

Coaching Better Justice

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Becoming a judge is a rigorous process requiring graduation from law school; passing one or more bar exams, years of practice; building a professional and legal presence; and, successful navigation of an appointment process or election. This is before the first day as a jurist. The transition from a private practice or governmental attorney to a judge is marked in shifts and nuances only learned through experience. How a judge becomes acclimated to this new role is vitally important. One of the most challenging is acculturation into an environment that is complex, challenging, intra and interdependent, and both restrictive and transparent.

The Challenge of Cognitive Dissonance in Judging

Being a judge can be a lonely role. How judges get support and gain feedback throughout the duration of their career is dissimilar, depending on an assortment of variables, including court cultures. Culture, as defined by Edgar Schein is an intriguing abstract concept that points to phenomena that are below the surface, often invisible and unconscious, but powerfully influential. Culture creates within us mindsets and frames of reference that Marshak (2006) identified as one of a number of important covert processes. Culture is to a group what personality or character is to an individual. Just as our personality and character guide and constrain our behavior, so does culture guide and constrain the behavior of members of a group through the shared norms that are held in that group.

Judicial systems tend to exhibit similar characteristics influenced by the size, geography, jurisdiction, method of judicial selection and retention and court culture. The law is slow to change. So too are court cultures. Layered over court cultures are systems that look backward, not forward; are cautious and risk averse; and steeped in tradition. All of this contributes to a natural and understandable resistance to innovative practices that ruffle or challenge existing paradigms, including what it means to be a judge.

Although most judges come to the job with the highest credentialing and experience as lawyers, they arrive at the bench with low credentialing and experience as a judge. They are joining a different legal culture – for example, a newly appointed judge may have left practice as a seasoned senior lawyer and arrived at the court as a junior and “green” judge. This dichotomy is especially so in the United States, unlike many civil law countries that do advanced training and preparation of lawyers to become

judges. Our system (law schools) has no significant track for education and preparation before embarking on a judicial career. Our selection of judges is based on meritocracy. This paradox of being highly qualified and arriving as a greenhorn presents a personal paradox, that if left unaddressed can lead to a myriad of other unintended issues and challenges.

When a judge is newly appointed or elected to the bench, there is no consistent method for acculturation into the role. Many jurisdictions will directly provide or engage training for new judges (mostly focused on legal process), formally or informally offer mentoring, and create bench books and guides as resources. After the initial training and support, many jurisdictions do little to provide ongoing support and development. Judges are left to their own devices. The system relies on the slow process of judicial elections or referral to judicial performance commissions to deal with substandard judicial performance. There are intermediate options, and this paper presents innovative and successful mentor coaching programs providing focused, intentional and consistent support to judges throughout their career. These models are peer-to-peer (judge to judge) mentor coach programs that have been adopted in the Massachusetts Trial Courts and the District of Columbia Superior Court.

In 2004, Judge Mike Town (Hawaii) wrote about compassion fatigue in judges. In his blog, "*Is compassion fatigue an issue for judges?*" Town notes that many judges hear a variety of cases that are often emotional, sad, and at times, profoundly tragic. Consistently hearing cases involving child custody, divorce, child abuse, mental illness, homicide, and domestic violence affects judges in different ways. Some will do just fine, many will not.

Town identifies compassion fatigue in judges as the result of vicariously becoming worn down and emotionally weary from hearing about and dealing with highly-charged situations where people have been physically and emotionally injured, hospitalized, and all too often killed. Add to this the demands of dealing with a complex organization and governance structure, and a culture that may or may not align with a judge's personal and professional values, assumptions, and motivations.

In 2006, Isaiah M. Zimmerman wrote an article for *Judicature* titled "Helping Judges in Distress." In it, he discusses the physical and emotional stresses that often get ignored in judicial initiation. Zimmerman and Town suggest that intentional wellness initiatives help overcome the unique and (often-silent) stressors that affect judges. Absent these initiatives, judges will soldier on, often to individual and organizational detriment.

