sends a signal that something important is happening. Whereas some emotions have a strong withdrawal tendency—for example, disgust makes us back away—anger keeps us engaged, meaning that it focuses the judge's attention to the offending person and situation. Anger also communicates seriousness to others. Its typical physical manifestations—raised voice, clenched eyebrows, narrowed eyes, a scowl, and tensed muscles—are extraordinarily potent communicative devices. Anger conveys power. Thus, the emotion sends important signals both *to* the judge and *from* the judge.

Second, anger motivates us to assign blame and consequences. It is tightly bound up with an urge to restore justice. Further, anger makes us more willing to take risks, in part because it is associated with optimism and feelings of being in control. Indeed, experimental studies show that people prefer being in an angry state when faced with a confrontational task, because anger helps them take on and succeed at the confrontation. It also literally heats us up, to prepare the body and mind for action—think of that telltale "boiling" feeling. Thus, anger facilitates both judgment and action.

These attributes are of obvious utility to judges—indeed, one is tempted to say they are *necessary*, or even that anger is quintessentially judicial. A judge often is asked to assign blame and consequences, which anger can help her do. It can also help her take necessary risks. Judges sometimes have to alienate powerful interests, upset potential voters, disappoint decent people who have been wronged, and even jeopardize public safety. The late Judge John Sprizzo of the Southern District of New York, for example, once expressed fury at having to release high-level drug dealers because of fatal flaws in the indictment.[42] Similarly, some judges reported recently that they hesitated in sanctioning police officers who had committed blatant perjury, citing a fear of ruining careers or conferring an undeserved benefit on defendants. Anger at the officers' abuse of the system helped them do what was right, not what was easy.[43]

Anger can also keep the judge's mind in the courtroom, so to speak. Given the welter of stimuli and stressors to which judges are exposed, they may need emotion to flag possible misconduct, direct attention to it, and keep attention from sagging. Moreover, anger's expressive benefits are strategically invaluable. Consider the difference between quietly suggesting that a lawyer stop making improper objections despite repeated instructions not to do so and smacking your hand on the bench and using a sharp tone.

Anger is not the only emotion that can serve judges well. Expressions of sorrow, for example, may demonstrate respect to present victims. A nice example from recent events: In a display remarkable enough to be extensively covered by the media, a New York City trial judge presiding over the sentencing of a serial killer cried when pronouncing sentence.[44] One of the things that made this moment remarkable was that the sentence made no practical difference; the defendant was already serving multiple life terms in California. The judge's tears drove home its symbolic and emotional importance. The victims' families reported that those tears meant a lot to them: they felt that their suffering had been acknowledged, turning a proceeding that could have been painfully *pro forma* into one that was meaningful.

If the tears-at-sentencing example shows that judicial emotion can convey compassion and respect, other emotions might instill motivation. Much of the drug-court model, for example, is premised on the idea that if the defendant feels that the judge cares about his future, he will be motivated to change. That defendant, we hope, will internalize some of the judge's hopes for him. Judges also report reciprocal benefits; feeling such hope, at least from time to time, can make the more difficult

40. Richard A. Posner, How Judges Think 110 (2008).

41. Much of the discussion of anger's psychological attributes is drawn from International Handbook of Anger: Constituent and Concomitant Biological, Psychological, and Social Processes (Michael Potegal et al. eds., 2010); Jennifer S. Lerner & Larissa Z. Tiedens, *Portrait of the Angry Decision Maker*, 19 J. Behav. Dec. Making 115 (2006); and James R. Averill, Anger and Aggression: An Essay on Emotion 248-49 (1982).

42. William Glaberson, *The Law; Judge Refuses to Open Proceeding*, N.Y. Times, Mar. 10, 1989, at B7.

43. Benjamin Weiser, *Police in Gun Searches Face Disbelief in Court*, N.Y. Times, May 12, 2008, at B1.

44. Russ Buettner, *Judge Cries During Sentencing of Serial Killer Rodney Alcala*, N.Y. Times, Jan. 8, 2013, at A17.

[A]nger can lead to decisions that are premature or overly punitive—or both.

moments far more bearable.

The flip side of this coin, of course, is the danger posed by judicial emotion. Anger again provides our primary example. First, as suggested by the prior discussion of moods, anger tends to trigger shallow patterns of thought, such as reliance on schemas and heuristics. Stereotypes are a particularly pernicious sort of schema, raising the danger that when a judge is angry she will be more prone to two-dimensional judgment of litigants, lawyers, or witnesses.[45] Of course, we are most worried about negative stereotypes, like racial bias, but positive stereotypes, like thinking police officers tend not to lie, are equally worrisome. The point is that to the angry judge, people may appear as types rather than as individuals.

Another shallow thought pattern typical of the angry person is quick endorsement of information that confirms the initial anger appraisal. This means that the angry judge is likely to give potentially important counter-evidence short shrift. Interestingly, angry people tend also to be disproportionately persuaded by angry-sounding arguments, regardless of whether those arguments are actually better.[46]

Next, anger can lead to decisions that are premature or overly punitive—or both. The heightened sense of certainty it brings can make a judge feel confident in the correctness of her decisions very quickly. That tendency confers an obvious advantage when further deliberation will be of no utility or quick action is essential. Judges frequently confront those situations—for example, a witness may start to testify about something off-limits and need to get shut down. But the tendency is just as obviously disadvantageous where information-gathering and reflection would disrupt an unwarranted assumption or uncover a previously overlooked point.

A case example illustrates this danger. In a complex civil case, a district court judge was reversed for having dismissed the plaintiffs' case with prejudice as a sanction for discovery abuse.[47] The lawyers' conduct was legitimately infuriating: they played games, provided misleading information, and evaded discovery orders. But the judge's anger eventually took the case down a bad road. He appeared to become predisposed to interpret every dispute in the way least favorable to the plaintiffs; possible lies became clear ones; investigation increasingly seemed futile. Things finally came to a head in a heated exchange in which a lawyer addressed the court in a way best described as snarky, and then suggested that the judge was factually mistaken about the procedural history of the matter. When the judge asked whether the plaintiff had produced certain documents, the lawyer retorted, "To them?," provoking this response:

> THE COURT: Well, hell, yes. Why would you ask a question like that? Hell, yes, to the defendant. . . . I kept telling you to produce stuff. . . . You ducked. You wove. You did everything to keep from producing them. . . . Now what the hell do you not understand? You must produce them. Jesus Christ, I don't want any more ducking and weaving from you on those 58 documents. That's unbelievable. That gives credence to everything I just heard from the defense. Now, tell me why else you don't think that I ought to dismiss this case . . . You better tell me. I'm about ready to throw this thing out. When you tell me that you still haven't produced those goddamn 58 documents after four times, four times I've ordered you to produce them. You are abusing this Court in a bad way. Now tell me.
>
> MR. STARRETT: Well, may I start with the fact—
>
> THE COURT: Yes.
>
> MR. STARRETT: —that you have not ruled four times to give them those 58 documents—
>
> THE COURT: That's it. I'm done. I'm granting the defendant's motion to dismiss this case for systematic abuse of the discovery process. Mr. Harris [defense counsel], I direct you to prepare a proposed order with everything you've just put on that presentation. I'll refine it and slick it up. [Plaintiff's witness] has abused this court, has misled you, has lied on his deposition. It's obvious he's lying about that e-mail. This case is gone. . . . What a disgrace to the legal system. . . . We're done. We are done, done, done. What a disgrace. . . . We're done.

