



## Life as a Judge – Examining Stress and Resiliency Within Our Judiciary

By Chris Aupperle, NLAP Director

Recently, *The Journal of the Professional Lawyer* released an examination of the comprehensive study entitled “Stress and Resiliency Within the United States Judiciary.”<sup>1</sup> Over 1,000 judges from a diverse judge pool participated in the study, which makes it the most comprehensive study ever examining the well-being impacts on our judges. Though some parallels can be drawn between this study and the lawyer well-being and law student well-being studies published in 2017,<sup>2</sup> it is important to understand the unique circumstances that impact our judges, including social isolation and making life changing decisions for litigants.

It is important to note that the survey data collected for this study occurred prior to the COVID-19 pandemic and represent the state of judicial well-being during “normal times.” Certainly, the pandemic has had unique impacts on our judiciary and further study of that issue would be beneficial as part of judicial planning for similar future events.

The stress and resiliency within the judiciary study was designed by a working group of lawyers, judges, and a forensic psychologist. The questionnaires were distributed through The National Judicial College and participant responses were anonymous. The study utilized four instruments to examine judicial well-being: The Sources of Stress Scale, Effects of Stress Scale, Stress Management and Resiliency Scale, and the Alcohol Use Disorders Identification Test (AUDIT). The primary focus of this study was to quantify the causes and symptoms of stress, as well as stress management activities commonly utilized by judges. This approach differed from the lawyer well-being study cited above, which not only screened participants for stress-related conditions but also screened lawyers for specific mental health conditions like anxiety and depression.

The 1,034 judges who participated in the judicial stress and resiliency study represented state (79%), local (10%), administrative (8%) and federal (2%), tribal (1%), and military courts (>1%). Ninety-one percent of the participants were full time judges, and 71% of the participants were exclusively trial judges.

The participant pool had significant geographic (urban vs. rural), age, and gender (57% men/43% women) groups represented.

### Sources of Stress

The study asked judges to rank 37 sources of stress. Not unsurprisingly, the top two sources of stress were the impact of their decisions and a heavy caseload to manage. Several of the other top stress sources related to interactions with court participants, including unprepared attorneys (#3), self-represented litigants (#4), dealing with the same parties without addressing the underlying issues (#5), and hearing contentious family law issues (#8). Other notable leading sources of stress identified in the survey were public ignorance of the courts, experiencing a sense of isolation in judicial service, insufficient support staff, cases involving severe trauma/horror, and increased incivility and lack of professionalism by counsel.

### Effects of Stress

The judges were then asked to identify how the sources of stress were impacting them in the areas of general well-being, cognitive performance, emotional performance, professional and personal relationships, and their attitude toward the judiciary. The highest ranked side effects from stress tended to be physical in nature and included fatigue (#1), sleep disturbance (#2), increased health concerns (#5), and physical discomfort (#9). In terms of frequency, nearly forty percent of judges reported fatigue, more than a one-third reported sleep disturbance, and one-in-four noted increased health concerns. The study noted that something as common as lack of adequate sleep can have an impact the judicial performance.

The emotional impacts from stress involved worrying about cases after they were decided (#4), which was cited by 31% of judges, and feelings of apprehension or anxiety (#6) experienced by 23% of the respondents. Other frequently cited emotional impacts on judges were having little time for family (#8) and experiencing irritability (#10).

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In terms of the most common stress-related cognitive issues, interference with attention and concentration was identified as a concern by one third of the judges and ranked #3 on the list. The various side effects of stress often relate to each other. For example, sleep disturbance has been recognized as a contributing source of concentration interference.<sup>3</sup>

A common concern within the legal profession is the misuse of alcohol to medicate chronic, unmanaged stress.<sup>4</sup> Accordingly, the study screened the participants for alcohol use disorders. The data revealed that 9.5% of the judges screened positive for problematic alcohol use. While this study indicates that judges are at a significantly lower risk for problematic alcohol use than practicing lawyers (20.5%), judges alcohol risk was still 30% greater than the general population (6.6%).<sup>5</sup> Even though most judges scored low on the alcohol risk scale, our profession should consider the impact on the judicial system when even one in 10 judges may be struggling with alcohol use.

## Stress Management Activities

The study next examined the stress management and resiliency activities utilized by judges. Resiliency is the ability for individuals to adapt well in the face of adversity, trauma, tragedy, threats, or significant sources of stress.<sup>6</sup> The study asked judges to identify the types and frequency of stress management activities they are currently utilizing, as well as activities the judge is not using but has a potential interest in using. These activities can generally be grouped as physical, spiritual/mindfulness, social, and general health. To better understand the use of stress management tools used by judges, further studies may be necessary to quantify the frequency (how often the respondent engaged in the activity—sporadic to daily) and approach (was the activity used primarily when feeling stressed or was it utilized more consistently to manage healthy stress levels). It would also be helpful to have judges quantify the level and duration of stress management benefit received from each activity.



