

TAB 11:

Best Mental

Health Practices

While Managing

Capital Cases

**Best Mental Health Practices While
Managing Capital Cases**

Cathy Killian
LPC, LCAS, CCS, CCH
Clinical Director

NC Lawyer Assistance Program

Being a Judge in a Capital Case...

- carries a major responsibility that requires a great deal of wisdom and integrity
- can be fulfilling and disheartening
- requires you to function effectively under very difficult and stressful circumstances
- requires you to make many decisions quickly, efficiently, and wisely every day
- involves cases that can be lengthy

Being a Judge in a Capital Case...

- exposes you to evidence that is often graphic and traumatic
- heightened attention from public due to views (from either side) on death penalty
- cameras in the courtroom can make everyone involved more unpredictable
- entails heightened media involvement which often seems omnipotent

Stanford University study

- “press coverage magnifies the influence of voters’ penal preferences on criminal sentencing decisions” of elected judges for severe violent crimes (Lim, Snyder & Stromberg, 2010)
- when a case receives a large amount of media coverage, elected judges tend to sentence more punitively than if the case is less publicized



Judicial Oath

“I, New T. Judgin, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as The Judge under the Constitution and laws of the United States.
So help me God.”



**“Law is reason, free from passion.
Thus, judges should apply the law to
the facts at hand and rule with
reason and precedent and remain
dispassionate.”**

Judicial Dispassion

“to call a judge emotional is
a stinging insult, signifying
a failure of discipline,
impartiality, and reason.”

Thomas Hobbes


The ideal judge
is “divested of all
fear, anger,
hatred, love, and
compassion.”




Judges Job

Part of judges job is to manage the emotions of others

- need to be sensitive/responsive to the victims and families (both sides)
- orchestrate the exposure that other people have to the inevitable emotional triggers purposefully imposed by both the defense and the prosecution
- filter out emotional influences
- instruct jurors how to handle their emotions



You need to both *experience* and *pay attention to* your own reactions so they can serve as a rough barometer to what could be expected from the jury and others in the courtroom






Dispassionate

- passionate is when we are influenced by strong emotion
- when dispassionate we may still have the strong emotion, but our decision-making and actions are not swayed by it
- we have self-awareness and self-control
- we are not influenced by strong emotion and thus can be unbiased, impartial, rational and cool
- we can assess situations free from bias and prejudices
- we can make sense of data/facts/evidence and arrive at sensible decisions

“Dispassionate objectivity is itself a passion, for the real and for the truth.”
~ Abraham Maslow

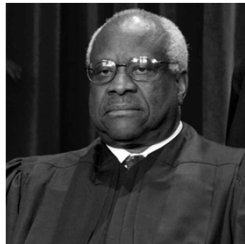
Emotional Impact

Bad News	Good News
	



Serak to Spock...

"Emotions run deep within our race. In many ways more deeply than in humans. Logic offers a serenity humans seldom experience. You have control of feelings so they do not control you."



Judge Clarence Thomas

"some cases . . .will drive you to your knees."

Expected Impact

- "Anger is the quintessentially judicial emotion. It involves appraisal of wrongdoing, attribution of blame, and assignment of punishment — precisely what we ask of judges."
- get angry at lawyers, defendants, witnesses, other participants...justifiably so because they are disrespectful, lie, buck the court's power, insult the judge or the legal system, act out in court
- express anger at sentencing...it is the most likely to be unapologetically acknowledged, its expression both deliberate and controlled



Loss of Control

- "judges are control freaks" so they don't handle not having control very well
- in many cases the appointed attorneys are overworked, underpaid, or lacking the trial experience required for death penalty cases
- sometimes you have to just sit up there and watch justice fail right in front of you and nothing you can do about it
- have ultimate control over your courtroom, but you can't effect/change what happened or the outcome...goes against what lawyers really do

Decision Fatigue

- takes mental energy to make decisions...more choices you make throughout the day, the harder each one becomes for your brain
- once depleted, we go to the path of least resistance or fall back on the "default"
- the brain's regulatory powers weaken, feel more frustration, irritation, and anger than usual, more impulsive, more "whatever"
- toughest decisions are the ones with the most options...when confronted early on with these, we become fatigued more quickly
- research looked at 1,100 parole judge decisions over the course of a year...prisoners who appeared early in the day received parole about 70% of the time, while those that came late in the evening had less than 10% chance at landing parole...it's the safer, easier call

