

Emotional Regulation & Judicial Behavior

Berkeley Judicial Institute

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Judicial Temperament

[I]t seems to me that temperament is the key to everything else that one does on the bench. (Hon. Jeremy Fogel)

Elusive as it is important, judicial temperament is notoriously hard to define. (Jeffrey Rosen)

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



Judicial temperament is a psychological construct

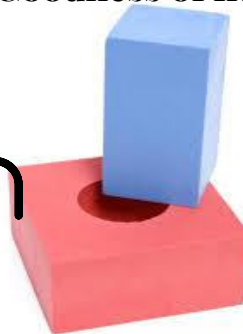
**... capturing part of what we
look for in a judge**

**... 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

Goodness of fit



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

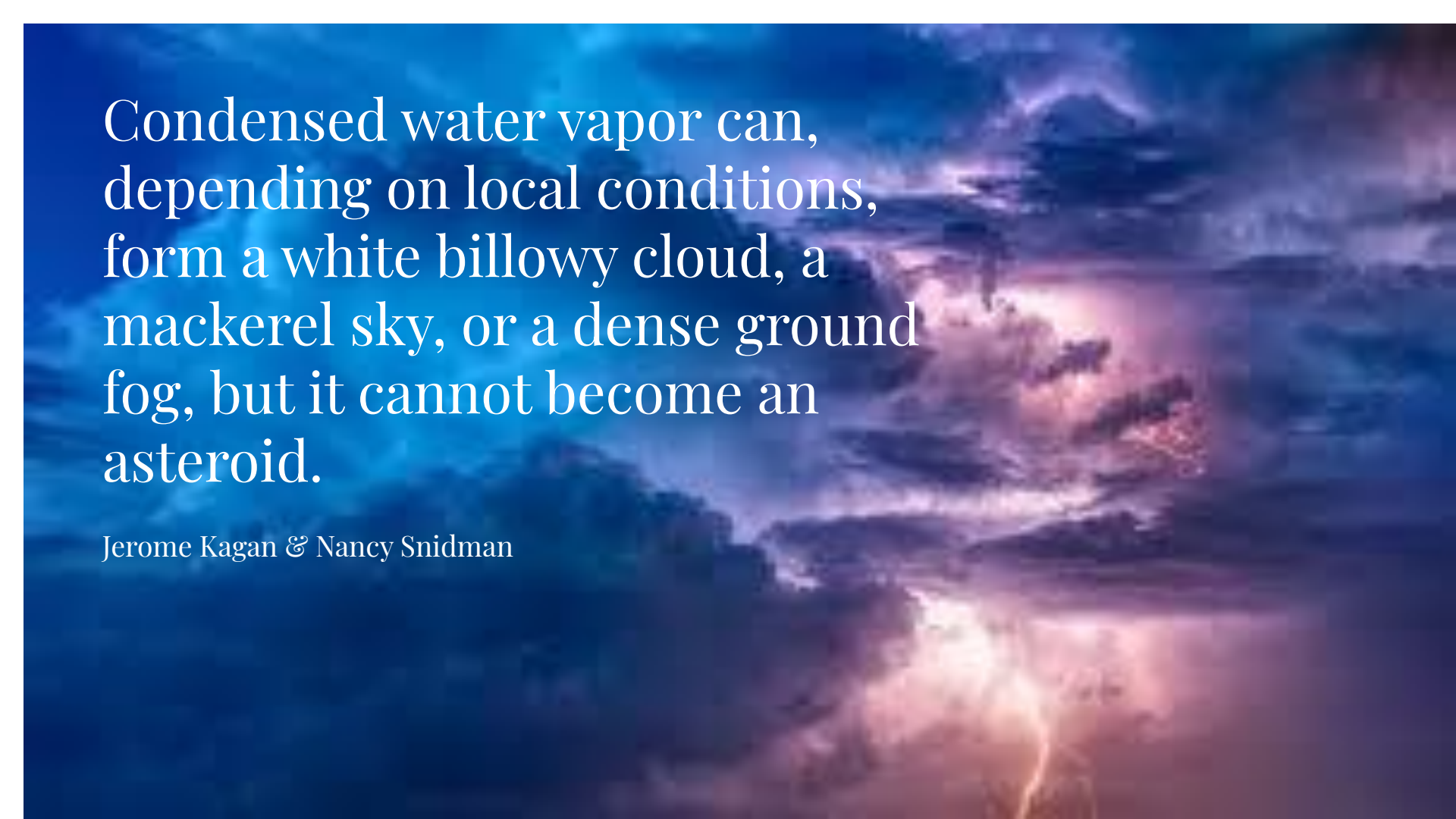
Nature of court and specific assignment; pace; stress features; culture; supports; isolation; security ...



The judge's behaviors

Demeanor, verbal and written expressions, interpersonal interactions, health-related actions



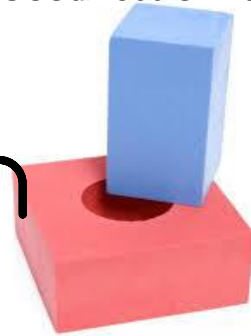


Condensed water vapor can, depending on local conditions, form a white billowy cloud, a mackerel sky, or a dense ground fog, but it cannot become an asteroid.

Jerome Kagan & Nancy Snidman

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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 ...

„,with distinct costs and benefits

suppression and

Represses self and
other people's feelings
you



“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

“I take a break, and vent, or cry,
or just sit for a couple minutes,
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

→ What are your strengths and weaknesses?

→ How can you grow within your envelope of possibility?
