

schedules, allowing sufficient time for non-work activities, and encouraging behaviors such as eating healthy, obtaining sufficient sleep, exercising regularly, and getting medical checkups. Such methods can be taught and, at a minimum, suggestions for stress inoculation should be made to new judges in training materials.

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Judges, particularly those who are newly appointed or elected, face

tremendous job pressures and receive little formal support. A facilitated mentoring program, offered as part of new-judge orientation, served to reduce some areas of occupational stress and strain and focus attention on coping skills. Participation in paired mentoring may have a mediating effect on occupational stress for both new and experienced judges. Judicial educators should explore the addition of stress-management programs to their curricula, not only to benefit both new and

experienced judges but also to improve the justice system by helping to ensure it is managed by judges who are productive and effective decision makers. ☛☛

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# CONFESSIONS of an angry judge

by Gregory C. O'Brien, Jr.

I used to be an angry judge. The reasons for my anger were real enough. Being a judge is stressful. For the past 10 years, though, I have been mellow. In deciding to change, I first had to articulate the causes of my stress and then to determine which were within my ability to minimize. (If some of my complaints sound petty, or unreasonably harsh, they in fact were. That was part of my self-discovery.)

## I. The reasons I gave for my stress (partial list)

### A. Low (but chronic) stress factors

**1. Doing it on the fly.** By the nature of courtroom proceedings, most decisions from the bench must be made without benefit of preparation, reflection, or consultation.

**2. Monday-morning quarterbacks** Since it occurs in public view and on the record, such decision making is

subject to potential second-guessing from all quarters. I am supposed to rule correctly. Maybe I will look foolish or ignorant if I get it wrong. People will talk. Lawyers will compare notes.

**3. Career exposure.** Always lurking in the background is potential criticism from the court of appeal, the Judicial Performance Commission, the *Los Angeles Times*, or, Heaven forbid, an election opponent.

**4. Peer pressure.** The system has created expectations for timely case

disposition. Judges feel pressured to "move the merchandise." Case management is subject to a subtle form of peer review—how are my "numbers"; am I measuring up?

**5. Wounded pride.** No one enjoys receiving notice of a writ or published reversal. My visceral reaction is that the appellate court surely must have misunderstood the facts.

**6. Ungracious advocates.** There is no salt in the wound worse than that of a smug petitioner/appellant helpfully informing me in front of a crowded courtroom of a just-issued writ or reversal.

### B. High stress factors

**7. Time pressures.** It is hard to suffer fools gladly when my courtroom is packed with people wanting my urgent attention. The feeling is compounded if my jury is waiting impatiently for the morning calendar to end and four unexpected ex parte motions come in from a dark "buddy

court.” There are also few irritations that compare with watching the ticking clock as I listen to seemingly pointless testimony, meanwhile knowing that a stack of call slips, orders to sign, and tomorrow’s huge motion for summary judgment are all waiting for me in chambers at the evening recess.

**8. Insufficient resources.** Few things can compare with being asked to rule on 250 objections to the evidence in a motion for summary judgment (a chore outside the job description of my research attorney), with the knowledge that Justice Turner (a local stickler on this subject) is lying in the weeds waiting to make me an object lesson if I try to take a short cut.

**9. Lack of civility.** What has happened to simple manners? The only thing I dislike more than reading an endless exchange of attorney correspondence effectively shouting “you’re a liar” is watching attorneys misbehave in front of a jury. How many times must I say, “Gentlemen, please,” before I am allowed to say, “If you do that one more time, I will stab you”?

**10. Attorney incompetence.** How I hate “the dog ate my homework.” The rules of court are not rocket science, but they might as well be if lawyers don’t read them. How hard is it to file timely briefs, to come to court at the appointed hour, to give appropriate notice to the opposing party, to tab and attach the correct exhibits, or to prepare a declaration on personal knowledge? These same people are regulars on the *ex parte* calendar, rushing in for a continuance of some event or for Calif. Code of Civ. Proc. 473 relief. I need a sign that says, “Don’t make your lack of organization become my emergency.” Sometimes I wish I could give them a grade: “D—See me.”

**11. Attorney impertinence.** Worse than incompetence is impertinence. Worse still is impertinence by the

incompetent, a combination that persistently remains in fashion. The problem with “all due respect” is when it means, “If I could show you any less respect, I would have to drop my drawers.” Meanwhile, the Judicial Performance Commission cautions that judges must have thick skin and remain calm, neutral, friendly, and courteous at all times—never mind that in a non-judicial setting, I might be justified in commenting on the horse counsel rode in on.

**12. Herding cats.** What is so hard about taking a 15-minute recess in a jury trial? What is hard is that apparently nobody wears a watch anymore. Jurors, lawyers, parties, witnesses—all seem to hear a different time to return to the courtroom. The larger the herd, the more likely it is that some cats will stray. Meanwhile, that pile of work waiting for me to begin at 4 p.m. in chambers isn’t getting any smaller. “Here, kitty, kitty.”

**13. Pro pers.** Enough said.

**14. Pro pers who don’t speak English and insist on a jury trial.** Just shoot me.

## II. My self-prescription for dealing with stress

After deciding that I would live longer if I were a happy judge, I looked at the above factors and decided that part of my anger came from a certain feeling of impotence. The low, but chronic, stress factors listed above were simply the nature of the beast. Most jobs include certain conditions bound to create stress. With no ability to change the duties and expectations placed upon a trial judge, the only thing left to do was to recognize that I am not alone in this. All of my colleagues are under identical pressures, and most of them seemed to be coping just fine. I had to become philosophical, and just a little bit more self-confident. Forget the Monday-morning quarterbacks, the court of appeal,

the potential election opponents. I reminded myself that I had a great job. Unlike a pilot, a police officer, or a soldier, my mistakes wouldn’t kill anybody. Moreover, my assessments sounded really harsh, even bitter. Why?