In this exchange, the final straw was counsel's effort to explain that not all of the documents in question had been ordered produced four times. Though tin-eared and poorly timed, the assertion was basically true. But by that point, the judge was simply "done." And once he was "done," he went straight to the most punitive response, which left him open to reversal.

The point is not in any way to condemn the judge. Indeed, the appellate court clearly had sympathy for his understandably human reaction, and it probably is safe to say that every judge could think of at least one situation in which she has acted similarly. The point, rather, is to demonstrate how even well-placed anger can create a decisional cascade which, if not interrupted, may lead to error.

Third, judicial anger can bleed over into other situations. Being angry at one person for one set of reasons increases the odds of becoming angry at another person for another set of reasons, whether that person deserves it or not. This reality can lead to both misplaced and disproportionate blame. For example, experimentally induced, utterly irrelevant anger has been shown in mock-jury studies to correlate with more punitive judgments of tort defendants, as well as with greater levels of punishment.[48]

45. David DeSteno et al., *Prejudice From Thin Air: The Effect of Emotion on Automatic Intergroup Attitudes*, 15 PSYCHOL. SCI. 319 (2004).
46. David DeSteno et al., *Discrete Emotions and Persuasion: The Role of Emotion-Induced Expectancies*, 86 J. PERSONALITY & SOC. PSYCHOL. 43 (2004).
47. Sentis Group v. Shell Oil, 559 F.3d 888 (8th Cir. 2009).
48. Neal R. Feigenson, *Emotions, Risk Perceptions, and Blaming in 9/11 Cases*, 68 BROOK. L. REV. 959 (2003); Neal Feigenson et al., *The Role of Emotions in Comparative Negligence Judgments*, 31 J. APPLIED SOC. PSYCHOL. 576 (2001); D.A. Small & J. Lerner, *Emotional Policy: Personal Sadness and Anger Shape Judgments About a Welfare Case*, 29 POL. PSYCHOL. 149 (2008).

Fourth, intense judicial anger can manifest in a grossly disproportionate way that can feel literally involuntary. Stated colloquially, judges sometimes just lose it. A quick look at the "benchslap" market—a popular feature on *Above the Law*—makes this clear.[49] Every major media outlet in the country reported on a Fifth Circuit oral argument in which Chief Judge Edith Jones slammed her hand on the bench and told a fellow judge to "shut up."[50] Just as much media coverage descended on the Wisconsin Supreme Court when one Justice was accused of choking another during a testy exchange in chambers.[51] A top-trending video on YouTube (inelegantly but accurately called "Flipping the Bird to the Judge") showed a judge at video arraignment coming down hard on a young defendant who disrespected him (he later reversed the sanctions when she apologized and explained she had been on drugs at the time).[52] Type "angry judge" into the YouTube search engine and you will find an astonishing array of videos showing judges screaming, throwing things, even pulling out guns. From a judge's perspective, one of the biggest downsides of losing it is that suddenly *you* are the story.[53]

Finally, there is reason for judges to worry about the heightened sense of power that anger can engender. Because judges have actual power over actual people, we might well worry that anger could help a judge feel justified in acting like an "absolute monarch,"[54] or like "God in my courtroom."[55]

If the previously described cluster of anger attributes is necessary to judging, this cluster seems anathema to it. Other emotions have evident downsides as well. Contempt, in particular, presents clear dangers. Contempt is much like anger but with one crucial difference. When we feel contempt for someone we are judging them to be our inferior, not just hierarchically but as a human being.[56] For this reason it often is considered to be a mixture of anger and disgust. Contempt would appear to underlie the unfortunate insults judges sometimes lob at sentencing, such as "animal," "lowlife," or "scumbag."[57] Because a judge has no claim to superiority but only to authority, contempt is likely unsuitable in nearly every instance.

And now we find ourselves on the horns of a dilemma. Judicial emotion giveth and it taketh away. Anger, our recurrent example, is necessary to critical aspects of judging, but it simultaneously has tendencies that can impair judging. The same would appear likely to hold true for most emotions, though some will tend generally to be more positive (one nomination: compassion) or negative (one nomination: contempt). We therefore are a juncture at which judges need to call upon emotion regulation.

[E]motion regulation refers to any attempt to influence what emotions we have, when we have them, or how those emotions are experienced or expressed.

JUDICIAL EMOTION REGULATION

In the psychological literature, emotion regulation refers to any attempt to influence what emotions we have, when we have them, and how those emotions are experienced or expressed. Regulation typically entails changing the emotion-eliciting situation, changing your thoughts about that situation, or changing your responses to that situation.[58]

These are processes in which we all regularly engage, including when at work. How we do so is heavily influenced by professional norms: flight attendants and bill collectors, for example, have to meet very different expectations as to how they feel and display emotion.[59] The ideal of dispassion supplies the background professional norm for judges. When judges report trying to act professionally, they are somehow engaging in emotion regulation in an attempt to experience and project neutrality. As the prior discussion revealed, not only is this not always a good goal, it is an unrealistic one. It's particularly unrealistic to expect judges to pull off this feat with precisely no guidance as to *how*. Justice Sotomayor stated

49. http://abovethelaw.com.
50. Debra Cassens Weiss, 5*th Circuit Oral Arguments Turn Contentious When Chief Judge Tells Colleague to Shut Up*, A.B.A. J., Sept. 26, 2011.
51. Crocker Stephenson, Cary Spivak & Patrick Marley, *Justices' Feud Gets Physical*, MILWAUKEE-WISCONSIN J. SENTINEL, June 25, 2011.
52. http://www.youtube.com/watch?v=lLA7dQ-uxR0 (more than 15 million views).
53. Sometime this may be what the judge is going for. This seemed to be the case with a federal district judge who gained notoriety by publicly releasing a sarcastic court order inviting lawyers to a "kindergarten party" where they would learn how "to practice law at the level of a first year law student." It quickly went viral on the Internet. Morris v. Coker, Nos. A-11-MC-712-SS, A-11-MC-713-SS, A-11-MC-714-SS, A-11-MC-715-SS, 2011 WL 3847590, at *1 (W.D. Tex. Aug. 26, 2011). It's worth debating whether public humiliation of this sort is a legitimate tactic.
54. McBryde v. Comm. to Review Circuit Council Conduct & Disability Orders of the Judicial Conference of the United States 264 F.3d 52, 68 (D.C. Cir. 2001) (quoting Chandler v. Judicial Council of Tenth Circuit of the United States, 398 U.S. 74, 84 (1970)).
55. Gottlieb v. Sec. & Exch. Comm'n, 310 F. App'x 424, 425 (2d Cir. 2009).
56. Dacher Keltner et al., *Emotions as Moral Intuitions*, *in* AFFECT IN SOCIAL THINKING AND BEHAVIOR 161, 163 (Joseph P. Forgas ed., 2006).
57. In re Merlo, 34 A.3d 932, 972 (Pa. Ct. Jud. Disc. 2011); In re Lokuta 964 A.2d 988, 1054 (Pa. Ct. Jud. Disc. 2008); Milmir Constr. v. Jones, 626 So. 2d 985, 986 (Fla. Ct. App. 1993).
58. Much of the discussion of emotion regulation is drawn from the following scientific sources: T.L. Webb et al., *Dealing with Feeling: A Meta-Analysis of the Effectiveness of Strategies Derived from the Process Model of Emotion Regulation*, 138(4) PSYCHOL. BULL. 775 (2012); REGULATING EMOTIONS (Marie Vandekerckhove et al. eds., 2008); HANDBOOK OF EMOTION REGULATION (James J. Gross ed. 2007); James J. Gross, *Emotion Regulation: Affective, Cognitive, and Social Consequences,* 39 PSYCHOPHYSIOLOGY 281 (2002); James J. Gross, *Antecedent- and Response-Focused Emotion Regulation: Divergent Consequences for Experience, Expression, and Physiology*, 74 J. PERSONALITY AND SOC. PSYCHOL. 224 (1998).
59. HOCHSCHILD, *supra* note 16.

