Emotional Regulation & Judicial Behavior

Berkeley Judicial Institute
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Prof. Terry Maroney & Hon. Jeremy Fogel
It seems to me that temperament is the key to everything else that one does on the bench. (Hon. Jeremy Fogel)

Temperament, perhaps most critically, affects how judges decide cases. (Hon. Jeffrey Sutton)

Elusive as it is important, judicial temperament is notoriously hard to define. (Jeffrey Rosen)
Judicial temperament is a psychological construct... capturing part of what we look for in a judge... separable from intellect, training, and ideology.

Judicial temperament is a relatively stable set of personal traits that, in dialectic with judicial environments and demands, drive behaviors that affect how justice is delivered and perceived.
Judicial temperament

The judge’s dispositional traits
Negative emotionality (anger, contempt, frustration, fear, anxiety), positive emotionality (pleasure, satisfaction, joy, excitement), kindness (compassion, empathy, agape) and emotion regulation (flexibility and range)

The judge’s work environment
Nature of court and specific assignment; pace; stress features; culture; supports; isolation; security ... 

The judge’s behaviors
Demeanor, verbal and written expressions, interpersonal interactions, health-related actions

Goodness of fit
Condensed water vapor can, depending on local conditions, form a white billowy cloud, a mackerel sky, or a dense ground fog, but it cannot become an asteroid.

Jerome Kagan & Nancy Snidman
Judicial temperament

The judge's dispositional traits
- Negative emotionality (anger, contempt, frustration, fear, anxiety)
- Positive emotionality (pleasure, satisfaction, joy, excitement)
- Kindness (compassion, empathy, agape)
- Emotion regulation (flexibility and range)

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Goodness of fit
Start with emotional granularity

Noticing, naming, and understanding your emotions is good for you - even if the emotions are unpleasant

Increased granularity

- Less aggressive behavior
- Longer, healthier lives
- Less drinking when stressed
- Better emotion regulation skills
emotion regulation...

... is any attempt to affect what we feel, when we feel it, and how we express our feelings

⇒ flexible, goal-driven deployment of diverse regulatory strategies ...
suppression and denial

Representing to self and others that you don’t feel what you feel

“Mostly I think I just try to stuff it.”

- Doesn’t diminish emotion
- Ironic rebound & misdirection
- Impairs memory, cognition, and judgment
- Can harden into repressive coping
**situation modification**

altering some aspect of events, timing, space in order to alter emotions

“...and gather myself before I go back out.”

- Breaks up a dynamic
- Creates a sense of control
- Conserves internal resources
- Use liberally, as duties allow
controlling external behaviors

choosing to mask or change signs of emotion in your face, voice, and body

“You can’t cry. Any authority I had would go out the window.”

- Crucial to demeanor, courtroom management
- Little impact on emotion
- Creates cognitive load
- Use purposely and sparingly
cognitive change

changing your thoughts about someone or something, in order to change your feelings

“I’ve come to realize that some lawyers are just not that good. So what’s the point of yelling at them?”

- What is your reaction about?
- What else could be true?
- How could you change your internal narrative?
- What broader or different perspectives might help?
social sharing

choosing whether, when, and how to say, show, or write something about your emotions

“...I bounce things off my colleagues.” “My wife and I talk every night.” “I rant and rail to my clerks.”

- Diminishes isolation
- Increases granularity
- Fosters cognitive change
- Cultivates acceptance
- Builds or repairs relationships
tools for increasing regulatory skill

mindfulness

professional help
emotion regulation...

...is an important part of every judge’s temperament.

How can you grow within your envelope of possibility?

What are your strengths and weaknesses?

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