In 2007, executive coach Marshall Goldsmith wrote the book *What Got You Here Won't Get You There*. The title itself is apropos to many professionals who spend their career convincing themselves that they have everything they need. How else

could judges take on the heavy lifting of judging and leading? Goldsmith's book postulates that our previous success often prevents us from achieving more success.⁴ He further implies that successful people only have two problems dealing with negative feedback. However, they are big problems: (a) they don't want to hear it from us and (b) we don't want to give it to them. This implication alone is supportive of how influential a well-constructed and sustained peer-to-peer coaching program is for individuals and organizations.

By the time of investiture, it is likely that a newly appointed judge believes that their behavior is a result of a carefully orchestrated career path. They have consciously made choices and commitments to reach this position. Judges come to the bench believing they know what to expect, and the more they believe in that paradigm, the less willingness there is to change. This is a common phenomenon called *cognitive dissonance*. The theory of cognitive dissonance, proposed by Psychologist Leon Festinger, is used to describe the feeling of discomfort that results from holding two conflicting beliefs. When there is a discrepancy between beliefs and behaviors, something must change in order to eliminate or reduce the dissonance. One example of how this may play out in courts is a newly appointed judge's assumption about the extent of judicial independence, and what he or she may actually experience in a complex judicial system. The more we are committed to believing that something is true, the less likely we are to believe that the opposite is true, even in the face of clear evidence that shows we may be wrong (Goldsmith, p.24).

At the judge's investiture, with much fanfare and congratulatory speeches, all eyes are focused on the new judge. The following day he or she could be assigned to hear the most routine and least complicated cases. This assignment may not be how the newly appointed judge expected to put to use the years of legal experience and competence, thus creating the cognitive dissonance. There is frankly no way to have the experience without being in the experience. The same thing can be true for medical doctors. They may have chosen the medical field with the belief that they could spend time with their patients to address the underlying habits and behaviors that aren't serving the patient well. Instead, they are subject to administrative expectations for time spent with a patient that conflict with their belief and hopes on how best to serve their patients. We all experience dissonance and find ways to reconcile dissonance so that we can make sense out of our experiences. When these paradigms aren't challenged and aren't serving us well, especially in organizations, we have to find a way to make it fit consistent with our goals and beliefs. Inconsistency often manifests through blaming system decision-makers and policies, for what isn't working in our belief system.

Judicial and other professional systems must not only make it acceptable to get help at any point in a professional career; we must deliberately put in place the infrastructure that builds enduring capacity and compassion.

The Peer-to-Peer Judicial Coaching Models

In 2009, the Massachusetts Supreme Judicial Court applied for and received a technical assistance grant from the State Justice Institute (SJI). The grant was intended to be a proof of concept grant to assess the extension of “focused mentoring and coaching” into the judicial branch in Massachusetts where judges receive appointment for life. At the time, the Supreme Judicial Court sought education, skill building, and ongoing support for judges being selected and asked to serve as “focused mentors” assigned to work with judges in need of assistance.

The initial group of focused mentors, a mixed group of 19 judges representing each of the seven trial courts, received three days of intensive mentor coach training in October of 2010. The training consisted of a combination of theory and practice based on the skills and principles of executive coaching. Mary Beth O’Neill (Executive Coaching with Backbone and Heart, p.5) describes executive coaching as the essence of helping leaders get unstuck from their dilemmas and assisting them to transfer their learning into results for the organization. Coaching is an intentional and focused conversation that is counter-intuitive to the role of being a judge. Judges are sworn to be impartial decision makers based on facts (rule of law), not emotion. The introduction of coaching skills and principles asks judges to be curious and probative with his/her peers, and it asks them to listen for clarity and for what isn’t being said. They are challenged not to advise, even if the answer is easy or obvious. The initial trained group of mentor coaches learned how to support their judicial peers by trusting they have the answers and can locate those answers through support and questioning.

Today, the peer-to-peer mentor coach program (known as the J2J Program: A collaborative professional development resource for judges) continues to support Massachusetts’s judges’ with a cadre of over 75 trained mentor coaches. There is also part-time dedicated staff. The program, not without its challenges, is slowly changing the court culture and has, systemically, worked diligently to create the expectation that a mentor coach is available to all judges beginning at judicial appointment.