[R]esearch shows that emotion regulation may be pursued by way of a diverse array of strategies . . . .

with confidence that a good judge simply puts her emotions aside. Would that it were so easy.

The good news is that while judicial emotion regulation may not ever be easy, everyone can get better at it, and its processes need not remain a mystery. The first step certainly is self-awareness, or what Justice Sotomayor referred to as recognizing your emotions. The second step—about which we've displayed a remarkable collective silence—is to engage appropriate emotion-regulation techniques. Fortunately, that is something about which contemporary psychological research has a lot to say.

Such research shows that emotion regulation may be pursued by way of a diverse array of strategies, each with distinct costs and benefits. There is no such thing as a "good" or "bad" strategy: all have both occasional utility and maladaptive manifestations. However, some emotion regulation strategies tend more toward particular types of costs and benefits, not to mention paradoxical or unintended effects, and thus tend to be more or less well suited to particular contexts.

In the judging context, the ideal of dispassion has both obscured that necessary level of analysis and pushed judges toward strategies that tend to be maladaptive. Just because generations of judges may have handled emotion in a particular way—by, say, ignoring it—doesn't make the approach effective. Poor regulatory choices can be remarkably impervious to correction through experience.

The most critical regulatory capacities for a judge, therefore, are sensitivity to her own experience, a deep bench of strategic options, and context-driven flexibility in how those options are employed. This combination allows her to exert far greater control over her emotions and how she chooses to express them.

Calling on the research literature illuminates which emotion-regulation strategies are unlikely to be helpful, are most likely to be harmful, and are most likely to be productive for judges.

Unlikely to be helpful: avoidance. One very common regulation strategy is avoidance. Avoidance comes in several different flavors. You can simply avoid situations because of their anticipated emotional effect; if that is not possible, you might try to modify the situation to alter its emotional salience; and if that is not possible, you might actively distract yourself. Imagine that you have a contentious relationship with your father-in-law, with whom you have to attend a big family dinner, and you know that talking with him always makes you angry. You might arrange in advance to be seated far away from him at dinner; if that is not socially acceptable, you might arrange for someone you like to be seated on your other side and engage that person in conversation whenever possible; and if you do have to talk with your father-in-law, you might pretend to listen while mentally going over your upcoming week's schedule. Such avoidance techniques are terrifically helpful in regular life. If you avoid or significantly block out the emotion trigger, you never have an emotion to deal with.

Unfortunately, this strategy is very seldom appropriate for judges. Judges' ability to choose the emotional situations to which they are exposed is extremely limited. Not only do you not choose your cases, but often you can't even choose your court or the subject matter of your docket. This is, to be sure, sometimes possible: a judge who finds family court intolerably stressful might try to switch to a commercial docket, or a state-court judge might seek appointment to the federal bench because it will entail more variety and less exposure to violent crime. But no matter the court or its jurisdictional parameters, you can't control who comes in the door, and you are guaranteed cases that will over time cover the emotional spectrum. A judge can (and generally must) recuse herself from a specific case if she has direct emotional involvement, such as a close personal connection to a party. Otherwise, avoiding unwanted emotion generally will not justify recusal unless it is so extreme as to pose a serious threat to fundamental fairness.[60]

Nor can judges always modify situations in a meaningful way. Again, it is possible on the margins. You can delegate talking with an irritating lawyer to a clerk, or call breaks, or limit argument time, or otherwise tinker around with details to buy some time and relief. These small tweaks can be enormously helpful. The big emotion triggers, however, often can't be worked around. This is so for two primary reasons.

First, part of the judge's job is to orchestrate the exposure that other people have to those triggers. If, for example, you are deciding under the applicable rules of evidence whether to withhold autopsy photos from the jury because you worry that their emotional impact will outweigh informational value, you need to look at them yourself. Indeed, you need to both *have* and *notice* your own reaction, so it can serve as a rough barometer to what could be expected from the jury. By helping other people avoid triggers, you must face them yourself. Second, it is often the most emotionally vivid aspects of a case that demand your most careful attention. At criminal sentencing, or when setting damages in tort and mass-disaster cases, you must take close account of the precise harms caused. Even with lower-impact emotional triggers, like a particularly inept argument by a borderline-incompetent attorney, it is not professionally acceptable to literally tune out (tempting though it might be), as something important might happen. This relates to another point raised elsewhere in this special issue: judicial multi-tasking, which is one way of distracting yourself, has consequences. Not surprisingly, distracted people demonstrate impoverished recall of the situations from which they are distracting themselves—that's the point, after all.[61]

Avoidance therefore is available to judges only in a marginal way—ironically, because it works too well. It helps judges handle emotional challenges only by helping them disengage from what it is about the job that makes it emotionally challenging.

Most likely to be harmful: experiential suppression and denial. The strategy that is most obviously harmful for judges

60. Liteky v. United States, 510 U.S. 540 (1994).

61. Gal Sheppes & Nachshon Meiran, *Divergent Cognitive Costs for Online Forms of Reappraisal and Distraction,* 8 EMOTION 870, 871 (2008).

is to try to suppress emotion directly. Think of this as vowing as a matter of willpower not to feel what you do not wish to, or pretending—to yourself and others—that you are not feeling it. A California state judge, for example, once described his approach thus: "I'm not moved by emotion one way or the other. I'm just kind of like an iceberg, but there is no heating. I'm just here."[62]

The first problem with this strategy is that it does not achieve its intended purpose. (In the universe of problems, that is a pretty big one to have.) Attempts to suppress emotional experience or thoughts of an emotional event have not been shown to have any meaningful effect on the emotions themselves. In fact, suppression raises the danger of "ironic rebound."[63] Think of a rough parallel to the "don't-think-of-a-pink-elephant" phenomenon, in which the more you try not to think of something the more you think of it.[64] Research shows that we are somewhat better at suppressing emotions than other sorts of thoughts, but that is a relative, not absolute, facility. Emotional suppression can be followed by a counterproductive increase in the frequency and intrusiveness of emotional thoughts. Suppression also increases the physiological concomitants of the undesired emotion, such as elevated heart rate and sweating. It may give the illusion of calming the mind, but it does not calm the body.

These rebound and reactivity effects are especially pronounced when a person is under conditions of stress and cognitive load, which describes most moments in a judge's working life. Adding denial to the mix tends to make matters worse, because combining greater physical reactivity with conscious disavowal of its source is dangerous. It creates a reaction in search of a cause, meaning a person can easily latch onto an unrelated, and sometimes innocent, target. The combination has also been associated with impulsive decision making.[65]

Further, suppression and denial are highly effortful. Because of the internal resources they consume, these strategies impair memory, are associated with impaired performance on logical tasks, and lead to overly simplistic judgments.