I had reacted to feelings of impotence by imposing greater control over items of no lasting consequence. I did this by brandishing local and state court rules as a weapon, rather than simply enforcing them blandly when requested to do so by an advocate. As I became more rigid, those around me were increasingly unhappy. As they demonstrated their unhappiness, I became more rigid. It was a vicious circle. Upon making this realization, I developed a new approach, one that has allowed me to become a better, and so much happier, judge. Perhaps not so strangely, the attorneys became happier—and better—as well. I developed a new philosophy about judging:

**1. Life is short.** Ignore imperfection. During a judicial council meeting last year, a member’s cell phone rang. As he fumbled to shut it off, the chief justice looked over and smiled. The member stepped outside and took his call. No big deal. We live in an age of cell phones. It is easy to forget to turn them off. If a cell phone goes off in my courtroom, I smile. Why should this be different from a business meeting?

**2. Save time by talking less.** The world will little note nor long remember what a trial judge says, unless it is outrageous. What the attorneys need and desire from me is a ruling, not an argument. They are required to argue; I am merely required to decide. Unless I need to summarize the basis of a ruling for purposes of appeal, the following four words are probably sufficient: sustained, overruled, granted, denied. By doing this, my bench time is reduced and I have more time to research, reflect, and consult—and thus am better prepared to rule and less stressed about my rulings.

**3. Keep oral arguments brief.** Whereas my law and motion calendar used to last an hour, it now lasts about 15 minutes. I do this by providing short, written tentative rulings that allow the attorneys to focus on one or two issues. They don't speak very long, because I don't argue with them. When they have spoken long enough, a single phrase is very effective in bringing it to a close: "thank you." The only rejoinder to "thanks" is "you're welcome."

**4. The rules are rules.** They are not commandments. It may be a sin to break a commandment, but a rule

**6. Don't try to be a genius in residence.** There is relatively little time for scholarship at the trial court level. I freely admit that I am not an expert on a wide variety of matters and will acknowledge such to counsel. I do not need to know the right answer. I merely need to choose the right answer. On certain occasions, I will be wrong. That's why there is a court of appeal. I am not there to be a sage or an oracle. I am merely a judge.

**7. Honey gets more flies than vinegar.** I have abandoned the stick in favor of the carrot. Rather than

the bench in 15 minutes, and those of you who are here may join me in watching those who come back late. Let's see who is brave enough to ignore the peer pressure." I laugh. They laugh. And they all come back on time.

**9. Save time by being efficient.** Since time limitations create stress, I can save time by being efficient. This starts with taking the bench at the appointed hour, avoiding taking matters under submission, calling uncontested matters first, and calendaring as few events as possible for each case.

**10. Demeanor isn't everything, but it comes close.** It is often said that the appearance of justice is as important as justice itself. I can't make everyone happy, but I can make everyone unhappy. I now try to run my courtroom the way I would run a committee meeting: with a personable, friendly, but business-like disposition. When I was an attorney, attorneys were my friends. They still are. The answer "no" is not inherently unpleasant. So I try to say "no" pleasantly. "Thank you. The tentative stands."

**11. Contentment comes from within.** Judging is one of the world's great jobs. We are independent, relatively well compensated, and, as has often been said, have box seats to the great game of life. The knowledge that this is so puts the stresses of the job into proper perspective. Lucky me. I feel less stressed already. ☺

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## I developed a new approach, one that has allowed me to become a better, and so much happier, judge.

is simply a rule. I have no emotional, political, or personal investment in their enforcement. In the old days, I used to feel quite righteous about California Standard 9, the former rule on continuances. The attorneys never seemed to know about it, so I, by gosh, was there to set them straight. Setting them straight often required a lecture. Attorneys don't need judicial lectures any more than they need judicial argument, and they appreciate them even less. The only thing I accomplished by the lecture was giving myself a headache. It was sufficient that I simply write, "Continuance denied, as good cause not shown per Std. 9."

**5. Leave grading to the professors.** It's true that there is a wide range of competence within the bar, but I am not appointed to critique the lawyers. The marketplace will take care of the worst ones. Meanwhile, I can't spend time and emotional energy worrying about their mistakes. If the demurrer is sustained with leave to amend, I politely say why and move on.

scolding, I now prefer "atta-boys" to motivate people: "good argument," "thanks for the helpful briefs," etc. Rather than order attorneys to attend arbitration or mediation, I say, "It would really make me happy if I could get you to agree to mediation." What lawyer doesn't grab a chance to make the judge happy? When lawyers fight with each other, I tell them I am disappointed in them, and that their attitudes are becoming a distraction to my making good rulings. As with all people, they usually react to charm and courtesy by responding in kind.

**8. Punctuality is a virtue, but only chronic tardiness is a problem.** The Southern California freeways are notorious. Even leaving early sometimes is not enough to assure a prompt appearance in court. If a colleague showed up late to a committee meeting I am chairing, would I be upset? No. Neither should I get overly preoccupied about an occasional late appearance by counsel. As for "herding cats," today I tell the jury something like, "I am resuming