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Social interactions (both personal and professional) lead the way with five of the top ranked stress management activities utilized by judges. These activities included having a trusted group of people for social support, maintaining a diverse group of friends outside the legal profession, engaging in hobbies, and personally supporting and confronting colleagues. Interestingly, while 55% of judges indicated they would provide peer support to a colleague, only 37% indicated that they were currently willing to ask for support from a peer. However, this does not mean judges do not want help, as 83% of judges wanted to learn more about how to request help from their peers. We need to better understand the barriers to judges asking peers for help (e.g., stigma, pride, confidentiality concerns) so the judiciary can provide resources to remove those barriers.


Physical exercise was the second most common stress management activity used by judges with 82% of the judges indicated that they engage in some type of physical exercise for that purpose. Relaxation through stretching (e.g., yoga or tai chi) was also frequently cited with 51% of the judges utilizing this stress management technique. Eating balanced and healthy meals was the top-rated general health and overall activity used by judges, with 89% indicating they use good dietary habits to help with stress. This contrasts with only 66% of the judges indicating that they were currently getting adequate sleep.

Spiritual connection and mindfulness were categories of stress management that appeared to be underutilized. Roughly half of the judges indicated that they engaged in spiritual related activities, but 71% had an interest in utilizing spiritual life to manage stress. An even greater gap existed when the judges were questioned about mindfulness. Only 36% indicated a use of mindfulness techniques (e.g., meditation), but 81% had an interest in learning about how mindfulness can help manage stress. This gap of current use versus interest on mindfulness provides an opportunity for judicial leaders and educators to provide future resources to their judges to develop this stress management tool. Mindfulness techniques are easy to learn, inexpensive, and can be used anywhere (including at work).

## Recommendations Provided

The study concluded with a list of recommendations for judicial leaders, educators, regulators, associations, and lawyer assistance programs to provide resources which will promote judge well-being and building resiliency. While recognizing that improvement in stress management ultimately rests with the individual's willingness to strengthen his or her stress management practices, resources provided by organizational leaders are a powerful tool in empowering individuals. But providing resources are not enough. Prioritizing this effort, reducing the stigma associated with asking for help, and modeling behavior by judicial leaders and peers will provide a path to improvement.

In 2019, The Nebraska Lawyers Assistance Program convened a Lawyer, Judge and Law Student Well-Being Taskforce with the intent on improving the profession and the lives of the people who work within it. This study provides us with a roadmap to assisting our judges, and I will ask our taskforce to consider the recommendations made by the Stress and Resiliency in the U.S. Judiciary study. This exercise will provide a benchmark to determine which of the recommended resources are currently available, how to better promote them, if needed, and gaps in resources. I also believe our profession needs to look at additional information gathering to quantify specific mental health impacts on our judges (depression, anxiety, and vicarious trauma) to ensure we understand the causes and resources needed.

There are resources available to help someone who is struggling. The Nebraska Lawyers Assistance Program (NLAP) can be a good starting place. NLAP is available to any Nebraska lawyer, judge, or law student who needs help. We are also available to anyone who wants to help a lawyer, judge or law student who may be struggling. It starts with a phone call or text to the NLAP Helpline (402) 475-6527. 

## Endnotes

- 1 David Swenson, Ph.D. L.P.; Joan Bibelhausen, J.D.; Bree Buchanan, M.S.F., J.D.; Hon. David Shaheed; Katheryn Yetter, Stress and Resiliency in the U.S. Judiciary, 2020 Journal of the Professional Lawyer, 2020 Edition.
- 2 Krill, Patrick R. JD, LL.M.; Johnson, Ryan MA; Albert, Linda MSSW, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, Journal of Addiction Medicine: January/February 2016 - Volume 10 - Issue 1 - p 46-52; and Jerome M. Organ, David B. Jaffe & Katherine M. Bender, Ph.D., 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., Autumn 2016, at 121.
- 3 Alhola P, Polo-Kantola P. Sleep deprivation: impact on cognitive performance. *Neuropsychiatr Dis Treat* 2007;3:553-67.
- 4 Lynne Pregonzer, Substance Abuse within the Legal Profession: A Symptom of a Greater Malaise, 7 Notre Dame J.L. Ethics & Pub. Pol'y 305 (1993).
- 5 U.S. Department of Health & Human Services, Substance Abuse and Mental Health Services Administration, results from the 2019 Survey on Drug Use and Health: Detailed Tables 5.5B, retrieved from <https://www.samhsa.gov/data/sites/default/files/reports/rpt29394/NSDUHDetailedTabs2019/NSDUHDefTabsSect5p2019.htm> on December 28, 2020.
- 6 American Psychological Association, retrieved from <https://www.apa.org/topics/resilience> on December 28, 2020.