Finally, these strategies take a toll on the judges who use them. People who regularly suppress and deny emotion can develop what psychologists call a "repressive coping style."[66] That style is characterized by (among other things) rigidity and arrogance, two qualities we clearly would like to discourage. Indeed, those qualities have unique potential to erode the public's perception of the judiciary.[67] People who habitually repress emotion also are far less able to handle emotion when they do experience it. One cautionary tale may be found in a Florida Supreme Court decision removing a trial judge from the bench.[68] He repeatedly treated litigants and lawyers in a callous, rude, condescending, and abusive manner. His own psychiatrist testified that a repressive anger-management style had come to define the judge's personality, such that he was in a constant state of "emotional over-control" that left him unable to "incorporate emotions into his life." Instead, he displayed an utter lack of empathy and periodically exploded. Finally, a repressive coping style is associated with poor health outcomes, such as anxiety, hypertension, and coronary heart disease.[69]

Emotional suppression can be followed by a counterproductive increase in the frequency and intrusiveness of emotional thoughts.

Caveats about the occasional utility of all regulatory strategies notwithstanding, it is hard to say much good about emotional suppression and denial. The best that can be said is that a judge might sometimes have no choice but to use them in extraordinary situations where the emotion threatens to overwhelm the judge, there is no way to alter the situation, and a temporary effort to completely ignore the reaction is the only way to act in a professionally necessary manner. One can imagine such situations. A judge who finds herself forced into that position, though, will be much better off if she recognizes it for what it is and gives herself time and space to cope with that emotion after the crisis is over.

Often necessary, but comes at a cost: behavioral suppression. Fortunately, emotion is not the only thing a judge can suppress. Another common strategy is to suppress only its external manifestation. Behavioral suppression involves inhibition of facial expressions (*e.g.*, grimacing), verbalizations (*e.g.*, groaning), or bodily movement (*e.g.*, cringing). One masks the true emotional state with an expression reflecting either neutrality (as with a "poker face") or a desired one (as with a fake smile). All judges likely spend a good deal of their time doing exactly that—and for some very good reasons. However, behavioral suppression takes a toll of its own.

The reasons why a person sometimes needs to hide emotion are rather obvious, particularly to judges. Selectively displaying

62. People v. Carter, No. C053369, 2009 WL 626113 (Cal. App. 3 Dist. Mar. 12, 2009).
63. Daniel M. Wegner, *How to Think, Say, or Do Precisely the Worst Thing for Any Occasion*, 325 Sci. 48-50 (2009).
64. Daniel M. Wegner, White Bears and Other Unwanted Thoughts: Suppression, Obsession, and the Psychology of Mental Control 122-24 (1989).
65. Renata M. Heilman et al., *Emotion Regulation and Decision Making Under Risk and Uncertainty*, 10 Emotion 257 (2010).
66. Sander L. Koole, *The Psychology of Emotion Regulation: An Integrative Review*, 23 Cognition & Emotion 4, 6 (2009); Lynn B. Myers & Nazanin Derakshan, *To Forget or Not to Forget; What Do Repressors Forget and When Do They Forget?*, 18 Cognition & Emotion 495 (2004).
67. *McBryde*, 264 F.3d at 66 ("Arrogance and bullying by individual judges expose the judicial branch to the citizens' justifiable contempt.").
68. In re Sloop, 946 So.2d 1046 (S. Ct. Fla. 2007) (per curiam).
69. Josh M. Cisler et al., *Emotion Regulation and the Anxiety Disorders: An Integrative Review,* 32 J. Psychopathology and Behav. Assessment 68, 75 (2010); Richard Chambers et al., *Mindful Emotion Regulation: An Integrative Review*, 29 Clinical Psychol. Rev. 560 (2009).

Self-aware judges can learn to do quick gut-and-brain checks not only on what they are feeling, but on why they feel it.

emotion can be highly strategic. A judge might want to keep an obnoxious attorney from knowing he has gotten to her, so as to discourage the behavior by refusing the attorney satisfaction. (Conversely, the judge may believe that a flash of anger might shut the behavior down, in which case she would opt for a controlled display.) She may need to model calmness and decorum to others, such as disruptive family members, which will make her courtroom management duties easier. She may need to prevent a jury from perceiving what she thinks of a witness, party, or attorney so as not to influence the jury's independent evaluation. She may want to prevent other observers, including the public, from being able to guess what she thinks, lest it improperly broadcast an outcome. The good news is that inhibiting the outward signs of emotion is relatively effective, particularly if you are well practiced in doing so. Judges often can keep others from perceiving what they feel.

Unfortunately, behavioral suppression is not very effective as an internal matter. It, too, is effortful, so it has some negative effects. Behavioral suppression impairs memory for information presented during the suppression period. Other cognitive capacities, like logical reasoning, also suffer.[70] Those effects may not be as pronounced as with suppression and denial, but they remain significant; indeed, they are equivalent to those attending avoidance. As stated bluntly to this author by a prominent scholar, behavioral suppression makes a person temporarily "stupider."

Further, keeping an emotion from showing does not keep a person from feeling it. Again, the profile is less extreme than with experiential suppression. Controlling your facial and bodily movements generally will blunt, but not eliminate, positive emotions. Interestingly, it has no such effect for negative ones. That is, suppressing a smile can make you a bit less happy, but suppressing a frown is not likely to make you less angry. Judges tend to be most concerned about displaying emotions such as sorrow, contempt, disgust, and anger, but it is not at all clear that behavioral suppression will have any effect on this cluster of feelings. Finally, suppressing expression does not lessen emotion's physiological concomitants, and it may in fact increase them.

Judges can take some comfort that behavioral suppression is usually going to work in terms of how you are perceived. However, it is important to be aware that controlling outward signs of emotion comes at a cost and is not doing any work in terms of dealing with the emotion itself.

Most likely to be helpful: cognitive reappraisal and disclosure. Thus far the analysis has looked to one strategy (avoidance) that is seldom available; one (suppression and denial) that is counterproductive, even dangerous; and one (behavioral suppression) that is often necessary but generally costly and ineffective. Fortunately, two other strategies have a more positive profile. If the judge can neither avoid, alter, nor ignore an emotional situation, she may change how she thinks about it. She also can choose to enlist the perspectives of others by selectively disclosing her experiences. This final section takes up these approaches in turn.

Cognitive reappraisal. Recall that an "appraisal" refers to the thought structure that underlies any given emotion. A "reappraisal" therefore refers to a change in those thoughts, which then leads naturally to a different emotional response. If, for example, a person comes to believe that a harm was inflicted accidentally rather than deliberately or negligently, she has no more reason to be angry and may instead be simply sad.

The first way in which judges can leverage the power of reappraisal is by examining the reasons behind their emotions, so as to determine whether they represent a correct and appropriate response. The judge in the viral YouTube video, for example, may have reacted much less angrily had he considered the high probability that the defendant was under the influence of drugs. Her behavior would have been equally offensive to decorum, but would not have represented a personal insult. In contrast, it may be entirely appropriate to be angry at a defendant who uses sentencing as a forum to insult and taunt his victims.[71] Reasons matter. Self-aware judges can learn to do quick gut-and-brain checks not only on what they are feeling, but on why they feel it.

