

How Are You Holding Up?



The State of Judges' Well-Being: A Report on the 2019 National Judicial Stress and Resiliency Survey

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Judges have always faced significant stressors, including the burden of consequential decision-making, exposure to disturbing evidence, and isolation. While every judicial assignment has its own mix of concerns, challenge is a constant. Recurrent experiences of serious stressors place judges at risk of burn-out, secondary trauma, poor mental and physical health, and substance use disorders.

Historically, such issues have been addressed primarily in the context of judicial fitness — that is, only when individual judges were suffering to the degree that they could no longer competently perform their duties would the system respond, and then usually for the purpose of discipline or removal.

In recent years, though, the focus has shifted. Judicial leaders, health professionals, judge and lawyer assistance programs, and social scientists have called for broader, nonpunitive attention to the stressors faced by all judges, not only those who have become impaired.

While fitness to serve remains a concern, today's judicial leaders are normalizing discussion of the difficult aspects of judicial work, with the goal of preventing and mitigating associated suffering. Indeed, in 2016 U.S. Supreme Court Chief Justice John Roberts dedicated his year-end report to federal district judges, who lend their time and talents to a job that “requires long hours, exacting skill, and intense devotion — while promising high stress, solitary confinement,

and guaranteed criticism.” In that same report, the Chief Justice noted that a “lumberjack saves time when he takes the time to sharpen his ax.”¹ Focusing on judicial stress allows us to fortify judicial resilience.

At around the same time, the National Task Force on Lawyer Well-Being released an influential report of its own, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*. Directed at seven key stakeholder groups, the 2017 report set out 44 recommendations for improving the well-being of law students, lawyers, and judges.² Its authors suggested that a “broad-based survey of the judiciary to determine the state of well-being and the prevalence of issues directly related to judicial fitness” would be an important next step.³ Answering the call, the American Bar Association Commission on Lawyer Assistance Programs assembled an interdisciplinary team — consisting of judges, attorneys, and a forensic psychologist — that constructed and disseminated the 2019 National Judicial Stress and Resiliency Survey, the largest of its type ever conducted in the United States. It sought to identify stressors unique to the judiciary, how those stressors affect individual judges, and strategies that judges have used to mitigate these stressors. Results are presented and discussed in detail in *Stress and Resiliency in the U.S. Judiciary*.⁴

With this article, we aim to encapsulate the core findings of the National Judicial Stress and Resiliency Survey for a judicial audience. We also offer

some thoughts on the cluster of challenges — a pandemic, racial justice reckoning, political turmoil, natural disasters, and economic pressures — that came to a head as the survey was going to press in 2020 and that continue to affect judges and courts today.

Who Responded to the National Judicial Stress and Resiliency Survey?

After a careful process of construction, testing, feedback, and ethics approval,⁵ links to the anonymous online survey were disseminated to judges around the United States through emails from the National Judicial College, individual states' lawyer and judge assistance programs, and chief justices of certain states. An impressive 1,034 judges responded, making this the largest wellness survey of U.S. judges to date. As dissemination was not centrally controlled, the response rate could not be calculated, and, to bolster anonymity, respondents were not identified by geographical region. Men represented 56.5 percent of the respondents, while 42.8 percent were women (the number of responses for other gender categories was too small to allow for meaningful statistical analysis). The most common age range was 60 to 69 (38.5 percent), followed by 50 to 59 (35.3 percent). Not surprisingly, given that most U.S. judicial systems fail to mirror the racial and ethnic diversity of U.S. society, white persons were strongly overrepresented (84.3 percent) and persons of color strongly underrepresented (about 5 percent identified as ►

TABLE 1: SOURCES OF STRESS ⁸

Rank	%	Item
1	79.7	Importance/impact of decisions
2	73.2	Heavy docket of cases
3	67.6	Unprepared attorneys
4	62.5	Self-represented litigants
5	58.1	Dealing repeatedly with same parties without addressing underlying issues
6	55.5	Public ignorance of the courts
7	53.5	Long hours of work without a break
8	50.3	Hearing contentious family law issues
9	50.3	Isolation in judicial service
10	49.5	Insufficient staff support
11	48.5	Increased incivility and lack of professionalism by counsel
12	47.9	Unable to hear as many cases as needed
13	47.3	Inadequate compensation structure
14	45.9	Cases involving severe trauma/horror
15	41.6	Running for office/reelection
16	41.4	Courthouse security concerns
17	37.2	Increased use of electronic media
18	37.1	Concern for personal or family safety
19	35.9	Staffing cuts and turnover
20	35.7	High-profile cases
21	35.4	Inadequate courthouse and courtroom facilities
22	32.2	Complex scientific or ethical issues
23	31.8	Lack of appreciation of my efforts; being passed over
24	30.7	Lack of privacy and pressure to maintain public image
25	29.7	Responsible to/for other judges in administration of the court
26	29.7	Prominent social issues
27	28.8	Staff anxiety about the future
28	28.5	Insufficient training in court technology systems
29	22.0	Political pressures
30	21.1	Needs and protection of jurors
31	20.8	Media monitoring and reporting
32	20.2	Adversarial relationships with other judges
33	19.6	Insufficient training in judicial responsibilities
34	19.6	Social media attacks
35	16.7	Conflicts among my staff
36	11.1	Pressure to raise funds for jurisdiction through fines and fees
37	10.3	Concern about impaired colleagues