Burnout


- a state of emotional, mental, and physical exhaustion caused by excessive and prolonged stress
- gradual process that occurs over an extended period of time
- feeling drained, nothing left to give, lack of achievement, lack of purpose, loss sense of hope, disillusioned, detached
- as the stress continues, you begin to lose the interest or motivation that led you to become a judge in the first place
- "may harden into a fixed element of one's outlook and depersonalization of cases one must deal with"

Compassion Fatigue or Vicarious Trauma

- cumulative physical/emotional/psychological effects of continual exposure to traumatic or distressing stories/events when working in a helping capacity where demands outweigh resources
- impacts mirror-neurons, part of our brain which responds neurologically-emotionally to other people's distress as an involuntary response...even when we might not have any conscious awareness of the response
- can occur due to exposure on one case or can be due to a "cumulative" level of trauma
- can cause you to question your professional competence and effectiveness

Can change your world view

- it's a disintegrating ray gun aimed at your sense of who you are, what you think the world is like, and where you find meaning in the world
- shrinks your view screen and perspective so it becomes normal to think life is only about violence, murder, abuse, torture, pain




Behavioral Suppression
inhibition of facial expressions (grimacing, eye rolling), verbalizations (groaning), bodily movement (hands or finger pointing)



Behavioral Suppression

mask true emotional state with an expression reflecting either neutrality (a "poker face") or a desired one (a fake smile)



Behavioral Suppression

- is effortful, takes energy...so often necessary but generally costly
- impairs memory for information
- logical reasoning suffers...temporarily stupid
- may not show it, but you will feel it
- generally will blunt, but not eliminate, positive emotions but has no such effect for negative ones

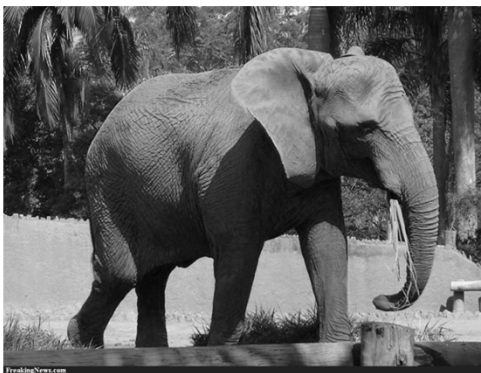
Suppression of Feelings

- drastically impacts your health...elevated heart rate/BP, heart disease in general, gastrointestinal problems, suppresses your immune system
- combining greater physical reactivity with conscious disavowal of its source creates a reaction in search of a cause, meaning a person can easily latch onto an unrelated, and sometimes innocent, target



Suppression of Feelings

- denies the brain the freedom to work properly and efficiently
- takes energy and effort, thus cognitively costly, so it may diminish decision making quality, create impulsive decision making, impair memory, impair performance on logical tasks, lead to overly simplistic judgments
- unable to see reality for what it is because a false sense of reality has been created by the ongoing/continuous restraining of feelings
- can increase the frequency and intrusiveness of emotional thoughts..."ironic rebound"




Suppression of Feelings

- can develop a “repressive coping style...characterized by (among other things) rigidity and arrogance
- makes you far less able to handle emotions when you do allow yourself to experience them
- can result in severe depression, anxiety and/or substance abuse – which are already the BIG 3 for lawyers/judges
- these rebound and reactivity effects are especially pronounced when a person is under conditions of stress and cognitive load

Blocking Out Feelings

- develop rhino skin to keep out the bad



- block out the bad, you block out the good too

Self Awareness is #1

- awareness is not sufficient to ensure that judges keep emotional responses in check, but it is a necessary first step
- recognize your humanness and it's limitations, which **are not weaknesses**
- emotional awareness means being able to recognize emotions that you experience, and understand what you think and do as a result of that feeling
- recognize and understand your emotions then you have the power to control them

Emotional Intelligence



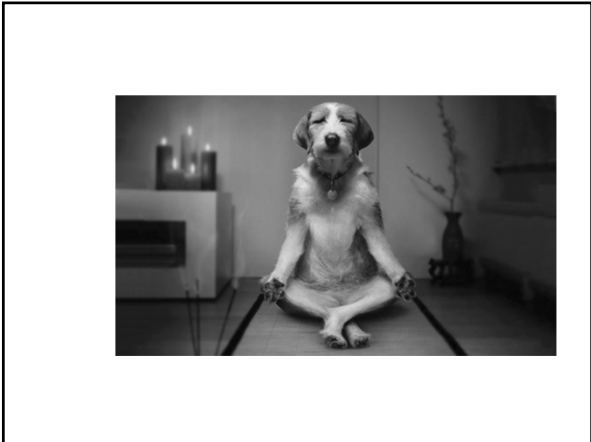
- ability to harness emotions and apply them to tasks like thinking and problem solving
- ability to manage/adjust emotions to adapt to the specific environment at that point in time
- by regulating your own emotions you can regulate the emotions of others