While reappraisal may be engaged in real time, a good deal of thought realignment can happen during times of reflection. Consider trying the following exercise. Think about situations in which people you encounter at work—lawyers, litigants, witnesses, and colleagues—have made you mad. Any given judge's anger triggers will, upon introspection, break into relatively stable categories, such as lying, cheating, abusing others, disrespect, sloppiness, and so on. Then think about why those particular things make you angry. Finally, think about whether those reasons justify anger, taking care to examine why or why not. In a light-hearted but revealing article reflecting just such an exercise, a Los Angeles state-court trial judge identified reliable triggers for his anger, including "lack of civility," tardiness, cell phones going off in court, "attorney incompetence," and the "herding cats" work of trying to get everyone in the courtroom at the same time.[72] He concluded that he would be much happier if he let some of those go—for example, by reminding himself that he is sometimes late, decent people sometimes forget to turn off their cell phones, and so forth.

Attorney incompetence, in contrast, is legitimately anger-

70. Jane M. Richards & James J. Gross, *Personality and Emotional Memory: How Regulating Emotion Impairs Memory for Emotional Events*, 40 J. Res. in Personality 631 (2006); Jane M. Richards, *The Cognitive Consequences of Concealing Feelings,* 13 Current Directions in Psychol. Sci. 131 (2004); Jane M. Richards & James J. Gross, *Emotion Regulation and Memory: The Cognitive Costs of Keeping One's Cool*, 79 J. Personality & Soc. Psychol. 410 (2000).
71. Jennifer Preston, *Teenage Gunman in Ohio Mocks Victims' Families*, http://thelede.blogs.nytimes.com/2013/03/19/teenage-gunman-in-ohio-mocks-victims-families/ (Mar. 19, 2013).
72. Gregory C. O'Brien, Jr., *Confessions of an Angry Judge*, 87 Judicature 251, 252 (2004).

ing. This is an important conclusion to reach, too, but not because it changes the underlying emotion. Rather, deliberately accepting the underlying thoughts puts the judge at just enough distance to evaluate her possible responses, and to choose the most fitting one. The judge in Los Angeles learned to choose different patterns of response to unprepared or unskilled attorneys—typically by being direct, courteous, and brief—by focusing on what was within his power to change. Chief Judge Alex Kozinski describes engaging in a similar mental exercise after a prosecutor lied to him about a matter of consequence. After reflection, he concluded that anger was precisely the right response, and he therefore chose to name the prosecutor in a harsh written opinion so as to maximize the deterrent message.[73]

The second cognitive appraisal technique that holds great promise for judges is committing to look at situations through a professional "lens." This is best explained with an analogy to being a doctor. Like judges, doctors regularly encounter stimuli that naturally provoke strong emotions, like festering wounds. An important part of learning to be a doctor is learning to regard that festering wound as professionally relevant.[74] It represents a source of information about what is wrong with the patient and an opportunity to display professional competence. The doctor thus learns to regard it without disgust, not by suppressing disgust but by thinking about the wound in a way that fails to satisfy the appraisal structure of disgust.

Judges have their own festering wounds to confront. Sometimes that is literally true—recall the example of the autopsy photos—but more often it is figuratively true. Courtrooms can be a theater for much that is broken and disturbing in our world and how we treat one another. For many judges, the most effective way of approaching that reality will be, when possible, to treat vivid stimuli as professionally relevant rather than personally provocative. Such a precommitment helps the judge stay focused on specific goals—for example, discerning the informational value of that autopsy photo, since she is the only one empowered to make that judgment call. That professional lens can dissipate the emotional salience of the stimuli.

Judges would likely report that when this works, it works well. The experimental literature shows that even laypeople can deliberately call on such a neutral-observer approach—tellingly, by pretending briefly to be doctors—with good results. When asked to look at disturbing images as a doctor would, and to think about them "objectively and analytically rather than as personally, or in any way emotionally relevant," they feel less emotion; show less emotion; display enhanced, not diminished, memory; and show decreased physiological reactivity.[75]

Reappraisal . . . is of enormous value to judges because it asks them to think differently, instead of simply commanding them to feel differently.

Of course, labs are labs. What an experimental subject can pull off for a short period of time, in a controlled environment, with an anticipated stimulus and explicit instructions, is instructive. To be pulled off by real judges in real situations, this species of reappraisal must be trained and practiced.

Reappraisal, in sum, is of enormous value to judges because it asks them to think differently, instead of simply commanding them to feel differently.

Disclosure. As the above discussion reveals, some amount of emotion is inevitable, no matter how skilled a judge is at regulation. Some situations cannot be avoided; behavioral suppression leaves emotions largely intact. Even cognitive appraisal has limits, for not every situation can be rethought. Sometimes the elderly person really did lose her entire life savings to a fraud, or that parent really did brutally rape his child, or the defendant really does spit in your face.[76] Nor would one want to rethink every situation. The warm glow that comes from helping families heal, for example, should be savored for what it is. And the professional lens sometimes will simply crack. No judge has truly seen everything, and everyone will be thrown from time to time, just as doctors are. The only way to prevent such moments is to become closed off and jaded—to grow that "rhino skin" feared by the Australian magistrate.

One highly effective strategy for coping with and learning from those inevitable emotions is disclosure. Disclosure, also known in the literature as "social sharing," is the act of thinking and talking about your emotions and the experiences that triggered them.[77] To be productive, it must be selective: a judge should not, for example, indulge in highly public expressions of vitriol against a colleague.[78] But when done thoughtfully and with a prosocial motive, judicial disclosure of emotion can be invaluable.

This is not because social sharing eventually dissipates the

73. 30 United States v. Kojayan, 8 F.3d 1315 (9th Cir. 1993). The judge omitted the individual's name once he was satisfied the message had been heard.
74. Daisy Grewal & Heather A. Davidson, *Emotional Intelligence and Graduate Medical Education*, 300 J. Am. Med. Ass'n 1200 (2008); Jason M. Satterfield & Ellen Hughes, *Emotional Skills Training for Medical Students: A Systematic Review*, 41 Med. Educ. 935 (2007); Vanda L. Zammuner & Cristina Galli, *The Relationship with Patients: "Emotional Labor" and Its Correlates in Hospital Employees, in* Emotion in Organizational Behavior 251-283 (C. E. J. Hartel et al. eds., 2005); Allen C. Smith III & Sheryll Kleinman, *Managing Emotions in Medical School: Students' Contact with the Living and the Dead*, 52 Soc. Psychol. Q. 56 (1989).
75. These results, consistent throughout the psychological literature, recently were confirmed in a meta-analysis. *See* Webb et al., *supra* note 58.
76. *How to Piss Off the Judge*, YouTube (Aug. 13, 2009), http://www.youtube.com/watch?v=uCNo4ky6GXE.
77. Much of this discussion is drawn from Bernard Rimé, *Interpersonal Emotion Regulation*, in Handbook of Emotion Regulation, *supra* note 32, at 466-85; Psychology of Emotion, *supra* note 32, at 185-89; and the work of the James Pennebaker lab, http://homepage.psy.utexas.edu/HomePage/Faculty/Pennebaker/Home2000/JWPhome.htm.
78. Crocker Stephenson et al., *Justices' Feud Gets Physical*, Milwaukee-Wisconsin J. Sentinel, June 25, 2011.

The emotionally intelligent judge is self-aware and is able to think coherently about her emotions . . .

emotion, as if you were emptying a bag. To the contrary, it tends to reawaken the emotion, often quite vividly. Chief Judge Kozinski, for example, recounted to this author a story more than four decades old of his son nearly being run over, and he reported feeling as terrified, guilty, and shaken as if it had happened yesterday. Paradoxically, though, disclosure is a basic impulse that people overwhelmingly experience as a net positive. Why?