Hispanic, and another 5 percent as African American; Native American, Asian, Pacific Islander/Hawaiian, and multicultural respondents each comprised less than 2 percent of the total).⁶

In terms of the type of judicial appointment, state court judges were most robustly represented (78.6 percent), followed distantly by local (10.1 percent) and administrative (8 percent) judges. Federal judges, tribal, and military judges all were underrepresented (about 2 percent or less each), likely a consequence of the state-focused dissemination channels. Nearly all respondents (90 percent) were in active, full-time judicial service. Nearly a third served in a leadership capacity, whether as a chief, administrative, or presiding judge. Trial judges were far more numerous than appellate judges. Some 75 percent of respondents presided only over trials or hearings; 19.8 percent presided over both appeals and trials/hearings; and 5.2 percent handled only appeals. About 30 percent reported involvement in problem-solving or restorative courts. The nature of the communities in which respondents served was varied: Frontier areas accounted for less than 1 percent; metropolitan, large metropolitan, and suburban were around 15 percent each; and rural and mixed settings were the most common, each around 25 percent. Finally, survey respondents reported a wide range of years on the bench, from one to 50 years, with an average of 11.4 years.

The robust size of the sample, combined with significant diversity in some domains, allows for meaningful analysis and increases confidence in the findings' ability to shed light on trends within the U.S. judiciary more generally. The large percentage of female respondents provides a valuable opportunity to examine gender

effects, a topic of great interest with a relatively thin empirical base. At the same time, generalizability is constricted by multiple factors, such as underrepresentation of important sectors of the judiciary. Further research is needed to fill these gaps, particularly with federal judges and all judges of color. The National Judicial Stress and Resiliency Survey nonetheless represents an important step toward building a data-grounded sense of the challenges judges face, how they are affected by those challenges, and how they — with institutional support — might try to meet those challenges.

What Job-related Stressors Did Judges Identify?

To measure the extent to which surveyed judges experience specific stressors, the authors of the National Judicial Stress and Resiliency Survey constructed a unique instrument called the Sources of Stress Scale. This customized scale drew on prior wellness surveys with legal professionals and the extant literature on judicial challenges. Its 37 items reflected areas such as workload, safety, trauma exposure, ethical concerns, and staff issues. For each item, judges were asked to characterize the degree to which it had caused them stress over the past 12 months, choosing between the options *not at all*, *slightly*, *moderately*, *very much*, and *extremely*. Responses were rank ordered based on frequency of selection (see Table 1).⁷

Table 1. Sources of Stress⁸

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(heavy docket). A cluster of recurrent scenarios triggering frustration followed. Handling unprepared attorneys and self-represented litigants can make judicial work more time-consuming and difficult, as judges cannot rely on experienced, competent counsel to hold up their end of the process. Judges can become dispirited and feel ineffectual when dealing repeatedly with the same parties without addressing the underlying issues. A lack of public awareness about the courts can increase in-court conflict (if, for example, litigants or witnesses have unrealistic expectations) and create a sense of being misunderstood or misjudged by the public one is trying to serve. Other items that reached response levels of about 50 percent — a level signifying that the issue affects many judges at least somewhat — were long hours of work without a break, hearing contentious family law issues, isolation, and insufficient staff support.

While the top-ten stressors were reported by half or more of the survey participants, it is important to note that significant percentages acknowledged a wide array of other challenges. Over half of the stressors had been experienced by at least a third of the

respondents. It is also noteworthy that no stressor emerged as unimportant. Interestingly, what historically has been the focus of judicial wellness efforts, impaired colleagues, was the least-chosen item — but it was still a concern for one in ten respondents. While certain recurrent stressors rose to the top of the pile, every single proposed stressor had touched a meaningful portion of this large judicial sample.

The Sources of Stress Scale thus provides one important window into the range of concerns that weigh on members of the judiciary today.

What Impacts — Physical, Mental, and Emotional — Did the Judges Identify?