In 2013, Massachusetts’s judges and staff affiliated with the J2J Program made a presentation at the annual NASJE conference. Shortly after, Superior Court of the District of Columbia contacted J&S Bouch Consulting, LLC to bring a similar program to the court. Not unlike most court systems, the DC Superior Court was aware that their informal mentor program was not providing the level of support that they desired. To date, the DC Superior Court has trained two groups of judicial coaches. They too have created policies and procedures, consistent with their culture, and are building an infrastructure for career long support.

Although different judicial cultures, these two models share some important commonalities:

- They recognized that informality in mentoring was not providing the level of support they hoped
- Institutional infrastructure is vital for long term sustainability
- Leadership is key to successful implementation of the program
- Policies and practices must be articulated and supported administratively
- Coaching can lift up individuals and organizations and bring renewed energy to the profession

The Evolution of a Title

What's in a name? In the Massachusetts J2J Program, the initial role was "focused mentor." The role has evolved through time and experience to "mentor coach." This important and ongoing discussion about the name led to the Massachusetts Trial Courts to expanding the J2J Program for all judges. The name is sensitive to their culture. The District of Columbia Superior Court opted to use the title "judicial coach" from the onset of the program. Whatever the title of the role (and that is very much culturally driven), learning when and how to distinguish the various system roles of supervisor, mentor, or coach is vital.

For example, a chief judge may have to deny a vacation request due to the overall court calendar coverage: This is an act of supervision. A mentoring role may be called for when a minor suggestion would improve a judge's overall courtroom management. That suggestion is a "telling" role. Coaching is practical where a judge may be consistently late in rendering decisions: the symptom is obvious - the underlying challenge/s are not. Coaching helps bring clarity, generation of options, and selection of choices that, with support, hold the coaching colleague accountable. What is important to this discussion is that the role of a coach is not to make someone change, but help them to get better at what they choose to change (Goldsmith, p.24). Effective coaching principles and practices are irrespective of title.

Infrastructure and Policy Considerations

Historically, many mentoring/coaching programs have existed informally and casually. Key to the success of a program that is committed to providing a continuum of support for judges and other professionals is the infrastructure and guiding principles and policies.

The Massachusetts J2J Program established a Peer Mentoring Policy and Practices Committee (PMPPC) determined to adhere to best practices and provide consistency, continuity, and effectiveness. Through the work of the PMPPC, the following areas were identified as needing definition and clarification for the program's successful system-wide integration:

1. Role of presiding or chief judge
 - a. Selection and assignment of mentor coach and mentee
 - b. Meeting schedule (including check-in meetings and annual meeting)
 - c. Resolution of conflicts
 - d. Issues and goal expectations
2. Confidentiality
3. Continuing mentor coach training
 - a. Mandatory learning labs
 - b. Optional trainings
4. Mentor Coach
 - a. Mandatory foundational training before assignment
 - b. Mentor Coach/Mentee meeting expectations

Supportive Resources and Ongoing Learning Needs

In addition to foundational training and ongoing learning labs, mentor coaches are introduced and given opportunities to practice with a variety of tools. For example, articles such as Atul Gawande’s New Yorker (October 3, 2011) piece titled “Personal Best,” can start a great conversation with professionals and the support a coach can provide.

Another powerful resource is the Judicial Capacity Wheel. The Judicial Capacity Wheel evolved from an observation by a juvenile judge that the Wheel of Life could be adapted to the needs of judges (especially those newly appointed) to help focus on important development areas. The Judicial Capacity Wheel is designed as a self-assessment tool for judges to rate how they view their capacity in the following areas:

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| • Lawyer relationships | • Jury management |
| • Organizational dynamics and culture | • Self-represented litigants |
| • Caseflow management | • Knowledge and use of resources |
| • Demeanor | • Courtroom management |
| • Time management | • Knowledge of the law |
| • Judicial-writing | • Resiliency |
| • Judicial decision-making | • Relationship with staff |
| • Relationships with external stakeholders | |

This article posits that many highly skilled professionals do not get the opportunity to self-assess capacity when assuming a new or different role. The Judicial Capacity Wheel gives both the judge and the mentor (judicial) coach the opportunity to focus

on the areas that will assist the judge in his/her acculturation in the complex judicial environment.