First, disclosure enhances self-knowledge. By talking or writing about emotional experiences, we help create a detailed internal data bank of those experiences. That data bank allows us to judge our reactions more coherently and consistently. This sense of heightened self-knowledge and control can help us live with emotion more comfortably, for we come to experience those emotions as an integrated aspect of the self.

Second, disclosure enlists insight and support from others. This is particularly true when we share emotional challenges with people who face similar circumstances. Imagine the exercise proposed earlier, in which you identified persistent anger triggers. Now imagine showing your list to another judge. That judge would be well-positioned to help with any necessary reappraisal by explaining whether and how she believes you are off base, overreacting, or right on the mark. Your spouse, friends, and other close confidants can serve a similar function. Perhaps most importantly, communicating with others helps us feel understood and supported. Numerous judges have reported to this author that they wish they could have this sort of communication with their colleagues but feel nervous about doing so, largely because of stigma. The more judges were to act on that impulse to disclose, the less stigmatized it would become.

Finally, public disclosure of judicial emotion also can be productive (and would go a long way toward dissolving the stigma). When the public sees the human underneath the robe, it has a better understanding of how a judge is doing her job. Disclosing emotion makes transparent an otherwise hidden input to judicial decision making and invites evaluation thereof. As the tears-at-sentencing example showed, the reaction can be quite positive, even enhancing respect for the judiciary. A rather different sort of public disclosure would be to write about it in an opinion, article, or book. For example, Chief Judge Kozinski wrote a law review article about a criminal sentencing that unexpectedly triggered those feelings he had when he inadvertently placed his son in danger, prompting him to show the defendant mercy. Once on the table, the propriety of such a motivation was open for debate.[79]

Disclosure thus can help judges feel more comfortable with their emotions, and helps ensure that those emotions influence decision making in a deliberate, thoughtful, and transparent way.

CONCLUSION

Within law, we have inherited some hefty cultural baggage, weighted down with the belief that a good judge is emotionless. This article has unpacked that baggage and suggested that it is that belief, not emotion, that should be put aside. We need a new ideal: that of the *emotionally intelligent judge*. The emotionally intelligent judge is self-aware and is able to think coherently about her emotions and to be in control of their expression. She is willing to seek the opinions and support of others and approaches the emotional challenges of the job with openness and flexibility.

In attempting to thus shift our ideal, we are not alone. More than a decade ago pioneers in medical education came to realize that, by acculturating doctors to a similar ideal of dispassion, they inadvertently were training them to suppress and deny emotion, with bad results. Medical students lost empathy for patients with each year of training; many showed performance-impairing levels of emotional disengagement.[80] These pioneers now are seeking to train medical professionals to improve their emotion-regulation skills. So far, all results are positive: among the important findings is that clinical performance improves as measures of emotional intelligence rise.[81]

Even with these advances, the general pattern unfortunately persists. Describing her recent studies of the impact of emotion on Canadian oncologists, a health psychologist has emphasized the importance to doctors of acknowledging their feelings, especially grief:

> Not only do doctors experience grief, but the professional taboo on the emotion also has negative consequences for the doctors themselves, as well as for the quality of care they provide. Our study indicated that grief in the medical context is considered shameful and unprofessional. Even though participants wrestled with feelings of grief, they hid them from others because showing emotion was considered a sign of weakness. . . . The impact of all this unacknowledged grief was exactly what we don't want our doctors to experience: inattentiveness, impatience, irritability, emotional exhaustion and burnout. . . . Even more distressing, half our participants reported that their discomfort with their grief over patient loss could affect their treatment decisions with subsequent patients. Oncologists are not trained to deal with their own grief, and they need to be.[82]

If we were to replace the words "oncologists" and "doctors" with "judges," I daresay most judges would nod in recognition. Whether in medicine or law, cultural baggage this heavy is not easily shed.

Fortunately, the psychology of emotion has done much of

79. Alex Kozinski, *Teetering on the High Wire*, 68 U. COLO. L. REV. 1217 (1997).
80. Myrle Croasdale, *Students Lose Empathy for Patients During Medical School*, AM. MED. NEWS, Mar. 24, 2008.
81. Satterfield & Hughes, *supra* note 74; Grewal & Davidson, *supra* note 74.
82. Leeat Granek, *When Doctors Grieve*, N.Y. TIMES, May 27, 2012, at SR12.

the heavy lifting already. There is much we still need to learn about judicial emotion, but we know more than enough to get started. Judges can learn to prepare realistically for, and respond thoughtfully to, the emotions they are bound to feel. It's time we integrated those lessons into how we train and support our judiciary.

Terry A. Maroney is a Professor of Law and Professor of Medicine, Health, and Society at Vanderbilt University in Nashville, Tennessee. Her academic focus is on the role of emotion in law, with a particular focus on emotion in judicial decision-making. Professor Maroney is frequently invited to speak with federal- and state-court judges about better recognizing and coping with emotion on the bench. She also teaches and writes about criminal law, juvenile justice, and wrongful conviction. After earning a B.A. from Oberlin College and a J.D. (summa cum laude) *from New York University School of Law, Professor Maroney clerked for the Hon. Amalya L. Kearse of the United States Court of Appeals for the Second Circuit; served as a Skadden Public Interest Fellow at the Urban Justice Center; and practiced with the law firm of WilmerHale.*

Mindfulness and Empathy in the Judiciary: An Interview with Jeremy Fogel

SAM TRACHTENBERG
(HTTPS://BROWNPOLITICALREVIEW.ORG/AUTHOR/STRACHTENBERG/) | MARCH 29, 2021

Judge Jeremy Fogel is the Founder and Executive Director of the Berkeley Judicial Institute (BJI) at Berkeley Law School. The BJI focuses on bridging the gap between judges and academics in the hopes of supporting an independent, resilient, and ethical judiciary. He was the founding Directing Attorney of the Mental Health Advocacy Project. Judge Fogel has served as Director of the Federal Judicial Center, a United States District Judge for the Northern District of California, and a judge of the Santa Clara County Superior and Municipal Courts.

ST: You started your career in private practice. Did you always know you wanted to become a judge?

JF: No, not at all. I didn't always know I even wanted to be a lawyer. It was something that came to me rather late. I was really interested in other things.

My major in college was religious studies. I thought that I'd probably do something in that area, probably on the academic side, rather than on the clergy side. But when I was in college, it was the Vietnam war era and the civil rights era, and I felt that an academic life would be a little bit too removed. Given my temperament, my interests, things I'm good at, things I'm not so good at, I figured it would be unwise for me to be doing scholarly work all the time. I needed to get out into the community.

One of the nice things about the law is that it gives you a lot of options. There's a lot of different ways to use a law degree. So when I went to law school, it was with the idea that I would gain some skills and apply them to helping underserved communities. That vision for how I would use my legal training was always there for me. When I graduated, I spent the first couple of years mostly doing fair housing stuff, plus some police and community relations. I worked a lot with the Latino community in East San Jose.

ST: Why did you get involved with mental health work?

JF: I had always had an interest in mental health. I studied mental health, both from the legal and medical perspective when I was in law school. The question was how do you work with mentally ill clients?

I had an opportunity to get a seed grant from the American Bar Association to start a program to help sensitize lawyers to working with people with chronic mental illnesses. Then I had the thought that, in addition to helping other lawyers, it would be really good if we could provide legal services directly to people in need of legal assistance who had mental health issues. So we got some more grants from the National Institute of Mental Health and from the state of California and started a program geared towards representing people who had chronic mental illnesses and other emotional challenges that made it difficult for regular lawyers to represent them.