The next customized measure, the Effects of Stress Scale, solicited respondents' views about the impacts that various stressors had on their physical, mental, and emotional health. The structure of the Effects of Stress Scale mirrored that of the Sources of Stress Scale. Respondents were asked to rate the degree to which a list of 34 items had affected them over the past 12 months, again choosing between the options *not at all*, *slightly*, *moderately*, ►

TABLE 2: EFFECTS OF STRESS ⁹

Rank	%	Item
1	38.8	Fatigue and low energy after hearing several cases in a row
2	36	Sleep disturbance (insufficient sleep, awakenings, daytime drowsiness)
3	32.3	Interference with attention and concentration; tend to be distracted
4	30.8	Ruminate or worry about cases after they are decided
5	27.6	Increased health concerns (high blood pressure, etc.)
6	26.3	Feel cynical about the effectiveness of the court
7	23	Feelings of apprehension or anxiety
8	22.9	Not having the initiative to do things I used to do
9	22.3	Have little time for my family
10	21.8	Physical discomfort such as headaches, stomach upset, etc.
11	21.3	Irritable, short tempered, sarcastic
12	21	Irritable over little things
13	20.3	I consider leaving the bench
14	20	Preoccupation with negative thoughts; few positive thoughts
15	19	Intrusive recall of traumatic images of people or evidence
16	17.8	Felt my work is no longer as meaningful
17	16.7	Can't wait for the day's work to end
18	16.7	Feel impatient when colleagues are delayed
19	15.4	Delay in responding to phone calls or emails
20	15.3	Depressed mood
21	14.6	Intolerant of anything that kept me from getting to what I was doing
22	13.3	I find it difficult to ask a respected colleague for critique of my work
23	12.6	Felt as though I have nothing to look forward to
24	11.2	My response(s) to pleas of urgency are increasingly numb
25	10.9	Feel out of touch with current legal issues and innovations
26	10.3	Used more alcohol than I should
27	9.7	More arguments or conflicts with family members
28	8.2	Contributed to marital difficulties
29	7.4	Difficulty breathing, excessively rapid breathing, breathless
30	6.9	Care little about the outcome of most trials
31	6.2	I tend to forget appointments or other plans
32	4.6	Worried that I might panic and lose control
33	3.5	Smoking or other uses of tobacco products
34	2.2	Had thoughts of injuring myself or suicide

very much, and extremely, and their responses were rank ordered in percent frequency of selection (see Table 2).

Table 2. Effects of Stress⁹

As with the Sources of Stress Scale, certain items were far more broadly selected than others, signaling some commonalities in experience. However, the top levels identified for the effects of stress were quite a bit lower than they had been for stressors. Fatigue and low energy after hearing several cases in a row, the most commonly endorsed item, was reported by just under 40 percent of respondents. This is not a small number, but it is smaller than the level of selection for each of the top-16 identified stressors. One implication of this spread is that challenge and coping with challenge are conceptually and practically separable, each deserving of close attention. The factors that can make judging stressful tend to be more uniform than the impacts of those factors on individual judges.

That said, those impacts remain important. In addition to the four-ten judges who reported some level of case-related fatigue, roughly one in three reported sleep disturbances; difficulties with attention, concentration, and distraction; and rumination and worry about cases, even after they were decided. These are the sorts of wear-and-tear consequences one might expect in workers charged with making consequential decisions under conditions that constrain or deplete the internal resources such decision-making requires. Further, this cluster of effects is interrelated: Sleep deficits can reduce awareness, concentration, and attention; they also cause fatigue, which then affects judgment and mood.¹⁰ The picture that emerged is of a judiciary being mentally worn down

— not the entire judiciary, to be sure, but a meaningful slice of it — with potential consequences for their work product.

Respondents also reported concerns with their physical health, though at lower levels. Just over a quarter had in the last year experienced increased health concerns such as high blood pressure, and about one in five experienced physical discomfort such as headaches.

Emotional health, specifically indicators of depression and anxiety, also surfaced as an area for concern. Survey items related to depression included: not having initiative (22.9 percent), preoccupation with negative thoughts (20 percent), work is no longer as meaningful (17.8 percent), can't wait for the day's work to end (16.7 percent), depressed mood (15.3 percent), nothing to look forward to (12.6 percent), feel increasingly numb to pleas of urgency (11.2 percent), and care little about trial outcomes (6.9 percent). Measures for anxiety were lower but still significant. Items that can signal anxiety included increased health concerns (27.6 percent), feelings of apprehension or anxiety (23 percent), having intrusive thoughts of traumatic images of people or evidence (19 percent), finding it difficult to ask a respected colleague for a critique of work (13.3 percent), experiencing breathing difficulties (7.4 percent), and being worried about panicking or losing control (4.6 percent).

These results do not suggest that the U.S. judiciary is suffering from widespread, high levels of clinically significant depression and anxiety. They do, however, give cause for concern. A finding that over one in five judges in this sample might meet at least one criterion for depressive disorder deserves our full attention. So, too, does the risk of clinically significant anxiety. Nearly 6 percent of the responding judges

The picture that emerged is of a judiciary being mentally worn down — not the entire judiciary, to be sure, but a meaningful slice of it — with potential consequences for their work product.

reported severe or extremely severe anxiety symptoms, and nearly one in four met criteria for stress at a level that could be debilitating. Judges' levels of clinically relevant distress appear to be a good deal lower than has been reported in practicing lawyers — that is the good news. But most judges wield far more power than most lawyers, and their distress can have commensurately greater consequences. Judges also face unique barriers to identification and treatment of mental health challenges, including stigma and reelection concerns. This aspect of the National Judicial Stress and Resiliency Survey does not justify a panic but does counsel meaningful, accessible investment in judges' mental health.