Cognitive Reappraisal

- reframe or reappraise a situation or event to decrease the emotional response to it...focus on positives or minimize the negatives
- allow other ways of making sense of a situation to *coexist* with the more emotionally triggering aspects
- allows emotions to lose their intensity and thus their impact
- works well in situations where you have no control, per se
- treat vivid stimuli as professionally relevant rather than personally provocative...defense and prosecution attorneys complicate this struggle by doing their best to personalize both defendant and victim, bring the victim's presence into the courtroom so that jurors emotionally connect with each of them

Cognitive Reappraisal

- using your professional lens to view things objectively and analytically rather than as personally or emotionally
- focus on your role...interpreting the law, assessing evidence, ruling on motions and objections, making sure proper procedures are followed, United States Circuit Judge Denny Chin stated: "Empathy, of course, should play no role in a judge's determination of *what* the law is...We do not determine the law or decide cases based on "feelings."
- enormous value to judges because it asks you to think differently, instead of simply commanding you to feel differently



Mindfulness

- the core practice of mindfulness involves focusing awareness on a present experience, which involves learning to accept one's emotions without getting engulfed by them
- builds up the mental muscles you use to keep emotions in their place so that they don't escalate
- don't focus on past or worry about future
- literally changes the brain...neuroscientists have also shown that practicing mindfulness affects brain areas related to perception, body awareness, pain tolerance, emotion regulation, introspection, complex thinking, and sense of self...moves us away from anger, anxiety, etc. toward a sense of calm and well-being

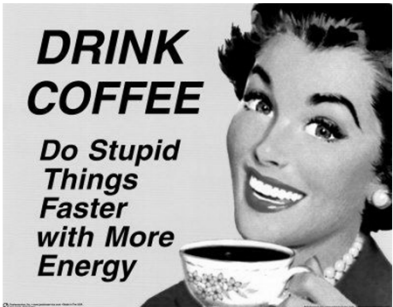
Generally Speaking...

- coping with emotional challenges is an unrecognized aspect of judges' work
- the professional lens sometimes will simply crack
- always expect the unexpected...something will always happen
- recognize that stress will take its toll on everyone during the course of a long hard trial
- an emotionally well-adjusted judge is likely to have better physical health, happier work-life balance, and more functional personal relationships...and vice versa
- start with the very basic parts of your daily life...food, sleep, exercise, breathing...brain needs nutrition, oxygen, rest to function properly...exercise is the best way to deal with stress
- eat properly and regularly...glucose alone will at least mitigate the effects of decision fatigue and sometimes completely reverse it

Generally Speaking...

“Even the wisest people won’t make good choices when they’re not rested and their glucose is low. That’s why the truly wise don’t restructure the company at 4 p.m. They don’t make major commitments during the cocktail hour. And if a decision must be made late in the day, they know not to do it on an empty stomach. The best decision makers, are the ones who know when *not* to trust themselves.”

~ Psychologist Roy Baumeister



**DRINK
COFFEE**

*Do Stupid
Things
Faster
with More
Energy*



welcome to yoga class


MEDITATION
BURNING
BLOOD
READ
TALK
HEALING
SUCCESS
MEDITATION
JOY
MONEY
CALM

By Andrew Rossiter

Generally Speaking...

- establish habits that eliminate the mental effort of making choices
- Aristotle approach to anger...feeling anger "at the right times, with reference to the right objects, towards the right people, with the right motive, and in the right way."

*Grant me the serenity to
 accept the things I cannot
 change
 Change the things I can,
 and the wisdom to know the
 difference.
 ~ Neibuhr*



Lord, Grant me the
 serenity to accept stupid
 people the way
 they are,
 courage to
 maintain my
 self-control, and
 wisdom to know
 that if I act on it,
I will go to Jail..

Generally Speaking...

- convey expectations, any special rules that you expect to be followed, or any pet peeves to provide continuity and predictability and thus minimize some of the drama
- recognize and address the isolation - beforehand
- plan ahead with family/friends...realistic expectations go a long way toward them being understanding and supportive
- affirm that understanding and support of your family/friends
- affirm your identity as a person...when you become a judge even close friends may refer to you as "Judge" instead of "John/Jane" out of respect for the office and judicial institution, but constantly being referred to by title reinforces *what you do* rather than *who you are*
- affirm your emotions

“Were judges truly to suppress all emotion, then, they would lose something of importance. They would lose an important source of engagement with, and commitment to, the reality of their work.”

