

Session 6/Thursday PM

Mindful Moment #10 (Elizabeth/5 min.)

Talking About the IAT (Jim/10 min.)

What Have We Learned? (all instructors/10 min.)

About the legal approach judges use to make decisions? _____

About using mindfulness to strengthen your use of that approach? _____

About the barriers to using that approach? _____

About strategies for avoiding/recognizing/managing those barriers? _____

Practicing What You've Learned

Small Group Exercise (3-person groups/3 min. solo/10 min./10 min. to process)

You've arrived early for your shift, just as the magistrate on duty (at the end of a long shift) begins to talk with a plaintiff wishing to take out an ex parte DVPO. You know the plaintiff has been in before for a DVPO, and that the couple reconciled before the 10-day hearing even took place. (The plaintiff dismissed the case.) On this occasion, she is crying and clearly distraught. Her mom and her preschool child are with her. She tells the magistrate that she's recently left her husband, who told her if she did that, he'd make sure that "no judge is ever going to get a chance to decide custody." Her mom frequently interjects to correct/add to her daughter's story. The grandmother whispers loudly to the magistrate that the defendant "has always said it's not even his child." No one shows any obvious sign of injury. The child is becoming restless and looks upset, the grandmother is sometimes helpful but sometimes confusing with her frequent additions and interruptions, and the plaintiff is telling the magistrate she's really afraid her husband may hurt or kill their child.

Got the picture? Now, remember, you're just watching, but you've been in this magistrate's position plenty of times. And notice that I am not asking you what the magistrate should do – or what you would do. This exercise is not focused on the law. **Instead, we want you to practice using your calm, slow-thinking brain to make some guesses about what is likely going on in the magistrate's fast-thinking brain.** Write down the first three things that occur to you below.

1. _____
2. _____
3. _____

As you know by now, a human brain in this situation will automatically try to simplify the task, save energy, and dodge complexity, while at the same time trying to find a way to feel okay about doing so. Allow the following specific questions help you imagine other factors that might influence the magistrate you're observing:

What unconscious mental short-cuts, including implicit associations, might the brain resort to in this endeavor? [Example: "If she were really concerned about the child, she wouldn't have brought him with her here."]

What are some psychological factors that might interfere with proper judicial decision-making here? We are all influenced by our unique circumstances and experiences, and this question

asks you to identify some that might affect the magistrate in this circumstance. A couple of examples are decision fatigue or a personal history related to DV.

Environmental factors can play a part as well. Use your imagination – and your own knowledge of the experience of others – to come with a couple of specific examples. An example might be recent news coverage of a tragic case, or a supervisory authority who instructed magistrates “not to overreact” to requests for *ex parte* DVPOs. Make your examples specific.

Give a specific example of a mindfulness tool the magistrate could use to focus attention on the appropriate legal analysis despite these extra-judicial factors.

Demonstration: Putting it All Together (25 min.)

We will be using the following set of facts for the exercise on the next page:

1. The defendant is Jose Hernandez, a 44-year-old United States citizen of Mexican ancestry.
2. He has been charged with DWI after being stopped at a checkpoint on a road connecting a commercial strip with several bars to a residential area where he lives.
3. He weaved as he approached the checkpoint, and officers noticed an odor of alcohol and bloodshot eyes when he stopped.
4. He admitted having had six beers at a bar, and he was arrested and blew a .11.
5. He has a prior DWI, nine years earlier.
6. He works sporadically as a painter.
7. He’s lived in town for five years, having moved from Kentucky to live with a woman he met online.
8. They have since broken up, and he lives alone.

9. Other than his work van, he owns nothing of value.
10. The local MADD chapter is aware of the checkpoint and you expect a MADD member to obtain a copy of all release orders signed in connection with drivers apprehended at the checkpoint.
11. DWI has been in the local news recently after a defendant left jail and immediately re-offended, resulting in a six-year-old child being hospitalized with serious injuries

Our Task is to set conditions of pretrial release. (Delayed release because of intoxication is not an issue in this case, in which the defendant is relatively sober when brought before you.)

The Law

GS 15A-534(a): *The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless s/he determines that such release:*

- *will not reasonably assure the appearance of the defendant as required;*
- *will pose a danger of injury to any person; or*
- *or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.*

The Ultimate Question: Is a secured bond necessary to achieve the statutory objectives?

Step 1: Check your thinking.

What tools might I use for this? _____

Step 2: Consciously identify potential extra-judicial influences on my decision.

Step 3: What information in this case is relevant to the likelihood of the defendant's appearance at trial?

Step 4: What information in this case is relevant to the likelihood of the defendant's posing a danger of injury to someone?

Break & 2-Minute Mindful Movement (7 min.)

Now It's Your Turn (3-person groups/6 min. solo/15 small group/15 to process)

Your Task is to determine PC in response to a citizen's request.

The Law:

§ 50B-4.1. Violation of valid protective order. (a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

The Evidence:

The Order:

Contains the standard language directing Sam to stay away from his former residence. The DVPO also restricts Sam's visitation of Sammie, requiring visits to take place at Sam's parents' home. The DVPO indicates that Sam made a verbal threat against Sammie when Kendra first told him she wanted to separate.

Kendra's testimony:

She and Sam are not married but have lived together for 5 years and have a three-year-old son, Solomon.

Last month, Kendra filed an action seeking custody of Sammie and a DVPO, which was issued, resulting in Sam having to leave the home.

She and Sam have been going to couples counseling, during which Sam asked her to allow him to accompany her and Sammie when they went trick-or-treating Wednesday night. (Today is Friday.) She tells you that everything started off well, but that Sam became angry when she refused to admit him to the residence at the end of the evening. She says he lost his temper, tried to shove her off the porch, called her an "f***in' bitch" and stomped off. She wasn't injured, but the incident frightened Solomon, and her too.

Your own personal knowledge and observations:

Kendra has a faint odor of alcohol on her breath, although she shows no visible indication of being impaired.

She has Solomon with her, and you notice that he seems to be a happy child, curious about his surroundings and sweetly affectionate toward Kendra.

Kendra has appeared in your office on three previous occasions asking that a warrant be issued against Sam for assault and communicating threats. A warrant was issued on two

of those occasions, but Kendra changed her mind and refused to cooperate, resulting in the charges being dropped. On both occasions, Kendra had visible minor injuries – and so did Sam. On her second visit, the magistrate questioned Kendra about this, and she stated that she attempted to protect herself by resisting when Sam grabbed her, causing his arm to be scratched.

Making a Decision:

Working on your own:

Take a moment to mentally review the steps you've learned to take to make this decision. Make brief notes below regarding your first step.

Strike-through facts above that you would not consider in making this decision.

Underline facts above facts that you *would consider* in making this decision.

Put brackets around facts your fast-thinking mind might react to – but your slow-thinking mind does not.

STOP HERE. DO NOT TURN THE PAGE UNTIL YOU GO TO SMALL GROUP.

Small Group Discussion: Compare notes on

1. What you wrote down as your first step. Did you skip “Step 1: “Check your thinking?” Is this step really necessary for you to make a good decision when you’re hearing a case like this?

2. Which facts did you underline as relevant to your decision?

3. Which facts did you readily identify as not relevant?

4. Which facts are bracketed, indicating possible hazards? (Note: You need not share any part of your response which you prefer to keep private.)

5. Which of the tools you’ve learned about do you plan to try as a way of managing hazards like these?

6. Is there additional information you need to decide whether to issue a warrant in this case? If so, what questions would you ask?

Making a Plan (Elizabeth/10 min.)

Mindful Moment (Elizabeth/5 min.)