It is also worth noticing that male and female judges, when viewed in the aggregate, report their experiences of stress somewhat differently. Recall that respondents were asked to report both the degree to which they had experienced stress because of certain factors (e.g., heavy docket, isolation) and the degree to which they had been affected by specific effects of stress (e.g., irritability, depressed mood). For most items, female judges reported both significantly higher levels of stress and significantly higher levels of the negative effects of stress. The National Survey thus harmonizes with a larger body of research showing that gender is related to how people experience

and respond to stress.¹¹ Some stressors may cluster disproportionately on female judges. For example, female respondents were significantly more likely than their male colleagues to report having been “passed over” or experiencing a “lack of appreciation” for their efforts, which may reflect gender biases in the courts. Higher reported levels of certain effects — such as fatigue, physical discomfort, and sleep deficits — may reflect the general trend for women to internalize stress (that is, to feel the impacts inside one's own mind and body) while men are more prone to externalizing (that is, directing effects outside of the mind and body, such as through aggression). It may also be that women are more acculturated to acknowledge stress and its impact.¹² And, of course, all three explanations — as well as others we simply do not know enough about — could be true simultaneously. While such gender differences are not sufficiently understood and are far from universal, they are a reminder that judges are human first. Judges are deeply affected by socially salient categories such as gender and race and often will manifest patterns visible in broader populations.

What About Alcohol Use?

Problematic alcohol use can be an impact of stress (something a judge does in an effort to handle challenges), ▶

TABLE 3: AUDIT RISK LEVELS

Risk Level	Frequency	Percent
Lower risk	929	90.5
Increasing risk	81	7.9
Higher risk	11	1.1
Possible dependence	5	.5

a source of stress (something that heightens or creates personal and professional challenges), or both. As substance use had emerged as a significant issue in surveys of lawyers and law students, judicial respondents were also asked to complete the ten-item version of the Alcohol Use Disorders Identification Test (AUDIT), a widely used screening tool that identifies levels of risk for alcohol dependency.¹³ The results are presented in Table 3.

Table 3. AUDIT Risk Levels

As Table 3 shows, nearly all respondents completed the AUDIT, though they were permitted to skip any portions of the survey. That alone is meaningful, as it shows that they did not systematically avoid issues of alcohol use. That said, it remains possible that respondents underreported the frequency and volume of their drinking. Some people, and certainly some judges, do not wish to divulge their true alcohol use or do not believe it is a problem. Taking the judges’ responses at face value, the survey revealed levels of worrisome drinking that are markedly lower than have been found in lawyers, but slightly higher than have been found in the general population of adults over 25 years of age.¹⁴ Gender was relevant here, too: Male judges reported much higher rates of alcohol use than their female counterparts.

The AUDIT does not diagnose alcohol dependence. Rather, it sorts respondents into dependency risk levels: 90.5 percent of the judges fell into the “lower risk” range, while 9.5 percent were at “higher risk.” More specifically, for the higher-risk range, 7.9 percent were at “increasing risk,” 1.1 percent were at “higher risk,” and 0.5 percent were rated at “possible dependence.” The most concerning patterns of alcohol use were thus highly concentrated

in a very small group. Every judge in that small group, though, is a real person with real power and real needs. The survey also showed that, among the judges who consume alcohol at all, most are not daily drinkers and consumption tends to be capped at one or two drinks on any day they do drink. A small number of judges, though, indicated that they did have six or more drinks at a time daily, almost daily, or weekly — in other words, they binge drink. A very small handful experienced interference with their daily lives due to drinking, whether it was failing to meet their own or others’ expectations, needing a first drink in the morning to get going, blackouts, or feeling guilt or remorse around drinking.

As with mental health, then, the picture that emerged with problematic drinking is not one of crisis but, rather, a cause for concern. It is notable that nearly one in ten judges reports problematic alcohol use, and the fact that any were willing to report behaviors that indicate high dependency risk — with serious impacts on their lives and work — is striking. A serious problem in a small percentage of judges is still a serious problem.

What Stress-mitigation Strategies Did Judges Report Having Used (or Wanting to Use)?

The final customized measure in the National Survey — the Stress Management and Resiliency Scale — presented diverse practices that are commonly reported in stress-manage-

ment studies. The 24 stress-reduction items included physical (e.g., exercise) and mind-focused approaches (e.g., meditation), as well as recreation, good health practices, seeking social support, maintaining community involvement, and pursuing professional development. Judges were asked to indicate which stress-reduction steps they currently use (and how frequently), as well as the extent to which they would like to increase their use of that method. Results are shown in Table 4. Any discrepancy between current use (percent active) and desired use (percent interest) indicates an opportunity for growth. Those discrepancies, which we call the “resiliency gap,” are shown in the “difference rank” column of Table 4, with 1 representing the largest resiliency gap — that is, the space between desire and action.