ST: What did you learn from doing that work?

JF: I realized two things. The first was about myself. I'm probably a better neutral party than a one-sided advocate. One of the strengths I have is that I can see many different sides of an issue. It's a weakness sometimes if you're a lawyer because you need to be fully on the client's side to zealously represent them. I began to feel that to reach my own highest and best use, I would need to find some sort of neutral problem-solving role.

The second thing I realized was that the clients I had represented in court had very little in the way of resources. They had trouble communicating. The problems they presented were not sympathetic for the most part. I really noticed when judges treated them well and when they didn't. There were judges who stood out to me as being particularly thoughtful and compassionate, and there were judges who were rude and impatient and gave a bad showing for the judiciary. I

think it was really the bad examples that motivated me more than the good ones. I kept saying, I can do better than that—these people are causing injury to the people I represent by being so disrespectful toward them. So that made me start thinking about being a judge.

ST: How did you end up becoming a judge?

JF: The governor at that time was trying to diversify the judiciary. Even though I'm a white male, my previous work meant that I had a background that was quite unusual. Our program had gotten some national attention, and it was seen as a good model for representing folks who were difficult to represent through no fault of their own. So the governor appointed me to the trial court in Santa Clara County in 1981. I was not yet 32 years old and from the very beginning, I felt that this was the career I was meant to have. It just felt very right.

The role allowed me to pursue a lot of my interests: to do legal analysis, to figure out a way to be thoughtful toward people, to be kind, to be compassionate, to be a good model of justice. I also liked the variety that one gets, particularly in the trial court. You see so many different kinds of cases over the course of a career—misdemeanors, family law, probate, heavy criminal cases, intellectual property cases, and business cases. I really saw the whole breadth of the kinds of problems that people face and end up in court.

ST: What was your favorite type of case as a judge?

JF: Certainly the years I spent as a family law judge were very meaningful, but exhausting at the same time. They were very difficult because the emotional intensity of those cases is so high. The cases that end up coming to court are usually the highest conflict cases, with people who are the angriest or the most grief-stricken. It really tests your ability to be emotionally engaged, to care about the people as human beings, and to try to shed some light on very difficult situations.

I also did a lot of intellectual property work later when I was on the federal court. The court was in Silicon Valley, so I got some really interesting science to think about. As I mentioned, I was a religious studies major, which tells you something about my interest in science. I had to learn the science at issue in the patent cases I was hearing.

ST: Do you have a favorite case? I know you had an important one in 2006 about lethal injection.

JF: I wouldn't say that's my favorite case, but it was certainly one of the more impactful cases I had. Up until that point, there was a lot of misunderstanding about lethal injection as a method of execution; it was meant to be more humane than the electric chair or a firing squad. I'm using "humane" in the way that it was used in the law, not necessarily the way I see it.

The problem was that, in a number of instances, lethal injection hadn't worked the way it was meant to work. It's not because there's anything wrong with the chemistry. If you properly deliver the dose, it does result in a painless death most of the time. But there were problems with the whole process of delivery, obtaining the drugs, and training the staff. I had the opportunity, in that case, to really investigate the process. As a result of my ruling, the particular method of lethal injection using a cocktail of three drugs largely fell out of favor.

I think it was also part of a national trend towards re-examining the death penalty altogether. It was a very, very difficult case and very hard for me personally. You shouldn't, and I didn't, decide a case based on how you feel about the underlying issue. My opinion on the death penalty is not public and never has been, and it's irrelevant to how I decided that case.

ST: What's one common misconception people have about the judiciary?

JF: Wow. Well, I think there's a lot of misconceptions about the judiciary. There are two extreme views that are both wrong. The first is the balls and strikes view. During Chief Justice Roberts' confirmation hearing, he talked about judges being umpires and calling balls and strikes. He was criticized for that view because nobody believes that it's that objective. You bring who you are to the process and you can't take the human being out of it. In certain kinds of situations, people are going to see things differently. The balls and strikes comment got caricatured, and I don't think that's really reflective of what the Chief Justice's view is.

So that's one extreme misconception. The other is that judges just do whatever they want. For example, we saw in the litigation of the 2020 presidential election, that there was a widespread expectation that the judges that President Trump had appointed would rule in his favor because he had appointed them. That goes back to the whole idea that there really isn't a legitimate difference between judges and politicians. But in this case, that view was proven wrong. Some of Trump's most prominent appointees ended up ruling against him in really consequential matters. There's a myth that gets shopped around, particularly on social media, that judges just vote the way that they're appointing governor or president would expect them to. And that's incorrect.

ST: So how do judges make decisions then?

JF: Well, it's in the middle of the two extremes. It's partly captured by what the Chief Justice has since said about people having different strike zones. But how a judge develops their strike zone is based on their life. What have you seen in your life? Where have you lived? What's been your exposure to different social contexts, to diversity, and to inequality? So I think judges differ very widely in those respects, but you're still trying to call balls and strikes.

So maybe one way of carrying that analogy forward is to imagine if the pitch was six feet outside the strike zone, you're not going to call it a strike no matter who you are, what experiences you have. But if it's closer, then your particular instincts, your predilections, your explicit and implicit biases, all of that comes into play in the significance you attach to a fact or in the way you read a particular case and its applicability. I'd say 98% of the judges I've known in my life have tried to set aside the biases they bring into the courtroom. They're not intellectually dishonest in a way that makes them think they always succeed. But, people are very complex and our buttons get pushed by different things and we have greater or lesser degrees of experience with different issues.

ST: I know a lot of your work at the Berkeley Judicial Institute (BJI) focuses on examining how judges make decisions. Can you tell me how you talk to judges about examining their strike zones?

JF: One example that's really relatable is a case from the Supreme Court a couple of years ago. The issue was whether being required to return a postcard from the Ohio secretary of state asking if you wanted to remain on the voter rolls and if you don't return it be purged from the voter rolls, presented an undue burden on voting. The court decided that it wasn't. But Justice Sotomayor, the only justice who had lived in a housing project, wrote a notable dissent explaining that maybe you get your mail, but some people don't, especially in a housing project. She said the Court was making assumptions about what's a burden and what isn't based on a narrow set of life experiences.

I think that's why conversations about the ways judges make decisions and the biases that they don't acknowledge or don't know about are so important. It's usually that they don't know about what they don't know

because judges do try very hard to be unbiased. It's one of the cardinal virtues of judging. But, nonetheless, none of us can be completely free of the limitations of our own perception.

ST: Do you feel that the judicial system is inherently racist?

JF: I think that society is structurally racist, yes. A society that's built on slavery will have a legacy of structural racism. I think you can have a room full of people determined not to be racist, but they are still in a society that has structural inequality built into it. I would say the justice system is inherently unequal. The inequality is in very large part derived from slavery and from racism. But it's not enough to acknowledge that, we need to ask, what can I do to begin changing it? And change is really hard because it is structural.

ST: Could you give an example of how racism manifests itself within the criminal justice system?

JF: One of the things that happens in sentencing computations in federal court is that you look at somebody's criminal history. You get a certain number of criminal history points for each arrest and for each conviction that you've had. Quite a bit of research has shown that people of color, and in particular African-Americans growing up in certain environments, are a lot more likely to have more criminal history.

A lot of it is not particularly significant crime. But folks in that demographic get arrested more, so it's easier for them to end up with more criminal history points. So they get longer sentences, irrespective of the intentions of the sentencing judges or the probation officers.