Generally Speaking...

- call someone or several people for feedback, insight, and support...talking about how you are feeling enhances self-knowledge and confidence, allows you to approach the emotional challenges of the job with openness and flexibility
- break the trial into days or pieces of the day
- get outside to get out of your head
- go to a park, mall, playground, anywhere to show the other side of the world...have to take time to restore the perspective that the world is also beauty, love, kindness, compassion
- realize it takes more than just general stress management...have to repair yourself on a regular basis...without intentional, ongoing care of yourself and keeping focused on the things that give you meaning, you will eventually have no resources left to give your job

Generally Speaking...

- **stick to the schedule/routine...**that way everyone can plan (professionally and personally) accordingly...disrupting the routine throws everything off...knowing it is going to be a challenge and you should anticipate issues to arise
- as important as it is to be prompt and maintain a consistent schedule, also important to be sensitive to the personal needs of your jurors, attorneys, others...may have to choose between canceling a day or half day of court or losing a juror due to such a conflict, recess early or take extended breaks occasionally simply to avoid undue fatigue

“The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice, and it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity.”
~ Justice Stewart

If you need to reach us:

<p>Robynn Moraites Executive Director 704-892-5699 robynn@nclap.org</p>	<p>Cathy Killian Clinical Director Charlotte and Areas West 704-910-2310 cathy@nclap.org</p>
<p>Nicole Ellington Eastern Area 919-719-9267 nicole@nclap.org</p>	<p>Towanda Garner Piedmont Triad Area 919-719-9290 towanda@nclap.org</p>

Thank you!



An Important Free Resource for Lawyers

One of the free resources available to you as a State Bar member is the **Lawyer Assistance Program (LAP)**. From time to time, lawyers encounter a personal issue that, left unaddressed, could impair his or her ability to practice law. Accordingly, the LAP was created by lawyers for lawyers to assure that free, confidential assistance is available for any problem or issue that is impairing or might lead to impairment.

Lawyers at Particular Risk

Of all professionals, lawyers are at the greatest risk for anxiety, depression, alcoholism, drug addiction, and even suicide. As many as one in four lawyers are affected. This means it is likely that you, an associate, a partner, or one of your best lawyer friends will encounter one of these issues. Whether you need to call the LAP for yourself or to refer a colleague, all communications are completely confidential.

Anxiety and Depression

Anxiety and depression often go hand-in-hand. These conditions can be incapacitating and can develop so gradually that a lawyer is often unaware of the cumulative effect on his or her mood, habits, and lifestyle. Each condition is highly treatable, especially in the early stages. Asking for help, however, runs counter to our legal training and instincts. Most lawyers enter the profession to help others and believe they themselves should not need help.

The good news is that all it takes is a phone call. The LAP works with lawyers exclusively. The LAP has been a trusted resource for thousands of lawyers in overcoming these conditions.

Alcohol and Other Substances

Often a lawyer will get depressed and self-medicate the depression with alcohol. Alcohol is a central nervous system depressant but acts like a stimulant in the first hour or two of consumption. The worse you feel, the more you drink initially to feel better, but the more you drink, the worse you feel. A vicious cycle begins. On the other hand, many alcoholic lawyers who have not had depression report that their drinking started normally at social events and increased slowly over time.

There is no perfect picture of the alcoholic or addicted lawyer. It may be surprising to learn that he or she probably graduated in the top one-third of the class. Also surprising, lawyers may find themselves in trouble with addiction due to the overuse or misuse of certain prescription medications that were originally prescribed to address a temporary condition. Use of these kinds of medications, combined with moderate amounts of alcohol, greatly increases the chances of severe impairment requiring treatment. The LAP knows the best treatment options available, guides lawyers through this entire process, and provides on-going support at every stage.



Confidentiality

All communications with the LAP are **strictly confidential** and subject to the attorney-client privilege. If you call to seek help for yourself, your inquiry is confidential. If you call as the spouse, child, law partner, or friend of a lawyer whom you suspect may need help, your communication is also treated confidentially and is never relayed without your permission to the lawyer for whom you are seeking help. The LAP has a committee of trained lawyer volunteers who have personally overcome these issues and are committed to helping other lawyers overcome them. If you call a LAP volunteer, your communication is also treated as confidential.