The table presents the resiliency gaps in the order of their magnitude, with the biggest reported gaps first, to call particular attention to where respondent judges felt they had the greatest room for growth in their own wellness practices. That gap tends to be the greatest for the activities in which judges are less likely to engage at present. As a result of this ordering, then, the activities generally (though not uniformly) start with those that the surveyed judges report engaging in the least, and progress to those they report engaging in the most.

The wellness activities in which respondent judges reported the highest current participation — that is, those appearing at the bottom of the table — had to do with physical health: Healthy eating habits (99.4 percent) and physical exercise (98 percent) were ranked first and second, respectively. Focusing on body care is well-advised: Physical exercise, specifically, is highly effective in reducing stress, anxiety, and depres-

TABLE 4: STRESS MANAGEMENT AND RESILIENCY ACTIVITIES

Current Activity	% Active (Rank)	% Interest (Rank)	Difference Active/Interest	Difference Rank
Asking for peer support	36.8 (12)	83 (11)	46.2	1
Meditation, mindfulness, mind-quieting	35.9 (13)	81.4 (12)	45.5	2
Relaxation, stretching (yoga, tai chi, etc.)	51.3 (10)	89.7 (9)	38.4	3
Personally support and confront colleagues	54.7 (9)	89.6 (10)	34.9	4
Adequate sleep, better habits	66.4 (8)	96.9 (5)	30.5	5
Hobbies, pastimes	73 (6)	97.8 (3)	24.8	6
Diverse friends outside of the field	73.4 (5)	97.4 (4)	24.0	7
Spiritual, faith tradition	49.3 (11)	70.9 (13)	21.6	8
Involve staff in planning, scheduling, etc.	71.4 (7)	91.6 (8)	20.2	9
Social support of trusted people	76.6 (4)	96.3 (6)	19.7	10
Reading educational materials	77.3 (3)	94.5 (7)	17.2	11
Physical exercise (walk, jog, bike, swim)	82.3 (2)	98 (2)	15.7	12
Balanced nutrition, better meals	88.7 (1)	99.4 (1)	10.7	13

sion; improving sleep; and promoting resilience to stress. Attending directly to sleep hygiene is somewhat less commonly endorsed (66.4 percent) but is thematically linked to those other physical-health areas. Respondents seem to understand the connection: Healthy sleep practices rank relatively high in the resiliency gap (fifth), meaning that many judges would like to improve their sleep quantity and quality.

Another high-endorsement cluster involves nonwork activities and social connection, both of which would be expected to mitigate stress. Around three in four judges also read educational materials, seek and enjoy the social support of trusted persons in their lives, maintain friendships with a diversity of friends not in the legal world, and pursue a variety of hobbies and pastimes. Nearly half drew support from a faith or spiritual tradition. The same was true for physical-relaxation activities such as stretching, yoga, or tai chi; however, such activities ranked second in the resiliency gap. That gap was even wider for mindfulness and

meditation, which often are associated with yoga and tai chi but without their physical aspects. While just over a third engage in a mindfulness practice, a whopping 81.4 percent would like to.

Relationships within judicial work settings can be a source of stress or of support. And, indeed, survey responses are ambiguous on this front. A high percentage of judges (71.4 percent) reported efforts to involve staff in management matters such as scheduling and docketing, as well as in giving feedback. The survey itself did not frame staff engagement as a stress-reduction strategy but simply asked judges to characterize the extent to which they do that activity — and it is entirely possible that this high response rate simply reflects how frequently judges must rely on staff for such functions, rather than any positive or negative quality of experience associated with that reality. Similarly, just over half reported personally supporting and confronting colleagues, a measure of collegial engagement that can have either a positive or negative flavor (or sometimes one and some-

times the other). Markedly fewer — just over a third — reported asking for peer support themselves. Indeed, the largest resiliency gap is in asking for support from judicial peers. That gap was also wide for engagement with peers more generally. The picture that surfaced here is, again, mixed, but the data strongly suggest that judges believe they would benefit from closer interaction with judicial peers — whether positive, as when supporting them, or negative, as in confronting them — and would benefit significantly from using judicial peers for personal support.

Gender also had an impact on resiliency activities. Female judges reported a greater level of participation than males in activities related to mindfulness, relaxation, sleep, and social interaction. Male judges, for their part, reported a greater level of participation in activities related to physical health, spirituality, and reading educational materials. Men and women did not, however, differ in their reported levels of participation in hobbies, nutrition, interacting with diverse friends outside their field, and involving staff in planning, scheduling, and feedback.