In the DC Superior Court, one tool they fleshed out is a 52-week schedule (originally created by a Massachusetts Judge) that recommends weekly events and activities. The DC Superior Court extended the 52-week schedule to include topics for discussion, e.g., practical questions, boundary management, staff hiring, and supervision, listening skills, and courtroom management, to name a few.

The DC Superior Court judicial coaches also had the experience of being coached using the ProfileXT, a validated instrument that measures learning index, behavioral traits and interests. The use of instruments, (both ipsative and validated) are commonly used in coaching relationships, again, as a complementary tool to the coaching dialog.

Benefits and Lessons Learned (so far)

There have been a number of surprising and unanticipated benefits gleaned these five plus years. Among the most profound learning was the expressed desire and need to expand mentor coaching as an offering for all judges, including the chief justices of the Massachusetts trial courts. The J2J Program has evolved as a way to enhance job satisfaction, study and understand motivation and intention, and to raise and scrutinize assumptions and actions. A particularly wonderful unanticipated benefit is the expressed renewal and a sense of satisfaction and recommitment to their work by the core group of focused mentors, as well as their coaching colleagues.

There are a number of lessons learned about what is needed to provide infrastructure support to sustain and maintain a robust program. First and foremost, a peer-to-peer coaching program requires commitment and support from court leadership. In the Massachusetts program, the chief justices of the trial courts are vital in terms of matching and assigning of mentor coaches and mentees. They are also critical in ensuring adequate time for mentor coaches to be effective in the mentor coach relationship. Mentor coaches need ongoing education, time to review and refine best practices, and, in particular, opportunities to work on their skills and to share time with other mentor coaches.

In the District of Columbia Superior Court, the chief judge is actively involved with the judicial coaching program from the assignment of coaches, to the development of policies to support it. His presence at the core educational programs reaffirms his commitment to the program's successful implementation in their judicial system.

Envisioning the future

Lawyers train in the art of asking questions that limit uncertainty (i.e. asking yes and no questions). On becoming a judge, they don't know what they don't know. The role requires different skills as they enter distinctive legal and ethical environments.

The same uncertainty can be assumed for most professional roles in a justice system – e.g. probation officers, prosecutors, defense attorneys, pretrial services, and court administrators. We are no longer lone cowboys, as Atul Gawande suggests. Rather, the new paradigm is working with pit crews.

What is needed for the foreseeable future is the growing effort to support judges from those newly appointed to those nearing the end of their judicial career. Peer-to-peer support is one powerful and successfully demonstrated way to achieve support from someone who truly has “walked in his or her shoes.” Traditionally, many of us entered the workforce following pedagogical models that left us responsible for our ongoing learning and development: we were complete at graduation. In today's world, we have reached a level of complexity where our knowledge and skills are beyond individual capabilities. Dr. Gawande notes that many professionals think they can “self-coach.” Marshall Goldsmith suggests that as we advance in our careers, behavioral changes are often the only significant changes we *can* make. How many professionals can you think of that have successfully stopped or started behaviors through self-will?

As Atul Gawande notes in *Personal Best*, coaching done well may be the most effective intervention designed for human performance. Judge Town states that judges find strength in their communities, their faith, their colleagues, and their families. Judicial systems must be mindful of the toll, emotional and physical, inherent upon judges and the judicial system professional. With this in mind, the peer-to-peer coaching model can profoundly affect individuals and system performance.



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Dr. Bouch is passionate about building community, being present, creating options, confronting assumptions, life-long learning, sharing insights, and being generous with her heart and mind. She believes that it is ok to struggle, ok to feel disenfranchised, ok to feel misjudged and that we are all capable of change and growth. Read more at www.justicecoachingcenter.com