The LAP is completely separate from the disciplinary arm of the State Bar. If you disclose to LAP staff or to a LAP volunteer any misconduct or ethical violations, it is confidential and cannot be disclosed. See Rules 1.6(c) and 8.3(c) of the Rules of Professional Conduct and 2001 FEO 5. The LAP works because it provides an opportunity for a lawyer to get **safe, free, confidential** help before the consequences of any impairment become irreversible.

LAP recognizes alcoholism, addiction, and mental illness as diseases, not moral failures. The only stigma attached to these illnesses is the refusal to seek or accept help.

www.NCLAP.org

FREE • SAFE • CONFIDENTIAL

info@nclap.org

*Know the signs. Make the call.
You could save a colleague's life.*



TAKE THE TEST FOR DEPRESSION

YES NO

- 1. Do you feel a deep sense of depression, sadness, or hopelessness most of the day?
- 2. Have you experienced diminished interest in most or all activities?
- 3. Have you experienced significant appetite or weight change when not dieting?
- 4. Have you experienced a significant change in sleeping patterns?
- 5. Do you feel unusually restless...or unusually sluggish?
- 6. Do you feel unduly fatigued?
- 7. Do you experience persistent feelings of hopelessness or inappropriate feelings of guilt?
- 8. Have you experienced a diminished ability to think or concentrate?
- 9. Do you have recurrent thoughts of death or suicide?

If you answer yes to five or more of these questions (including questions #1 or #2), and if the symptoms described have been present nearly every day for two weeks or more, you should consider speaking to a health care professional about treatment options for depression.

Other explanations for these symptoms may need to be considered. Call the Lawyer Assistance Program.

Adapted from *American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders*. Fourth Edition. Washington, DC. American Psychiatric Association: 1994.

TAKE THE TEST FOR ALCOHOLISM

YES NO

- 1. Do you get to work late or leave early due to drinking?
- 2. Is drinking disturbing your home life?
- 3. Do you drink because you are shy with other people?
- 4. Do you wonder if drinking is affecting your reputation?
- 5. Have you gotten into financial difficulties as a result of drinking?
- 6. Does drinking make you neglect your family or family activities?
- 7. Has your ambition decreased since drinking?
- 8. Do you often drink alone?
- 9. Does drinking determine the people you tend to be with?
- 10. Do you want a drink at a certain time of day?
- 11. Do you want a drink the next morning?
- 12. Does drinking cause you to have difficulty sleeping?
- 13. Do you drink to build up your confidence?
- 14. Have you ever been to a hospital or institution because of drinking?
- 15. Do family or friends ever question the amount you drink?

If your answer is yes to two or more of these questions you may have a problem. Call the Lawyer Assistance Program.

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Western Region

Cathy Killian 704.910.2310

Piedmont Region

Towanda Garner 919.719.9290

Eastern Region

Nicole Ellington 919.719.9267



NCLAP
NORTH CAROLINA
LAWYER ASSISTANCE PROGRAM

Identifying Illness Based Impairment in Colleagues

Depression, Anxiety and Stress

Alcoholism and Substance Abuse

Every aspect of an addicted or depressed attorney's life is affected. When there are problems at work or home, with health or finances, or there is police involvement, chances are the attorney is suffering from a medically based illness which can be successfully treated. If you recognize the following warning signs in a colleague, call us. *We can help.* Visit NCLAP.org

Relationship Problems

- Complaints from clients
- Problems with supervisors
- Disagreements or inability to work with colleagues
- Avoidance of others
- Irritable, impatient
- Angry outbursts
- Inconsistencies or discrepancies in describing events
- Hostile attitude
- Overreacts to criticism
- Unpredictable, rapid mood swings
- Non-responsive communication

Performance Problems

- Missed deadlines
- Decreased efficiency
- Decreased performance after long lunches involving alcohol
- Inadequate follow through
- Lack of attention
- Poor judgment
- Inability to concentrate
- Difficulty remembering details or instructions
- General difficulty with recall
- Blaming or making excuses for poor performance
- Erratic work patterns

Personal Problems

- Legal separation or divorce
- Credit problems, judgments, tax liens, bankruptcy
- Decreased performance after lunches involving alcohol
- Frequent illnesses or accidents
- Arrests or warnings while under the influence of alcohol or drugs
- Isolating from friends, family and social activities

Attendance Problems

- Arrive late and/or leaving early
- Taking "long lunches"
- Not returning to work after lunch
- Missing appointments
- Unable to be located
- Ill with vague ailments
- Absent (especially Mondays/Fridays)
- Frequent rest room breaks
- Improbable excuses for absences
- Last minute cancellations