This section of the National Survey shows these respondents — and, perhaps, the larger U.S. judiciary of which they are part — as active agents in their own well-being. Most report regularly engaging in practices that would be expected to mitigate some of the stresses of judicial life. Their physical self-care practices appear particularly strong, though sleep hygiene stands out as an area in which many would like to improve. Mental-hygiene practices such as meditation and mindfulness represent another such growth area, particularly for men. Finally, one critical space for wellness practice lies not outside the workplace but within it. ►

Judges appear to believe that they need each other as sources of feedback and support, and feel they are not rising to that need.

What Is the Impact of Recent Events?

As the authors of *Stress and Resiliency in the U.S. Judiciary* noted, shortly after their research was conducted judges were — like the remainder of U.S. society — “subjected to stress and tests of their resiliency,” because of (to name just a few factors) the COVID-19 pandemic, political unrest and violence following the 2020 presidential election, a series of natural disasters, and a racial reckoning following the murder of George Floyd at the hands of police officers.¹⁵ Judges are touched by these events, both professionally and personally. The Minnesota state-court judge who presided over the highly publicized murder trial of former officer Derek Chauvin, for example, recently spoke about the associated stress, lack of sleep, and need for post-trial recovery supports — not just for him but also for court staff, particularly staff of color. “Being a judge means managing misery every day,” he remarked,¹⁶ sometimes under a microscope in times of collective pain.

These events and their aftershocks continue to play out in our society and courts, and their impact on judges is worthy of concentrated study.¹⁷ Here we offer just a few observations on the impact of the COVID-19 pandemic.

In late 2020 and into 2021, two of the original authors of the National Judicial Stress and Resiliency Survey (Yetter and Swenson) examined the emerging literature on pandemic responses, interviewed several state-court judges on the faculty of the National Judicial College, and conducted a poll during a judicial presentation.¹⁸ They found

While judges need support in enhancing their resiliency in the face of workplace challenges, it is also crucial to consider ways in which we might reduce the prevalence or intensity of certain stressors. Nor should individual judges shoulder the entire burden of fortifying their wellness. Rather, a wide coalition of stakeholders is required to make the courts healthy places to work.

strong indications that, at that time, the pandemic was exacerbating many of the stresses identified in the National Survey. Many courts shut down nearly all physical presence, curtailed many operations and programs, and experienced sudden staff shortages. Judges had to pivot quickly to an entirely new set of procedures, many of them involving online platforms with which they were not previously familiar. This unplanned reliance on “Zoom court” upended dress codes and conduct norms; introduced distractions; confused the often-unprepared lawyers, parties, and witnesses; and required additional time and explanation. As one judge noted, “‘Zoom fatigue’ is real: it’s much more taxing, exhausting, and draining to do virtual court for 7+ hours every day.”¹⁹ The normal roster of mental health treatment and other supportive services for litigants was significantly reduced.

Cases stalled and backed up, creating a backlog from which judges across the country are still working to dig out.

While they were managing these highly challenging changes to the work environment, judges also were trying to keep themselves, their staff, and their families safe in uncertain times. In combination, these pressures appear to have increased judges’ experience of isolation, depression, anxiety, and increased intake of food or alcohol.²⁰ However, many judges also appeared to be taking active steps to increase their self-care. Indeed, the pandemic may have been a catalyst for some to close the “resiliency gaps” identified in the National Survey. Some judges reported taking more breaks, walking more, eating more healthfully, participating in informal peer networking, and journaling. The shock of pandemic conditions may also have increased

awareness of sleep hygiene, ways to counter isolation, focus on positive experiences, and resiliency practices such as mindfulness.

While it is far too soon to fully characterize the impacts of the COVID-19 pandemic and the many other social stressors with which it shared the stage, these preliminary data remind us that stress and resilience are linked. Increases in the former can be used to spur the healthy coping behaviors that promote the latter.

How Can Individual Judges, Court Systems, and Others Improve Judicial Wellness?

The National Survey opens a much-needed window into judicial stress, the impacts of such stress, particular dangers to judicial well-being and fitness to serve, and the steps that judges currently take and would like to take in service of their mental, physical, and emotional health. While further research is sorely needed, particularly with the judicial populations least represented in the survey responses, the results suggest a variety of paths forward.

Efforts to fortify judicial wellness should not be entirely reactive. While judges need support in enhancing their resiliency in the face of workplace challenges, it is also crucial to consider ways in which we might reduce the prevalence or intensity of certain stressors. Nor should individual judges shoulder the entire burden of fortifying their wellness, whether proactively or reactively. Rather, a wide coalition of stakeholders is required to make the courts healthy places to work; build structures within which judges can access support to help them cope well with the irreducible baseline of stress that attends the work; and provide nonpunitive systems for identifying,

helping, and — as a last resort — removing judges whose wellness issues threaten the integrity of the courts.

In this concluding section we will briefly outline some of the most important action areas suggested by the National Survey.