It's a self-perpetuating problem. So you have to figure out a way to view it as a structural issue and to push back and say, well, given our understanding of how structural inequality works, we shouldn't give the

same kind of weight to the incidents that occur largely due to that structural inequality. When sentencing, we need to look at certain kinds of data with a little bit more caution based on its origin.

ST: Can a judge, working within the system help to address those issues, or can they only be remedied by outside advocacy groups?

JF: It takes both. I don't think sitting judges, because of ethical limitations, can be quite as outspoken. They still have to apply the law as it exists. But, I do think judges can observe the fact that these structural inequalities exist. So take the example I just described– judges can consider the context when looking at criminal histories.

A judge I have worked with at BJI's sits in a family court in downtown Los Angeles. Many of the people appearing are both poor and from communities of color. The judge has restructured the way she hears her cases so that they aren't set at nine o'clock in the morning. By giving people times that work around their work and family obligations, she can help to mitigate the effects of their circumstances. For example, someone with a minimum wage job with hourly wages can't just take a whole day off like people with a salaried job can. That has nothing to do with the content of the cases, only with equalizing access.

ST: What do you see as the biggest problem in the judiciary today?

JF: There are two main problems. The external problem is that I don't think the public really understands what the judiciary's role is. This becomes a political problem for the judiciary–judges get attacked, judges get threatened, that kind of thing.

I mentioned those two extremes earlier, but a lot of people don't even understand the fact that judges operate within a system of rules and procedures; they have ethical obligations. If judges mistreat people or

don’t follow ethical rules and the basic rule of law, things happen to them, they can get disciplined, and appellate courts can reverse their rulings.

ST: So what’s the internal problem?

JF: I think the problem within the judiciary is that it still doesn’t have the diversity of thought and perspective that it needs. It’s not just a matter of having differences based on race, ethnicity, gender, sexual orientation, and so forth. All of those categories matter, but what really matters is the value of diversity of experience. You can’t have everybody looking at things in the same way.

Federal judges, by and large, have gone to elite law schools. They were lawyers in big law firms, or they were prosecutors for the US attorney. Even if you get diversity by identity group, the background of the judges is still a fairly narrow band of experiences. What you want is a mix of people who grew up poor or privileged, in urban or rural areas, and as a result, can really reflect all of the ways people differ.

The more you enrich the mix, the more it enables you to see what you don’t see more clearly, which gives you a better shot at understanding your implicit biases. But, it’s hard to achieve that mix because the law has always been kind of an elite profession. It takes a lot of resources to become a lawyer. All of that gets back to the structural inequality of our society.

ST: BJI really focuses on enriching the diversity of the judiciary. Could you explain how BJI came about?

JF: Yeah, it’s a good story. I’d been a judge for a very long time, thirty-seven years if you count the last seven I was at the Federal Judicial Center (FJC), which is the research and education agency for the federal judiciary. I really liked developing a curriculum for judges and

working with judges about judging. My term at the FJC had just ended, and I was thinking about what I wanted to do. I thought about being a district judge again or a professional mediator.

Someone I had gotten to know over the years was Dean Chemerinsky, the Dean of the law school at Berkeley. At some point, we just started talking about the internal problems we saw in the judiciary. We thought, 'wouldn't it be great if we could work together at some point to try and help address that problem.' We worked out an arrangement so that I could become the director of a new center at Berkeley which we decided to call the Berkeley Judicial Institute.

The idea was to take what I'd started working on at the FJC and go further. Because working in the federal judiciary means working with government funds, I felt somewhat constrained. Dean Chemerinsky basically said, just don't embarrass us, represent us well and follow your passions, do the things you want to do. Well, that's a job nobody can turn down. After having had a long career as a judge this seemed like a great opportunity to synthesize a lot of the things I learned.

ST: What do you hope BJI will have accomplished in ten years?

JF: Well, there's been all of this study among psychologists about different kinds of intelligence: cognitive intelligence, emotional intelligence, physical intelligence. But currently, the judging profession is really focused on cognitive intelligence. So I would like more consideration of the other types of intelligence.

If you go back into the origins of civilization, there have always been people like judges. Some societies have their elders or they have other titles, but the idea is that there's somebody you go to when you have a problem, and you go to this person to try to get some guidance based on the cultural and ethical values of the society.

ST: What values do you believe are needed in the judiciary currently?

JF: I don't think a lot of judges are good listeners. They're very good at listening for the facts that are relevant to the legal decision. They're very good at selective listening. They're not hearing the other dimensions of the communication. Take compassion, for example. Showing compassion doesn't mean that you don't follow the law or that you let somebody go who just did something terrible. It just means that you really try to understand what happened, and then you think about how to deal with that in a way that achieves justice. Compassion is a kind of intelligence and it's one that judges need to cultivate.

I learned this while representing people with chronic mental illnesses, who often couldn't communicate basic facts. I had to figure out what the actual problem was, and how I could help the person. It challenged me to be a good listener. I'd like to see judges have more social intelligence. I mean, you're never gonna know everything about everybody, but you should at least be curious about people.

ST: Can you tell me about your work with mindfulness?

JF: I've invested a lot of time in encouraging people to develop mindfulness. Some people do that through meditating, others do that through gratitude practices. There are lots of ways to become mindful, but the point of it is to not be so quick to judge. That seems like such a paradox because I'm talking about judges, but mindfulness is a way of helping you be reflective and deliberative instead of reactive.

If people go to court and they encounter a judge who's patient, mindful, caring, and doesn't disrespect them, it just makes all the difference in the world. People want to be heard, they want to be valued. I would get

letters from people who had lost cases before me, people who I'd sent to prison for a long time saying, "thank you for treating me well." It's one of those things that really resonates with people.

ST: How have meditation and mindfulness helped you in your own life?

JF: One of the biggest gifts meditation has given me is that when I get triggered, I know that it's happened. Being aware of this I can then stop and not do anything until I've had a chance to reflect. That just has made all the difference for me. It has made my relationships better with my family and friends.

When I have challenges in my life I can think, and be intentional in how I deal with them. Whatever it is you can do to create space between your reactivity and your reflective capacity, that's the goal.

ST: What advice would you give to college students looking to pursue law? Looking to pursue becoming a part of the judiciary specifically?

JF: I don't think anybody should go to a professional school without some sense that this is something they want to do. It's great to have an open mind about your ultimate goal because you're going to be exposed to things when you get there that will help you figure out better what you want to do. But if it is between going to law school or a different type of graduate school, if those are the kinds of things you're thinking about then it's really a good idea to ask yourself, who am I, what's my skill set? Where can I fulfill myself the most?

I think it's important to come at it like that rather than saying, where can I make the most money? Or where can I have the best lifestyle? It's not that that stuff doesn't matter, but that's not what, at the end of the day, is going to make you happy. If you are deciding whether you

want to go to law school, ask yourself if being an advocate for people, or being a problem solver of the kinds of problems that lawyers are called upon to solve, is a role that you think you could thrive in.

Judging was something that came to me late, but it came from experience. It was seeing the consequences of judges who weren't thoughtful and those who were. I became really good friends with a judge who I appeared before when I was a young lawyer, and what I will always remember about him is how kind he was. I said that this is what is needed in this place. That became an inspiration to me. Then, when I had a chance to be a judge I said, "Yeah, I'm going to do that."

**This interview has been edited for length and clarity.*

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