- » Judicial leaders (such as chief judges and justices), as well as court administrators, should communicate and demonstrate by example that judicial well-being is a priority.
 - Consider convening a judicial wellness task force for jurisdictions without one.
 - Ensure that all judges have access to, and awareness of, a full array of free or affordable wellness programs and services, including counseling through confidential lawyer and judge assistance programs for themselves and their families.
 - Create a culture in which use of wellness resources is normalized and praised.
 - Create regular opportunities for judges to connect meaningfully with peers.
 - Conduct docket, staffing, workflow, and other studies that could identify mechanisms to reduce caseload pressures and afford judges the minimum time and resources they need to reach thoughtful decisions. Advocate for funding and structural changes necessary to that end, including strategic use of senior judge resources.
 - Make use of existing expertise, such as that of the National Center for State Courts and the Federal Judicial Center, to assist in these steps.
- » Judicial regulators should institute disciplinary diversion rules for judges with potential fitness impairments, allowing some at-risk judges to continue their careers by connecting them with interventions that could resolve underlying issues such as depression, anxiety, burnout, vicarious trauma, or substance use.
- » Judicial educators should routinely integrate a wide variety of wellness materials and activities into their offerings and utilize the knowledge of their jurisdiction's lawyer and judge assistance program.
 - Include a particularly robust focus on anticipating and responding productively to the predictable stressors of the job in new judges' trainings.
 - Develop fora in which judges can confidentially seek and offer peer support — for example, through small-group sessions and interactive judge-led discussions.
 - Conduct anonymous surveys, both quantitative and qualitative, to learn about the most salient stressors, impacts, and resilience gaps in particular jurisdictions.
- » Judges, whether individually or in groups, should lead the way in learning about their own wellness challenges and needs; educate judicial and court leadership, regulators, and educators about those challenges and needs; and support one another.
 - Identify stressors that are beyond one's locus of control — for example, caseload pressures that cannot be relieved through more efficient chambers management — and articulate them to those with power to affect them.
 - Identify and commit to steps that are within one's locus of control ►

— for example, adopting healthy behaviors that can mitigate impacts on one’s mental, emotional, and physical health — and seek support for those steps from family, friends, peers, and/or professionals.

- Be a cultural changemaker. Collaborate with judicial peers to normalize discussions of the many challenges of this work, cultivate gratitude for its many positive aspects, and grow habits of meaningful mutual support.

Many stakeholders already are hard at work on these steps, and they deserve recognition, funding, and institutional buy-in.

Conclusion

The National Judicial Stress and Resiliency Survey is one of the largest and most representative surveys of U.S. judges on the topic of stress and its effects to date. It should not be the last; there is much left to learn. What we know today, though, provides both a call to, and a road map for, continued action. Judicial work should not itself impose the sorts of serious, continual stressors that can impair competent performance of that work. To the extent that some — indeed, many — recurrent stressors are inherent in judicial work, judges should be equipped with the training, services, and support they need to cope with them well. The quality of justice meted out in our courts every day and the quality of life enjoyed by the public servants carrying out that important work depend on it.



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* This article is adapted from David Swenson et al., *Stress and Resiliency in the U.S. Judiciary*, J. PRO. LAW., 1 (2020), <https://www.mncl.org/wp-content/uploads/2022/09/journal-of-the-professional-lawyer-2020.pdf>. Professor Maroney is the primary author of this *Judicature* adaptation but was not among the original authors, who are David Swenson, Joan Bibelhausen, Bree Buchanan, David Shaheed, and Katheryn Yetter. Dr. Marc is not among the original authors but contributed post-publication to analysis of gender dynamics in survey responses.

¹ JOHN G. ROBERTS, 2016 YEAR-END REPORT ON THE FEDERAL JUDICIARY 7, <https://www.supremecourt.gov/publicinfo/year-end/2016year-endreport.pdf>.

² Stakeholder groups were the judiciary, regulators, law schools, legal employers, bar associations, malpractice carriers, and lawyer assistance programs. NATIONAL TASK FORCE ON LAWYER WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE (2017), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer_well_being_report_final_authcheckdam.pdf [hereinafter NATIONAL TASK FORCE REPORT]. For the predecessor to The Path to Lawyer Well-Being, see Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION

MED. 46 (2016). The Path to Lawyer Well-Being report was developed to ensure that the findings from the Krill, Johnson, and Albert research spur meaningful change. A similar survey of law students was released during this same era. See Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016) [hereinafter *Suffering in Silence*].

³ See NATIONAL TASK FORCE REPORT, *supra* note 2, at 23.

⁴ *Stress and Resiliency in the U.S. Judiciary*, *supra* note *. We strongly encourage those seeking greater detail and discussion to read the entire report, which includes numerous appendices containing, for example, a copy of the entire survey instrument and a listing of all those who participated in the survey’s development. While this article is lightly footnoted by design, the full publication reflects robust citation to the relevant literature.

⁵ Approval was provided by the institutional review board of the College of St. Scholastica (where Dr. Swenson is a professor), which has responsibility for ensuring protection of the safety, rights, and welfare of human subjects such as the survey’s anonymous judicial respondents.

⁶ It is surprisingly difficult to know the demographic parameters of the judiciary within the United States, given the diversity of jurisdic-

tions within which they sit and the lack of a common mechanism for collection and sharing of such data. The data gap is particularly acute for state-court judges, who represent by far the largest group of respondents to the *National Judicial Stress and Resiliency Survey*. The extant data, though, suggest that the demographics of National Survey respondents roughly mirror those in the state judiciary more generally.

According to a 2017 study, state-court judges are overwhelmingly white. Women are underrepresented. White men are the most overrepresented and women of color are the most underrepresented groups within state judiciaries. Tracey E. George & Albert H. Yoon, *Measuring Justice in State Courts: The Demographics of the State Judiciary*, 70 VAND. L. REV. 1887 (2017).

⁷ The first column of Table 1 represents the rank ordering that emerged from analysis of all responses, with 1 being the most frequently noted and 37 the least. The second column represents the percentage of respondents that characterized that item as affecting them at least “moderately.” The third column shows the item as the survey respondents saw it.

⁸ In the corresponding table in *Stress and Resiliency in the U.S. Judiciary*, *supra* note *, the 13th and 14th ranked items were mistakenly reversed and the frequency of response for each was incorrectly reported. Those errors are corrected in this table.

⁹ In the corresponding table in *Stress and Resiliency in the U.S. Judiciary*, *supra* note *, one item (“cynical about effectiveness of the court”) was mistakenly omitted and the remaining

items misnumbered. Those errors are corrected in this table. As in Table 1, the second column represents the percentage of respondents that characterized that item as affecting them at least “moderately.”

¹⁰ Goran Medic, Micheline Wille, & Michael E.H. Hemels, *Short- and Long-Term Health Consequences of Sleep Disruption*, 9 NATURE & SCI. SLEEP 151 (2017).

¹¹ Sara Rosenfield, Kelly Kato, & Dena Smith, *Gender and Mental Health*, in A HANDBOOK FOR THE STUDY OF MENTAL HEALTH 266–281 (3d ed., Teresa L. Scheid & Eric R. Wright eds. 2017); STRESS AND GENDER, STRESS IN AMERICA, AMERICAN PSYCHOLOGICAL ASSOCIATION (2011), <https://www.apa.org/news/press/releases/stress/2011/gender>.

¹² *Id.* See also Dena T. Smith, Dawne M. Mouzon, & Marta Elliot, *Reviewing the Assumptions About Men’s Mental Health: An Exploration of the Gender Binary*, 12 AM. J. MEN’S HEALTH 78 (2018).

¹³ THOMAS F. BABOR ET AL., WORLD HEALTH ORGANIZATION, AUDIT: THE ALCOHOL USE DISORDERS IDENTIFICATION TEST: GUIDELINES FOR USE IN PRIMARY HEALTH CARE (2001), https://apps.who.int/iris/bitstream/handle/10665/67205/WHO_MSD_MSB_01.6a.pdf?sequence=1.

¹⁴ See generally *Suffering in Silence*, *supra* note 2 (finding lawyers’ level of problematic drinking to be 20.6 percent). Problematic drinking in the general population of adults over 25 years of age in the past year, last measured in 2018, was 6.6 percent in 2018. U.S. DEPT. OF HEALTH & HUM. SERVS., SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., 2018 NATIONAL SURVEY ON DRUG USE AND HEALTH: DETAILED TABLES, TABLE 5.2B (2018), <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHDetailedTabs2018R2/NSDUH-DetTabsSect5pe2018.htm>. The 2020 SAMHSA survey showed a marked increase in alcohol use for the same age group, rising from 6.6 percent to 10.3 percent. See U.S. DEPT. OF HEALTH & HUM. SERVS., SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., 2020 NATIONAL SURVEY ON DRUG USE AND HEALTH: DETAILED TABLES (2020), <https://www.samhsa.gov/data/report/2020-nsduh-detailed-tables>. The percentage among judges may have risen as well in the early months of the pandemic.

¹⁵ *Stress and Resiliency in the U.S. Judiciary*, *supra* note *, at 1.

¹⁶ Peter Cahill, Judge, Fall 2022 Justice Jackson Lecture at The National Judicial College (Oct. 10, 2022) (available at <https://www.judges.org/news-and-info/watch-chauvin-trial-judge-peter-cahill-deliver-fall-2022-justice-jackson-lecture/>).

¹⁷ Professor Maroney’s interview and survey research with sitting U.S. judges touches on many of these issues, including the ways in which Black judges are differentially affected by racist violence and discrimination. See Terry A. Maroney, *What Judges Feel: How Emotions Shape Justice* (forthcoming). This is a deeply under-researched area deserving far greater attention.

¹⁸ Kathryn Yetter & David X. Swenson, *Judicial Stress and Resiliency Survey: COVID-19 Update*, 57 CT. REV. 4 (2021).

¹⁹ *Id.* at 5.

²⁰ *Stress and Resiliency in the U.S. Judiciary*, *supra* note *, at 1 & n.2.

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